

SENATE BILL 839

K3
SB 484/18 – JPR

9lr2220
CF HB 994

By: ~~Senator Carter~~ **Senators Carter and Smith**

Introduced and read first time: February 4, 2019

Assigned to: Judicial Proceedings

Reassigned: Finance, February 7, 2019

Committee Report: Favorable with amendments

Senate action: Adopted with floor amendments

Read second time: March 19, 2019

CHAPTER _____

1 AN ACT concerning

2 **Labor and Employment – Criminal Record Screening Practices**
3 **(Ban the Box)**

4 FOR the purpose of authorizing the Commissioner of Labor and Industry to conduct an
5 investigation to determine whether certain provisions of this Act have been violated
6 on receipt of a certain written complaint; prohibiting certain employers from
7 requiring an applicant for employment to disclose certain information regarding the
8 criminal record of the applicant except under certain circumstances, ~~conducting a~~
9 ~~certain criminal history records check, or taking certain other action before a~~
10 ~~conditional offer for employment has been extended the conclusion of a first~~ first
11 in-person interview; providing that certain provisions of this Act do not prohibit an
12 employer from making a certain inquiry or taking certain other action; providing
13 that certain provisions of this Act do not apply to certain employers; ~~authorizing~~
14 requiring the Commissioner on a certain determination to resolve certain issues
15 informally by mediation; authorizing the Commissioner to ask the Attorney General
16 to bring a certain action on behalf of certain applicants under certain circumstances;
17 authorizing the Attorney General to bring a certain action in a certain county under
18 certain circumstances for injunctive relief, damages, or other relief; prohibiting
19 employers from taking or refusing to take certain actions against certain applicants
20 and employees under certain circumstances; establishing a certain civil penalty;
21 defining certain terms; providing for a delayed effective date; and generally relating
22 to criminal record screening practices of employers.

23 BY repealing and reenacting, with amendments,

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.

Underlining indicates amendments to bill.

~~Strike out~~ indicates matter stricken from the bill by amendment or deleted from the law by amendment.



1 Article – Labor and Employment
2 Section 3–103
3 Annotated Code of Maryland
4 (2016 Replacement Volume and 2018 Supplement)

5 BY adding to
6 Article – Labor and Employment
7 Section 3–1401 through 3–1406 to be under the new subtitle “Subtitle 14. Criminal
8 History Screening”
9 Annotated Code of Maryland
10 (2016 Replacement Volume and 2018 Supplement)

11 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF MARYLAND,
12 That the Laws of Maryland read as follows:

13 **Article – Labor and Employment**

14 3–103.

15 (a) Except as otherwise provided in this section, the Commissioner may conduct
16 an investigation to determine whether a provision of this title has been violated on the
17 Commissioner’s own initiative or may require a written complaint.

18 (b) The Commissioner may conduct an investigation under Subtitle 3 of this title,
19 on the Commissioner’s own initiative or on receipt of a written complaint of an employee.

20 (c) The Commissioner may conduct an investigation to determine whether
21 Subtitle 5 of this title has been violated on receipt of a written complaint of an employee.

22 (d) The Commissioner may conduct an investigation to determine whether
23 Subtitle 6 of this title has been violated on receipt of a written complaint of a sales
24 representative.

25 (e) (1) The Commissioner may investigate whether § 3–701 of this title has
26 been violated on receipt of a written complaint of an applicant for employment.

27 (2) The Commissioner may investigate whether § 3–702 of this title has
28 been violated on receipt of a written complaint of an applicant for employment or an
29 employee.

30 (3) The Commissioner may investigate whether § 3–704 of this title has
31 been violated on receipt of a written complaint of an employee.

32 (4) The Commissioner may investigate whether § 3–710 of this title has
33 been violated on receipt of a written complaint of an employee as provided in § 3–710(d)(1)
34 of this title.

1 (5) The Commissioner may investigate whether § 3–711 of this title has
2 been violated on receipt of a written complaint of an employee as provided in § 3–711(d)(1)
3 of this title.

4 (6) The Commissioner may investigate whether § 3–712 of this title has
5 been violated on receipt of a written complaint of an employee or applicant.

6 (f) (1) The Commissioner may investigate whether § 3–801 of this title has
7 been violated on receipt of a written complaint of an employee.

8 (2) The Commissioner may investigate whether § 3–802 of this title has
9 been violated on receipt of a written complaint of an employee.

10 (g) The Commissioner may investigate whether Subtitle 9 of this title has been
11 violated:

12 (1) on the Commissioner’s own initiative;

13 (2) on receipt of a written complaint signed by the person submitting the
14 complaint; or

15 (3) on referral from another unit of State government.

16 (h) The Commissioner may conduct an investigation to determine whether
17 Subtitle 10 of this title has been violated on receipt of a written complaint of an employee.

18 (i) The Commissioner may conduct an investigation to determine whether
19 Subtitle 12 of this title has been violated on receipt of a written complaint of an employee.

20 **(J) THE COMMISSIONER MAY CONDUCT AN INVESTIGATION TO DETERMINE**
21 **WHETHER SUBTITLE 14 OF THIS TITLE HAS BEEN VIOLATED ON RECEIPT OF A**
22 **WRITTEN COMPLAINT OF AN APPLICANT OR EMPLOYEE.**

23 **[(j)] (K)** The Commissioner, on the Commissioner’s own initiative or on receipt
24 of a written complaint, may conduct an investigation of whether a local minimum wage law
25 has been violated.

26 **[(k)] (L)** (1) The Commissioner may conduct an investigation to determine
27 whether Subtitle 13 of this title has been violated on receipt of a written complaint by an
28 employee.

29 (2) To the extent practicable, the Commissioner shall keep confidential the
30 identity of an employee who has filed a written complaint alleging a violation of Subtitle 13
31 of this title unless the employee waives confidentiality.

32 **SUBTITLE 14. CRIMINAL HISTORY SCREENING.**

1 **3-1401.**

2 (A) IN THIS SUBTITLE THE FOLLOWING WORDS HAVE THE MEANINGS
3 INDICATED.

4 (B) "CRIMINAL RECORD" MEANS:

5 (1) AN ARREST;

6 (2) A PLEA OR VERDICT OF GUILTY;

7 (3) A PLEA OF NOLO CONTENDERE;

8 (4) THE MARKING OF A CHARGE "STET" ON THE DOCKET;

9 (5) A DISPOSITION OF PROBATION BEFORE JUDGMENT; OR

10 ~~(5)~~ (6) A DISPOSITION OF NOT CRIMINALLY RESPONSIBLE.

11 (C) (1) "EMPLOYER" MEANS A PERSON WHO EMPLOYS 15 OR MORE
12 FULL-TIME EMPLOYEES.

13 (2) "EMPLOYER" INCLUDES A PERSON WHO ACTS, DIRECTLY OR
14 INDIRECTLY, IN THE INTEREST OF AN EMPLOYER WITH RESPECT TO AN EMPLOYEE
15 OF THE EMPLOYER.

16 (D) (1) "EMPLOYMENT" MEANS ANY WORK FOR PAY AND ANY FORM OF
17 VOCATIONAL OR EDUCATIONAL TRAINING, WITH OR WITHOUT PAY.

18 (2) "EMPLOYMENT" INCLUDES:

19 (I) CONTRACTUAL, TEMPORARY, SEASONAL, OR CONTINGENT
20 WORK; AND

21 (II) WORK THROUGH THE SERVICES OF A TEMPORARY OR
22 OTHER EMPLOYMENT AGENCY.

23 **3-1402.**

24 THIS SUBTITLE DOES NOT:

25 (1) PROHIBIT AN EMPLOYER FROM MAKING AN INQUIRY OR TAKING
26 OTHER ACTION THAT THE EMPLOYER IS REQUIRED TO TAKE OR IS EXPRESSLY

1 AUTHORIZED TO TAKE BY ANOTHER APPLICABLE FEDERAL, STATE, OR LOCAL LAW;
2 OR

3 (2) APPLY TO AN EMPLOYER THAT PROVIDES PROGRAMS, SERVICES,
4 OR DIRECT CARE TO MINORS OR TO VULNERABLE ADULTS.

5 3-1403.

6 (A) ~~AN EXCEPT AS PROVIDED IN SUBSECTION (B) OF THIS SECTION, AN~~
7 ~~EMPLOYER MAY NOT, AT ANY TIME BEFORE A CONDITIONAL OFFER OF EMPLOYMENT~~
8 ~~HAS BEEN EXTENDED THE CONCLUSION OF A FIRST FIRST~~
9 ~~IN-PERSON INTERVIEW;~~

10 (1) ~~EXCEPT AS PROVIDED IN SUBSECTION (B) OF THIS SECTION,~~
11 ~~REQUIRE AN APPLICANT TO DISCLOSE WHETHER THE APPLICANT HAS A CRIMINAL~~
12 ~~RECORD OR HAS HAD CRIMINAL ACCUSATIONS BROUGHT AGAINST THE APPLICANT;~~

13 (2) ~~CONDUCT A CRIMINAL HISTORY RECORDS CHECK ON THE~~
14 ~~APPLICANT; OR~~

15 (3) ~~OTHERWISE INQUIRE OF THE APPLICANT OR OTHERS ABOUT~~
16 ~~WHETHER THE APPLICANT HAS A CRIMINAL RECORD OR HAS HAD CRIMINAL~~
17 ~~ACCUSATIONS BROUGHT AGAINST THE APPLICANT.~~

18 (B) AN EMPLOYER MAY REQUIRE AN APPLICANT TO DISCLOSE DURING THE
19 FIRST ~~IN-PERSON~~ INTERVIEW WITH THE APPLICANT WHETHER THE APPLICANT HAS
20 A CRIMINAL RECORD OR HAS HAD CRIMINAL ACCUSATIONS BROUGHT AGAINST THE
21 APPLICANT.

22 3-1404.

23 (A) (1) WHENEVER THE COMMISSIONER DETERMINES THAT THIS
24 SUBTITLE HAS BEEN VIOLATED, THE COMMISSIONER ~~MAY;~~

25 (1) ~~SHALL TRY TO RESOLVE ANY ISSUE INVOLVED IN THE VIOLATION~~
26 ~~INFORMALLY BY MEDIATION; OR.~~

27 (2) ~~IF MEDIATION UNDER PARAGRAPH (1) OF THIS SUBSECTION IS~~
28 ~~UNSUCCESSFUL, THE COMMISSIONER MAY ASK THE ATTORNEY GENERAL TO BRING~~
29 ~~AN ACTION ON BEHALF OF THE APPLICANT OR EMPLOYEE.~~

30 (B) THE ATTORNEY GENERAL MAY BRING AN ACTION UNDER THIS SECTION
31 IN THE COUNTY WHERE THE VIOLATION ALLEGEDLY OCCURRED, FOR INJUNCTIVE
32 RELIEF, DAMAGES, OR OTHER RELIEF.

1 **3-1405.**

2 AN EMPLOYER MAY NOT TAKE OR REFUSE TO TAKE A PERSONNEL ACTION OR
3 OTHERWISE RETALIATE OR DISCRIMINATE AGAINST AN APPLICANT OR EMPLOYEE
4 AS A REPRISAL FOR THE APPLICANT OR EMPLOYEE HAVING CLAIMED A VIOLATION
5 OF THIS SUBTITLE.

6 **3-1406.**

7 AN EMPLOYER WHO VIOLATES ANY PROVISION OF THIS SUBTITLE IS ~~GUILTY~~
8 ~~OF A MISDEMEANOR AND ON CONVICTION IS SUBJECT TO A FINE NOT EXCEEDING~~
9 ~~\$500 OR IMPRISONMENT FOR NOT MORE THAN 90 DAYS OR BOTH~~ SUBJECT TO A
10 CIVIL FINE NOT EXCEEDING \$500 FOR EACH VIOLATION.

11 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect
12 January 1, 2020.

Approved:

Governor.

President of the Senate.

Speaker of the House of Delegates.