



## **“Ban the Box” Trend Continues: New Jersey, Illinois, Rochester NY and Baltimore MD**

New Jersey and Illinois, as well as Rochester NY and Baltimore MD, have recently joined in on the “Ban the Box” trend. Below is a high-level summary of what you need to know regarding recent litigation in these states and jurisdictions.

### **New Jersey**

On August 11, 2014, Gov. Chris Christie signed [The Opportunity to Compete Act](#). New Jersey’s “Ban the Box” legislation applies to private sector employers, affecting any employer who employs 15 or more employees, including employment agencies. The Act will preempt the 2012 Newark NJ “Ban the Box” legislation, which means Newark employers should no longer be required to provide specific details with their pre-adverse action notices, among other changes, once this goes into effect. The Act will take effect **March 1, 2015**.

#### **The legislation states:**

- Employers shall not inquire, whether oral or written, into an applicant’s criminal record during the initial employment application process; the initial employment application process is the period of time from when there is an inquiry about a prospective employment position or job vacancy until the employer has conducted a first interview.
- The employer may inquire into the applicant’s criminal history:
  - If an applicant discloses any information regarding their criminal record, by voluntary oral or written disclosure, during the initial employment application process, the employer may then make inquiries regarding the applicant’s criminal record during the initial employment application process; or
  - After the initial employment application process.
- Unless otherwise permitted by law, an employer may not publish any advertisement that explicitly states that the employer will not consider any applicant who has been arrested or convicted of one or more crimes or offenses.

#### **Exceptions:**

- There are exceptions to this legislation including when employment sought or being considered is for a position in law enforcement, corrections, the judiciary, homeland security or emergency management or otherwise as required by law.

#### **Penalties:**

- Violations of the law carry civil penalties ranging from \$1,000-\$10,000

### **Illinois**

On July 19, 2014, Gov. Pat Quinn signed the [Job Opportunities for Qualified Applicants Act](#). Illinois’ “Ban the Box” legislation applies to most private sector employers, affecting any employer who employs 15 or more employees, including any agent of the employer, and temporary agencies. The Act will take effect **January 1, 2015**.

#### **The legislation states:**

- An employer or employment agency may not inquire about or into, consider, or require disclosure of the criminal record or criminal history of an applicant until the applicant has been determined qualified for the position and notified that the applicant has been selected for an interview by the employer or employment agency or, if there is not an interview, until after a conditional offer of employment is made to the applicant by the employer or employment agency.

#### **Exceptions:**

- The requirements set forth do not apply for certain positions including, but not limited to, where consideration of such convictions is required by law or individuals licensed under the Emergency Medical Services System Act.

#### **Penalties:**

- Possible civil penalties may range from a written warning to \$1,500 for every 30 days that passes without compliance.



### **Rochester NY**

On May 22, 2014, Mayor Lovely A. Warren signed **Ordinance No. 2014-155**. The city's "Ban the Box" legislation now applies to private businesses where the work is primarily conducted, affecting employers who employ 4 or more employees, including contract and temporary workers. This also includes temporary agencies. The Ordinance will take effect **November 18, 2014**.

#### **The legislation states:**

- Employers located within City limits may not inquire into, or require any person to disclose or reveal, any criminal conviction during the application process. The "application process" shall be deemed to begin when the applicant inquires about the employment sought and shall end when an employer has conducted an initial employment interview or made a conditional offer of employment.
- If an employer does not conduct an interview, that employer must inform the applicant whether a criminal background check will be conducted before employment is to begin.

#### **Exceptions:**

- The prohibitions of this article shall not apply if the inquiries prohibited herein are specifically authorized by any other applicable law, or to applicants for positions in the City Police Department or Fire Department.

#### **Penalties:**

- Possible civil penalties include injunctive relief, damages, or other appropriate relief, and costs and reasonable attorney's fees. Other penalties may include \$500 for the first violation and \$1,000 for each subsequent violation.

### **Baltimore MD**

On May 15, 2014, Mayor Stephanie Rawlings-Blake signed **An Ordinance Concerning "Ban the Box" - Fair Criminal Record-Screening Practices**. Baltimore's "Ban the Box" legislation has now been expanded to the private sector, affecting employers who employ 10 or more full-time equivalent employees in the City of Baltimore, including contract and temporary workers. This also includes temporary agencies. The Ordinance took effect **August 13, 2014**.

#### **The legislation states:**

- Employer may not, at any time before a conditional offer of employment has been extended:
  - Inquire into, or require the applicant to disclose or reveal, whether he or she has a criminal record or otherwise has had criminal accusations brought against her or him; or
  - Conduct a criminal-record check on the applicant.

#### **Exceptions:**

- Exceptions to the legislation include when such actions are expressly required or authorized by law, as well as employment facilities servicing minors or vulnerable adults.

#### **Penalties:**

- Possible civil penalties include back pay for lost wages, reinstatement, compensatory damages, expenses incurred in seeking other employment, and reasonable attorney's fees.
- Possible criminal penalties include a Misdemeanor for any violation which, upon conviction, is subject to fines up to \$500 or imprisonment up to 90 days, or both fine and imprisonment for each offense.

### **Recommendations**

We recommend you review, and discuss with your legal counsel, your organization's policies and procedures, including your company's application, criminal history questions and adverse action process to ensure compliance with the changing laws.

### **Contact Accurate Background**

For additional questions, please contact Accurate Background at 800.216.8024. For more information regarding recent Ban the Box initiatives in other states and jurisdictions, visit our [Legislative Updates page](#).