

HOUSE BILL 994

K3

9lr2219
CF SB 839

By: **Delegates Mosby, Acevero, Barron, Boyce, Bridges, Brooks, Charles, W. Fisher, Holmes, Ivey, Lierman, Moon, Pena-Melnyk, Proctor, Sample-Hughes, Smith, Turner, Wells, and Wilkins**

Introduced and read first time: February 8, 2019

Assigned to: Economic Matters

Committee Report: Favorable with amendments

House action: Adopted

Read second time: March 12, 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; providing that certain~~
11 ~~provisions of this Act do not prohibit an employer from making a certain inquiry or~~
12 ~~taking certain other action; including on certain application forms a question or other~~
13 ~~request for information regarding whether the applicant for employment has a~~
14 ~~criminal record or has had criminal accusations brought against the applicant;~~
15 ~~providing that certain provisions of this Act do not apply to certain employers;~~
16 ~~authorizing the Commissioner on a certain determination to resolve certain issues~~
17 ~~informally by mediation; authorizing the Commissioner to ask the Attorney General~~
18 ~~to bring a certain action on behalf of certain applicants under certain circumstances;~~
19 ~~authorizing the Attorney General to bring a certain action in a certain county under~~
20 ~~certain circumstances for injunctive relief, damages, or other relief; prohibiting~~
21 employers from taking or refusing to take certain actions against certain applicants
22 and employees under certain circumstances; ~~establishing certain penalties;~~
23 ~~requiring the Commissioner to issue a certain order under certain circumstances;~~

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 authorizing the Commissioner to assess a certain civil penalty for certain violations
 2 of this Act under certain circumstances; requiring the Commissioner to consider
 3 certain factors in determining the amount of a certain penalty; subjecting the
 4 assessment of a certain penalty to certain requirements; providing for the
 5 construction of this Act; defining certain terms; providing for a delayed effective date;
 6 and generally relating to criminal record screening practices of employers.

7 BY repealing and reenacting, with amendments,
 8 Article – Labor and Employment
 9 Section 3–103
 10 Annotated Code of Maryland
 11 (2016 Replacement Volume and 2018 Supplement)

12 BY adding to
 13 Article – Labor and Employment
 14 Section 3–1401 through ~~3–1406~~ 3–1405 to be under the new subtitle “Subtitle 14.
 15 Criminal History Screening”
 16 Annotated Code of Maryland
 17 (2016 Replacement Volume and 2018 Supplement)

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

20 **Article – Labor and Employment**

21 3–103.

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

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

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

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

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

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

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

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

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

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

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

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

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

17 (1) on the Commissioner's own initiative;

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

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

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

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

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

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

1 (II) WORK THROUGH THE SERVICES OF A TEMPORARY OR
2 OTHER EMPLOYMENT AGENCY.

3 3-1402.

4 (A) THIS SUBTITLE DOES NOT:

5 (1) PROHIBIT AN EMPLOYER FROM MAKING AN INQUIRY OR TAKING
6 OTHER ACTION THAT THE EMPLOYER IS REQUIRED TO TAKE OR IS EXPRESSLY
7 AUTHORIZED TO TAKE BY ANOTHER APPLICABLE ~~FEDERAL, STATE, OR LOCAL~~
8 FEDERAL OR STATE LAW; OR

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

11 (B) THIS SUBTITLE MAY NOT BE CONSTRUED TO PREEMPT A LOCAL
12 JURISDICTION FROM ENACTING OR ENFORCING A LAW THAT IS MORE RESTRICTIVE
13 WITH RESPECT TO CRIMINAL RECORD SCREENING PRACTICES OF EMPLOYERS IN
14 THE LOCAL JURISDICTION.

15 3-1403.

16 ~~(A) AN EMPLOYER MAY NOT, AT ANY TIME BEFORE A CONDITIONAL OFFER~~
17 ~~OF EMPLOYMENT HAS BEEN EXTENDED:~~

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

21 ~~(2) CONDUCT A CRIMINAL HISTORY RECORDS CHECK ON THE~~
22 ~~APPLICANT; OR~~

23 ~~(3) OTHERWISE INQUIRE OF THE APPLICANT OR OTHERS ABOUT~~
24 ~~WHETHER THE APPLICANT HAS A CRIMINAL RECORD OR HAS HAD CRIMINAL~~
25 ~~ACCUSATIONS BROUGHT AGAINST THE APPLICANT.~~

26 (B) AN EMPLOYER MAY REQUIRE AN APPLICANT TO DISCLOSE DURING THE
27 FIRST IN PERSON INTERVIEW WITH THE APPLICANT WHETHER THE APPLICANT HAS
28 A CRIMINAL RECORD OR HAS HAD CRIMINAL ACCUSATIONS BROUGHT AGAINST THE
29 APPLICANT INCLUDE ON A PAPER OR ELECTRONIC APPLICATION FORM A QUESTION
30 OR OTHER REQUEST FOR INFORMATION REGARDING WHETHER THE APPLICANT HAS
31 A CRIMINAL RECORD OR HAS HAD CRIMINAL ACCUSATIONS BROUGHT AGAINST THE
32 APPLICANT.

1 ~~3-1404.~~

2 ~~(A) WHENEVER THE COMMISSIONER DETERMINES THAT THIS SUBTITLE~~
 3 ~~HAS BEEN VIOLATED, THE COMMISSIONER MAY:~~

4 ~~(1) TRY TO RESOLVE ANY ISSUE INVOLVED IN THE VIOLATION~~
 5 ~~INFORMALLY BY MEDIATION; OR~~

6 ~~(2) ASK THE ATTORNEY GENERAL TO BRING AN ACTION ON BEHALF~~
 7 ~~OF THE APPLICANT OR EMPLOYEE.~~

8 ~~(B) THE ATTORNEY GENERAL MAY BRING AN ACTION UNDER THIS SECTION~~
 9 ~~IN THE COUNTY WHERE THE VIOLATION ALLEGEDLY OCCURRED, FOR INJUNCTIVE~~
 10 ~~RELIEF, DAMAGES, OR OTHER RELIEF.~~

11 ~~3-1405.~~

12 AN EMPLOYER MAY NOT TAKE OR REFUSE TO TAKE A PERSONNEL ACTION OR
 13 OTHERWISE RETALIATE OR DISCRIMINATE AGAINST AN APPLICANT OR EMPLOYEE
 14 AS A REPRISAL FOR THE APPLICANT OR EMPLOYEE HAVING CLAIMED A VIOLATION
 15 OF THIS SUBTITLE.

16 ~~3-1406.~~ 3-1405.

17 ~~AN EMPLOYER WHO VIOLATES ANY PROVISION UNDER THIS SUBTITLE:~~

18 ~~(1) FOR A FIRST VIOLATION, IS SUBJECT TO A CIVIL PENALTY OF \$250;~~

19 ~~(2) FOR A SECOND VIOLATION, IS SUBJECT TO A CIVIL PENALTY OF~~
 20 ~~\$500;~~

21 ~~(3) FOR A THIRD VIOLATION, IS SUBJECT TO A CIVIL PENALTY OF~~
 22 ~~\$750; AND~~

23 ~~(4) FOR A FOURTH OR SUBSEQUENT VIOLATION, IS SUBJECT TO A~~
 24 ~~CIVIL PENALTY NOT LESS THAN \$1,000.~~

25 (A) IF THE COMMISSIONER DETERMINES THAT AN EMPLOYER HAS
 26 VIOLATED ANY PROVISION OF THIS SUBTITLE, THE COMMISSIONER:

27 (1) SHALL ISSUE AN ORDER COMPELLING COMPLIANCE; AND

28 (2) FOR A SUBSEQUENT VIOLATION, MAY, IN THE COMMISSIONER'S
 29 DISCRETION, ASSESS A CIVIL PENALTY OF UP TO \$300 FOR EACH APPLICANT FOR

1 EMPLOYMENT OR EMPLOYEE WITH RESPECT TO WHOM THE EMPLOYER VIOLATED
2 ANY PROVISION OF THIS SUBTITLE.

3 (B) IN DETERMINING THE AMOUNT OF THE PENALTY, IF ASSESSED, THE
4 COMMISSIONER SHALL CONSIDER:

5 (1) THE GRAVITY OF THE VIOLATION;

6 (2) THE SIZE OF THE EMPLOYER’S BUSINESS;

7 (3) THE EMPLOYER’S GOOD FAITH; AND

8 (4) THE EMPLOYER’S HISTORY OF VIOLATIONS UNDER THIS
9 SUBTITLE.

10 (C) THE ASSESSMENT OF A PENALTY UNDER SUBSECTION (A)(2) OF THIS
11 SECTION SHALL BE SUBJECT TO THE NOTICE AND HEARING REQUIREMENTS OF
12 TITLE 10, SUBTITLE 2 OF THE STATE GOVERNMENT ARTICLE.

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

Approved:

Governor.

Speaker of the House of Delegates.

President of the Senate.