



February 9, 2018

Delegate Dereck E. Davis, Chair, House Committee on Economic Matters
Delegate Nick Mosby, Bill Sponsor
Maryland General Assembly, House of Delegates
Room 231, House Office Building
Annapolis, MD 21401

RE: HB 541 – Opposing unless Amended.

Dear Chair Davis, Delegate Mosby, and Members of the Committee,

On behalf of the National Association of Professional Background Screeners (NAPBS), we respectfully submit the following comments concerning House Bill 541 to be heard on February 13th, 2018.

NAPBS was established in 2003 to represent the interest of companies offering employment background screening services. Our Association currently represents over 950 member companies engaged in professional background screening across the United States, including Maryland. Our members help employers, staffing agencies and nonprofit organizations make more informed decisions regarding the suitability of potential employees, contractors and volunteers.

We understand and support the intent of the bill to provide those with criminal histories a fair chance at employment by removing questions about prior convictions from the initial employment application. However, the bill, as drafted, poses a risk to employers who might not be able to effectively screen job applicants. Specifically, we raise two items of concern which we discuss in greater detail below along with proposed modifications to the legislation.

- Limit the prohibition against inquiring about a criminal record to the initial application or interview rather than extending such a prohibition until a determination that the applicant is made.
- Pre-empt inconsistent municipal statutes.

Timing/ Conditional Offer. Recognizing the sponsors' desire to restrict an inquiry about an applicant's criminal history at the outset of the application process, we believe delaying such an inquiry until a determination is made that the applicant is qualified will unduly delay the hiring process, negatively impacting both employers and applicants. Accordingly, we would respectfully propose to modify the legislation so that the prohibition extends only to the initial application or interview.

The requirement to make a determination about an applicant’s qualifications before permitting a background check to be done will force employers to conduct background checks on applicants one-by-one (after each determination is made), rather than permitting the employer to conduct checks on multiple applicants at the same time, and then selecting the best applicant for the job. This delays getting applicants to work and can also prove costly should an employer make a conditional offer to an applicant who subsequently may be disqualified for the position due to his or her criminal history at which time the process would start again.

In addition, applicants may defer accepting other positions for which they have applied and may be offered (with the expectation that the determination of qualification mean they will be offered the job), only to find out that the results of the background check may disqualify them for the position. This would have the unintended effect of delaying the process for anyone going through the hiring process and may result in applicants missing out on other available employment opportunities that were previously deferred. Again, permitting employers to conduct background checks earlier in the employment process (namely after the initial employment application) would both preserve the intent of the bill while not creating unnecessary delays in the hiring process.

Accordingly, NAPBS respectfully proposes that the legislation be modified so as to restrict the ability of employers to inquire about criminal history on the initial application or during the initial interview, but not extend that restriction further into the evaluation process. Indeed, several states have enacted similar laws prohibiting the inclusion of criminal history questions on the initial employment application or after being selected for or participating in a first interview, such as New Jersey, Connecticut, Massachusetts, Rhode Island and Vermont.

Local Preemption. As of the end of 2017, over 150 cities and counties have adopted “ban-the-box” hiring policies for public employers and 16 cities and counties have done so for private employers. Unfortunately, the scope and restrictions contained in these local ordinances vary widely – often conflicting with each other and relevant state statutes. We have even seen at least once instance wherein a local ordinance inconsistent with a state statute was adopted within months of the state enacting its ban the box legislation (Oregon and Portland). Such a patchwork of statutory requirements, presents a burden on employers seeking to comply with relevant laws and delays the hiring process unnecessarily. Accordingly, NAPBS would respectfully propose to modify the legislation to include a pre-emption of local ordinances that seek to regulate private businesses’ hiring practices inconsistent with the state law. For example, the State of New Jersey enacted its own “ban-the-box” law in 2014 which contained the following pre-emption language:

“The governing body of a county or municipality shall not adopt any ordinance, resolution, law, rule or regulation regarding criminal histories in the employment context, except for ordinances adopted to regulate county or municipal

operations. The provisions of this act shall preempt any ordinance, resolution, law, rule or regulation adopted by the governing body of a county or municipality prior to the effective date of this act regarding criminal histories in the employment context, except for ordinances adopted to regulate municipal operations.”¹

In summary, NAPBS supports the intent of the bill to provide those with criminal histories a fair chance at employment. However, given some of the adverse impacts that would occur if the bill were enacted as drafted, we would like to constructively offer these proposed amendments for your consideration.

We are sorry we are unable to attend the hearing, but NAPBS appreciates the opportunity to provide these comments and is happy to provide additional information or answer any questions you may have. Please feel free to contact me directly at 402-957-1179 or brent.smoyer@napbs.com.

Sincerely,



Brent Smoyer, JD
NAPBS State Government Relations &
Grassroots Director

¹ See New Jersey “The Opportunity to Compete Act” available at http://www.njleg.state.nj.us/2014/Bills/A2000/1999_R1.PDF