

Prince George's County Council

Agenda Item Summary

Meeting Date: 11/19/2014
Reference No.: CB-078-2014
Draft No.: 3
Proposer(s): Patterson
Sponsor(s): Patterson, Toles, Harrison, Franklin, Davis
Item Title: An Act concerning Administration for the purpose of prohibiting certain employers from conducting a criminal background check or otherwise inquiring into an applicant's criminal record during the interview process under certain conditions; requiring certain employers to provide prior notice to an applicant or employee when taking an adverse action concerning the applicant's or employee's employment; providing for enforcement by the Executive Director of the Human Relations Commission; and generally regulating the use of criminal records in the hiring process by certain employers.

Drafter: Colette R. Gresham, Legislative Officer
Resource Personnel: Ellis F. Watson, Legislative Aide District 8

LEGISLATIVE HISTORY:

Date Presented:	9/16/2014	Executive Action:	12/4/2014 S
Committee Referral:	9/16/2014 - PSFM	Effective Date:	1/20/2015

Committee Action: 10/16/2014 - FAV(A)

Date Introduced: 10/21/2014
Public Hearing: 11/19/2014 - 10:00 AM

Council Action (1) 11/19/2014 - ENACTED
Council Votes: WC:A, DLD:A, MRF:A, AH:A, ML:A, EO:A, OP:A, IT:A, KT:A
Pass/Fail: P
Remarks:

AFFECTED CODE SECTIONS:

02-231.02, 02-231.03, 02-231.04, 02-231.05, 02-231.06, 02-231.07, 02-231.08

COMMITTEE REPORTS:

Public Safety and Fiscal Management

Date 10/16/2014

REPORT: Committee Vote: Favorable as Amended 4-0 (In Favor: Council Members Toles, Davis, Harrison, and Turner)

This bill prohibits an employer from requiring an applicant or potential applicant to disclose on an employment application or otherwise, the existence of details of the applicant's or potential applicant's arrest record or conviction record. An employer shall not at any time before a conditional offer of employment is made require the applicant to disclose whether the applicant has an arrest record or conviction record; conduct a criminal record check on the applicant; or inquire of the applicant or others about whether the applicant has an arrest or conviction record. During the meeting testimony was heard from the following: Mary Lou McDonough, Director, Department of Corrections; Mike Lyles, Esq., Executive Director, Human Relations Commission; Rhonda Weaver, Esq., Deputy Director, Office

of Human Resources Management; Ron Wineholt, Apartment and Office Building Association; Kenny Battle, Prince George's Chamber of Commerce; Caryn York Aslan, Job Opportunities Task Force; James Estep, Greater Prince George's Business Roundtable; Bob Zinsmeister, Association of Builders and Construction Trade Council; Bob Ross, NAACP; and Matthew Fogg. Letters were also received from Beth Ross, Ross Management Services and Melvin Thompson, Restaurant Association of Maryland. The Committee discussed the history of "ban the box" legislation and how the laws differ from state to state. The bill was held in order to discuss proposed amendments with the business industry and community stakeholders.

The Committee met again on October 16, 2014 to continue discussion and review amendments to the legislation. Members had concerns about when an employer can inquire about an applicant's criminal record as well as listing criteria for what is considered an adverse action. Staff recommended language to allow employer inquiries at the conclusion of a first interview and to require the Executive Director of HRC to promulgate rules and regulations to implement and administer this law.

During the worksession the bill was amended as follows:

1. To move the language in the bill from Subtitle 16 to Subtitle 2 and replace the word "Division" with "Subdivision" throughout the bill
2. On page 1, line 4, after "record" delete "before making a conditional offer of employment" and insert "until the conclusion of a first interview"
3. On page 2, lines 29-31, after "(4)" delete the language and on page 3, delete lines 1-3; renumber the sections
4. On page 3, line 18 delete "ten (10)" and insert "twenty-five (25)"
5. On page 3, line 30, delete "before a conditional offer of employment is made" and insert "until the conclusion of a first interview"
6. On page 4, line 24 delete "seven (7)" and insert "three (3)"
7. On page 5, line 7 after "prohibitions" insert "and requirements" and after "County" delete "law enforcement" and insert "public safety"; on line 16 insert "(c) The Director shall promulgate rules and regulations, subject to County Council approval by resolution, which shall govern the implementation and administration of this Subdivision within sixty (60) days of the effective date of this Act. Sec. 2-231.08. Reporting. (a) The Human Relations Commission shall maintain data on the number of complaints files pursuant to this Subdivision, demographic information on the complainants, the number of investigations it conducts, and the disposition of every complaint and investigation. (b) The Director shall provide the County Council and County Executive an annual report on the number of complaints and the disposition of every complaint and investigation on or before December 31 beginning fiscal year 2016 and each year thereafter."

The Office of Law has reviewed this legislation and finds it to be in proper legislative form with no legal impediments to its enactment.

The enactment of CB-78-2014 should not have an adverse fiscal impact on the County.

BACKGROUND INFORMATION/FISCAL IMPACT:

(Includes reason for proposal, as well as any unique statutory requirements)

The proposed legislation would prohibit certain employers from conducting a criminal background check or otherwise inquiring into an applicant's criminal record before making a conditional offer of employment. "Ban the Box" legislation has been adopted or enacted in several state and local jurisdictions, most recently in the City of Baltimore in May of this year. These laws prohibit the use of a check-box on job applications indicating whether or not the applicant has a criminal record. "Ban the Box" laws began in Hawaii in 1998 and there are now 11 states, including Maryland, and over 50 local jurisdictions that have adopted some form of the laws. The laws take various forms ranging from applying to only public or government employers or going further to apply to private contractors doing business with the jurisdiction or all private employers. "Ban the box" laws benefit public safety by reducing recidivism as well as the economic benefit of increasing employment of people with criminal records and decreasing expenditures on law enforcement and social services.

11/19/2014: CB-78-2014 (DR-2) was amended on the floor prior to enactment as follows:

1. On page 1, line 5 after "applicant" delete "or employee when taking an adverse action concerning the applicant's or employee's" and insert "when rescinding an offer of"
 2. On page 2, line 21 after "1" delete lines 21-23 and renumber
 3. On page 4, line 6 delete "adverse actions" and insert "rescission of an offer of employment"
 4. On page 4, line 7 after "applicant's" delete "or employee's" and on line 10 after "applicant" delete "or held by the employee"
 5. On page 4, delete lines 12-27 and insert the following "(b) If an employer intends to rescind an offer of employment based on an item or items in the applicant's arrest record or conviction record, before rescinding the offer of employment the employer shall (1) provide the applicant with a copy of any criminal record report; (2) notify the applicant of the intention to rescind the offer of employment and the items that are the basis for the intention to rescind the offer of employment; and (3) delay rescinding the offer of employment for seven (7) days to permit the applicant to give the employer notice of inaccuracy of an item or items on which the intention to rescind the offer of employment is based. (c) If an employer decides to rescind an offer of employment based on the arrest record or conviction record of an applicant, the employer shall notify the applicant of the rescission of the offer of employment in writing."
 6. On page 4, line 30 delete "adverse actions" and after "are" insert "required or"
- CB-78-2014 (DR-3) was enacted.

CODE INDEX TOPICS:

INCLUSION FILES:
