

# **CLIENT ALERT: Vermont Enacts Law Prohibiting Employers From Requesting Criminal History Information In Initial Job Applications**

On May 3, 2016, Vermont Governor Peter Shumlin signed a bill that makes Vermont the latest state to enact “ban the box” legislation. The Bill (H.261), which goes into effect on July 1, 2017, prohibits employers from requesting criminal history record information from prospective employees on their initial job application forms. While employers cannot seek this information at the initial stage of the hiring process, they are permitted to inquire about criminal history during the interview process or once the applicant has been deemed otherwise qualified for the position.

The Bill does provide several very limited exceptions. Employers may inquire about criminal convictions on an initial employee application form where: (1) the prospective employee is applying to a position for which any state or federal law or regulation creates a mandatory or presumptive disqualification based on a conviction for one or more types of criminal offenses; or (2) the employer or an affiliate of the employer is subject to an obligation imposed by any state or federal law or regulations not to employ an individual, in either one or more positions, who has been convicted of one or more types of criminal offenses. If either exception applies, job application form questions must be limited to the types of criminal offenses creating the disqualification or obligation.

Additionally, if an employer does ask a prospective employee about his or her criminal history, the employer is required to give the employee an opportunity to explain the criminal history (including post-conviction rehabilitation) so long as they are still eligible for the position under applicable state or federal law. Employers who violate any provision of the Bill are subject to a \$100 civil penalty for each violation.

Vermont is one of an increasing number of states that have enacted some form of “ban the box” legislation that covers private employers. Hawaii, Illinois, Massachusetts, Minnesota, New Jersey, Oregon and Rhode Island also have “ban the box” laws that extend to private employers, while many other states have such laws that currently only apply to public employers. In addition, dozens of municipalities across the country have enacted “ban the box” local laws, including San Francisco, Chicago, Baltimore, New York City, Portland (Oregon), Philadelphia and Austin. These local laws may be more protective to prospective employees than statewide bans or may exist even where there is no statewide ban.

If you have any questions about the Bill, please contact your MBJ attorney.

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