

H. B. 4355

(By Delegate Manypenny)
[Introduced January 28, 2014; referred to the
Committee on the Judiciary.]

A BILL to amend the Code of West Virginia, 1931, as amended, by adding thereto a new article, designated §21-16-1 and §21-16-2, relating to prohibiting an employer from inquiring whether an applicant for employment has been convicted of a criminal offense; and providing that a civil penalty be assess against any employer who commits that unlawful act.

Be it enacted by the Legislature of West Virginia:

That the Code of West Virginia, 1931, as amended, be amended by adding thereto a new article, designated §21-16-1 and §21-16-2, all to read as follows:

CHAPTER 21. LABOR.

ARTICLE 16. UNLAWFUL EMPLOYMENT PRACTICES.

§21-16-1. Employer prohibited from inquiring whether an applicant for employment has been convicted of a criminal offense;

1 **exceptions.**

2 (a) Except as provided in subsection (b) of this section, it
3 is an unlawful employment practice for any employer to make
4 inquiries of an applicant for employment, or otherwise seek
5 information about the applicant, including through the use of any
6 form or application, relating to whether the applicant has ever
7 been convicted of a criminal offense.

8 (b) Notwithstanding the provisions of subsection (a) of this
9 section, an employer may make inquiries of an applicant, or
10 otherwise seek information about the applicant, relating to whether
11 the applicant has ever been convicted of a criminal offense as
12 follows:

13 (1) After the employer extends a conditional offer for
14 employment to an applicant; or

15 (2) Where the granting of employment may involve an
16 unreasonable risk to the safety of specific individuals or to the
17 general public.

18 (c) The Commissioner of Labor shall propose rules for
19 legislative approval in accordance with the provisions of article
20 three, chapter twenty-nine-a of this code, to: (i) Define
21 categories of employment where an individual's past criminal
22 history may involve an unreasonable risk to the safety of specific
23 individuals or to the general public; and (ii) establish factors to
24 be considered by employers in assessing whether an individual's

1 past criminal history poses such an unreasonable risk.

2 (d) The Commissioner may assess a civil penalty against an
3 employer who violates this section of not more than \$100 for each
4 violation.

5 (e) This section becomes effective July 1, 2014, and applies
6 to applications for employment made on or after that date.

7 **§21-16-2. Rules.**

8 The commissioner may adopt rules needed to implement this
9 article in accordance with the provisions of article three, chapter
10 twenty-nine-a of this code.

NOTE: The purpose of this bill is to prohibit employers from inquiring whether an applicant for employment has been convicted of a criminal offense and to provide that a civil penalty may be assessed.

This article is new; therefore, it has been completely underscored.