

# **WEST VIRGINIA LEGISLATURE**

## **2018 REGULAR SESSION**

**Introduced**

### **House Bill 4567**

BY DELEGATE UPSON

[Introduced February 13, 2018; Referred  
to the Committee on Industry and Labor then the  
Judiciary.]

1 A BILL to amend the Code of West Virginia, 1931, as amended, by adding thereto a new article,  
 2 designated §29-6A-1, §29-6A-2, §29-6A-3, §29-6A-4 and §29-6A-5, all relating to enacting  
 3 the Ban-the-Box Act, prohibiting public employers from asking applicants for employment  
 4 to disclose information concerning the applicant’s criminal record or history, under certain  
 5 circumstances.

*Be it enacted by the Legislature of West Virginia:*

**ARTICLE 6A. BAN-THE-BOX ACT.**

**§29-6A-1. Findings.**

1 The Legislature finds that it is the duty of the State of West Virginia to encourage and  
 2 contribute to the successful reintegration of people with a criminal history. The ability to procure  
 3 meaningful employment is essential to reinstating good citizenship. The Legislature also finds  
 4 that reducing barriers to employment for persons with a criminal history is a matter of statewide  
 5 concern and that increasing employment opportunities will reduce recidivism and improve  
 6 community stability.

**§29-6A-2. Short title; scope.**

- 1 (a) This article may be known and cited as the “Ban-the-Box Act.”
- 2 (b) This article only applies to public employers and does not apply to private employers.
- 3 (c) This article is not applicable to public employers that require, by state or federal law, a  
 4 criminal history inquiry as a preliminary qualification to be considered for public employment.  
 5 Those positions may include law enforcement, community safety, civil service, and any position  
 6 that involves direct interaction with minors or the elderly.
- 7 (d) This article does not apply to the practice of law, but nothing in this article precludes  
 8 the Supreme Court of Appeals, in its discretion, from adopting the policies set forth in this article.
- 9 (e) This article encourages similar hiring practices among local governments and private  
 10 employers operating within the state.

**§29-6A-3. Definitions.**

1           For purposes of this article:

2           “Applicant” means any person considered for, or who requests to be considered for, public  
3 employment or any current employee considered for, or who requests to be considered for,  
4 another position of public employment.

5           “Criminal history” means a state or federal conviction of a crime, whether a misdemeanor  
6 or felony, that bears upon an applicant’s fitness for public employment.

7           “Inquiry” means any direct or indirect conduct intended to gather information, using any  
8 mode of communication.

9           “Public employer” means the State of West Virginia, its agencies, boards and  
10 commissions.

**§29-6A-4. Criminal history.**

1           (a) A public employer may not ask an applicant to disclose, orally or in writing, information  
2 concerning the applicant’s criminal record or history, including any inquiry on any employment  
3 application, until the applicant has:

4           (1) Signed the appropriate waiver authorizing release;

5           (2) Is being considered for a specific position; and

6           (3) Has received an interview.

7           (b) Where a background check has been lawfully completed and a criminal history exists,  
8 the state shall consider the following criteria before either proffering or denying an offer of  
9 employment:

10           (1) The nature and gravity of the offense;

11           (2) The length of time that has elapsed since the offense occurred;

12           (3) The age of the person at the time of the conviction;

13           (4) Whether the offense is reasonably related to the duties and responsibilities of the  
14 employment sought by the applicant; and

15           (5) Any information pertaining to the degree of the applicant’s rehabilitation, if any.

16           (c) A record of arrest that did not result in conviction may not be the basis for  
17 disqualification from public employment.

18           (d) The public employer may inform the applicant of the potential adverse employment  
19 decision based on the background check report prior to a final decision and may provide an  
20 opportunity to demonstrate that the applicant was not correctly identified in the background check  
21 report or that the report is otherwise inaccurate.

**§29-6A-5. Remedies.**

1           A complaint or grievance concerning violations of this article by public employers shall be  
2 processed and adjudicated in accordance with the procedures of §29A-5-1 et seq. of this code.

NOTE: The purpose of this bill is to enact the Ban-the-Box Act which prohibits public employers from asking applicants for employment to disclose information concerning the applicant's criminal record or history, under certain circumstances.

Strike-throughs indicate language that would be stricken from a heading or the present law and underscoring indicates new language that would be added.