

WEST VIRGINIA LEGISLATURE

2020 REGULAR SESSION

Committee Substitute

for

House Bill 4905

BY DELEGATES S. BROWN, PUSHKIN, WALKER,
FLEISCHAUER, ESPINOSA, KESSINGER AND PAYNTER

[Originating in the Committee on the Judiciary;

February 21, 2020.]

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; providing findings regarding reintegration of people with a criminal
4 history; applying the provisions only to public employers; excluding the practice of law
5 from the Ban-the-Box Act; encouraging the bill's hiring practices for private employers;
6 providing definitions; providing a procedure to address an applicant's criminal history in
7 the course of the hiring process; prohibiting public employers from asking applicants for
8 employment to disclose information concerning the applicant's criminal record or history,
9 under certain circumstances; requiring a public employer to notify the applicant after
10 receiving adverse information prior to a final decision; providing the applicant an
11 opportunity to address adverse information; requiring the employer to publish specific
12 disqualifying crimes; providing for a grievance procedure to adjudicate a complaint by the
13 applicant.

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 that
4 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 either:

4 (1) Signed the appropriate waiver authorizing release or

5 (2) Is being considered for a specific position and has received an interview.

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

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

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

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

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

14 (5) Any information pertaining to the degree of rehabilitation that may have taken place in
15 the applicant.

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 shall inform the applicant of the potential adverse employment
19 decision based on the background check report prior to a final decision and shall 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.

22 (e) The public employer may publish any specific criminal offenses that would disqualify
23 the applicant for employment.

§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.