

Background Checks - "Ban the Box"

On August 11, 2014, New Jersey Governor Chris Christie signed the "Opportunity to Compete Act," (A.B. 1999). The law limits the ability of certain employers to inquire into a job applicant's criminal record. The law applies to public and private employers in New Jersey that employ 15 or more employees over 20 calendar weeks.

Pursuant to the law, a covered employer may not:

- Require an applicant for employment to complete any employment application that makes any inquiries regarding an applicant's criminal record during the initial employment application process.
- Make any oral or written inquiry regarding an applicant's criminal record during the initial employment application process.
- Post a job advertisement that states that the employer will not consider anyone who has been arrested or convicted of a crime, unless the advertisement solicits applicants for a position exempt from the law (see below).

The law does not cover voluntary disclosures (oral or written) of criminal history. Once an applicant voluntarily discloses the information, employers are permitted to make inquiries about the applicant's criminal history.

The law does not preclude an employer from requiring an applicant for employment to complete an employment application that makes any inquiries regarding an applicant's criminal record after the initial employment application process has concluded or from making any oral or written inquiries regarding an applicant's criminal record after the initial employment application process has concluded. In addition, the law does not preclude an employer from refusing to hire an applicant for employment based upon the applicant's criminal record, unless the criminal record or relevant portion thereof has been expunged or erased through executive pardon, provided that such refusal is consistent with other applicable laws, rules, and regulations.

Positions exempt from the law under the act include law enforcement, corrections, the judiciary, homeland security, or emergency management. Employers are also exempt from the act's prohibitions if the job applicant is legally prohibited from holding the position based on a conviction or arrest, or if the employer is "restricted from specified business activities" based on the criminal history of its employees.

Employers that violate the law are subject to the following civil penalties:

- First offense: Up to \$1,000.
- Second offense: Up to \$5,000.
- Third and subsequent offenses: Up to \$10,000.

The law goes into effect on March 1, 2015.

Read [2014 NJ A.B. 1999](#)