

Minnesota - Ban the Box Alert

The State of Minnesota has enacted a "Ban the Box" law: §364.021. The law is effective January 1, 2014. So there is ample time for Minnesota employers to comply with the newest law requirements. One step is for them to review their employment applications and make sure that any questions seeking criminal history information have been removed.

This law, like similar laws, does not prohibit employers from inquiring about a candidate's criminal history. In fact, this right is specifically affirmed in a contemporaneous amendment to §181.53 of the Minnesota statutes. However, the inquiry can only be made at the first interview of the applicant or if there is no interview until after a conditional offer for employment has been made. The law also prohibits inquiring into criminal history. Thus the employer cannot order a report from a CRA until after the above event in the hiring process. The obvious purpose of the law to allow those with a criminal record, who also have actual qualifications for the position in question, to get a chance at getting the job.

Several categories of employment are excluded from the statute. At this point these appear to be:

1. Department of Corrections
2. All peace officers
3. Fire protection agencies
4. Private detectives
5. Teachers
6. School bus drivers
7. Special transport endorsements
8. Commercial driving training instructor licenses
9. Emergency medical personnel
10. Taxi cab drivers (previous 10 years records)
11. Doctors after a license has been revoked
12. Any position required by statute to conduct a criminal history background check

The Human Rights Commission will enforce this statute. Employers can be fined up to \$500 for violating the requirements of this new law. There is no private cause of action for a consumer to sue.

The law also attempts to provide some protection to employers against claims of negligent hiring. Unfortunately, the law is so poorly written it will be a boon to lawyers arguing over what the words in the statute mean. If you wish to read the actual language, go to the Minnesota legislative website and look up SB 523. Without discussion the legal issues to any degree, here is what the statute attempts to do:

1. There is no negligent hiring if the job really does not expose people to danger.
2. The criminal record exists in a sealed or pardon record (no mention of expungements).
3. The arrest/charge did not result in a conviction.
4. The employers compliance with §364.021. This reference is quite vague and difficult to understand. The New York statute which encourages an evaluation of an individual with a criminal record for a position contains a provision which states that if an employer goes through that process, then they will not be liable for negligent hiring. This statute, however, has no particular process for an employer to follow or make judgments in regard to whether or not someone with a criminal record should be hired. This might be the intent, but it is not in the statute.