

# State Rules Register Alert

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## Understanding the VT & CT Ban-the-Box Laws

As reported in the news, two more states have enacted Ban-the-Box laws. These new laws demonstrate the variety found in these laws. Clearly there is no uniformity from state to state.

### Vermont Ban-the-Box

On May 3, 2016 Governor Peter Shumlin of Vermont signed H.261 establishing Ban-the-Box in that state. The law is effective July 1, 2017. Thus, employers have time to become aware of the law. A violation is a \$100 civil penalty.

This law takes a step back from the current trend in ban-the-box. It does not delay inquiring into criminal record until "post offer". Rather an employer can ask about criminal history including: "arrest or citation, arraignment, judicial disposition, custody and supervision" during an interview or when the applicant is deemed qualified for the position. The law does not limit inquiry as to any particular interview. It just prohibits the question being on the application form.

If the employer intends to deny employment due to a criminal record, it must "afford the applicant an opportunity to explain the information and circumstances regarding any convictions including post-conviction rehabilitation". An easy way to comply is to include this invitation to provide information in the pre-adverse action notice.

#### Exclusions

The law excludes the following companies and allows them to keep the Box on their application forms.

1. Where a federal or state law or regulation creates a mandatory or presumptive disqualification based upon specific types of convictions. Questions on the application must be limited to those offenses that will disqualify the individual per law or regulation.
2. Affiliates of employers who are subject to No. 1.

The exclusion is not lost because the employer or affiliate can request a waiver from the regulators to permit the employment of a specific person. These provisions appear to be directly related to securities, financial and banking employers. It is possible that there are other employers who may fall within this exclusion.

## **Connecticut Ban-the-Box**

On June 1, 2016 Connecticut joined the states that have enacted a Ban-the-Box law per Public Law No. 16-83. It becomes effective on January 1, 2017. Again employers have time to comply.

Basically this is a pure Ban-the-Box law as it simply prohibits inquiring about a prospective employee's prior arrests, criminal charges or convictions on an initial employment application. The law does not contain any guidance as to where or how an employer can pursue the inquiry into criminal records. Evidently there are no restrictions after the application is completed. If one is to believe that there is a real purpose to this law, one would assume that it would not be wise to ask about criminal history as the applicant hands the application to the employer. Some delay while the application is evaluated would seem appropriate.

### **There are two exceptions:**

1. employers required to obtain criminal record information by applicable state or federal law; and
2. a job that requires a security or fidelity bond.

The new law then becomes confusing because it provides that if an employment application has any question concerning criminal history, an elaborate notice must be provided to the applicant. Does this supersede the prohibition or does this only apply to the two exceptions? This is not spelled out.

**The law incorporates some existing state employment restrictions.** Employers may not consider:

- erased records pursuant to 46b-146, juvenile records, 54-760, youthful offender, or 54-142a, final disposition of not guilty, charge dismissed, case not prosecuted for 13 months, case continued for 13 months without further prosecution, absolute pardon given;
- offenses that have received a provisional pardon; and
- the individual has received a certificate of rehabilitation.

The disclosure of criminal information within the employer organization is restricted to the personnel department or if there is no personnel department then to the person in charge of employment and those involved in interviewing the applicant.

There are several stated exceptions that allow sharing with those outside of these personnel employees:

- broker dealers and the SEC;
- insured financial institutions and the FDIC; and
- an insurance producer licensed by Connecticut.