

Briefing Memorandum

DATE: December 5, 2018
TO: Councilwoman Gilmore
FROM: Zach Rothmier, Legislative Analyst
SUBJECT: Ban the Box

BACKGROUND: Ban-the-Box policies are aimed at reducing recidivism by allowing applicants to gain employment based on their qualifications and not be hindered by past criminal history. The theory is that the applicants have paid their debt to society and should not be further hindered. Previous iterations addressed screening on arrests and expungements¹ as violations of due process and presumed innocence.

BEST PRACTICES: 33 States and over 150 cities have adopted a “Ban-the-Box” policy. The laws do not prohibit background checks or further inquiries during the interviewing process. The Office of Personnel Management under the Obama Administration issued an executive order in 2016 to prohibit applications from asking for information on criminal records. Private companies such as Google, Target, and Koch Industries have self-imposed similar policies. The U.S. Equal Employment Opportunity Commission included recommendations on not prescreening in lieu of background checks in their 2012 recommendations.²

DENVER: Executive Order 135 prohibits the City from inquiring about an applicant’s criminal history until it has been determined that the applicant is otherwise qualified for the position. All offers of employment are contingent upon a successful completion of a background check. The background check may only consider convictions unless the arrest has a direct correlation between the conduct and the duties of the position. *This Executive Order does not apply to City Council.*

CURRENT STATUS: Bills prohibiting employment discrimination based on past criminal history have been repeatedly voted down at the Colorado General Assembly (Senate) in recent years. The most comprehensive bill was introduced in the 2016 session by Beth McCann³; mandating that employers cannot screen applicants based on previous criminal history and creating a fine structure for employers that violate the law. In the 2018 session, Colorado adopted a bill that prohibits screening for licenses, permits, and employment if an individual has been arrested but not charged, or has been convicted but pardoned, had the conviction record sealed, or had a collateral order entered concerning the conviction. This bill is applicable to State employees only.

POLICY OPTIONS: Implementing a local *private* Ban-the-Box ordinance could be problematic with the amount of regional contractors that operate in the City. Boston’s ordinance is limited, but the ordinance applies to 50,000 city vendors. Denver’s contract lobbyists expect a “Ban-the-Box” bill to be introduced in the 2019 session. City Council could support this legislation via proclamation.

NEXT STEPS: If Council wishes to include the “Ban-the-Box” and background check requirements in their Human Resource Policies, a draft resolution to change the rules can be introduced to Council.

¹ Colo. Rev. Stat. § 24-5-101

² Enforcement Guidance on the Consideration of Arrest and Conviction Records in Employment Decisions Under Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. § 2000e et seq.

³ Colorado HB 16-1388

Private-Sector Laws:

Location	Ban the Box	Background check only for some positions	Background check only after conditional offer	EEOC-type criteria	Appeal or complaint (A); Copy of record (C); Look-back limit (L); Notice of denial (N);
STATES					
1. California	X		X	X	A, C, N
2. Connecticut	X				A
3. Hawaii	X		X	X	A, L
4. Illinois	X				A
5. Massachusetts	X				A, C, L, N
6. Minnesota	X			X	A
7. New Jersey	X				A
8. Oregon	X				A
9. Rhode Island	X				A
10. Vermont	X				A
11. Washington	X				A
LOCALITIES					
1. Austin, TX	X	X	X	X	A, N
2. Baltimore, MD	X	X	X	X	A
3. Buffalo, NY	X			X	A
4. Chicago, IL	X			X	A
5. Columbia, MO	X		X	X	A
6. District of Columbia	X		X	X	A
7. Kansas City, MO	X			X	
8. Los Angeles, CA	X		X	X	A, C, N
9. Montgomery County, MD	X				A, C, N
10. New York, NY	X		X	X	A, C, N
11. Philadelphia, PA	X		X	X	A, C, N
12. Portland, OR	X		X	X	A, N
13. Prince George's County, MD	X			X	A, C, N
14. Rochester, NY	X			X	A
15. San Francisco, CA	X		X	X	A, C, L, N
16. Seattle, WA	X			X	A, C, N
17. Spokane, WA	X				