

# Management Alert



## Connecticut Bans (Another) Box, Expanding Protections for Applicants With Criminal Backgrounds

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**Seyfarth Synopsis:** Connecticut amends its “ban the box” law with regard to employers and modifies technical requirements for consumer reporting agencies. The law is an expansion of Connecticut’s current law, and places further restrictions on when and how employers may inquire about applicants’ criminal backgrounds.

On June 1, 2016, Connecticut’s Governor Dannel Malloy signed an [amendment](#) to the state’s existing law covering criminal history disclosures on employment applications. The amendment essentially creates a “ban the box” law. Previously, applicants were not required to report convictions which were erased, subject to a provisional pardon or where the applicant received a certificate of rehabilitation. Once effective, the amendment, like laws in other jurisdictions, bans criminal history inquiries on the employment application. Although the amendment does not appear to provide a private right of action, it does permit the filing of a complaint with Labor Commissioner. The amendment also eliminates the requirement for Consumer Reporting Agencies (“CRAs”), to regularly delete records of erased arrests, criminal charges, or convictions.

### Changes for Employers

The aspects of the amendment that apply to employers are effective on **January 1, 2017**, while the CRA provisions became effective **immediately**. The law applies to both public and private Connecticut employers with one more employees, regardless of industry.

Employers subject either to applicable state or federal laws requiring a background check at the initial employment stage, or security, fidelity or equivalent bonding requirements are exempted from the ban the box restrictions on employment applications.

The amendment does not establish a limitation on the number of years an employer can search an applicant’s criminal history, establish when an employer can inquire about criminal history after the completion of the employment application, create a posting requirement explaining the law or prohibit an employer from disclosing that a criminal history background check is part of its pre-employment process.

The existing law requires a disclaimer that in clear and conspicuous language, states:

- (1) that the applicant is not required to disclose the existence of any arrest, criminal charge or conviction, the records of which have been erased,
- (2) that criminal records subject to erasure are, i.e., records pertaining to a finding of delinquency where a child was a

member of a family with service needs, an adjudication as a youthful offender, a criminal charge that has been dismissed or nolle, a criminal charge for which the person has been found not guilty or a conviction for which the person received an absolute pardon, and

(3) that any person whose criminal records have been erased are deemed to have never been arrested within the meaning of other state laws with respect to the proceedings so erased and can swear under oath that they are erased.

Because this provision was not deleted in the process of amending the law, in an abundance of caution, we suggest that you consider placing a notice when asking about criminal history indicating that applicants need not disclose such information during the hiring process.

The law also establishes a “fair chance employment task force” to study issues relating to employment opportunities available to individuals with criminal histories, which will report its findings to the General Assembly, on or before January 1, 2017 (the amendment’s effective date), and on January 1, 2018, at which point the task force will be disbanded. The mandate initiating the task force will be effective immediately.

## Changes for Consumer Reporting Agencies

Specifically for CRAs, the amendment also streamlines certain requirements under Connecticut law. Previously, in instances where CRAs purchased criminal records from the Connecticut Judicial Department, they were required to purchase updated criminal records from the Judicial Department on a monthly basis, and permanently delete any criminal records that had been “erased.” The amendment requires that, going forward, erased records must be made available to CRAs, but eliminates the requirement that CRAs must make these purchases and updates on a monthly or any other periodic basis. Unlike the provisions of the amendment applicable to employers, this change is effective immediately.

## Conclusion

Unless an employer squarely falls within one of the two exceptions noted above, employers should remove any criminal history inquiry contained on an employment application prior to the effective date of the revised law. As written, the law appears to permit questions to be asked of criminal convictions during an interview, but employers should ensure that the employment application was completed prior to the interview and, in addition, proceed with extreme caution. Further guidance from the Connecticut Department of Labor may provide insight, which we will report on if and when it becomes available.

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