

# 50 STATE GUIDE

## EMPLOYMENT & HIRING BACKGROUND SCREEN LAWS

Asurint's comprehensive guide is designed to provide a high-level snapshot of each ordinance, law or regulation at the local and state level that may impact background screening (the guide excludes US territories). This guide does not address "clean slate" laws or drug testing. We have additional resources available that provide a more detailed look into many of the laws included here. Please request one of our topic-specific whitepapers on Ban the Box, Credit Check Restrictions or Drug Testing Laws for further information.

Please note, Asurint continually reviews this guide for accuracy and completeness; however, it may be possible an applicable law is missing or outdated. This guide is not intended to provide legal advice or address industry-specific requirements. We strongly recommend consultation with qualified legal counsel to determine if and how the laws outlined here impact your background screening and hiring process.



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## EMPLOYMENT & HIRING BACKGROUND SCREEN LAWS

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# ALABAMA

## **ALABAMA**

Alabama does not have any local or statewide laws that impact employers and their use of background reports akin to the Fair Credit Reporting Act. There may be industry-specific requirements and we encourage consultation with qualified legal counsel.

### **Fair Credit Reporting Act-State Analogue**

None.

### **Ban the Box/Fair Chance**

None.

### **Credit Check Restrictions**

None.

### **Expungement/Record Sealing/Certificate of Good Conduct**

Alabama affords protections to individuals whose criminal record was expunged. Individuals with expunged records are not required to disclose that information to employers.

[Ala. Code §15-27-6.](#)

### **Social Media**

None.

### **Security Freeze**

Individuals may place a security freeze on their credit report which is administered by one (or all) of the three nationwide credit bureaus. Under this law, individuals are entitled to receive a specific summary of rights any time they receive a copy of the "A Summary of Your Rights Under the Fair Credit Reporting Act." [Ala. Code §8-35-2.](#)

# ALASKA

## **ALASKA**

Alaska does not have any local or statewide laws that impact employers and their use of background reports akin to the Fair Credit Reporting Act. There may be industry-specific requirements and we encourage consultation with qualified legal counsel.

### **Fair Credit Reporting Act-State Analogue**

None.

### **Ban the Box/Fair Chance**

None.

### **Credit Check Restrictions**

None.

### **Expungement/Record Sealing/Certificate of Good Conduct**

Individuals may petition to have records sealed that resulted from mistaken identity or false accusations. Individuals who have a record sealed under such conditions are not required to report the information to employers. [Alaska Stat. §12.62.180](#).

### **Social Media**

None.

### **Security Freeze**

Individuals may place a security freeze on their credit report which is administered by one (or all) of the three nationwide credit bureaus. Under this law, individuals are entitled to receive from a consumer reporting agency a specific summary of rights any time they receive a copy of the "A Summary of Your Rights Under the Fair Credit Reporting Act." [Alaska Stat. §45.48.170](#).

# ARIZONA

## ARIZONA

Arizona has a statewide law that impacts employers and their use of background reports. There may be industry-specific requirements and we encourage consultation with qualified legal counsel.

### Fair Credit Reporting Act-State Analogue

Arizona's law regulating consumer reports is not nearly as comprehensive as the Fair Credit Reporting Act, but does require employers who deny an individual employment, a promotion, retention as an employee or reassignment (which is not to the individual's advantage) to provide the name and address of any consumer reporting agency that furnished the report. [Ariz. Rev. Stat. §44-1693](#).

Employers (and consumer reporting agencies) are prohibited from requiring a consumer/individual to waive their rights and may not charge any fee for a disclosure of the individual's file if the request is made within a 30-day period of the request for the consumer report or notice of adverse action. [Ariz. Rev. Stat. §44-1693](#).

### Ban the Box/Fair Chance

None.

### Credit Check Restrictions

None.

### Expungement/Record Sealing/Certificate of Good Conduct

Various laws afford the ability for record sealing. For example, an individual who is wrongfully arrested, indicted or otherwise charged for any crime may petition the court for a notice to be added to all records related to such an instance that the person has been cleared. [Ariz. Rev. Stat. §13-4051](#).

### Social Media

None.

### Security Freeze

Individuals may place a security freeze on their credit report which is administered by one (or all) of the three nationwide credit bureaus. There is no specific notice of rights required. [Ariz. Rev. Stat. §44-1698](#).



# ARKANSAS

## ARKANSAS

Arkansas does not have any local or statewide laws that impact employers and their use of background reports akin to the Fair Credit Reporting Act. There may be industry-specific requirements and we encourage consultation with qualified legal counsel.

### Fair Credit Reporting Act-State Analogue

None. However, employers are required to provide a copy of the background report to an applicant or an employee upon their request. [Ark. Code Ann. §11-3-206](#).

### Ban the Box/Fair Chance

None.

### Credit Check Restrictions

None.

### Expungement/Record Sealing/Certificate of Good Conduct

Individuals may petition to have certain information sealed, including some felony, misdemeanor, or violation records. Once a record is sealed, it cannot be distributed or considered. [Ark. Code Ann. §16-90-1400, et seq.](#)

### Social Media

Employers are prohibited from requiring current or prospective employees to:

- Disclose username and passwords on social media accounts.
- Change the privacy settings on their social media account.
- Add another employee, supervisor or administrator to the list or contacts associated with their account.

If an employer inadvertently receives an employee's username, password or other login information they may not use that information to gain access to an employee's social media account. Employers may also not take action against or threaten to discharge, discipline or other penalize an employee, or fail to hire an applicant, based on their exercise of rights under this law.

However, the law does not prohibit an employer from viewing information about current or prospective employees that is publicly available. Additionally, the law is not designed to prevent an employer from complying with the requirements of federal, state or local rules, laws or

regulations or affect an employer's obligations to request information related to formal investigations or proceedings. [Ark. Code Ann. §11-2-124.](#)

### **Security Freeze Notice**

Individuals may place a security freeze on their credit report which is administered by one (or all) of the three nationwide credit bureaus. Under this law, individuals are entitled to receive a specific summary of rights any time they receive a copy of the "A Summary of Your Rights Under the Fair Credit Reporting Act." [Ark. Code Ann. §4-112-111.](#)

### **Other**

Employers in Arkansas will likely not be confronted with local level legislation pertaining to criminal or credit legislation as state law prohibits any county, municipality or other political subdivision of the state from adopting or enforcing an ordinance, rule, resolution or policy that creates a protected classification or prohibits discrimination on a basis not contained in state law. [Ark. Code Ann. §14-1-403.](#)

# CALIFORNIA

## CALIFORNIA

California has numerous laws at the local and state level that impact employers and their use of background report information. There may also be industry-specific requirements and we encourage consultation with qualified legal counsel.

### Fair Credit Reporting Act-State Analogue

California has two versions of laws that impact background reports: Investigative Consumer Reporting Agencies Act (ICRAA) and Consumer Credit Reporting Agencies Act (CCRAA). Despite constitutional challenges, both laws remain in effect and should be reviewed by employers.<sup>1</sup> A high-level summary of each is provided below.

#### Investigative Consumer Reporting Agencies Act (ICRAA)

[ICRAA governs](#) the use of “investigative consumer reports” used for employment purposes which includes all potential check types (i.e., criminal, driving record/MVR, reference, employment and education verifications, etc.) minus arguably credit information.

Employer Requirements:

#### Disclosure & Authorization

- Make a “clear and conspicuous disclosure in writing” to the individual in a “document that consists solely of the disclosure” that they may obtain an investigative consumer report, include the permissible purpose (i.e., employment) and note that disclosure may include information on the “consumer’s character, general reputation, personal characteristics, and mode of living.”
- Identify the consumer reporting agency’s (CRA) name, address, telephone number and privacy policy.
- Notifies the consumer in writing of the nature and scope of the investigation requested including a summary of Section 1786.22.
- Provide a means for the individual to check a box that they wish to receive a copy of the background report.
- Obtain written authorization from the individual.
- Exception: If the employer has suspicion of wrongdoing or misconduct by the individual subject to a background report request.

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<sup>1</sup> The Supreme Court of California recently issued an opinion finding employers can comply with both laws. See [Eileen Connor v. First Student, Inc.](#)

### Adverse Action

- Employers must notify the individual of any adverse action taken on the background report and provide the name and address of the consumer reporting agency.

ICRAA also regulates what information CRAs may include on a consumer report. CRAs may not report records of arrest, indictment, information, misdemeanor complaint, or convictions of a crime that, from the date of disposition, release, or parole, antedate the report by more than seven (7) years.

### **Consumer Credit Reporting Agencies Act (CCRAA)**

[The CCRAA](#) is more narrowly tailored than ICRAA and applies to credit information used to develop a credit report (not a background report generally). Prior to requesting a consumer credit report for employment purposes, employers must provide written notice informing the individual that a report will be used and must identify the specific basis for use of the report (see the section on Credit Check Restrictions below). The employer must also include a box that the individual can check to receive a copy of the consumer credit report.

Employers must also advise the individual if adverse action has been taken based on a consumer credit report and provide the name and address of the consumer credit reporting agency. (See Section 1785.20 for further requirements).

Given the complexities and application of each, employers are strongly encouraged to consult with qualified legal counsel.

## **Ban the Box/Fair Chance**

### **California Statewide**

There are two primary portions of California law that impact employer use of criminal history information. The amended Regulations which take effect October 1, 2023, are far more extensive than the [Labor Code](#). The following content addresses the amended Regulations at a high-level. Given the extensive requirements, employers are encourage to review the [Consideration of Criminal History in Employment Decisions Regulations \(amendments\)](#) in full with qualified legal counsel. Our Ban the Box whitepaper also provides additional detail.

The amended Regulations change several definitions including for employer and applicant. Notably, the term “applicant” now includes existing employees. Thus, the Regulations apply to any consideration of criminal history whether that is pre-hire or post-employment.

At a high-level, the Regulations:

- Prohibit any use or inquiry into criminal history information before a conditional offer. This includes conducting a criminal background check. (Note: there are limited exemptions included in the Regulations to this prohibition). Employers cannot hold an applicant’s refusal to provide criminal history information pre-offer against the individual and cannot consider voluntarily provided information until post-offer.
- Prohibit inclusion of statements such as “No Felons” and “Must Have Clean Record” in job advertisements, postings, applications or other material.

- Prohibit the type of criminal history information employers may consider (such as non-convictions, referral to or participation in diversion programs, dismissed, sealed or expunged cases, juvenile matters or non-felony conviction for possession of marijuana that is two or more years old).
- Require employers to conduct individualized assessments to determine if the criminal history has a direct and adverse relationship with the specific duties of the job that justify denying the applicant the position. Note: the Regulations include several factors that an employer must consider at a minimum.
- Require notice of the preliminary decision to disqualify an applicant (following the individualized assessment). The notice must include the specific conviction(s) forming the basis for the preliminary decision, the criminal history report, notice of the individual's right to respond, and notice of the deadline for the response.
  - Applicants must be provided at least 5 business days to respond. This 5 business day period starts upon the "date of receipt" which varies depending on method of send. If notice does not provide a confirmation of receipt (such as a tracked delivery) then the notice will be deemed received: (i) for email, two (2) business days after it is sent; (ii) for mail, five (5) calendar days after delivery for California addresses, ten (10) calendar days for outside of California address and twenty (20) calendar days for outside of the US addresses. Employers are encouraged to consult with legal counsel whether receiving a bounce back or other undeliverable notice associated with email should start a new "date of receipt" calculator when resending the notice via mail.
- Require employers conduct a reassessment if the applicant provides information. There are a number of factors employers may consider during this reassessment process included within the Regulations.
- Require written notification to the applicant if the decision becomes final. Such notice must include: the final decision reached, any procedure the employer has to challenge the decision or request reconsideration, and the right to contest the decision by filing a complaint with the Civil Rights Department.

The Civil Rights Department makes various sample forms available on its website which employers may use (but are not required to use).

There are a number of additional changes covered within the Regulations, such as requirements related to the Work Opportunity Tax Credit, not addressed here. Please review the Regulations in full and consult with qualified legal counsel.

### Los Angeles City

The Ordinance applies to employers located in or doing business in the City that have at least ten (10) employees. Employers should review the Ordinance's language for the definition of employee as it is defined broadly.

Employers cannot inquire into an individual's criminal history until after extending a conditional offer or include the criminal history question on an employment application. Prior to taking adverse action, employers must complete a [written assessment](#) that that "effectively links the

specific aspects” of the individual’s criminal history “with risks inherent in the duties” of the position sought. Employers must then follow the Fair Chance process which includes providing written notification of the potential decision, a copy of the written assessment and any other information or documentation that supports the decision.

Employers must then wait at least five (5) business days before making a final decision. During this time, the employer cannot fill the position sought by the applicant. If an applicant provides additional information or documentation, employers must take that into consideration and perform a written reassessment of the proposed adverse action. Finally, if adverse action will still be taken, the applicant must be notified and provide a copy of the written reassessment.

There are additional requirements under the law around job advertisements, record retention and posting a notice in the workplace informing individuals of the law’s provisions. [Los Angeles Fair Chance Initiative for Hiring; Rules and Regulations Implementing The Fair Chance Initiative For Hiring \(Ban the Box\) Ordinance](#).

### Los Angeles County

The Fair Chance Ordinance (FCO) in Los Angeles County becomes operative September 3, 2024. The Department of Economic Opportunity has published [FAQs](#) employers should review. The following is a brief, high-level overview of the FCO and does not cover every single component of the law (such as any exceptions).

The FCO applies to employers with five (5) or more employees regardless of location, including any entity/agent that evaluates criminal history on behalf of an employer, whenever the employee will work within the [unincorporated areas of Los Angeles County](#) at least two (2) hours on average each week. The law applies to applicants and employees.

The broad law prohibits any criminal history inquiries or review until a conditional offer of employment has been extended. Employers must provide written notice to applicants prior to considering criminal history information that includes specific details outlined in the ordinance. Employers are prohibited from considering certain criminal history information (which largely mirrors statewide law) including convictions that arose out of conduct that has since been decriminalized.

Prior to taking adverse action, employers must conduct a written initial individualized assessment taking into account several factors. If an applicant has a license, certificate or other credential, it will be presumed the applicant’s criminal history is not directly, adversely or negatively related to the specific duties of the position so the employer must provide an explanation to rebut this presumption in their initial individualized assessment. There are specific requirements for the preliminary adverse action notification which must be sent via mail and email (if an email is provided).

Employers must wait at least five (5) business days before making a final decision. If an applicant disputes or provides further information (such as evidence of rehabilitation or mitigating circumstances), the employer must wait an additional ten (10) business days. The position must remain open. The waiting period starts based on a specific date of receipt



calculation outlined in the FCO (for example, five (5) calendar days if the letter is mailed to an address in California).

A second individualized assessment is required if the applicant provides additional information. If a final adverse decision is made, the employer must provide notice to the applicant (specific details are required under the FCO) via mail and email.

The FCO also impacts job advertisements, and includes posting requirements, record retention obligations and prohibits retaliation. The FCO provides protections for employers from negligent hiring and retention claims if the employer was prohibited from considering the particular criminal history information that may be at issue. [Los Angeles County Fair Chance Ordinance](#).

### **San Francisco**

The Ordinance applies to employers with five (5) or more employees regardless of whether those employees are located in San Francisco or not.

Currently, employers may not inquire about, require disclosure of (including conducting a third-party background check) or base a hiring decision on a person's conviction history until after a conditional offer of employment. Prior to inquiring into conviction history, employers must provide a copy of the Fair Chance Ordinance Notice.

Employers are required to conduct an individualized assessment considering only directly related convictions, the time that elapsed since the conviction or unresolved arrest and any evidence of inaccuracy, mitigating factors or rehabilitation. Prior to taking adverse action, employers must provide notice to the individual including identification of the certain conviction(s) that form the basis of the potential decisions. Employers must provide seven (7) days before making a final decision and hold the position open during that time. If a decision becomes final, the employer must notify the individual of that decision.

Employers may not consider certain types of criminal history information including: (i) arrests that did not lead to a conviction, (ii) conviction that has been judicially dismissed, sealed or expunged, (iii) referral to or participation in a pre-trial or post-trial diversion program, (iv) juvenile criminal history, (v) offenses other than felony or misdemeanors and (vi) convictions older than seven (7) years. Employers may also not consider charges that have been decriminalized since the date of conviction (such as marijuana or cannabis offenses).

There are several other requirements including posting the [Fair Chance Ordinance Notice](#) in every workplace/jobsite, record retention and specific notices required for job advertisements/solicitations. [Fair Chance Ordinance; Amendments effective October 1, 2018](#).

### **Credit Check Restrictions**

Employers may not obtain or use a consumer credit report for employment purposes unless a particular exemption is met (see law for full list of exemptions). If conducting a credit check in California, employers must provide notice to the candidate of which exemption is being relied upon. [Cal. Lab. Code §1024.5-1024.6](#)

## Social Media

Employers are prohibited from requiring or requesting an employee or applicant to:

- Disclose a username or password with the purpose of accessing a personal social media account.
- Access personal social media in the employer's presence.
- Divulge any personal social media.

Employers may request an employee divulge personal social media information reasonably believed to be relevant to an investigation related to alleged employee misconduct or violation of applicable laws or regulations. Employers may also request the username, password or other information related to an employer-issued electronic device. [Cal. Lab. Code §980](#).

## Summary of Rights & Security Freeze

There are numerous rights and notices that must be provided to candidates throughout the background screening process. Asurint will provide a notice of rights addressing California Civil Code §§ 1785.10 and 1785.15 that addresses an individual's right to access information held by Asurint and their right to place a security freeze on their credit which is administered by one (or all) of the three nationwide credit bureaus.

## Other

### Sex Offender Registry

"Megan's Law" in California governs sex offender registration requirements in addition to the registration database. Under the law, it is prohibited to use information from the California sex offender registry for several purposes including employment. There are limited exemptions including where employers are required by law to access and use this information. Employers should consult with qualified legal counsel to determine if an exemption exists for their use of California sex offender registry information. [Cal. Penal Code §290.46\(1\)\(2\)\(E\)](#).

### Workers Compensation

Law specifically notes that "there should not be discrimination against workers who are injured in the course and scope of their employment." Although the law does not reference job applicants specifically, it does note that any employer that discharges, threatens to discharge or in any way discriminates against any employee because he or she has filed, or intends to file, a worker's compensation claim, is guilty of a misdemeanor. [Cal. Lab. Code §132a](#).

# COLORADO

## COLORADO

Colorado has several laws that may impact employers as it relates to background screening. There may be industry-specific requirements and we encourage consultation with qualified legal counsel.

### Fair Credit Reporting Act-State Analogue

Colorado does have a law similar to the Fair Credit Reporting Act (FCRA) in some respects, including a prohibition on consumer reporting agencies from producing consumer reports that contain records of arrest, indictment, or conviction of a crime that, from the date of disposition, release, or parole, predate the report by more than seven (7) years for applicants that have an expected salary of \$75,000 or less. If the salary is reasonably expected to be more than \$75,000, than the 7-year restriction does not apply. [Colo. Rev. Stat. § 12-14.3-105.3](#)

However, the law was passed after the FCRA amendments were enacted in 1996. Therefore, Colorado law and its requirements regarding what may be reported on a background report is pre-empted and does not apply. The language for this determination is found in Section 625(b)(1)(E) of the FCRA.

### Ban the Box/Fair Chance

House Bill 19-1025 prohibits employers from inquiring into or requiring disclosure of criminal history on an initial written or electronic employment application. Employers may also not state in job advertisements or on any form of employment application that persons with criminal history may not apply. Employers with 11 or more employees must be in compliance with the law effective September 1, 2019. All other employers must be in compliance by September 1, 2021. [House Bill 19-1025](#).

### Credit Check Restrictions

Employers with four or more employees may not request or use credit history information in employment decisions unless a particular exemption is met. This includes requiring an individual to consent to a request for a credit report. [Colo. Rev. Stat. §8-2-126](#).

### Exemptions

The employer is a bank or financial institution;

- The report is required by law; or
- The report is substantially related<sup>2</sup> to the employee's current or potential job and the employer has a bona fide purpose for requesting or using information in the credit report

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<sup>2</sup> Employers are encouraged to review the text of the law for what constitutes "substantially related".

that is substantially related to the employee's current or potential job and is disclosed in writing to the An employer may ask the individual to provide any "unusual or mitigating circumstances" regarding the credit report information. The employer must inform the individual if they are taking adverse action upon the credit report information.

### **Expungement/Record Sealing/Certificate of Good Conduct**

Colorado allows individuals to seal a variety of records, including those related to cases of mistaken identity, arrest records and certain conviction records. Once a record is sealed, an individual does not need to provide that information to an employer. [Colo. Rev. Stat. §24-72-701 to 710.](#)

### **Social Media**

Employers are prohibited from suggesting, requesting, or requiring an employee or applicant to disclose any username or password or other means for accessing the employee's or applicant's personal account. Employers are prohibited from compelling employees to add anyone to their list of contacts or change their privacy settings. Further, employers may not discharge, discipline, or otherwise penalize an individual for refusing to comply with the employer's request in violation of the law's protections.

Employers are permitted to conduct an investigation to ensure compliance with applicable securities or financial laws or regulations and investigate an employee's electronic communications based on information received about unauthorized downloading of the employer's proprietary information or financial data to a website or account by an employee. Additionally, employers may require employees to disclose usernames, passwords or other means for accessing non-personal accounts or services. [Colo. Rev. Stat. §8-2-127.](#)

### **Security Freeze**

Individuals may place a security freeze on their credit report which is administered by one (or all) of the three nationwide credit bureaus. Under this law, individuals are entitled to receive a specific summary of rights any time they receive a copy of the "A Summary of Your Rights Under the Fair Credit Reporting Act." [Colo. Rev. Stat. §5-18-113.](#)

# CONNECTICUT

## CONNECTICUT

Connecticut does not have any local or statewide laws that impact employers and their use of background reports akin to the Fair Credit Reporting Act. However, there are laws that impact criminal and credit checks. There may also be industry-specific requirements and we encourage consultation with qualified legal counsel.

### Fair Credit Reporting Act-State Analogue

None.

### Ban the Box

Prohibits employers from inquiring into whether an applicant has ever been arrested for, charged with or convicted of any crime on an initial employment application. Employers are also prohibited from requiring an employee or prospective employee to disclose the existence of any arrest, criminal charge or conviction which have been erased.

If an employment application form contains any question regarding criminal history, there must be a specific notice, in clear and conspicuous language, that the applicant is not required to disclose particular items of criminal history. [Conn. Gen. Stat. §31-51j](#).

A new law was passed, SB 1019, effective October 1, 2021. This law amends the employer criminal background check law adding a definition for "erased criminal history record information." The amendments go on to provide that on and after January 1, 2023 it is an illegal discriminatory practice for an employer or employer's agent, an employment agency or a labor organization to discriminate in employment matters on the basis of a person's erased criminal history record information or to advertise employment opportunities in such a manner as to restrict such employment so as to discriminate against persons on the basis of their erased criminal history record information

### Credit Check Restrictions

Employers may not inquire into or require an employee or prospective employee to consent to a request for a credit report that contains information about the employee's or prospective employee's credit score, credit account balances, payment history, savings or checking account balances or savings or checking account numbers as a condition of employment unless an exemption applies. [Conn. Gen. Stat. §31-51tt](#).

### Exemptions

- Financial institution.
- Such report is required by law.

- The employer reasonably believes that the employee has engaged in specific activity that constitutes a violation of the law related to the employee's employment.
- Such report is substantially related<sup>3</sup> to the employee's current or potential job or the employer has a bona fide purpose for requesting or using information in the credit report that is substantially job-related and is disclosed in writing to the employee or applicant.

## Expungement/Record Sealing/Certificate of Good Conduct

Individuals may receive a provisional pardon or certificate of rehabilitation (labeled as a Certificate of Employability) depending on the nature of their conviction(s). [Conn. Gen. Stat. §54-130e](#). The granting of a provision pardon or certificate of rehabilitation does not mean the individual's record was erased or that they do not need to disclose the existence of such a record.

Employers may not deny employment solely based on the fact that the individual had a prior arrest, criminal charge or conviction where the records were erased, or a prior conviction where the individual received a provisional pardon or certificate of rehabilitation. [Conn. Gen. Stat. §31-51i](#). Amendments redefine the term to "erased criminal history record information"

As of January 1, 2023, it will be illegal for employers to discriminate against someone in compensation or in terms, conditions or privileges of employment on the basis of that person's erased criminal history record information. Furthermore, it is considered discriminatory practice "to advertise employment opportunities in such a manner as to restrict such employment so as to discriminate against persons on the basis of their erased criminal history record information." Violations can be reported to the Labor Commissioner, the Commission on Human rights and Opportunities or brought as an action to the Superior Court. [SB No. 10109](#)

## Social Media

Employers may not:

- Request or require that an employee or applicant provide an employer with username and password or any other authentication means for accessing a personal online account.
- Request or require that an employee or applicant authenticate or access a personal online account in the employer's presence.
- Require that an employee or applicant invite the employer or accept an invitation from the employer with respect to a personal online account.
- Discharge, discipline, discriminate against, retaliate against, or otherwise penalize any employee who refuses an employer's request that is prohibited under this law.
- Fail or refuse to hire an applicant who refuses an employer's request that is prohibited under this law.

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<sup>3</sup> There are several different employment relationships and responsibilities that may constitute the credit check being "substantially related" to the position. Employers should review the text of the law for a full listing.



Employers request or require information around usernames and passwords that are associated with an account or service provided by the employer for business purposes and any electronic communication devices that are supplied or paid for (in whole or in part) by the employer. Nothing under the law prevents an employer from conducting investigations, monitoring, reviewing accessing or blocking data stored on an employer-paid device, or from complying with state or federal rules, regulations, or law. [Conn. Gen. Stat. §31-40x](#).

### **Summary of Rights & Security Freeze**

A consumer reporting agency must provide a statement of rights to a consumer whenever there is a written request for their file that includes outlining the nature and substance of information it holds about the consumer. [Conn. Gen. Stat. §36a-699a](#).

Individuals may place a security freeze on their credit report which is administered by one (or all) of the three nationwide credit bureaus. Under this law, individuals are entitled to receive a specific summary of rights any time they receive a copy of the "A Summary of Your Rights Under the Fair Credit Reporting Act." [Conn. Gen. Stat. §36a-701](#).

# DELAWARE

## DELAWARE

Delaware does not have any local or statewide laws that impact employers and their use of background reports akin to the Fair Credit Reporting Act. There may be industry-specific requirements and we encourage consultation with qualified legal counsel.

### Fair Credit Reporting Act-State Analogue

None.

### Ban the Box/Fair Chance

None.

### Credit Check Restrictions

None.

### Expungement/Record Sealing/Certificate of Good Conduct

If an individual receives an expungement for their criminal record, they are not required to disclose its existence.

### Social Media

Employers are prohibited from requiring or requesting an employee or applicant to do any of the following:

- Disclose a username or password for the employer to access personal social media.
- Access personal social media in the presence of the employer.
- Use personal social media as a condition of employment.
- Divulge any personal social media.
- Add a person to list of contacts by inviting or accepting an invitation from a person or group.
- Alter the settings on the employee's or applicant's personal social media account that affect a third party's ability to view the contents of the personal social media.

Employers are permitted to request or require disclosure of usernames and passwords associated with an electronic communication device supplied by or paid for (in whole or part) by the employer or an account or service provided by the employer. Employers are also able to monitor, review, access or block electronic data on its own network or on electronic communication devices it supplies or pays for. Additionally, the law does not prevent employers from viewing publicly available content. [Del. Code Ann. Tit. 19, §709A.](#)

## Security Freeze

Individuals may place a security freeze on their credit report which is administered by one (or all) of the three nationwide credit bureaus. Under this law, individuals are entitled to receive a specific summary of rights any time they receive a copy of the "A Summary of Your Rights Under the Fair Credit Reporting Act." [Del. Code Ann. tit. 6, §2203](#).

## THE DISTRICT OF COLUMBIA

The District of Columbia does not have any laws that impact employers and their use of background reports akin to the Fair Credit Reporting Act. However, there are specific laws that regulate use of criminal and credit background checks. There may also be industry-specific requirements and we encourage consultation with qualified legal counsel.

### Fair Credit Reporting Act-State Analogue

None.

### Ban the Box/Fair Chance

Employers may not inquire into an arrest or criminal accusation that is not currently pending or did not result in a conviction. As for criminal convictions, employers may not inquire or require applicant to disclose criminal convictions until after extending a conditional offer of employment. Employers may only withdraw a conditional offer or take an adverse action for a legitimate business reason which requires consideration of several specific factors, including, but not limited to, the specific duties and responsibilities of the position, the age of the applicant when the offence occurred, and any information produced by the applicant regarding rehabilitation or good conduct.

If the applicant believes a conditional offer was terminated or adverse action was taken based on the criminal conviction, the applicant may request – within 30 days after the employer’s action – that the employer provide: (i) a copy of any and all records procured by the employer in consideration of the applicant (including criminal records) and (ii) a notice that advises the applicant of their right to file an administrative complaint with the Office of Human Rights. [D.C. Code Ann. §32-1341](#).

### Credit Check Restrictions

Employers may not directly or indirectly require, request, inquire into or otherwise use an individual’s credit information during the hiring process. There are limited exemptions to this prohibition such as where DC law requires an employer to obtain the information or where the position would require access to personal financial information. Employers should review the full text of the law for the full list of available exemptions. [Fair Credit in Employment Amendment Act of 2016](#).

## **Expungement/Record Sealing/Certificate of Good Conduct**

Individuals may petition to have their criminal records sealed in a variety of circumstances including when they are innocent, have an eligible felony or misdemeanor conviction or were convicted of an offense that has been decriminalized. [D.C. Code Ann. §16-801-807](#).

## **Social Media**

None.

## **Security Freeze**

Individuals may place a security freeze on their credit report which is administered by one (or all) of the three nationwide credit bureaus. Under this law, individuals are entitled to receive a specific summary of rights any time they receive a copy of the "A Summary of Your Rights Under the Fair Credit Reporting Act." [D.C. Code Ann. § 28-3863](#).

# FLORIDA

## FLORIDA

Florida does not have any local or statewide laws that impact employers and their use of background reports akin to the Fair Credit Reporting Act. There may be industry-specific requirements and we encourage consultation with qualified legal counsel.

### Fair Credit Reporting Act-State Analogue

None.

### Ban the Box/Fair Chance

None at the statewide level.

### Gainesville

The ordinance applies employers with fifteen (15) or more employees whose primary work location is in the City of Gainesville for each working day in each of four (4) or more calendar weeks in the current or preceding calendar year.

Under the ordinance, employers may not: (i) Publish information about a job that states or implies an individual's criminal history automatically disqualifies the individual from consideration; (ii) Solicit or otherwise inquire about criminal history in an employment application; (iii) Solicit from the applicant or otherwise inquire through third parties information about an arrest or criminal accusation made against an individual, other than an arrest or criminal accusation relating to domestic violence, which: is not pending against the applicant; or did not result in a conviction, plea of nolo contendere or deferred adjudication; (iv) Solicit or consider criminal history unless a conditional offer of employment has been extended (employers may explain, in writing, the individualized assessment system used to consider criminal history); (v) Refuse to employ or consider employing an individual because the person did not provide criminal history information prior to a conditional offer; or (vi) Take adverse action against an individual due to criminal history unless the employer has determined the person is unsuitable for the job based on an individualized assessment.

*Note: staffing agencies may solicit and use criminal history information when it has identified a job for the individual or placed the individual in a staffing pool.*

Prior to taking adverse action due to the individual's criminal history, an employer must:

- Inform the individual of the basis for the decision,
- Provide the individual with the criminal history records used in their consideration, and
- Provide the individual a reasonable opportunity to provide the employer with additional context about the criminal history records and any information demonstrating the individual's rehabilitation and good conduct since the occurrence of the criminal offense.

The written final adverse action notice must include:



- That the adverse action was based on the individual's criminal history, and
- following statement: This notice is provided in accordance with the City of Gainesville Code of Ordinances, Chapter 14.5, Section 14.5-181, which regulates the process and timing of criminal background checks conducted on job applicants.

The ordinance does not apply to any job/employment for which a federal, state, or local law, or compliance with legally mandated insurance or bond requirement disqualifies an individual based on criminal history.

### **Credit Check Restrictions**

None.

### **Expungement/Record Sealing/Certificate of Good Conduct**

Florida allows for the court-ordered expungement of criminal history records. Once the record is expunged, the individual may lawfully deny or fail to acknowledge the arrests covered by the expunged record in most employment situations. [Fla. Stat. §943.0585](#).

### **Social Media**

None.

### **Security Freeze**

Individuals may place a security freeze on their credit report which is administered by one (or all) of the three nationwide credit bureaus. Under this law, individuals are entitled to receive a specific summary of rights any time they receive a copy of the "A Summary of Your Rights Under the Fair Credit Reporting Act." [Fla. Stat. §501.005](#).

## GEORGIA

Georgia does not have any local or statewide laws that impact employers and their use of background reports akin to the Fair Credit Reporting Act. There may be industry-specific requirements and we encourage consultation with qualified legal counsel.

### Fair Credit Reporting Act-State Analogue

None.

### Ban the Box/Fair Chance

None.

#### Atlanta

Ordinance 22-O-1748 makes “criminal history status” a protected class. It is an unlawful employment practice for employers to fail or refuse to hire, terminate or other discriminate against an individual due to criminal history status. Employers may not publish or circulate job advertisements indicating any preference, limitation, specification or discrimination based on criminal history status. Any adverse employment decisions based on criminal history status must take into account how the criminal history related to the position’s responsibilities using the following considerations: 1) whether the committed the offense; 2) the nature and gravity of the offense; 3) the time since the offense; and 4) the nature of the job for which the applicant has applied. Nothing in the Ordinance prohibits an employer from making an adverse employment decision based on criminal history status when related to positions where certain criminal convictions are a bar to employment under state or federal law requirements such as positions that work with children or law enforcement. [Ordinance 22-O-1748](#).

### Credit Check Restrictions

None.

### Expungement/Record Sealing/Certificate of Good Conduct

Georgia provides a “First Offender” program. Where the individual has not been previously convicted of a felony, a court may decide, upon a guilty verdict or plea of guilty or nolo contendere and before an adjudication of guilt, without entering a judgment of guilt and with the consent of the defendant, to place the individual on probation or sentence the individual to a term of confinement. If the individual successfully completes the terms assigned by the court, they will be considered to not have a conviction. [O.C.G.A. §42-8-60](#).

Employers can obtain criminal records on applicants from the Georgia Crime Information Center (GCIC), with the applicant’s fingerprints or written consent (this is the statewide search). The GCIC will not release records of arrests or charges that did not result in a conviction, or sentences for certain first offender crimes, or for crimes where the individual was later

exonerated, or the charges were discharged without court adjudication of guilt. If an adverse employment decision is made adverse to a person whose record is obtained through this source, the individual must be informed which include information that a record was obtained from the center, the specific contents of the record and the effect the record had upon the decision.

[O.C.G.A. §35-3-34](#).

Effective January 1, 2021, [SB 288](#) provides qualifying individuals the opportunity to have certain criminal convictions restricted from public access through a petition process. Individuals convicted of certain misdemeanors offenses are eligible to petition for those records to be sealed four years after any terms of sentencing or conditions of probation have successfully been completed. Additionally, individuals may not have been convicted of any crime or have pending charges in any jurisdictions—excluding nonserious traffic offenses—for at least four years prior to filing a petition. The program is limited to two misdemeanor convictions, or a series of misdemeanors arising from a single incident. Sexually motivated crimes, crimes against children and crimes involving family violence are barred from expungement. Felony convictions—except those violent or sexual in nature—may be expunged for individuals who have received Pardon from the State Board of Pardons. The legislation also offers protections in civil proceedings based on an employee or former employee’s conduct.

## Social Media

None.

## Security Freeze

Individuals may place a security freeze on their credit report which is administered by one (or all) of the three nationwide credit bureaus. Under this law, individuals are entitled to receive a specific summary of rights any time they receive a copy of the “A Summary of Your Rights Under the Fair Credit Reporting Act.” [O.C.G.A. §10-1-915](#).

# HAWAII

## HAWAII

Hawaii does not have any local or statewide laws that impact employers and their use of background reports akin to the Fair Credit Reporting Act. However, there are several laws that impact an employer's use of criminal and credit check information. There may also be industry-specific requirements and we encourage consultation with qualified legal counsel.

### Fair Credit Reporting Act-State Analogue

None.

### Ban the Box/Fair Chance

Hawaii Revised Statute §378-2 includes "arrest and court record" as a protected class making it an unlawful discriminatory practice for employers to refuse to hire or employ, or otherwise discriminate against an individual based on this or any other protected class. The law applies to all employers with one (1) or more employees and applies to both applicants and current employees.

Employers may inquire into conviction records after the individual has received a conditional offer of employment that may be withdrawn if the applicant's conviction record bears a rational relationship to the duties and responsibilities of the position. Effective September 15, 2020, employers may only consider felony criminal convictions for a period of 7 years and misdemeanor convictions for a period of 5 years (excluding periods of incarceration for both felonies and misdemeanors). Employers are also prohibited from including any limitations in a job advertisement or publication, or on an employment application, based on any protected class. [Haw. Rev. Stat. §378-2.5](#), amended by [SB2193](#).

### Credit Check Restrictions

Employers may not refuse to hire or employ, bar or discharge from employment, or otherwise discriminate against any individual in compensation or in the terms, conditions or privileges of employment of any individual because of the individual's credit history or credit report unless there is a bona fide occupational qualification. [Haw. Rev. Stat. §378-2](#).

Inquiry into or consideration of a prospective employee's credit history or credit report may only take place after a conditional offer, which may be withdrawn if information in the credit history or credit report is directly related to a bona fide occupational qualification. There are additional exemptions outlined in this provision of the law including managerial and supervisory employees, federally insured financial institutions and where employers are expressly permitted by state or federal law to inquire into credit history for employment purposes. [Haw. Rev. Stat. §378-2.7](#).

## **Expungement/Record Sealing/Certificate of Good Conduct**

Individuals may petition to have an arrest expunged where there was no actual conviction of a crime. [Hawaii Rev. Stat. §831-3.2.](#)

## **Social Media**

None.

## **Security Freeze**

Individuals may place a security freeze on their credit report which is administered by one (or all) of the three nationwide credit bureaus. There is currently no specific notice of rights required. [Haw. Rev. Stat. §489P-3.](#)

# IDAHO

## **IDAHO**

Idaho does not have any local or statewide laws that impact employers and their use of background reports akin to the Fair Credit Reporting Act. There may be industry-specific requirements and we encourage consultation with qualified legal counsel.

### **Fair Credit Reporting Act-State Analogue**

None.

### **Ban the Box/Fair Chance**

None.

### **Credit Check Restrictions**

None.

### **Expungement/Record Sealing/Certificate of Good Conduct**

None.

### **Social Media**

None.

### **Security Freeze**

Individuals may place a security freeze on their credit report which is administered by one (or all) of the three nationwide credit bureaus. There is no specific notice of rights required. Idaho [Code §28-52-103](#).

# ILLINOIS

## ILLINOIS

Illinois does not have any local or statewide laws that impact employers and their use of background reports akin to the Fair Credit Reporting Act. However, there are laws that impact an employer's use of criminal and credit check information. There may also be industry-specific requirements and we encourage consultation with qualified legal counsel.

### Fair Credit Reporting Act-State Analogue

None.

### Ban the Box/Fair Chance

Effective January 1, 2020, the Illinois Human Rights Act makes it a civil rights violation for an employer or employment agency to inquire into or use an arrest record in various employment-related decisions (pertaining to both applicants and employees). Arrest record is defined to include: an arrest not leading to a conviction, juvenile records and criminal history information that has been expunged, sealed, or impounded. The Act provides a caveat that employers or employment agencies are not prohibited from obtaining or using information that indicates a person was actually engaged in conduct that led to the arrest. There are several exemptions under the Act including federal or state laws that require criminal background checks or if the use of such information is otherwise authorized by federal or state law.

Effective March 23, 2021: Amendments to the Human Rights Act make it a civil rights violation for an employer to use a conviction record as a basis to refuse to hire or otherwise take adverse action (such as terminating, disciplining or not promoting an individual) unless: (1) there is a substantial relationship between one or more of the convictions and the employment held or sought; or (2) the granting or continuation of employment involves an unreasonable risk to property or to the safety of individuals or the general public.

To determine if there is a "substantial relationship", employers must analyze whether there is an opportunity for the same or similar offense to occur and whether the circumstances leading to the conduct that led to the individual's conviction will recur in the employment position. As part of making this determination, employers must consider six (6) factors.

If the employer preliminarily decides the conviction record may disqualify the individual based on its analysis of the above factors, it must notify the individual of this preliminary decision in writing. This notification must include:

- The conviction(s) that is the basis for the preliminary decision and the employer's reasoning for the disqualification,
- A copy of the "conviction history report" (if any) and

- An explanation of the individual's right to respond to the notice prior to a final decision. This must include informing the individual may submit evidence challenging the accuracy of the conviction record that is the basis for the disqualification, or evidence of mitigation including rehabilitation as an example.

The employer must then allow at least five (5) business days for the individual to respond prior to making a final decision and must consider any information provided to them by the individual. If the adverse decision becomes final based on the individual's criminal history, the employer must provide written notice of that final decision including again specifying the disqualifying conviction(s) and the employer's reasoning, along with any existing procedure the employer has for challenging the decision or requesting reconsideration, and the right of the individual to file a charge with the Department of Human Rights.

**Ban the Box:** Laws regulating the use of criminal checks exist at the state level, and in Chicago and Cook County. Overall, the three laws are relatively similar.

### Statewide

Employers with 15 or more employees may not inquire into, consider, or require disclosure of criminal history until the applicant has been determined qualified for the position and notified that he/she has been selected for an interview. If there is no interview, the inquiry or consideration of may take place following a conditional offer of employment.

The law does not apply to: (i) employers required to exclude applicants with certain criminal convictions under state or federal law; (ii) where a standard fidelity (or equivalent) bond is required and the applicant's criminal convictions would disqualify from the obtaining the bond; (iii) employers employing individuals licensed under Emergency Medical Services (EMS) Systems Act. [Job Opportunities for Qualified Applicants Act](#).

### Cook County

Cook County's ordinance applies to employers not subject to the statewide law, the Job Opportunities for Qualified Applicants Act. The other exceptions mirror those found in the statewide law.

A general summary is provided below. Employers are encouraged to review the full text of each law which include a comprehensive list of circumstances that are required to be present in order to prove an "established bona fide occupational requirement".

Employers may not inquire into, consider or require disclosure of an applicant's criminal record or history until after the applicant has been determined qualified for the position and selected for an interview. If there is no interview, the inquiry must take place after a conditional offer of employment is extended. Employers are permitted to notify the applicant in writing of the specific offenses that will disqualify him/her from employment in a particular position.

Employers may notify individuals in writing of the specific offenses that will disqualify them from employment in a particular position.

[Cook County Human Rights Ordinance, Section 42-35\(h\)](#)



## Chicago

Chicago amended its [ban the box law](#) in April 2023 with immediate effect. The law applies to all employers within the city. Employers may not use a person's conviction record to refuse to hire or otherwise impact an employment-related decision unless: (1) applicable law excludes applicants with certain criminal convictions from the position; (2) standard fidelity bond or equivalent is required for the relevant position and an applicant's conviction for a specified criminal offense(s) would disqualify them from obtaining such a bond; (3) there is a substantial relationship between the criminal offense(s) and the employment held or sought; or (4) the granting or continuation of employment involves an unreasonable risk to property or to the safety of individuals or the general public. To determine if there is a "substantial relationship" employers must consider six specific factors outlined in the amended ordinance.

The new law impacts the adverse action process as well largely mirroring the statewide law's requirements. Employers who are in compliance with the statewide law must also consider updating their adverse action form to make reference to the candidate's right to file a complaint with the Chicago Commission on Human Relations. Please view the [amended ordinance](#) for the full adverse action requirements.

## Credit Check Restrictions

Laws regulating the use of credit checks exist at the state level, and in Chicago and Cook County. Overall, the three laws are relatively similar.

### Statewide

Employers may not:

- Fail or refuse to hire or recruit, discharge, or otherwise discriminate against an individual with respect to employment, compensation, or a term, condition, or privilege of employment because of the individual's credit history or credit report.
- Inquire about an applicant's or employee's credit history.
- Order or obtain an applicant's or employee's credit report from a consumer reporting agency.

Employers may obtain the credit history or credit report of an individual if satisfactory credit history is an "established bona fide occupational requirement" of a particular position or particular group of employees. This requires one of several circumstances to be present such as: the duties of the position involve custody of or unsupervised access to cash or marketable assets valued at \$2,500 or more or the position is managerial which involves setting the direction or control of the business. Employers are encouraged to review the text of the law for the full list of circumstances. [820 ILCS 70](#).

### Chicago & Cook County

Chicago and Cook County ordinances are almost mirror images of each other. A general summary is provided below. Employers are encouraged to review the full text of each law which include a comprehensive list of circumstances that are required to be present in order to prove an "established bona fide occupational requirement".

Employers may not:

- Fire or refuse to hire or recruit, discharge, or otherwise discriminate against an individual with respect to employment, compensation or otherwise based on the individual's credit history or credit report.
- Inquire about an applicant's or employee's credit history.
- Order or obtain an applicant's or employee's credit report from a consumer reporting agency.

Employers may obtain the credit history or credit report of an individual if satisfactory credit history is an "established bona fide occupational requirement" of a particular position or particular group of employees.

[Chicago Human Rights Ordinance, Section 2-160-053, Credit History.](#)

[Cook County Human Rights Ordinance, Section 42-35\(g\).](#)

### **Expungement/Record Sealing/Certificate of Good Conduct**

The Illinois Human Rights Act states it is a civil rights violation for any employer to inquire into or to use an arrest record, or a record that has been sealed, expunged or impounded, as a basis to refuse to hire or to otherwise impact the recruitment, hiring, promotion, etc. of an individual.

[775 ILCS 5/2-103.](#)

Additionally, expunged or sealed records may not be considered in employment matters and applications for employment must contain specific language which states that the applicant is not obligated to disclose sealed or expunged records of conviction or arrest. Employers may not ask if an applicant has had records expunged or sealed. [20 ILCS 2630/12.](#)

### **Social Media**

Employers may not require, request, or coerce applicants or employees to:

- Provide a username and password or other related account information to gain access to the personal online account.
- Authenticate or access a personal online account in the presence of an employer
- Invite the employer to join a group affiliated with any personal online account of the employee or applicant
- Join an online account established by the employer or add the employer or an employment agency to the employee's or applicant's list of contacts that enable the contacts to access the employee or applicant's personal online account

Employers are prohibited from discharging, disciplining, discriminating against or otherwise penalizing current employees, or failing to hire potential employees that refuse to comply with illegal requests. Employers are not prohibited from maintaining lawful workplace policies that govern the use of employer-issued electronic equipment including policies regarding internet, e-mail, and social media use. Employers are also authorized to monitor usage of the employer's e-mail without requesting or using password or other information to gain access. There are

additional exemptions around investigations and compliance with applicable laws and regulations.

This portion of Illinois' law also makes it unlawful for employers to inquire into whether a prospective employee has ever filed a Workers Compensation claim or received benefits. [820 ILCA 55/10](#).

### **Security Freeze**

Individuals may place a security freeze on their credit report which is administered by one (or all) of the three nationwide credit bureaus. There is no specific notification of rights required. [815 ILCS 505/2MM](#).

# INDIANA

## INDIANA

Indiana does not have any local or statewide laws that impact employers and their use of background reports akin to the Fair Credit Reporting Act. There may be industry-specific requirements and we encourage consultation with qualified legal counsel.

### Fair Credit Reporting Act-State Analogue

None.

### Ban the Box/Fair Chance

Indiana does not have a statewide ban the box law. However, Indiana did ban local government (i.e., cities, municipalities and counties) from enacting local level ban the box laws. Essentially this legislation was designed to prevent cities/municipalities from enacting ban the box laws.

Additionally, criminal history information may only be introduced as evidence against an employer in a civil action based on the conduct of the employee/former employee if the nature of the criminal history information bears a direct relationship to the facts of underlying the civil action. [IC 22-2-17](#).

### Credit Check Restrictions

None.

### Expungement/Record Sealing/Certificate of Good Conduct

Individuals may petition to have certain criminal convictions expunged (the requirements vary depending on type and level of offense). Once an expungement is granted, it is unlawful discrimination for any person to refuse to employ or other discriminate against an individual due to an expunged conviction or arrest record. In any application for employment, a person may be questioned about a previous criminal record only in terms that exclude expunged convictions or arrests, such as: "Have you ever been arrested for or convicted of a crime that has not been expunged by a court?". [IC 35-38-9](#).

### Social Media

None.

### Security Freeze

Individuals may place a security freeze on their credit report which is administered by one (or all) of the three nationwide credit bureaus. Under this law, individuals are entitled to receive a

specific summary of rights any time they receive a copy of the "A Summary of Your Rights Under the Fair Credit Reporting Act." [IC 24-5-24](#).



## IOWA

Iowa does not have any local or statewide laws that impact employers and their use of background reports akin to the Fair Credit Reporting Act. There may be industry-specific requirements and we encourage consultation with qualified legal counsel.

### Fair Credit Reporting Act-State Analogue

None.

### Ban the Box/Fair Chance

None.

#### Des Moines

It is an illegal discriminatory employment practice for an employer to include a criminal history question on an employment application. It is also an illegal discriminatory employment practice to make any inquiry regarding or to require disclosure of any convictions, arrests or pending criminal charges during the application process including during any interviews. If the individual voluntarily discloses such information, the employer may then discuss with the individual. The application process begins when the applicant inquires about employment and shall end when a conditional offer of employment is extended. The Ordinance notes that employers must comply with any state or federal law obligations relating to background check authorizations, adverse action and use of criminal history information. The Ordinance applies to employers in the city with four or more employees. The Human Rights Commission has the power to enforce the Ordinance. [Ordinance No. 16,083](#).

#### Waterloo

The City of Waterloo originally enacted a ban the box ordinance that took effect July 1, 2020. Ordinance impacted employers differently depending on employee count. Employers with 4-14 employees could not inquire into criminal history on an employment application. Employers with 15 or more individuals were also prohibited from inquiring into criminal history on an employment application but also from considering criminal history information (such as arrest records or pending criminal charges) as the sole basis of the adverse hiring decision. Employers were also required to have a "legitimate business reason" for the adverse decision, which was outlined in the law.

In June 2021, the Iowa Supreme Court issued a ruling on the city's ban the box law. In the ruling, the Iowa Supreme Court upheld the provision that prohibits employers (both with 4-14, 15 and more) from asking about criminal histories on a job application. Inquiring into criminal history can only take place after a conditional job offer has been extended. The court struck down the portion of the ordinance that prohibits employers from making hiring decisions based

solely on an applicant's criminal records and found that those portions of the ordinance conflicted with existing state law originally passed in 2017. "[Unfair Use of Criminal Record in Hiring Decisions](#)" subsequent [Amendment](#) and updated [ruling](#). (also referred to as the Fair Chance Initiative Ordinance).

### **Credit Check Restrictions**

None.

### **Expungement/Record Sealing/Certificate of Good Conduct**

Individuals may petition (or a court may make its own motion) for an order expunging a criminal record if several factors have been met. [Iowa Code Ann. §901C.2](#).

Iowa also enacted negligent hiring protections for employers effective July 1, 2019. The law limits private employer liability for negligent hiring lawsuits by prohibiting a cause of action from being brought based on solely on the fact the individual was convicted of a public offense. Employers should review the law's text in full for important exemptions. [HF 650](#).

### **Social Media**

None.

### **Security Freeze**

Individuals may place a security freeze on their credit report which is administered by one (or all) of the three nationwide credit bureaus. There is no specific notice of rights required. [Iowa Code Ann. §§714G.1-714G.11](#).

### **Other**

#### **Payment for Background Check**

If the employer requires a record check to be completed on a prospective employee, Iowa law requires employers to pay for the criminal record check only if it is run through Iowa's Division of Criminal Safety Investigations, a subdivision of Iowa's Department of Public Safety. All other background searches may be conducted at cost to the applicant if the employer chooses. [Iowa Code Ann. §692.2](#).

# KANSAS

## KANSAS

Kansas has a statewide law that impacts employers and their use of background reports. There may be industry-specific requirements and we encourage consultation with qualified legal counsel.

### Fair Credit Reporting Act-State Analogue

Kansas' version of the Fair Credit Reporting Act requires employers who deny employment based in whole or in part on consumer report information to notify the individual including the name and address of the consumer reporting agency. [K.S.A. §50-714](#).

For investigative consumer reports<sup>4</sup>, employers must clearly and accurately disclose to the consumer that including information as to the consumer's character, general reputation, personal characteristics, and mode of living, whichever are applicable, may be made. Such a disclosure must be in a writing either mailed or otherwise delivered within three (3) days after requesting the report and must include a statement informing the consumer of the right to request additional disclosures. If a consumer requests further information, the employer must provide, in writing, a complete and accurate disclosure of the nature and scope of investigation required. [K.S.A. §50-705](#).

The law also governs information consumer reporting agencies may include on a report. This includes (but is not limited to) records of arrest, indictment, or conviction of crime which, from date of disposition, release, or parole, antedate the report by more than 7 years. This restriction does not apply if the applicant is expected to have an annual salary of twenty thousand dollars (\$20,000) or more. [K.S.A. §50-704](#).

### Ban the Box/Fair Chance

None.

### Credit Check Restrictions

None.

### Expungement/Record Sealing/Certificate of Good Conduct

Kansas allows individuals with particular criminal convictions to petition for an expungement. Once an expungement is granted, the individual is treated as not having been arrested, or convicted or diverted of the crime. There are exceptions to this including applications for a commercial driver's license among other employment categories. [K.S.A. § 21-6614](#).

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<sup>4</sup> The definition of an investigative consumer report under Kansas state law is similar to the definition under the Federal Fair Credit Reporting Act.



## Social Media

None.

## Security Freeze

Individuals may place a security freeze on their credit report which is administered by one (or all) of the three nationwide credit bureaus. There is no specific notice of rights required. [K.S.A §50-723](#).

## Other

### Payment for Background Checks

Kansas state law prohibits employers from requiring candidates to provide their own record from the state repository. The law outlines that the Kansas Bureau of Investigation (which operates the Kansas Central Repository) may charge the employer a reasonable fee for providing the criminal history information but does not specifically state the employer cannot then charge the applicant. All other background searches may be conducted at cost to the applicant if the employer chooses. [K.S.A §22-4710](#).

# KENTUCKY

## KENTUCKY

Kentucky does not have any local or statewide laws that impact employers and their use of background reports akin to the Fair Credit Reporting Act. There may be industry-specific requirements and we encourage consultation with qualified legal counsel.

### Fair Credit Reporting Act-State Analogue

None. However, consumer reporting agencies can only report criminal cases that result in convictions (i.e. not legally allowed to report pending or non-convictions). [K.R.S. §367.310](#).

### Ban the Box/Fair Chance

None.

### Credit Check Restrictions

None.

### Expungement/Record Sealing/Certificate of Good Conduct

Individuals may petition to have certain felony and misdemeanor convictions, violations and traffic infractions, or records where they were not guilty, expunged. In the event of an expungement, individuals do not have to disclose the fact of the record or any matter relating to it on an employment application. [K.R.S. §431.073-.079](#).

### Social Media

None.

### Security Freeze

None.

### Other

#### Payment for Background Check

Kentucky law states that it is “unlawful for any employer to require any employee or applicant for employment to pay for the cost of medical examination or the cost of furnishing any records required by the employer as a condition of employment.” This law applies to both current and prospective employees and covers the cost of medical examinations in addition to all other background checks. [K.R.S. §336.220](#).

# LOUISIANA

## LOUISIANA

Louisiana has a statewide law that somewhat impacts employers and their use of background reports. There may be industry-specific requirements and we encourage consultation with qualified legal counsel.

### Fair Credit Reporting Act-State Analogue

Louisiana's law regulating credit reports is far more narrowly tailored than the Fair Credit Reporting Act. Under the law, individuals may receive a copy of the credit report for free if employment is denied based in whole or in part on the report within 60 days. The name of the credit reporting agency must also be provided upon request. [La. Rev. Stat. §3571.1](#).

### Ban the Box/Fair Chance

Effective June 23, 2021, employers are prohibited from requesting or considering an arrest record or charge that did not result in a conviction. When considering other types of criminal history records, employers are required to conduct an individualized assessment where several factors should be evaluated to determine if the applicant's criminal history record has a "direct and adverse relationship with the specific duties of the job that may justify denying the applicant." The law provides the following factors for consideration: i) the nature and gravity of the offense or conduct, (ii) the time that has elapsed since the offense, conduct, or conviction and (iii) the nature of the job sought [Act No. 406](#).

### Credit Check Restrictions

None.

### Expungement/Record Sealing/Certificate of Good Conduct

Individuals may petition to have arrest or conviction records expunged. Once the record is expunged, it is considered confidential and is no longer considered to be a public record. With limited exceptions, individuals who have received an expungement are not required to disclose to any person that they were arrested or convicted of the expunged offense. [La. CCRP 973](#).

### Social Media

Employers may not request or require an employee or applicant to disclose username, password, or other authentication information that allows access to their personal account. Additionally, employers may not discharge, discipline, fail to hire or otherwise penalize an employee or applicant who refuses to comply with an illegal request.

Employers may request or require username and passwords associated with employer-issued or paid for devices and accounts or services provide by the employer. Employers may also take disciplinary action against employees for transferring proprietary or confidential information to

an employee's personal online account without permission. The law includes other exemptions such as conducting investigations or restricting access to certain websites while using company-issued or paid for equipment. [La. Rev. Stat. §51:1953](#).

## Security Freeze

Individuals may place a security freeze on their credit report which is administered by one (or all) of the three nationwide credit bureaus. There is no specific notice of rights required. [La. Rev. Stat. §3571.3](#).

## Other

### Traffic Records

Under Louisiana law, failure to pay fines related to traffic violations are not reportable unless 120 days have passed since the final disposition.

### Payment for Background Check

Louisiana law states that it is "unlawful for any public or private employer to require any employee or applicant for employment to pay...or withhold from an employee's pay the cost of fingerprinting, a medical examination, or a drug test, or the cost of furnishing any records available to the employer or required by the employer as a condition of employment." The law also applies to background checks on current employees. Therefore, employers should not charge applicants for any aspect of the background screening process. [La. Rev. Stat. §23:897](#).

# MAINE

## MAINE

Maine has a statewide version of the Fair Credit Reporting Act that was amended in 2013. There may also be industry-specific requirements and we encourage consultation with qualified legal counsel.

### Fair Credit Reporting Act-State Analogue

In 2013, Maine's version of the Fair Credit Reporting Act was amended and removed the requirement for specific notice information to be included on a disclosure form. The law states: "A person subject to this chapter shall comply with the federal Fair Credit Reporting Act...". There are additional remedies and penalties available for non-compliance under the state law. [Maine Fair Credit Reporting Act](#).

### Ban the Box/Fair Chance

Effective October 18, 2021, employers are prohibited from requesting criminal history information on the initial employee application. Additionally, employers may not advertise that a person with a criminal history may not apply or will not be considered for a position. Employers may inquire about a prospective employee's criminal history during an interview or once the prospective employee has been determined otherwise qualified for the position. The law provides exceptions largely related to positions that have federal or state law, regulations, or rules in place. ([LD 1167](#))

### Credit Check Restrictions

None.

### Expungement/Record Sealing/Certificate of Good Conduct

No general expungement scheme exists apart from juvenile records. Individuals may seek a pardon but that is not equivalent to an expungement.

### Social Media

Employers are prohibited from requiring an employee or applicant to:

- Disclose the password or any other means for accessing a personal social media account privately or in the presence of the employer.
- Disclose any personal social media account information.
- Add anyone, including the employer or agent of the employee, to the employee or applicant's list of contacts associated with a personal social media account.
- Discharge, discipline, fail to hire or otherwise discipline an employee or applicant for failing to comply with an illegal request.

Employers are allowed to view publicly available information. The law does not prohibit or restrict an employer's duty to screen employees or applicants before hiring, or from requiring disclosure of personal social media account information that the employer reasonably believes is relevant to an investigation of allegations of employee misconduct or workplace-related violation of applicable laws, rules and regulations. [Me. Stat. tit. 26, §616](#); [Me. Stat. tit. 26, §617](#).

## Security Freeze

Maine's Fair Credit Reporting Act allows individuals to place a security freeze on their credit report which is administered by one (or all) of the three nationwide credit bureaus. Under this law, individuals are entitled to receive a specific summary of rights any time they receive a copy of the "A Summary of Your Rights Under the Fair Credit Reporting Act." [Maine Fair Credit Reporting Act](#).

## Miscellaneous

Beginning January 1, 2020, employers may not request the Social Security Number (SSN) from prospective employees on an employment application or during the application process. Employers may request the SSN for the purpose of performing a background check or substance abuse testing. Employers may also request the SSN after the employee has been hired. [LD 305](#).

# MARYLAND

## MARYLAND

Maryland has a statewide law that impacts employers and their use of background reports, along with several local and county level laws that impact criminal checks. There may also be industry-specific requirements and we encourage consultation with qualified legal counsel.

### Fair Credit Reporting Act-State Analogue

Maryland's version of the Fair Credit Reporting Act requires employers who deny employment based in whole or in part on consumer report information to notify the individual including the name and address of the consumer reporting agency. [Md. Code Ann., Comm. Law §14-1212](#).

For investigative consumer reports<sup>5</sup>, employers must clearly and accurately disclose to the individual that including information as to the individual's character, general reputation, personal characteristics, and mode of living, whichever are applicable, may be made. Such a disclosure must be in a writing either mailed or otherwise delivered within three days after requesting the report and must include a statement informing the consumer of the right to request additional disclosures. If a consumer requests further information, the employer must provide, in writing, a complete and accurate disclosure of the nature and scope of investigation required within five (5) days. [Md. Code Ann., Comm. Law §14-1204](#).

The law also regulates what information consumer reporting agencies may place on the report. This includes (but is not limited to) only reporting criminal history information (record of arrest, indictment, or conviction) or any other adverse information which antedates the report by more than seven (7) years. The restriction only applies if the applicant is expected to make a salary of \$20,000 or less. [Md. Code Ann., Comm. Law §14-1203](#).

### Ban the Box/Fair Chance

Maryland's state legislature passed House Bill 994 which would have added a statewide ban the box law to the already existing local laws in Baltimore, Montgomery County and Prince George's County. Maryland's Governor Larry Hogan vetoed this bill during the 2019 legislative session. The Maryland General Assembly voted to override Governor Hogan's veto on January 30, 2020. This law will take effect on February 29, 2020.

Under the statewide law, at any time before the first in-person interview, employers may not require an applicant to disclose whether the applicant has a criminal record or has had criminal accusations brought against them. During the first in-person interview, employers may require an applicant to disclose that information. The law **does not preempt local legislation**. [House Bill 994](#).

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<sup>5</sup> The definition of an investigative consumer report under Maryland state law is similar to the definition under the Federal Fair Credit Reporting Act.

### Baltimore

Applies to employers with ten (10) or more full-time employees in the City. Employers may not require applicant to disclose or reveal criminal record information or other criminal accusation, conduct a criminal record check or otherwise make any criminal history inquiry until after a conditional offer of employment has been extended. The law states that it should not be construed to require any employer to hire someone with a criminal record, nor to limit an employer's ability to choose the most qualified and appropriate applicant for the employment opportunity at hand. [Baltimore City Code art. 11, §§15-1 to 15-16](#).

### Montgomery County

Applies to employers doing business in the County with one (1) or more full-time employees in the County. Employers may not require an applicant to disclose arrest or conviction records on an employment application. Employers may also not inquire into criminal history or conduct a criminal record check until after until after a conditional offer has been extended to the applicant. Employers are prohibited for inquiring into certain criminal records, such as first-time convictions of trespassing, disturbance of the peace, and assault of the second-degree charges. Additionally, employers cannot ask about a conviction of a misdemeanor if at least 3 years have passed since the date of conviction and the date of incarceration ended. Employers are also prohibited from asking applicants about expunged records. Employers cannot consider or base a hiring decision or promotion on any of these items.

If an employer intends to rescind a conditional offer based on an arrest or conviction record, the employer first must: provide the individual with a copy of any criminal record report, notify the individual of the employer's intention to rescind the conditional offer and the items that are the basis for that decision, and delay rescinding the conditional offer for seven (7) days to permit the individual to provide notice of any inaccuracies on the report. Following that process, if the employer decides to rescind the conditional offer based on the arrest or conviction record, the individual must be notified of the decision in writing. [Montgomery County Code §§27-71 to 27-75](#).

### Prince George's County

Applies to employers with twenty-five (25) or more full-time employees in the County. Effective September 16, 2024: Law will apply to employers with ten (10) or more full-time employees in the County.

Effective September 16, 2024: Employers cannot inquire into or consider the following: (i) convictions where the sentence was completed: for a non-violent felony, at least five (5) years or sixty (60) months ago, for a misdemeanor, at least thirty (30) months ago; (ii) arrests that did not result in a conviction, except where the result was probation before judgment (which shall be treated as misdemeanors for the purpose of this law); (iii) Arrests or convictions for possession of marijuana, cannabis, or cannabis-related materials or paraphernalia, provided any such sentence has been completed, unless it was a conviction that included an intent to distribute. Employers are prohibited from conducting background checks that do not conform to the law.

Employers may not require an applicant to disclose criminal history information on an employment application. Employers also may not inquire into criminal history, require criminal



history to be disclosed or conduct a criminal record check until after the conclusion of the first interview.

If an employer intends to rescind a conditional offer based on an arrest or conviction record, the employer first must: conduct an individualized assessment, provide the individual with a copy of any criminal record report, notify the individual of the employer's intention to rescind the conditional offer and the items that are the basis for that decision, and delay rescinding the conditional offer for seven (7) days to permit the individual to provide notice of any inaccuracies on the report. Following that process, if the employer decides to rescind the conditional offer based on the arrest or conviction record, the individual must be notified of the decision in writing.

Employers must also keep records of applicants denied based on criminal history for a period of three (3) years. [Prince George's County Code §§2-231.02 to 2-231.08; Rules and Regulations. Fair Chance Law Amendments.](#)

### **Credit Check Restrictions**

Employers cannot use a job applicant or employee's credit report to determine: (1) whether to hire a job applicant; (2) whether to terminate an employee; or (3) the rate of pay or other conditions of employment.

An employer may request or use an individual's credit history if: (1) the individual received an offer of employment and the information will be used for a purpose not in violation of the law, or (2) there is a bona fide purpose for using the information that is substantially job-related and disclosed in writing to the employee or applicant. In order to demonstrate the bona fide purpose, the position must fall into one of several job types such as a managerial role that involves setting the direction or control of a business or a role that has involves a fiduciary responsibility to the employer.

There are several additional exemptions under the law including those employers required to inquire into an individual's credit report or history based on federal or state law. Employers should review the text of the law for a full listing of exemptions. [Md. Code Ann., Lab & Empl. §3-711; FAQs published by the Department of Labor, Licensing & Regulation.](#)

### **Expungement/Record Sealing/Certificate of Good Conduct**

The [Maryland Second Chance Act](#) allows court or police records for one of twelve specified crimes to be "shielded" from public access. This process is not equivalent to an expungement. An employer may still consider a case that has been shielded but cannot require a person to disclose shielded information in an application, interview or otherwise. Employers may also not discharge or refuse to hire a person solely because they refused to disclose shielded criminal charges.

### **Social Media**

Employers may not request or require that an employee or applicant disclose any username, password, or other means for accessing a personal account or service through an electronic

communications device. Employers may also not discharge, discipline, fail to hire or otherwise discipline an employee or applicant for failing to comply with an illegal request. Employers are allowed to conduct necessary investigations. [Md. Code Ann., Lab. & Empl. § 3-712](#).

### **State Notice & Security Freeze**

Individuals may place a security freeze on their credit report which is administered by one (or all) of the three nationwide credit bureaus. Under this law, individuals are entitled to receive a specific summary of rights any time they receive a copy of the "A Summary of Your Rights Under the Fair Credit Reporting Act." [Md. Code Ann. Comm. Law §14-1212.1](#).

Consumer reporting agencies are also required to provide a description of rights Maryland consumers have under state law. [Md. Code Ann. Comm. Law §14-1206](#).

### **Other**

Employers are prohibited from requiring any individual to inspect or challenge any criminal history record information for the purpose of obtaining a copy of the criminal history record to qualify for employment. [Md. Code Ann. Comm. Law §10-228](#).

# MASSACHUSETTS

## MASSACHUSETTS

Massachusetts has several laws that impact employers and their use of background reports akin to the Fair Credit Reporting Act that also includes regulations around use of criminal checks. There may also be industry-specific requirements and we encourage consultation with qualified legal counsel.

### Fair Credit Reporting Act-State Analogue

Massachusetts law has several provisions governing actions taken by consumer reporting agencies, including a limitation of what may be placed on a consumer report. Among other items, records of arrest, indictments, or convictions of crime which, from the date of disposition, release or parole antedate the report by more than seven (7) years. [Mass. Gen. Laws ch. 93, §52.](#)

For investigative consumer reports<sup>6</sup>, employers must clearly and accurately disclose to the consumer that including information as to the consumer's character, general reputation, personal characteristics, and mode of living, whichever are applicable, may be made, and the right of the individual to receive a copy of the report upon request. The individual must provide written permission to obtain the investigative consumer report. [Mass. Gen. Laws ch. 93, §53.](#)

The law also requires employers to notify the individual of its decision to deny or terminate employment based on the consumer report within ten (10) business days. The notice must be in a clear and conspicuous format, no smaller than ten-point type, and shall contain the name, address and toll-free telephone number of any consumer reporting agency which provided any consumer report which was reviewed or otherwise taken into account in the making of such adverse action. A specific notice of rights must also be included. [Mass. Gen. Laws ch. 93, §62.](#)

### Ban the Box/Fair Chance

#### Statewide Law

Applies to employers with six (6) or more employees. Employers may not inquire into criminal history information on an initial written application form. Employers may also not inquire into an arrest, detention or disposition where no conviction resulted, a first conviction for certain misdemeanors or any misdemeanor conviction where the date of such conviction or completion of any period of incarceration (whichever is later) occurred five (5) or more years prior to the date of application unless the person was convicted of any offense within five (5) years immediately preceding the application. Employers may not inquire into or request sealed or expunged records. [Mass. Gen. Laws, ch. 151B, §4\(9 1/2\).](#)

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<sup>6</sup> The definition of an investigative consumer report under Massachusetts state law is similar to the definition under the Federal Fair Credit Reporting Act.

Massachusetts recently enacted sweeping [criminal justice reforms](#) that includes impacting the state's long-standing ban the box law. These new reforms take effect October 13, 2018. The new reforms shorten the time period for consideration of any misdemeanor convictions that occurred three (3) or more years prior to the date of the employment application unless the person was convicted within the preceding three (3) years. Additionally, under the new reforms, employers may not inquire into or request sealed or expunged records.

### **CORI Regulations**

CORI (Criminal Offender Record Information) is covered through Regulations issued by the Department of Criminal Justice Information Services (DCJIS). Although Asurint does not offer the CORI statewide search,<sup>7</sup> employers that either use CORI or other criminal history information (regardless of what source it's received from) have specific obligations under the CORI Regulations.

With respect to adverse action, the requirements outlined in the Regulations (Section 2.18) include:

- Comply with applicable federal and state laws and regulations;
- Notify the subject in person, by telephone, fax, or electronic or hard copy correspondence of the potential adverse employment action;
- Provide a copy of the subject's CORI or criminal history information to the subject;
- Identify the source of the criminal history information;
- Provide a copy of the requestors CORI Policy, if applicable;
- Identify the information in the subject's CORI or criminal history information that is the basis for the potential adverse action;
- Provide the subject with the opportunity to dispute the accuracy of the information contained in the CORI or criminal history information;
- When CORI is considered as a part of a potential adverse action, provide the subject with a copy of DCJIS information regarding the process for correcting CORI; and
- Document all steps taken to comply with 803 CMR 2.18.

CORI Regulations 803 CMR 2.00.

### **Boston**

Although Boston does not have a ban the box law, the city's Human Rights Ordinance includes ex-offender status as a protected class akin to race, color, sex, national origin, etc., meaning it is an unlawful practice to refuse to hire, employ or otherwise discriminate against an individual who has a prior criminal history. [12-9.3 Discriminatory Practices Regarding Employment](#).

### **Credit Check Restrictions**

None.

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<sup>7</sup> As outlined in the CORI Regulations, in order for a consumer reporting agency such as Asurint to conduct a CORI search and store CORI results, we would have to be considered a "decision maker". Asurint plays no part in the hiring decisions of our clients and thus we have made the decision to not offer this service.

## Expungement/Record Sealing/Certificate of Good Conduct

Massachusetts already affords individuals the opportunity to expunge certain records. This scheme will be expanded effect October 13, 2018 as the [comprehensive criminal justice reform](#) passed earlier in 2018 takes effect. Under the amended law, expungements for minor crimes will be easier to obtain and convictions for deregulated offenses (such as marijuana) may be expunged. Additionally, the governor may grant pardons, ordering records sealed.

## Social Media

None.

## Security Freeze

Individuals may place a security freeze on their credit report which is administered by one (or all) of the three nationwide credit bureaus. Consumer reporting agencies also have an obligation to provide specific information pertaining to the nature and contents of any file it holds about an individual. [Mass. Gen. Laws, ch. 93, §56](#).

## Other

### Payment for Background check

Although Massachusetts law does not expressly prohibit employers from requiring applicants to pay for their criminal background checks, the laws does state that "it is unlawful to request or require a person to provide a copy of his criminal offender record information." Thus, employers cannot require applicants to produce criminal record background checks on their own. It is unclear if that then prohibits employers for charging for the criminal search. However, employers must reimburse employees, present and prospective, for the expense of a medical examinations if the medical examination by a physician is designated by the employer and is required "as a condition to secure or continue employment." [Mass. Gen. Laws ch. 6, §172\(d\); Mass. Gen. Laws, ch. 149 §159B](#).

# MICHIGAN

## MICHIGAN

Michigan does not have any local or statewide laws that impact employers and their use of background reports akin to the Fair Credit Reporting Act. There may be industry-specific requirements and we encourage consultation with qualified legal counsel.

### Fair Credit Reporting Act-State Analogue

None.

### Ban the Box/Fair Chance

None, although Michigan has passed a law effectively banning local municipalities (cities and counties) from enacting ban the box laws for private sector employers. [Michigan Senate Bill 0353](#).

Existing Michigan law prohibits employers from asking an applicant about a misdemeanor arrest that did not result in a conviction. [Elliott-Larsen Civil Rights Act](#).

### Grand Rapids

Effective December 1, 2019, the Human Rights Ordinance (HRO) prohibits employers with one (1) or more employees from discriminating against individuals on the basis of several protected classes. Including in the HRO is a provision addressing conviction records. Under the HRO, employers may not have an "outright ban" on prospective employees with a criminal conviction and may also not consider arrest-only information. Employers can consider conviction records on a case-by-case basis taking into account factors such as: (i) the nature and severity of the crime, (ii) the age of the individual at the time of the crime, (iii) repeat offenses, (iv) employment history maintained before or after the conviction, (v) evidence of rehabilitation efforts and (vi) if the conviction record poses a demonstrable risk to the health, safety or welfare of persons or property.

Employers are also prohibited from adopting, enforcing or employment any policy or requirement (including distributing any job advertisement) that discriminates against or suggests discrimination against an individual based on a protected class. Retaliation against individuals seeking to enforce the law is also prohibited.

Further, the HRO provides that "[n]o person shall conspire with, assist, coerce or request another person to discriminate in any manner prohibited by this Ordinance." [Ordinance No. 2019-43](#).

### Credit Check Restrictions

None.

## Expungement/Record Sealing/Certificate of Good Conduct

Michigan allows individuals to apply for an order “setting aside” a conviction under certain circumstances. Once an order is granted, the individual is considered to not have been previously convicted (with limited exceptions). Any person (other than the individual whose conviction was set aside or a victim) who knows or should have known that a conviction was set aside under this section and who divulges, uses, or publishes information concerning a conviction set aside under this section is guilty of a misdemeanor punishable by imprisonment for not more than 90 days or a fine of not more than \$500.00, or both. [Mich. Comp. Laws Ann. §780.621-624](#).

## Social Media

Employers are prohibited from requesting an employee or applicant grant access to, allow observation of or disclose information that allows access to a personal internet account. Employers may also not discharge, discipline, fail to hire or otherwise discipline an employee or applicant for failing to comply with an illegal request. [Mich. Comp. Laws Ann. §37.273](#).

There are several acts by employers that are not prohibited or restricted by virtue of this law. For example, employers may request or require access to information on an electronic communication device paid for in whole or part by the employer, to accounts or services provided by the employer, or through an appropriate investigation. [Mich. Comp. Laws Ann. §37.275](#).

## Security Freeze

None, although the three nationwide credit bureaus will allow Michigan consumers to place a freeze on their credit report. No specific notice of rights is required under Michigan law.

# MINNESOTA

## MINNESOTA

Minnesota has several different legal requirements that impact background screening akin to the Fair Credit Reporting Act, along with legislation that governs criminal history inquiries. There may also be industry-specific requirements and we encourage consultation with qualified legal counsel.

### Fair Credit Reporting Act-State Analogue

Minnesota law requires employers to clearly and accurately disclose to the consumer that a consumer report may be obtained or caused to be prepared. In the case of an investigative consumer report,<sup>8</sup> the disclosure must inform the consumer that the report may include information obtained through personal interviews regarding the consumer's character, general reputation, personal characteristics, or mode of living. The disclosure must be in writing and include a box for the individual to check in order to receive a copy of the report. If the consumer requests a copy of the report, the person requesting the report shall request the person preparing the report to provide a copy to the consumer. [Minn. Stat. Ch. 13C.02](#).

Employers must also notify individuals if adverse action for employment purposes is taken based in whole or in part on the consumer report. The notice must also notify the consumer of their right to receive a copy of the report if a copy has not already been provided, include the name and address of the consumer reporting agency, and a notice of the consumer's right to dispute and correct any errors. [Minn. Stat. Ch. 13C.03](#).

### Ban the Box/Fair Chance

Applies to employers with one (1) or more employees. Employers may not inquire into or consider criminal records/history until after the applicant has been selected for an interview or has received a conditional offer of employment (if there is no interview).

Employers are not prohibited from notifying applicants that the law or the employer's policy will disqualify an individual with particular criminal history from employment in particular positions. [Minn. Stat. §364.021](#).

### Credit Check Restrictions

None.

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<sup>8</sup> "Investigative consumer report" has the same meaning under Minnesota law as the Fair Credit Reporting Act.



## Expungement/Record Sealing/Certificate of Good Conduct

Minnesota allows individuals with convictions for petty misdemeanors, misdemeanors, gross misdemeanors and some felonies to petition for a full expungement of their records. If a full expungement is not an available remedy, a court may have the authority to seal a record. [Minn. Stat. §609A.02.](#)

## Social Media

None.

## Security Freeze

Minnesota allows consumers to place a security freeze on their credit reports. However, no specific notice of rights is required. [Minn. Stat. Ch. 13C.016-019.](#)

## Other

### Criminal History Check – BCA

Employers obtaining criminal information from Minnesota’s Bureau of Criminal Apprehension (BCA) who intend to use the information regarding an applicant for employment, housing or credit must notify the applicant that the criminal history will be pulled from the BCA. [Minn. Stat. §13.87\(f\).](#)

### Payment for Background Checks

Minnesota law prohibits employers or prospective employers from requiring “an employee or prospective employee to pay for expenses incurred in criminal or background checks, credit checks, or orientation.” Furthermore, the law extends beyond just the expenses of a background check and requires employers to “pay for the expenses of training or testing that is required by federal or state law or is required by the employer to maintain the employee’s current position.” This does not include required training or testing that pertains to maintaining a license, registration or certification. [Minn. Stat. §181.645.](#)

# MISSISSIPPI

## MISSISSIPPI

Mississippi does not have any local or statewide laws that impact employers and their use of background reports akin to the Fair Credit Reporting Act. There may be industry-specific requirements and we encourage consultation with qualified legal counsel.

### Fair Credit Reporting Act-State Analogue

None.

### Ban the Box/Fair Chance

None.

### Credit Check Restrictions

None.

### Expungement/Record Sealing/Certificate of Good Conduct

Mississippi allows individuals who have been convicted of a misdemeanor (that is not a traffic violation) and are a first offender to petition for an expungement of that conviction. There are also provisions allowing particular felony convictions to be expunged. However, employers are still allowed to ask if the employee has had an expungement order entered on their behalf. [Miss. Code Ann. §99-19-71](#).

### Social Media

None.

### Security Freeze

Individuals may place a security freeze on their credit report which is administered by one (or all) of the three nationwide credit bureaus. There is no requirement to provide a specific notice of rights. [Miss. Code Ann. §75-24-201](#).

### Other

#### Preemption

Employers in Mississippi will likely not be confronted with local level legislation regarding credit and criminal searches as state law prohibits all counties, municipalities or any other political subdivisions from adopting or maintain any law, ordinance, or rule that creates requirements, regulations, processes or prohibitions that in any way interfere with an employer's ability to

become fully informed about the background of an employee or potential employee for the purpose of creating or maintaining a fair, secure, safe and productive workplace. [Miss. Code Ann. §17-25-33](#).

# MISSOURI

## MISSOURI

Missouri does not have any local or statewide laws that impact employers and their use of background reports akin to the Fair Credit Reporting Act. There may be industry-specific requirements and we encourage consultation with qualified legal counsel.

### Fair Credit Reporting Act-State Analogue

None.

### Ban the Box/Fair Chance

There is no statewide ban the box law; however, Columbia and Kansas City each have ordinances on the subject.

#### Columbia

Applies to all employers within the City. Prohibits employers from inquiring into whether an applicant has ever been arrested for, charged with or convicted of any crime on an employment application and until the applicant has received a conditional offer of employment. Employers are not prohibited from notifying applicants in writing of the specific offenses that will disqualify them from employment in a particular position.

Employers are encouraged to not automatically ban applicants with a criminal history. Employers may make final employment-related decisions based on all of the information available to them, including consideration of the frequency, recentness and severity of a criminal record as well as rehabilitation efforts against the duties and responsibilities of the position. [Columbia Code of Ordinances §§12-90 to 12-94](#).

#### Kansas City

Applies to employers with six (6) or more employees. Employers cannot inquire into criminal history until the individual is determined to be “otherwise qualified for the position” and been interviewed. Employers can ask about criminal history of all applicants that are in a “final selection pool” of candidates for the position.

Employers cannot base a hiring or promotion decision on an applicant’s criminal history unless the employer can demonstrate the employment-related decision was made after considering factors such as the frequency, recentness and severity of a criminal record, and that the criminal history is “reasonably related” to the duties and responsibilities of the position. [Kansas City Code of Ordinances §38-104](#). “Criminal history” includes convictions, plea of guilty/no contest, record of arrests not followed by a valid conviction, annulled or expunged convictions, etc. [Kansas City Code of Ordinances §38-1\(a\)\(31\)](#).

## St. Louis

Applies to employers in the city of St. Louis with ten (10) or more employees. Employers cannot inquire into criminal history until the applicant is considered otherwise qualified for the position. The criminal history inquiry may also only take place after the applicant has been interviewed. Employers may also not inquire into or require disclosures of criminal history on initial job applications. Employers may not: (i) Base a hiring or promotional decision on criminal history or sentencing unless the employer demonstrates the employment-related decision is based on “all information available” (including the frequency, recentness and severity, as well as if the criminal history is reasonably related to or bears upon the duties and responsibilities of the position); (ii) Publish job advertisements excluding individuals on the basis of criminal history; (iii) Include statements excluding applicants on the basis of criminal history in job applications or other forms used in the hiring process and (iv) Seek to obtain publicly available information concerning job applicants’ criminal history.

The last prohibition in particular is concerning as it could be interpreted as banning criminal background checks in St. Louis. However, in reviewing City Council meetings it appears that was not the intent of this legislation. Rather, they simply wanted to prevent that type of search until after the interview. Employers should stay tuned on this issue in the event the city issues further clarifications or amends the Ordinance. [Ordinance 71074](#).

## Credit Check Restrictions

None.

## Expungement/Record Sealing/Certificate of Good Conduct

Missouri allows individuals to seek expungement of arrest and criminal records under certain scenarios. For example, if an individual was arrested based on false information, for first intoxication-related traffic or boating offenses classified as a misdemeanor, or cases resulting from stolen or mistaken identity. An individual who has been granted an expungement may answer “no” to an employer’s inquiry into whether the individual has ever been convicted of a crime, unless the employer is required to exclude applicants with certain criminal convictions from employment due to federal or state law. [Mo. Rev. Stat. §610.100-145](#).

## Social Media

None.

## Security Freeze

Individuals may place a security freeze on their credit report which is administered by one (or all) of the three nationwide credit bureaus. Under this law, individuals are entitled to receive a specific summary of rights any time they receive a copy of the “A Summary of Your Rights Under the Fair Credit Reporting Act.” [Mo. Rev. Stat. §407.1382](#).

# MONTANA

## MONTANA

Montana has a statewide law that impacts background reports akin to the Fair Credit Reporting Act. There may also be industry-specific requirements and we encourage consultation with qualified legal counsel.

### Fair Credit Reporting Act-State Analogue

Montana regulates the use of consumer reports for employment purposes. Among other items, consumer reporting agencies may not include records of arrest, indictment or conviction of crime which, from date of disposition, release, or parole, antedate the report by more than 7 years. [Mont. Code Ann. §31-3-112](#).

For investigative consumer reports<sup>9</sup>, employers must clearly and accurately disclose to the consumer that including information as to the consumer's character, general reputation, personal characteristics, and mode of living, whichever are applicable, may be made. Such a disclosure must be in a writing either mailed or otherwise delivered within three (3) days after requesting the report and must include a statement informing the consumer of the right to request additional disclosures. If a consumer requests further information, the employer must provide, in writing, a complete and accurate disclosure of the nature and scope of investigation required. This requirement arguably does not apply if the report is to be used for employment purposes for which the consumer applied. [Mont. Code Ann. §31-3-113](#).

Additionally, if an employer is taking adverse action based in whole or in part on the background report, they must notify the individual and supply the name and address of the consumer reporting agency. [Mont. Code Ann. §31-3-131](#).

### Ban the Box/Fair Chance

None. However, as outlined in [Mont. Admin. Rule 24.9.1406\(2\)\(h\)](#), inquiring into criminal arrests may raise a suspicion that the employer intends to use the information to unlawfully discriminate against individuals. Employers can inquire into criminal convictions.

### Credit Check Restrictions

None.

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<sup>9</sup> The definition of an investigative consumer report under Montana state law is similar to the definition under the Federal Fair Credit Reporting Act.

## Expungement/Record Sealing/Certificate of Good Conduct

Montana allows for individuals to seek expungement (only one time through the course of their lifetime) of misdemeanor offenses but does not speak to the impact of that expungement in relation to employment relationships. [Mont. Code Ann. §46-18-1101](#).

## Social Media

An employer or employer's agent may not require or request an employee or an applicant for employment to:

- Disclose a username or password for the purpose of allowing the employer or employer's agent to access a personal social media account of the employee or job applicant.
- Access personal social media in the presence of the employer or employer's agent.
- Divulge any personal social media or information contained on personal social media.
- Discharge, discipline, fail to hire or otherwise discipline an employee or applicant for failing to comply with an illegal request.

Employees are required to provide username and passwords to access personal social media under limited circumstances including if the employer has specific information about an activity taken by the employee that indicates work-related employee misconduct or criminal defamation. Among other items, the law does not limit an employer's right to maintain lawful workplace policies regarding the use of employer-issued electronic equipment and does not impact employer-run accounts intended solely for business-related purposes. [Mont. Code Ann. §39-2-307](#).

## Security Freeze

Individuals may place a security freeze on their credit report which is administered by one (or all) of the three nationwide credit bureaus. Under this law, individuals are entitled to receive a specific summary of rights from a consumer reporting agency any time they receive a copy of the "A Summary of Your Rights Under the Fair Credit Reporting Act." [Mont. Code Ann. §30-14-1733](#).

# NEBRASKA

## NEBRASKA

Nebraska does not have any local or statewide laws that impact employers and their use of background reports akin to the Fair Credit Reporting Act. There may be industry-specific requirements and we encourage consultation with qualified legal counsel.

### Fair Credit Reporting Act-State Analogue

None.

### Ban the Box/Fair Chance

None.

### Credit Check Restrictions

None.

### Expungement/Record Sealing/Certificate of Good Conduct

Nebraska does not have comprehensive legislation that allows for the expungement of misdemeanor or felony convictions. There may be circumstances where a dismissed charge may be expunged or removed from an individual's record.

### Social Media

Employers are prohibited from requiring or requesting that an employee or applicant:

- Provide or disclose any username or password in order to gain access to the employee's or applicant's personal Internet account by way of an electronic communications device.
- Log into a personal Internet account in the presence of the employer in a manner that enables the employer to observe the contents of the account.
- Add anyone, including the employer, to the list of contacts associated with the personal Internet account or otherwise change settings to allow content to be viewed.

Employers may not take adverse action against, fail to hire, or otherwise penalize an individual for failing to comply with an illegal request. [Neb. Rev. Stat. § 48-3503](#). Employers may also not require an applicant or employee waive or limit any protection granted to them under this Act. [Neb. Rev. Stat. § 48-3504](#).

Employers retain several rights under the law, including (but not limited to) the right to maintain lawful workplace policies governing the use of the employer's electronic equipment including policies around Internet use. Employers may also require employees disclose information



allowing them to access electronic communication devices supplied by or paid for (in whole or in part) by the employer and have the right to conduct investigations. [Neb. Rev. Stat. § 48-3507](#).

### **Security Freeze**

Individuals may place a security freeze on their credit report which is administered by one (or all) of the three nationwide credit bureaus. There is no requirement to provide a specific notice of rights. [Neb. Rev. Stat. Ann §8-2602](#).

# NEVADA

## NEVADA

Nevada has a statewide law that impacts employers and their use of background reports. There may be industry-specific requirements and we encourage consultation with qualified legal counsel.

### Fair Credit Reporting Act-State Analogue

Nevada's law regulating consumer reports is not nearly as comprehensive as the Fair Credit Reporting Act but does require employers notify an individual if taking adverse action based on a consumer report. This includes furnishing the individual with the name and address of the consumer reporting agency (CRA) and informing them of the right to obtain a copy of the consumer report from the CRA. [Nev. Rev. Stat. §598C.170](#).

Nevada law previously prohibited consumer reporting agencies from reporting records of conviction that predated the report by more than 7 years. However, that restriction was removed from the law in 2015.

### Ban the Box/Fair Chance

None.

### Credit Check Restrictions

Employers may not:

- Directly or indirectly require, request, suggest or cause an employee or prospective employee to submit credit information as a condition of employment;
- Use, accept, refer to or inquire into an individual's credit information;
- Discharge, discipline or discriminate in any manner against an individual (including denying employment or a promotion to)
  - Who refuses, declines, or fails to submit credit information) or
  - On the basis of credit information; or
- Discharge, discipline or discriminate against in any manner (including denying employment or a promotion to) any employee or prospective employee who has:
  - Filed any complaint or instituted or caused to be instituted any legal proceeding;
  - Testified or may testify in any legal proceeding; or
  - Exercised his or her rights, or has the rights exercised on behalf of another person.

There are several exemptions under the law including where the employer is authorized to use credit information for employment reasons pursuant to a state or federal law, if the employer reasonably believes an individual has engaged in specific activity that may violate a state or federal law or if the credit information is reasonably related to the position. Employers should review the full text of the law for examples of where the credit information will be deemed reasonably related to a position. [Nev. Rev. Stat. §613.520-613.600](#).

### **Expungement/Record Sealing/Certificate of Good Conduct**

Individuals may petition to have certain criminal records sealed. Once a record is sealed, individuals may answer “no” if asked if they possess a criminal history on an employment application. [Nev. Rev. Stat. §179.285](#).

### **Social Media**

Employers are prohibited from: (i) requiring, requesting, suggesting or causing any employee or prospective employee to disclose a user name, password or other information that provides access to a personal social media account, and (ii) discharging, disciplining or discriminating against in any matter (including denying employment or promotion) based on an individual’s refusal or failure to disclose such information protected by this law. Employers are allowed to require individuals to disclose the username, password or other information, associated with an employer issued computer or information system. [Nev. Rev. Stat. §613.135](#).

### **Security Freeze**

Individuals may place a security freeze on their credit report which is administered by one (or all) of the three nationwide credit bureaus. Under this law, individuals are entitled to receive a specific summary of rights any time they receive a copy of the “A Summary of Your Rights Under the Fair Credit Reporting Act.” [Nev. Rev. Stat. §598C.310](#).

### **Other**

#### **Sex Offender Registry Records**

A person shall not use information obtained from the community notification website (Nevada Sex Offender Registry) for employment purposes unless the employer has an authorization to do so pursuant to a specific statute. [Nev. Rev. Stat. §179B.270](#).

# NEW HAMPSHIRE

## NEW HAMPSHIRE

New Hampshire has a statewide law that impacts employers and their use of background reports. There may also be industry-specific requirements and we encourage consultation with qualified legal counsel.

### Fair Credit Reporting Act-State Analogue

With respect to investigative consumer reports,<sup>10</sup> New Hampshire's law requires employers "clearly and accurately" disclose to the consumer that an investigative consumer report including information as to character, general reputation, personal characteristics, and mode of living may be made. The disclosure should be in writing mailed or otherwise delivered to the consumer within 3 days after the date on which the report was first requested and should include a statement informing the consumer of their right to request additional disclosures outlined in the law. Employers must also respond to written requests from individuals regarding the nature and scope of the investigation required. [N.H. Rev. Stat. Ann. §359-B:6](#).

Employers must also notify the individual if taking adverse action based in whole or in part on information from a consumer report and include the name and address of the consumer reporting agency. [N.H. Rev. Stat. Ann. §359-B:15](#).

The law also prohibits consumer reporting agencies from predating records of arrest, indictment, or convictions of crimes which, from date of disposition, release, or parole, antedate the report by more than seven (7) years for applicants that have an expected salary of \$20,000 or less. If the salary is reasonably expected to be more than \$20,000, then the 7-year restriction does not apply. [N.H. Rev. Stat. Ann. §359-B:5](#).

### Ban the Box/Fair Chance

None.

### Credit Check Restrictions

None.

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<sup>10</sup> "Investigative consumer report" is defined in a similar manner under New Hampshire law as the Fair Credit Reporting Act.

## Expungement/Record Sealing/Certificate of Good Conduct

Individuals may seek an annulment of certain criminal record history. If an annulment is granted, the individual is treated as though they were never arrested, convicted, or sentenced. In any application for employment, a person may be questioned about a previous criminal record only in terms such as "Have you ever been arrested for or convicted of a crime that has not been annulled by a court?" [N.H. Rev. Stat. Ann. §651:5\(X\)](#).

## Social Media

Employers are prohibited from requiring or requesting that an employee or prospective employee disclose login information for accessing any personal account or service through an electronic communication device. Additionally, employers may not require those individuals to add anyone to a list of contacts or change privacy settings. Employers may also not discharge, discipline, fail to hire or otherwise discipline an employee or applicant for failing to comply with an illegal request.

Employers retain several rights under the law including (but not limited to) the right to adopt and enforce lawful workplace policies governing the use of employer-issued electronic equipment, and use of the internet, social networking sites and e-mail. Employers may also conduct investigations and view information that is in the public domain. [N.H. Rev. Stat. Ann. §275:74](#).

## Security Freeze

Individuals may place a security freeze on their credit report which is administered by one (or all) of the three nationwide credit bureaus. Under this law, individuals are entitled to receive a specific summary of rights any time they receive a copy of the "A Summary of Your Rights Under the Fair Credit Reporting Act." [N.H. Rev. Stat. Ann. §359-B:22-23](#).

# NEW JERSEY

## NEW JERSEY

New Jersey has a statewide law that impacts employers and their use of background reports. There may also be industry-specific requirements and we encourage consultation with qualified legal counsel.

### Fair Credit Reporting Act-State Analogue

New Jersey has a statewide version of the Fair Credit Reporting Act (FCRA) which is designed to provide “additional consumer protection” with respect to consumer reports. Employers are required to make a “clear and conspicuous” disclosure in writing before the consumer report is procured in a document that consists “solely” of the disclosure that a consumer report may be obtained for employment purposes and obtain the individual’s written authorization. [N.J. Stat. Ann. §56:11-31\(4\)\(c\)\(1\)-\(2\)](#).

For investigative consumer reports<sup>11</sup>, employers must clearly and accurately disclose to the consumer that this commonly includes information regarding the consumer's character, general reputation, personal characteristics, and mode of living, and the disclosure must include the precise nature and scope of the investigation requested along with the right of the consumer to have a copy of the report upon request. The individual must then provide written permission to obtain the investigative consumer report. [N.J. Stat. Ann. §56-11-33](#).

Employers must provide notice to an individual – before taking adverse action based in whole or in part on the consumer report – and provide a copy of the report, “A Summary of Your Rights Under the Fair Credit Reporting Act” and “A Summary of Your Rights Under the New Jersey Fair Credit Reporting Act”. [N.J. Stat. Ann. §56:11-31\(4\)\(e\)\(1\)-\(2\)](#).

### Ban the Box/Fair Chance

Applies to employers with fifteen (15) or more employees over 20 calendar weeks that does business, employs individuals, or takes applications within the State. The physical location of the prospective employment must be in whole or substantial part within the State for the Act to apply to that individual (meaning at least 50 percent of the individual’s work hours take place in New Jersey); however, all employees – whether they work inside or outside of New Jersey – contribute to the employer’s total employee count.

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<sup>11</sup> The definition of an investigative consumer report under New Jersey state law is similar to the definition under the Federal Fair Credit Reporting Act.

Employers may not inquire into or require disclosure of criminal history during the initial employment application process. The initial employment application process means the period beginning when an applicant for employment first makes an inquiry to an employer about a prospective employment position or job vacancy or when an employer first makes any inquiry to an applicant for employment about a prospective employment position or job vacancy, and ending when an employer has conducted a first interview, whether in person or by any other means of an applicant for employment. Employers may also not publish job advertisements that state candidates with arrest or conviction records will not be considered.

SB 3306 amended New Jersey's ban the box law to prohibit employers from inquiring into expunged criminal records on the initial employment application, or during the initial employment application process. The Opportunity to Compete Act also preempts all local legislation meaning employers have a single, statewide standard for compliance. [Opportunity to Compete Act; N.J. Admin. Code §§12:68-1.1 to 12:68-1.6.](#)

### **Credit Check Restrictions**

None.

### **Expungement/Record Sealing/Certificate of Good Conduct**

Individuals may apply to have certain criminal history information expunged. If an expungement is granted, the arrest, conviction and any related proceedings are deemed not to have occurred. [N.J. Stat. Ann. §2C:52-27](#). Per amendments to the Opportunity to Compete Act, employers may not inquire into records that are expunged. [SB 3306](#).

### **Social Media**

Employers may not request or require a current or prospective employee to provide or disclose any username or password, or in any way provide the employer access to, a personal account through an electronic communications device. [N.J. Stat. Ann. §34:6B-6](#). Employers are prohibited from requiring an individual to waive or limit any protections granted under this Act. [N.J. Stat. Ann. §34:6B-7](#).

Employers retain several rights under the law, including (but not limited to) the right to implement and enforce a policy addressing the use of employer-issued electronic communication devices, accounts, or services. Employers are also free to conduct investigations and view information that is in the public domain. [N.J. Stat. Ann. §34:6B-10](#).

### **Security Freeze**

Individuals may place a security freeze on their credit report which is administered by one (or all) of the three nationwide credit bureaus. Under this law, individuals are entitled to receive a specific summary of rights any time they receive a copy of the "A Summary of Your Rights Under the Fair Credit Reporting Act." [N.J. Stat. Ann. §56:11-46](#).

# NEW MEXICO

## NEW MEXICO

New Mexico does not have any local or statewide laws that impact employers and their use of background reports akin to the Fair Credit Reporting Act. There may be industry-specific requirements and we encourage consultation with qualified legal counsel.

### Fair Credit Reporting Act-State Analogue

Although New Mexico does not have a law similar to the Fair Credit Reporting Act (FCRA), there is a provision within its credit bureau regulations that prohibits consumer reporting agencies (CRAs) from reporting arrests and indictments pending trial, or convictions of crimes, that are older than seven years from date of release or parole. CRAs may also not report such information if it learns a full pardon has been granted, or if after an arrest or indictment a conviction did not result. [N.M. Stat. §56-3-6](#).

### Ban the Box/Fair Chance

Effective June 14, 2019, private sector employers are prohibited from asking criminal history questions on initial job applications. Employers may ask about criminal history after reviewing the application and discussing employment with the candidate. Employers may also notify candidates that they can be disqualified from certain positions based on their criminal history. [N.M. Stat. § 28-2-2](#).

### Credit Check Restrictions

None.

### Expungement/Record Sealing/Certificate of Good Conduct

New Mexico does allow for conditional discharges;<sup>12</sup> however, there is no formal law allowing for expungements of convictions. Certain arrest records may be expunged by the Department of Public Safety. [N.M. Stat. §29-3-8.1](#).

### Social Media

Employers are prohibited from requesting or requiring a prospective employee to provide a password in order to gain access to, or otherwise demand access to, the prospective employee's account or profile on a social networking web site.

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<sup>12</sup> A conditional discharge allows an individual to complete certain conditions after being charged with a crime. If the conditions are successfully completed, there will be no resulting criminal conviction.



Employers may still have policies regarding workplace internet, social networking, and e-mail use, and may still monitor the usage of employer-issued devices and accounts. Employers may also view information that is publicly available. [N.M. Stat. §50-4-34](#).

### **Security Freeze**

Individuals may place a security freeze on their credit report which is administered by one (or all) of the three nationwide credit bureaus. Under this law, individuals are entitled to receive a specific summary of rights any time they receive a copy of the "A Summary of Your Rights Under the Fair Credit Reporting Act." [N.M. Stat. §56-3A-4](#).

# NEW YORK

## NEW YORK

New York has several local and statewide laws that impact employers and their use of background reports. There may also be industry-specific requirements and we encourage consultation with qualified legal counsel.

### **Fair Credit Reporting Act-State Analogue**

New York has several provisions akin to the Fair Credit Reporting Act. Employers may not request a consumer report (other than an investigative consumer report) without first notifying the individual in writing and obtaining a written authorization from the individual. [N.Y. Gen. Bus. Law §380-b](#).

For investigative consumer reports, employers must provide notice and receive authorization from the individual. The notice required must be in writing if the individual made a written application or may otherwise be in writing or delivered orally. The notice must inform the individual that an investigative consumer report may be requested, and that they have a right, upon written request, to be informed whether or not such a report was requested and the name and address of the consumer reporting agency. [N.Y. Gen. Bus. Law §380-c](#).

Employers are required to advise the individual if adverse action is being taken based in whole or in part on the consumer report which includes supplying the name and address of the consumer reporting agency (CRA) and informing the individual of their right to inspect and receive a copy of the report from the CRA. [N.Y. Gen. Bus. Law §380-i](#).

CRA's are prohibited from including certain information on a consumer report such as such as records of arrest, indictment, or conviction of a crime that, from the date of disposition, release, or parole, predate the report by more than seven (7) years for applicants that have an expected salary of \$25,000 or less. If the salary is reasonably expected to be more than \$25,000, the 7-year restriction does not apply. [N.Y. Gen. Bus. Law §380-j](#).

### **Ban the Box/Fair Chance**

There are several local ban the box laws (currently New York City, Buffalo, Rochester and Suffolk County) and statewide laws employers must contend with when conducting criminal background checks.

### **New York State Law**

New York state law provides numerous protections to individuals based on arrest and conviction information:

#### **Human Rights Law**

- Employers may not make any inquiry to or act upon adversely (i.e., make an adverse employment decision) arrest records that are not pending and did not result in a conviction unless specifically required by law. [N.Y. Exec. Law §296\(16\)](#).

## **Corrections Law**

- [Article 23-A](#) prohibits employers from denying employment based solely on the individual's prior conviction history unless: (1) there is a direct relationship between one or more of the criminal offenses and the specific employment held or sought; or (2) the granting or continuation of employment would involve an unreasonable risk to the property or to the safety or welfare of specific individuals or the general public. [N.Y. Correct. Law §752](#).
- Employers must consider eight specific factors prior to making an adverse employment decision based on criminal record history. [N.Y. Correct. Law §753](#).
- Upon request from the individual employers must provide, within 30 days, a written statement noting why there was a denial of employment. [N.Y. Correct. Law §754](#).
- The Article 23-A notice must be:
  - Posted in the employer's workplace. [N.Y. Labor Law §201-f](#).
  - Provided prior to obtaining a background check (most commonly sent along with the disclosure and authorization document). [N.Y. Gen. Bus. Law §380-c](#).
  - Provided any time there is criminal information returned on a background report (note: this is not just during the adverse action process). [N.Y. Gen. Bus. Law §380-g\(d\)](#).

## **New York City**

Some protections under the New York City Human Rights Law apply to employers of all sizes, unless an exception applies. Others apply only to employers with four or more employees (which includes the business owner and independent contractors).

From a Fair Chance Act perspective, employers are regulated in terms of what types of criminal history information they may consider and when the criminal background check may be conducted. The New York City Commission on Human Rights (NYCCHR) issued [Guidance](#) effective July 29, 2021 that impacts how background checks may be conducted. A "conditional offer of employment" is defined as an offer of employment, promotion or transfer which may only be revoked based on one of the following: 1. The results of a criminal background check, 2. The results of a medical exam as permitted by the Americans with Disabilities Act of 1990 or 3. Other information the employer could not have reasonably known before making the conditional offer if the employer can demonstrate it would not have extended the offer regardless of the criminal background check results. The Guidance states that "[e]mployers who request background checks on applicants should first receive the non-criminal information, evaluate it, and then receive and evaluate the criminal information."

From a disclosure and authorization form perspective, according to the Guidance, "[e]mployers should omit mention of a criminal background check when seeking an applicant's authorization for an employment related background check prior to a conditional offer." Instead, the Guidance encourages employers to use the terms such as "consumer report" or "investigative consumer report" versus "background check" prior to a conditional offer. Once a criminal (and/or MVR) check is sought, the employer must provide the candidate notice and obtain their authorization.

If an employer may not hire an individual based on criminal history information, several steps must be taken. The employer needs to determine if there is a direct relationship between the applicant's conviction history or pending case and the job or show that employing the applicant would involve an unreasonable risk to property or to the safety or welfare of specific individuals or the general public. If neither of these apply, arguably the candidate must be hired.

To conduct this analysis, employers should gather information necessary to assess the relevant factors including for the Article 23-A process for convictions. If there are pending cases involved, employers also need to conduct an analysis using the NYC Fair Chance Factors which are similar to but not identical to the Article 23-A factors. If an applicant has both a conviction history and a pending case, the employer must separately analyze each according to the relevant set of factors.

The Guidance notes that employers cannot ignore evidence favorable to the applicant and must make a reasoned evaluation of each relevant factor.

After evaluating the factors, the employer must then follow the Fair Chance Process. It must:

1. Provide the applicant a copy of the report, written copy of the Article 23-A analysis and Fair Chance Act Notice;
2. Provide the applicant at least 5 business days from receipt of the information to respond (during which time another person cannot be permanently placed in the position); and
3. Consider additional information provided by the applicant including whether that changes its Article 23-A analysis.

If the time elapses and no new information is provided and there are no known errors on the background report, then the employer may move forward with making its decision final at which point it must notify the applicant in writing (i.e., send the final adverse action letter).

If there are errors on the background check, the applicant should notify the employer and the employer must then conduct the Fair Chance Analysis on the corrected criminal background check information.

There are numerous other portions of the law and Guidance. A few highlights:

- Must have consent from the applicant or employee to send notices and disclosures that are required under the Fair Chance Act via email.
- Non-convictions are completely protected unless specifically required or permitted by law. This includes items such as dismissed cases, cases that were adjourned in contemplation of dismissal, where the verdict was set aside, and cases that resulted in a conviction for a violation. There is a long list of items available in the Guidance.
- Employers cannot include any limitation based on criminal history in job advertisements including saying no felonies or even background check required. Even including a neutral statement such as "Applicants criminal history will be considered consistent with the requirements of the NYC Fair Chance Act" is not permitted.
- Intentional misrepresentations: Employers can disqualify an applicant based on an intentional misrepresentation without performing the Fair Chance Analysis. However, the employer is required to first provide the applicant with a copy of the information and

afford at least 5 business days to respond. If the applicant credibly demonstrates that there was not a misrepresentation or such misrepresentation was unintentional, then the employer must follow the Fair Chance Analysis before taking adverse action.

Additional resources are available for the [Fair Chance Act](#) including the [Fair Chance Act Notice](#) and [FAQs](#).

### Buffalo

Applies to employers with fifteen (15) or more employees located within the City. Employers may not make any inquiry or require any person to disclose or reveal any criminal conviction information during the application process, or before a first interview. The application process being when the applicant inquires into employment and ends when an employer accepts employment application. If an employer does not conduct an interview, the employer must inform the applicant if a criminal background check will be conducted before employment begins. [Chapter 154, Article V, "Fair Employment Screening"](#).

### Rochester

Applies to employers with four (4) or more employees and the position being filled must be performed primarily within the City. Employers may not inquire into or require disclosure of prior criminal convictions during the initial application process. The "application process" begins when the applicant inquires about the employment sought and ends when an employer has conducted an initial employment interview or made a conditional offer of employment. An interview is defined as: "Any direct contact by the employer with the applicant, whether in person or by telephone, to discuss the employment being sought or the applicant's qualifications." If an employer does not conduct an interview, the employer must inform the applicant if a criminal background check will be conducted before employment begins.

The law also requires employers to comply with Article 23-A of the New York State Correction Law and the Fair Credit Reporting Act. [Chapter 63, Article II of the City of Rochester Municipal Code](#).

### Suffolk County

Under the Suffolk County Human Rights Law, which applies to employers with four (4) or more employees: Unless specifically required or permitted by statute, employers may not inquire into (whether on an employment application or otherwise), take adverse action based on or require an individual to divulge any information pertaining to any arrest or criminal accusation that is not pending. The prohibition also includes convictions that are sealed.

Employers must comply with Article 23-A of the New York State Correction Law. As outlined in the county-level legislation, this means employers may not deny employment to an individual by reason of them being convicted of one or more criminal offenses, or by reason of a finding or by reason of a finding of a lack of "good moral character" which is based upon his or her having been convicted of one or more criminal offenses (if either leads to a violation of Article 23-A).

There is a rebuttable presumption in favor of excluding from evidence the prior incarceration or conviction of any individual, in a case alleging that the employer has been negligent in hiring or

retaining an applicant or employee, or supervising a hiring manager, if the employer can demonstrate their compliance with the NY Correction Law, and made a reasonable, good faith determination that such factors militate in favor of hire or retention of that applicant or employee. [Suffolk County, NY Code § 528-7\(A\)\(12\)](#).

Under the Suffolk County ban the box law which applies to employers located within Suffolk County with fifteen (15) or more employees: Prohibits inquiries into criminal conviction information on a preliminary employment application. The application process begins when an applicant inquires about employment and ends when the employer accepts an employment application. Employers may inquire into criminal conviction information after a first interview. If an interview is not conducted, employers must inform applicants whether a criminal background check will be conducted. Employers are required to comply with Article 23-A of the New York State Corrections Law when considering criminal history information in relation to an employment decision. Limited exemptions apply. The law takes effect 120 days after filing with the Office of the Secretary of State and was passed on March 17, 2020. [Introductory Resolution 1019-2020](#).

### Westchester County

Employers may not inquire into criminal convictions or arrests on employment applications. Employers must also ensure their job advertisements do not contain any specifications or limitations regarding criminal history. Employers may ask about a candidate's criminal history after an employment application is submitted.

Before taking any adverse employment action (such as not hiring an individual) based on the candidate's criminal history, employers must comply with New York's Article 23-A correction law which includes looking at several specific factors in relation to the criminal conviction. Employers must provide this analysis in writing along with the reasons for their decision to candidates upon request. [Westchester County Local Law 10913](#).

## Credit Check Restrictions

### New York City

Employers with four (4) or more employees may not:

- Request credit history from job applicants, or potential or current employees (orally or in writing);
- Request or obtain credit history from a consumer reporting agency; and
- Use credit history in an employment decision or when considering an employment action.

As outlined in the [Legal Enforcement Guidance](#), simply taking one of the above steps is a violation of the law regardless of whether the individual suffers any adverse consequences.

There are several exemptions provided for under the law such as employers that are required by state or federal law or regulations to use credit history for employment purposes. Employers should review the text of the law and the Legal Enforcement Guidance for a full list of

exemptions keeping in mind that the NYC Commission on Human Rights (NYCCHR) has outlined that exemptions are to be construed narrowly. Employers will have the burden of proving the exemption by a preponderance of the evidence. Additionally, the NYCCHR has stated that no exemption applies to an entire employer or industry, but rather must be determined on a position-by-position basis.

Further, as outlined in the Legal Enforcement Guidance, employers should inform applicants or employees of the claimed exemption and should also keep a record of their use of such exemptions for a period of five (5) years. [Stop Credit Discrimination in Employment Act \(SCDEA\)](#); [FAQs](#).

### **Expungement/Record Sealing/Certificate of Good Conduct**

New York allows individuals to have certain convictions sealed. Once sealed, the information is not available to most employers and individuals are not required to divulge information pertaining to the arrest or prosecution. [N.Y. Crim. Proc. Law. § 160.59](#); [N.Y. Crim. Proc. Law. § 160.60](#).

### **Social Media**

None.

### **Security Freeze**

Individuals may place a security freeze on their credit report which is administered by one (or all) of the three nationwide credit bureaus. Under this law, individuals are entitled to receive a specific summary of rights any time they receive a copy of the "A Summary of Your Rights Under the Fair Credit Reporting Act." [N.Y. Gen. Bus. Law §380-t](#).

# NORTH CAROLINA

## **NORTH CAROLINA**

North Carolina does not have any local or statewide laws that impact employers and their use of background reports akin to the Fair Credit Reporting Act. There may be industry-specific requirements and we encourage consultation with qualified legal counsel.

### **Fair Credit Reporting Act-State Analogue**

None.

### **Ban the Box/Fair Chance**

None.

### **Credit Check Restrictions**

None.

### **Expungement/Record Sealing/Certificate of Good Conduct**

Individuals are allowed to seek expungements for certain criminal history information. Once a record is expunged, the individual is not required to disclose the information. Employers may not require individual to disclose information regarding any arrest, criminal charge or conviction that has been expunged; however, employers are still permitted to ask about criminal charges and convictions that have not been expunged. [N.C. Gen. Stat. §15A-153](#).

### **Social Media**

None.

### **Security Freeze**

Individuals may place a security freeze on their credit report which is administered by one (or all) of the three nationwide credit bureaus. Under this law, individuals are entitled to receive a specific summary of rights any time they receive a copy of the "A Summary of Your Rights Under the Fair Credit Reporting Act." [N.C. Gen. Stat. §75-63](#).



# NORTH DAKOTA

## **NORTH DAKOTA**

North Dakota does not have any local or statewide laws that impact employers and their use of background reports akin to the Fair Credit Reporting Act. There may be industry-specific requirements and we encourage consultation with qualified legal counsel.

### **Fair Credit Reporting Act-State Analogue**

None.

### **Ban the Box/Fair Chance**

None.

### **Credit Check Restrictions**

None.

### **Expungement/Record Sealing/Certificate of Good Conduct**

Expungements are only available for a limited number of convictions including records for possession of one ounce or less of marijuana and records of unconstitutional arrests.

### **Social Media**

None.

### **Security Freeze**

Individuals may place a security freeze on their credit report which is administered by one (or all) of the three nationwide credit bureaus. Under this law, individuals are entitled to receive a specific summary of rights any time they receive a copy of the "A Summary of Your Rights Under the Fair Credit Reporting Act." [N.D. Cent. Code §51-33-12](#)

## **OHIO**

Ohio does not have any local or statewide laws that impact employers and their use of background reports akin to the Fair Credit Reporting Act. There may be industry-specific requirements and we encourage consultation with qualified legal counsel.

### **Fair Credit Reporting Act-State Analogue**

None.

### **Ban the Box/Fair Chance**

None.

### **Credit Check Restrictions**

None.

### **Expungement/Record Sealing/Certificate of Good Conduct**

Ohio allows individuals to petition for an expungement or sealing of certain criminal records. Employers may not inquire into records that have been sealed or expunged. [Ohio Rev. Code Ann. §2953.33](#).

### **Social Media**

None.

### **Security Freeze**

Individuals may place a security freeze on their credit report which is administered by one (or all) of the three nationwide credit bureaus. Under this law, individuals are entitled to receive a specific summary of rights any time they receive a copy of the "A Summary of Your Rights Under the Fair Credit Reporting Act." [Ohio Rev. Code Ann. §1349.52](#).

# OKLAHOMA

## OKLAHOMA

Oklahoma has a statewide law that impact employers and their use of background reports akin to the Fair Credit Reporting Act. There may also be industry-specific requirements and we encourage consultation with qualified legal counsel.

### Fair Credit Reporting Act-State Analogue

Oklahoma's law regulating consumer reports is not nearly as comprehensive as the Fair Credit Reporting Act. Prior to requesting a consumer report for employment purposes, employers must provide written notice to the individual which informs them that a consumer report will be used and contains a box that the consumer may check to receive a copy of the consumer report. [Okla. Stat. §24-148\(A\)](#).

### Ban the Box/Fair Chance

None.

### Credit Check Restrictions

None.

### Expungement/Record Sealing/Certificate of Good Conduct

Oklahoma allows individuals to petition for an expungement or sealing of a record only in limited scenarios. Employers may not require an applicant to disclose any information contained in a sealed record, and applicants do not need to answer any question concerning an arrest or conviction that has been sealed. [Okla. Stat. §22-19F](#).

### Social Media

Employers may not:

- Require an employee or prospective employee to disclose a username and password or other means of authentication for accessing a personal online social media account through an electronic communications device.
- Require an employee or prospective employee to access their personal online social media account in the presence of the employer in a manner that enables the employer to observe the contents of such accounts if the account's contents are not available to the general public, (except pursuant to an investigation).

- Take retaliatory personnel action that materially and negatively affects the terms and conditions of employment against an employee solely for refusal to give the employer the username or password to the employee's personal online social media account.
- Refuse to hire a prospective employee solely as a result of the prospective employee's refusal to give the employer the username and password to the prospective employee's personal online social media account.

Employers retain several rights under the law, including the ability to request usernames and passwords associated with employer-provided or paid for electronic communications devices, accounts or services. Employers may also conduct investigations for various reasons. [Okla. Stat. §40-173.2](#).

### **Security Freeze**

Individuals may place a security freeze on their credit report which is administered by one (or all) of the three nationwide credit bureaus. Under this law, individuals are entitled to receive a specific summary of rights any time they receive a copy of the "A Summary of Your Rights Under the Fair Credit Reporting Act." [Okla. Stat. §24-158](#).

# OREGON

## OREGON

Oregon does not have any local or statewide laws that impact employers and their use of background reports akin to the Fair Credit Reporting Act; however, there are a variety of state and local laws that regulate the use of criminal and/or credit information. There may also be industry-specific requirements and we encourage consultation with qualified legal counsel.

### Fair Credit Reporting Act-State Analogue

None.

### Ban the Box/Fair Chance

#### Statewide

Applies to all employers in the State but does not impact volunteers. Employers are prohibited from excluding an individual from an initial interview based solely on the existence of a past criminal conviction. Employers may not require individuals to disclose criminal conviction information on an employment application, prior to an initial interview or, if no interview is conducted, prior to extending a conditional offer of employment. The law makes clear that employers are not prohibited from considering an applicant's criminal conviction history when making a hiring decision. [Or. Rev. Stat. §659A.360](#).

#### Portland

Applies to employers within the City that have six (6) or more employees where the position is being performed a majority of the time within the City. The law does not impact volunteers. Employers may not inquire into a candidate's criminal history or perform a criminal background check until after a conditional offer of employment has been extended. If the applicant voluntarily discloses criminal history before a conditional offer, the employer must disregard that information and take reasonable steps to prevent further disclosure or dissemination of that information.

Employers may rescind a conditional offer based upon a candidate's criminal history only after determining "in good faith" that the offense/conduct was "job-related" and "consistent with business necessity". If taking adverse action, employers must conduct an individualized assessment. If they intend to rescind the conditional job offer following the assessment, the employer must provide the candidate written notice that identifies the relevant criminal conviction.

There are several factors that employers may not take into consideration when making the hiring decision including: (i) arrests that did not lead to a conviction (except for pending or unresolved charges), (ii) convictions judicially voided or expunged and (iii) charges resolved through a diversion or deferral of judgment program for offenses not involving physical harm or attempted physical harm. [Portland City Code §§23.10.010 to 23.10.100](#).

## Credit Check Restrictions

Employers may not obtain or use credit history of an applicant or employee, or refuse to hire, discharge, demote, suspend, retaliate or otherwise discriminate against an applicant or an employee with regard to promotion, compensation or the terms, conditions or privileges of employment based on information in the credit history of the applicant or employee.

There are limited exemptions under the law including employers that are required by state or federal law to use credit history for employment purposes. Another exemption is if the information is substantially job related and that fact is disclosed to the employee or prospective employee in writing. Employers are encouraged to review the text of the law for the full list of exemptions in addition to [FAQs](#) published by the state. [Or. Rev. Stat. § 659A.320](#).

Additionally, employers should review the Administrative Rules that outline further considerations. For example, employers have the obligation to prove that the use of credit information was substantially job related and cannot obtain or use credit information in a manner that results in adverse impact discrimination. [Or. Admin. R. 839-005-0070](#); [Or. Admin. R. 839-005-0075](#). More elaboration on the concept of “substantially job related” is found in [Or. Admin. R. 839-005-0080](#).

## Expungement/Record Sealing/Certificate of Good Conduct

Individuals with certain convictions that have complied with their sentence may apply to the court for entry of an order setting aside the conviction. Individuals may also seek a Certificate of Good Standing. In a claim for negligent hiring of an employee, there is a rebuttable presumption that the employer was not negligent if the employer had notice at the time of hire that the employee possessed a valid Certificate of Good Standing. [Or. Rev. Stat. ch. 526](#).

## Social Media

Employers are prohibited from:

- Requiring or requesting an employee or an applicant for employment to establish or maintain a personal social media account, or to disclose or to provide access through the employee’s or applicant’s user name and password, password or other means of authentication that provides access to a personal social media account;
- Requiring an employee or applicant to authorize the employer to advertise on their personal social media account;
- Compelling an employee or applicant to add the employer to the individual’s list of contacts associated with a social media website;

- Compelling an employee or applicant to access a personal social media account in the presence of the employer and in a manner that allows them to view non-public information;
- Taking or threatening to take any action to discharge, discipline or otherwise penalize an employee for their refusal to comply with an employer's request that violates this law; and
- Failing or refusing to hire an applicant before the applicant refused to comply with any employer's request that violates this law.

Employers may require employees to disclose username and password information for any accounts used on behalf of the employer. Employers may also conduct an investigation for the purpose of ensuring compliance with applicable laws, regulations or prohibitions against work-related employee misconduct or to share content gathered from that investigation that is necessary to make a factual determination about the matter. Employers are also allowed to view publicly available information. [Or. Rev. Stat. §659A.330](#).

### **Security Freeze**

Individuals may place a security freeze on their credit report which is administered by one (or all) of the three nationwide credit bureaus. There is no specific summary of rights or notice required. [Or. Rev. Stat. §646A.600-628](#).

# PENNSYLVANIA

## PENNSYLVANIA

Pennsylvania does not have any local or statewide laws that impact employers and their use of background reports akin to the Fair Credit Reporting Act; however, there are state and local laws addressing the use of criminal history and/or credit information. There may also be industry-specific requirements and we encourage consultation with qualified legal counsel.

### Fair Credit Reporting Act-State Analogue

None.

### Ban the Box/Fair Chance

Although Pennsylvania does not have a statewide ban the box law, the Criminal History Record Information Act outlines that employers may use felony and misdemeanor convictions only to the extent to which those convictions relate to the individual's suitability for employment in the specific position for which the individual applied. Employers must also notify the individual in writing if the decision to not hire them is based in whole or in part on their criminal history. [18 Pa. Cons. Stat. §9125](#). Criminal history information that has been expunged or provided limited access may not be used for employment purposes. If an individual voluntarily discloses conviction history that has been expunged or designated as limited access to an employer, the employer is immune from liability for any claim arising from their otherwise lawful use or consideration of criminal history information in connection with an employment decision. [House Bill 689](#).

### Philadelphia

Applies to employers with at least one (1) employee in the City. The requirements outlined below apply to job applicants and current employees.

Employers may not inquire into an individual's criminal history until after a conditional offer of employment has been extended. The inclusion of a criminal history inquiry on an employment application is "unlawful" whether or not the applicants are told they need not answer the question. Employers may also not ask any question before a conditional offer regarding the applicant's willingness to consent to a background check.

Before denying an applicant employment based on a criminal record, the employer must conduct an individualized assessment, taking into account factors such as the nature of the offense, time passed since the offense, individual's employment history before and after the offense in addition to any period of incarceration, etc. Following the individualized assessment, if an employer chooses to take adverse action, it must notify the individual in writing including the basis for that decision and provide a copy of the criminal history report. The employer must then allow the individual ten (10) business days to provide evidence of an inaccuracy or a further explanation.



Employers may not consider conviction information beyond a seven (7) year period (excluding periods of incarceration), cannot consider any convictions that have been exonerated (meaning, the conviction has been reversed or vacated through pardon, acquittal, dismissal or other post-conviction re-examination of the case by a court or other authorized governmental official), may not take adverse action against an individual on the basis of any arrest or accusation that is not currently pending, must post a summary of the law's requirements in a conspicuous place on the employer's website and premises, and may not automatically exclude individuals based on conviction history.

Employers may inquire into an employee's pending criminal charges. when the employer "possesses reasonably reliable information" that indicates a pending charge relates to the employee's job duties. Employers may require employees to report pending criminal charges provided there is a written policy outlining what offenses are reportable. Employers may not take adverse action against an employee unless the pending criminal charge bears a relationship to the position's duties where the continued employment would present an unacceptable risk to the business, coworkers or customers. [Chapter 9-3500. Fair Criminal Record Screening Standards.](#)

### **Lehigh County**

Lehigh County's anti-discrimination ordinance (effective June 1, 2024) includes several prohibitions related to criminal history consideration.

Employers may not ask whether the applicant has ever been convicted of a crime on an employment application. Employers may include in its job requirements that an applicant have a clean driving record or be able to pass a child abuse clearance check.

Employers may not require a job applicant to disclose criminal convictions until after an initial interview.

Employers are prohibited from considering conviction records which do not relate to an applicant's suitability for employment. After a first interview, employers may use background checks and prior history to determine suitability for employment. Pennsylvania State law requires employers to provide written notification if a denial of employment was based in whole or in part on the applicant's criminal history. Failure to provide such notice will also be a violation of the ordinance.

## **Credit Check Restrictions**

### **Philadelphia**

Employers with one (1) or more employees in Philadelphia cannot procure, seek or use credit information regarding an applicant or employee in connection with hiring, discharge, tenure, promotion, discipline or consideration of any other term, condition or privilege of employment with respect to such applicant or employee.

There are several exemptions provided for under the law such as if the employer must obtain credit information pursuant to a state or federal requirement. If an employer obtains credit information under certain exemptions and then relies on that information in whole or in part to consider an adverse employment action, the employer must disclose that fact to the individual in

writing and identify the specific information upon which the employer relied. The employer must also provide the individual an opportunity to explain the circumstances surrounding the information at issue before taking any such adverse action. [Chapter 9-1130 of The Philadelphia Code](#).

**Effective March 21, 2021:** The exemption line item of “any law enforcement agency or financial institution” is removed. Thus, once the amendment takes effect, law enforcement agencies and financial institutions will need to evaluate if one of the remaining exemptions applies if using credit check information in an employment decision. Employers will also be able to meet the law’s requirements related to adverse employment actions by complying with the Fair Credit Reporting Act’s adverse action process requirements.

### **Expungement/Record Sealing/Certificate of Good Conduct**

Pennsylvania’s Criminal History Record Information Act allows for individuals to petition for expungements, limited access, or clean slate limited access. If an employer employs or otherwise engages with an individual who has a record expunged or received limited access/clean slate limited access, they are immune from liability for any claim arising out of the misconduct of the individual, if the misconduct relates to the portion of the criminal history record that has been expunged or provided limited access. [18 Pa. Cons. Stat. §9122.6](#).

### **Social Media**

None.

### **Security Freeze**

Individuals may place a security freeze on their credit report which is administered by one (or all) of the three nationwide credit bureaus. There is no specific notice of rights required.

# RHODE ISLAND

## RHODE ISLAND

Rhode Island does not have any local or statewide laws that impact employers and their use of background reports akin to the Fair Credit Reporting Act. There may be industry-specific requirements and we encourage consultation with qualified legal counsel.

### Fair Credit Reporting Act-State Analogue

None.

### Ban the Box/Fair Chance

Applies to employers with four (4) or more employees. Employers may not include a criminal history question on an employment application. Employers may ask about criminal convictions at the first interview or thereafter, in accordance with all applicable state and federal laws. [R.I. Gen. Laws §28-5-7](#).

### Credit Check Restrictions

None. However, employers must inform the individual that a credit report may be requested in connection with their employment application. If employment is denied based on information contained in a credit report from a credit bureau, the employer must advise the consumer of the adverse action and supply the name and address of the credit bureau that provided the report. [R.I. Gen Laws §6-13.1-21](#).

### Expungement/Record Sealing/Certificate of Good Conduct

Rhode Island allows individuals with certain criminal records to petition for an expungement. Once a record is expunged, the individual may state they have never been convicted of a crime on employment applications (with some limited exceptions based on profession). [R.I. Gen. Laws §12-1.3-4](#).

### Social Media

Employers may not require, coerce, or request an employee or applicant to:

- Disclose the password or any other means for accessing a personal social media account.
- Access a personal social media account in the presence of the employer or representative.
- Divulge any personal social media account information, except when reasonably believed to be relevant to an investigation of allegations of employee misconduct or workplace-related violations of laws or regulations.

Employers may also not discharge, discipline, fail to hire or otherwise discipline an employee or applicant for failing to comply with an illegal request. The law does not apply to information that is publicly available and does not prohibit or restrict with an employer's duty to screen employees or applicants under certain circumstances. [R.I. Gen. Laws §§28-56-1 to 28-56-6](#).

### **Security Freeze**

Individuals may place a security freeze on their credit report which is administered by one (or all) of the three nationwide credit bureaus. Under this law, individuals are entitled to receive a specific summary of rights any time they receive a copy of the "A Summary of Your Rights Under the Fair Credit Reporting Act." [R.I. Gen. Laws §6-48-6](#).

# SOUTH CAROLINA

## **SOUTH CAROLINA**

South Carolina does not have any local or statewide laws that impact employers and their use of background reports akin to the Fair Credit Reporting Act. There may be industry-specific requirements and we encourage consultation with qualified legal counsel.

### **Fair Credit Reporting Act-State Analogue**

None.

### **Ban the Box/Fair Chance**

None.

### **Credit Check Restrictions**

None.

### **Expungement/Record Sealing/Certificate of Good Conduct**

South Carolina has a limited right to expungement for a specific set of convictions that are minor or first-time offenses. The law appears to be silent on if employers may inquire into expunged records or not. [S.C. Code Ann. §17-22-910](#).

### **Social Media**

None.

### **Security Freeze**

Individuals may place a security freeze on their credit report which is administered by one (or all) of the three nationwide credit bureaus. There is no specific notice of rights required. [S.C. Code Ann. §37-20-160](#).

# SOUTH DAKOTA

## **SOUTH DAKOTA**

South Dakota does not have any local or statewide laws that impact employers and their use of background reports akin to the Fair Credit Reporting Act. There may be industry-specific requirements and we encourage consultation with qualified legal counsel.

### **Fair Credit Reporting Act-State Analogue**

None.

### **Ban the Box/Fair Chance**

None.

### **Credit Check Restrictions**

None.

### **Expungement/Record Sealing/Certificate of Good Conduct**

Individuals with an arrest record may apply for an expungement order. The law appears to be silent on employer inquiries into expunged record information. [S.D. Codified Laws §23A-3-27](#).

### **Social Media**

None.

### **Security Freeze**

Individuals may place a security freeze on their credit report which is administered by one (or all) of the three nationwide credit bureaus. There is no specific notice of rights required. [S.D. Codified Laws Ch. 54-15](#).

# TENNESSEE

## TENNESSEE

Tennessee does not have any local or statewide laws that impact employers and their use of background reports akin to the Fair Credit Reporting Act. There may be industry-specific requirements and we encourage consultation with qualified legal counsel.

### Fair Credit Reporting Act-State Analogue

None.

### Ban the Box/Fair Chance

None.

### Credit Check Restrictions

None.

### Expungement/Record Sealing/Certificate of Good Conduct

Tennessee allows individuals with certain criminal history to petition for record expungements. The granting of an expungement means the offense never occurred and that the individual shall not suffer any adverse effects due to the criminal offense that was expunged. [Tenn. Code Ann. §40-32-101](#).

### Social Media

Employers may not:

- Require or request an employee or applicant disclose a password that allows access to a personal Internet account.
- Compel an employee or applicant to add the employer to their list of contacts associated with a personal Internet account.
- Compel an employee or applicant to access a personal Internet account in the presence of the employer.
- Take adverse action, fail to hire, or otherwise penalize an employee or applicant because of a failure to disclose information protected under the law.

Employers retain several rights under the law including the right to access username and password information required for electronic communication devices, accounts and/or services supplied by or paid for by the employer. Employers may also conduct investigations, discipline or discharge employees for transferring proprietary or confidential information, restrict access to certain websites while using employer-issued/owned devices or networks, etc. [Tenn. Code Ann. §50-1-1003](#).

## Security Freeze

Individuals may place a security freeze on their credit report which is administered by one (or all) of the three nationwide credit bureaus. Under this law, individuals are entitled to receive a specific summary of rights any time they receive a copy of the "A Summary of Your Rights Under the Fair Credit Reporting Act." [Tenn. Code Ann. §47-18-2109](#).

## Other

### Preemption

Employers will likely not be confronted with local level legislation impacting criminal and credit background checks as state law prohibits local governments from enacting legislation that prevents employers from requesting any information on an application for employment or during the process of hiring a new employee. [Tenn. Code Ann. §7-51-1802\(d\)](#).



# TEXAS

## TEXAS

Texas has a statewide law akin to the Fair Credit Reporting Act. There may also be industry-specific requirements and we encourage consultation with qualified legal counsel.

### Fair Credit Reporting Act-State Analogue

Texas does have a law similar to the Fair Credit Reporting Act (FCRA) in some respects, including a prohibition on consumer reporting agencies from producing consumer reports that contain records of arrest, indictment or conviction of a crime that, from the date of disposition, release or parole, predate the report by more than seven (7) years for applicants that have an expected salary of \$75,000 or less. If the salary is reasonably expected to be more than \$75,000, than the 7-year restriction does not apply. [Tex. Bus. & Com. Code Ann. §20.05](#).

However, the law was passed after the FCRA amendments were enacted in 1996. Therefore, Texas law and its requirements regarding what may be reported on a background report is pre-empted and does not apply. The language for this determination is found in Section 625(b)(1)(E) of the FCRA.

### Ban the Box/Fair Chance

Effective September 1, 2023, [Texas House Bill 2127](#) goes into effect eliminating various regulations on city and county level that exceed or are in conflict with state law. Arguably this includes the ban the box ordinances in Austin and De Soto. Asurint has removed content related to those cities from this whitepaper. We encourage employers to consult with qualified legal counsel on the full impact of HB 2127.

### Credit Check Restrictions

None.

### Expungement/Record Sealing/Certificate of Good Conduct

Individuals may petition for an order of nondisclosure of criminal history record information. If such an order is granted, the individual is not required on an employment application to state that they have been the subject of any criminal proceeding related to the criminal history the nondisclosure order covers. [Tex. Gov't Code §411.0755](#).

### Social Media

None.

## Security Freeze

Individuals may place a security freeze on their credit report which is administered by one (or all) of the three nationwide credit bureaus. There is no specific notice of rights required. [Tex. Bus. & Com. Code Ann. § 20.03](#).

Additionally, consumer reporting agencies are required to provide particular information in writing upon request and proper identification by a consumer. [Tex. Bus. & Com. Code Ann. § 20.25](#).

## UTAH

Utah does not have any local or statewide laws that impact employers and their use of background reports akin to the Fair Credit Reporting Act. There may be industry-specific requirements and we encourage consultation with qualified legal counsel.

Fair Credit Reporting Act-State Analogue

None.

### **Ban the Box/Fair Chance**

None.

### **Credit Check Restrictions**

None.

### **Expungement/Record Sealing/Certificate of Good Conduct**

Individuals with certain criminal history may petition for their record to be expunged. Once a record is expunged, the individual may respond to any inquiry as though the arrest or conviction did not occur. [Utah Code Ann. §77-40-108\(2\)](#).

### **Social Media**

Under [Utah Code Ann. §34-48-201](#), employers may not:

- Request an employee or an applicant for employment to disclose a username and password, or a password that allows access to the employee's or applicant's personal Internet account.
- Take adverse action, fail to hire, or otherwise penalize an employee or applicant for employment for failure to disclose information protected by this law.

Employers retain several rights under the law including the right to access username and password information required for electronic communication devices, accounts and/or services supplied by or paid for by the employer. Employers may also conduct investigations, discipline or discharge employees for transferring proprietary or confidential information, restrict access to certain websites while using employer-issued/owned devices or networks, etc. [Utah Code Ann. §34-48-202](#).

## Security Freeze

Individuals may place a security freeze on their credit report which is administered by one (or all) of the three nationwide credit bureaus. There is no specific notice of rights required. [Utah Code Ann. §13-45-201.](#)

## Other

### Preemption

Employers will likely not be confronted with local level legislation impacting criminal and credit background checks as state law supersedes and preempts any legislation enacted by local government that relates to the prohibition of discrimination in employment. [Utah Code Ann. §34A-5-102.5.](#)

# VERMONT

## VERMONT

Vermont does not have any local or statewide laws that impact employers and their use of background reports akin to the Fair Credit Reporting Act; however, there are several state laws on topic-specific items such as the use of criminal and/or credit information in an employment decision. There may also be industry-specific requirements and we encourage consultation with qualified legal counsel.

### Fair Credit Reporting Act-State Analogue

Although Vermont does not have a comprehensive law similar to the Fair Credit Reporting Act, employers are required to obtain the consent of the individual prior to obtaining a credit report.<sup>13</sup> [9 V.S.A. §2480e](#).

### Ban the Box/Fair Chance

Applies to employers with one (1) or more employees. Employers may not inquire into an individual's criminal history on an initial employment application; however, an employer may ask about criminal history in an interview or once the prospective employee has been deemed otherwise qualified for the position.

If the employer inquires into an individual's criminal history record, the prospective employee, if still eligible for the position under applicable federal or State law, must be afforded an opportunity to explain the information and the circumstances regarding any convictions, including post-conviction rehabilitation. [21 V.S.A. §495j](#).

### Credit Check Restrictions

Employers may not:

- Fail, refuse to hire or recruit; discharge; or otherwise discriminate against an individual with respect to employment, compensation, or a term, condition, or privilege of employment because of the individual's credit report or credit history.
- Inquire about an applicant or employee's credit report or credit history.

There are several exemptions under the law including if the information is required by state or federal law or regulation. Employers should review the text of the law for a full listing of possible

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<sup>13</sup> "Credit report" is defined similarly as under the FCRA. Arguably the consent requirement thus applies to all consumer reports – not just credit.

exemptions. Even if an exemption applies, employers may not use an individual's credit history as the sole factor in an employment decision.

When obtaining credit information, the employer must: (i) obtain the individual's consent each time, (ii) disclose in writing the employer's reasons for accessing the credit report and if an adverse employment action is taken based on the information, disclose the reasons for the action in writing (the individual is allowed to contest the accuracy of the credit report); (iii) ensure that none of the costs are passed on to the individual; and (4) ensure the credit report is kept confidential. [21 V.S.A. §495j](#).

## Expungement/Record Sealing/Certificate of Good Conduct

Individuals with certain criminal history may petition for their record to be expunged. Once a record is expunged, the individual may respond to any inquiry as though the arrest, conviction or sentencing did not occur. Employers may only inquire into arrests and convictions that have not been expunged. [13 V.S.A. §7606](#).

## Social Media

Employers may not require, request, or coerce an employee or applicant to:

- Disclose a username, password, or other means of authentication, or turn over an unlocked personal electronic device for the purpose of accessing their social media account.
- Access a social media account in the employer's presence.
- Divulge or present any content from their social media account.
- Change the account or privacy settings of the social media account to increase third-party access to its contents.
- Add anyone, including the employer, to a list of contacts associated with a social media account.
- Enter into an agreement to waive his or her rights.

Employers may request an employee share specifically identified content for the purpose of complying with its legal and regulatory obligations, conducting investigations, or accessing an employer-issued electronic device. [21 V.S.A. §495l](#).

## Security Freeze

Individuals may place a security freeze on their credit report which is administered by one (or all) of the three nationwide credit bureaus. Under this law, individuals are entitled to receive a specific summary of rights any time they receive a copy of the "A Summary of Your Rights Under the Fair Credit Reporting Act." [9 V.S.A. §2480h](#).

## Other

### Payment for Background Check

Employers are prohibited from requiring an applicant to “obtain, submit personally, or pay” for the creation of his or her criminal conviction records from the Vermont Crime Information Center. Except for this limitation, employers in Vermont may charge applicants for background reports. [20 V.S.A §2056c\(c\)\(10\)](#).

# VIRGINIA

## **VIRGINIA**

Virginia does not have any local or statewide laws that impact employers and their use of background reports akin to the Fair Credit Reporting Act. There may be industry-specific requirements and we encourage consultation with qualified legal counsel.

### **Fair Credit Reporting Act-State Analogue**

None.

### **Ban the Box/Fair Chance**

None.

### **Credit Check Restrictions**

None.

### **Expungement/Record Sealing/Certificate of Good Conduct**

Individuals with certain criminal history may petition to have their record expunged. Employers may not require an individual to disclose information concerning any arrest or criminal charge that has been expunged. Individuals – when responding to a question concerning arrest or criminal charges that did not result in a conviction – are not required to include a reference to information concerning arrests or charges that have been expunged. [Va. Code Ann. § 19.2-392.4](#).

### **Social Media**

An employer shall not require a current or prospective employee to disclose the username and password to the current or prospective employee's social media account, or add an employee, supervisor or administrator to the list of contacts associated with the current or prospective employee's social media account. The law also prohibits employers from retaliating against or refusing to hire employees who exercise their rights.

Employers are not prohibited from viewing information about a current or prospective employee that is publicly available. Additionally, nothing in the law prevents employers from complying with federal, state, or local laws, rules or regulations, or affects an employer's rights in conducting investigations. [Va. Code Ann. §40.1-28.7:5](#).

### **Security Freeze**

Individuals may place a security freeze on their credit report which is administered by one (or all) of the three nationwide credit bureaus. Under this law, individuals are entitled to receive a



specific summary of rights any time they receive a copy of the "A Summary of Your Rights Under the Fair Credit Reporting Act." [Va. Code Ann. §59.1-444.2](#).

# WASHINGTON

## WASHINGTON

Washington has several local and statewide laws that impact employers and their use of background reports. There may also be industry-specific requirements and we encourage consultation with qualified legal counsel.

### Fair Credit Reporting Act-State Analogue

Washington has several provisions akin to the Fair Credit Reporting Act. Employers may not request a consumer report (other than an investigative consumer report) without first notifying the individual in writing via a “clear and conspicuous disclosure” and obtaining authorization from the individual. [RCW 19.182.020](#).

For investigative consumer reports<sup>14</sup>, employers must clearly and accurately disclose to the consumer that including information as to the consumer’s character, general reputation, personal characteristics, and mode of living, whichever are applicable, may be made. Such a disclosure must be in a writing either mailed or otherwise delivered within three (3) days after requesting the report and must include a statement informing the consumer of the right to request additional disclosures. If a consumer requests further information, the employer must provide, in writing, a complete and accurate disclosure of the nature and scope of investigation required. Alternatively, employers may obtain an investigative consumer report if the report is to be used for employment purposes for which the individual has not specifically applied. [RCW 19.182.050](#).

Employers are required to advise the individual if adverse action is being taken based in whole or in part on the consumer report which includes providing: the name, address and telephone number of the consumer reporting agency (CRA), a description of the consumer’s rights under the state law (i.e., “A Summary of Your Rights Under the Washington Fair Credit Reporting Act”) and a reasonable opportunity to respond to any information in the report that is disputed by the consumer. [RCW 19.182.020](#).

CRA’s are prohibited from including certain information on a consumer report such as such as records of arrest, indictment, or conviction of a crime that, from the date of disposition, release, or parole, predate the report by more than seven (7) years for applicants that have an expected salary of \$20,000 or less. If the salary is reasonably expected to be more than \$20,000, the 7-year restriction does not apply. [RCW 19.182.040](#).

### Ban the Box/Fair Chance

Washington has statewide law along with two city level items of legislation (Seattle and Spokane) that impact criminal record inquiries.

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<sup>14</sup> The definition of an investigative consumer report under Washington state law is similar to the definition under the Federal Fair Credit Reporting Act.

## Statewide

Applies to employers with one (1) or more employees in the state. Employers may not inquire into criminal history, either verbally or in writing, until the applicant is determined to be “otherwise qualified.” The law defines “otherwise qualified” as: “the applicant meets the basic criteria for the position as set out in the advertisement or job description without consideration of a criminal record.” Employers may also not ask about criminal history on an employment application.

Employers may also not advertise employment openings in a way that excludes people with criminal records from applying and may not implement any policy or practice that automatically or categorically excludes individuals with a criminal record from consideration prior to an initial determination that the application is otherwise qualified for the position. [House Bill 1298](#), “[Washington Fair Chance Act](#)”.

In addition to the state Fair Chance Act, another state law outlines that inquiries concerning convictions will be considered to be justified by business necessity if the crimes inquired about relate reasonably to the job duties and if such convictions (or release from prison) occurred within the last ten (10) years. [WAC 162-12-140](#).

## Seattle

Applies to employers with one (1) or more employees. An employee is covered by the law when the physical location of services performed for the employer is in whole or part (at least 50 percent of the time) within the geographic boundaries of the City. The Rules expand further on the meaning of “substantial part of services in Seattle”.

Employers may not perform a criminal background check or inquire into criminal history until after completing an initial screening of applications or resumes to eliminate unqualified applicants. An initial screening consists of a review of an applicant’s qualifications to ensure that the applicant possesses the minimum qualifications that are necessary for the job.

Employers may not take adverse action based solely on an individual’s arrest record; however, employers may inquire into the conduct related to the arrest record and may then take adverse action based solely on the conduct if there is a legitimate business reason. Employers may not take adverse action based solely on an individual’s criminal conviction record or pending charges unless there is a legitimate business reason to do so. Prior to taking adverse action, employers must identify the conviction(s) that form the basis of the decision and provide the individual an opportunity to respond. Employers must hold the position open for a minimum of two (2) business days.

Employers have several other requirements under the law including displaying a poster and ensuring there is no policy or practice policy or practice that automatically or categorically excludes all individuals with any arrest or conviction record from any employment position covered by the law. [Seattle Code, Chapter 14.17](#); [Practices for Administering Use of Criminal History in Employment Decisions Under SMC 14.17 \(Chapter 80\)](#).

## Spokane

Applies to any employer that is acting directly or indirectly within the city limits of Spokane and is hiring a person to perform a majority of his/her services within the City. Employers may not inquire into criminal history on an employment application. Additionally, employers may not inquire orally or in writing, or receive information through a criminal background check about an individual's arrest or conviction record until after there is an in-person or video interview, or until after the individual received a conditional offer of employment.

Employers may also not: (i) advertise job openings in a way in a way that excludes people with criminal records from applying, (ii) disqualify an individual from employment solely because of an arrest or conviction unless the conviction is related to the significant duties of the job or (iii) reject or disqualify an individual for failing to disclose criminal record information prior to the employer initially determining if the individual is otherwise qualified for the position. [Spokane Muni. Code §09.02.050](#).

## Credit Check Restrictions

Employers may not procure a consumer report for employment purposes where any information contained in the report bears on the consumer's credit worthiness, credit standing or credit capacity unless the information is: (i) substantially job related and the employer's reasons for the use of such information are disclosed to the consumer in writing or (ii) required by law. [RCW 19.182.020](#).

## Expungement/Records Sealing/Certificate of Good Conduct

Individuals may petition to have certain records of conviction vacated. Once the court vacates a record of conviction, an individual may state that they have never been convicted of that crime when responding to an employer's question about criminal history. [RCW 9.94A.640](#).

## Social Media

An employer may not request, require, or otherwise coerce an employee or applicant to:

- Disclose login information for the employee's or applicant's personal social networking account.
- Access their personal social networking account in the employer's presence.
- Add a person, including the employer, to the list of contacts associated with the personal social networking account.
- Take adverse action against an individual because they refused to comply with an employer's request prohibited under this law.

Employers may access personal social networking account information if it is related to an investigation (and several additional factors such as ensuring compliance with applicable laws are present). The law does not apply to several scenarios, including (but not limited to) access to employer-issued devices or accounts. [RCW 49.44.200](#).

## Security Freeze

Individuals may place a security freeze on their credit report which is administered by one (or all) of the three nationwide credit bureaus. There is no specific notice of rights required. [RCW 19.182.170](#).

# WEST VIRGINIA

## WEST VIRGINIA

West Virginia does not have any local or statewide laws that impact employers and their use of background reports akin to the Fair Credit Reporting Act. There may be industry-specific requirements and we encourage consultation with qualified legal counsel.

### Fair Credit Reporting Act-State Analogue

None.

### Ban the Box/Fair Chance

None.

### Credit Check Restrictions

None.

### Expungement/Record Sealing/Certificate of Good Conduct

Individuals with certain criminal history may file a petition to expunge the records. Once an expungement is granted, the individual does not have to disclose the information on any application for employment. [W. Va. Code §61-11-25](#); [§61-11-26](#).

### Social Media

Employers may not:

- Request, require or coerce an employee or a potential employee to disclose a username and password, password or any other authentication information that allows access to the employee or potential employee's personal account;
- Request, require or coerce an employee or a potential employee to access the employee or the potential employee's personal account in the presence of the employer; or
- Compel an employee or potential employee to add the employer or an employment agency to their list of contacts that enable the contacts to access a personal account.

Employers retain several rights under the law such as the right to access publicly available information about an individual, complying with applicable laws, rules or regulations, or requiring disclosure of information for the purpose of accessing employer-issued electronic devices or accounts. [W. Va. Code §21-5H-1](#).

## Security Freeze

Individuals may place a security freeze on their credit report which is administered by one (or all) of the three nationwide credit bureaus. Under this law, individuals are entitled to receive a specific summary of rights any time they receive a copy of the "A Summary of Your Rights Under the Fair Credit Reporting Act." [W. Va. Code §46A-6L-103](#).

# WISCONSIN

## WISCONSIN

Wisconsin does not have any local or statewide laws that impact employers and their use of background reports akin to the Fair Credit Reporting Act. There may be industry-specific requirements and we encourage consultation with qualified legal counsel.

### Fair Credit Reporting Act-State Analogue

None.

### Ban the Box/Fair Chance

#### Statewide

Although Wisconsin does not have a ban the box law, the Wisconsin Fair Employment Act prohibits employers from discriminating against an individual on the basis of several protected classes including an arrest or conviction record. [Wis. Stat. §111.321](#). Employers may also not print or circulate any job advertisement or solicitation which expresses or implies any limitation with respect to the protected classes including arrest and conviction records. [Wis. Stat. §111.322](#).

The law further outlines that employment discrimination based on an arrest record includes, but is not limited to, requesting an applicant or employee supply information regarding any arrest record except for a pending charge (with limited exceptions). It is not employment discrimination to refuse employment for a pending criminal charge if the circumstances of the charge substantially relate to the circumstances of the particular job or licensed activity. With respect to criminal convictions, it is not employment discrimination to refuse to employ an individual if the circumstances of the conviction substantially relate to the circumstances of the particular job or licensed activity. [Wis. Stat. §111.335](#).

For current employees, the Wisconsin Department of Workforce Development clearly establishes that an employer may not terminate an employee because of a pending criminal charge. However, the employer may suspend the employee if the offense is substantially related to the circumstances of the particular job or licensed activity. [Arrest and Conviction Record](#).

#### Madison

Madison's Equal Opportunities Ordinance contains similar provisions to the Wisconsin Fair Employment Act. [Madison Code of Ordinances §39.03](#). [FAQs](#).

### Credit Check Restrictions

None.



## Expungement/Record Sealing/Certificate of Good Conduct

Wisconsin likely affords individuals the most limited rights to expungement in the country.

### Social Media

Employers may not:

- Request or require an employee or applicant for employment, as a condition of employment, to disclose access information for the personal Internet account of the employee or applicant or to otherwise grant access to or allow observation of that account.
- Discharge or otherwise discriminate against an employee, or refuse to hire an applicant for employment, due to their refusal to comply with a request prohibited by this law.

Employers retain several rights under the law including requiring an employee to disclose access information related to an employer-issued or paid for electronic communications device, account, or service. Employers may also conduct investigations, take disciplinary action for an employee transferring proprietary or confidential information to a personal Internet account, restrict or prohibit access to certain websites, etc. [Wis. Stat. §995.55](#).

### Security Freeze

Individuals may place a security freeze on their credit report which is administered by one (or all) of the three nationwide credit bureaus. Under this law, individuals are entitled to receive a specific summary of rights any time they receive a copy of the "A Summary of Your Rights Under the Fair Credit Reporting Act." [Wis. Stat. §100.54](#).

# WYOMING

## WYOMING

Wyoming does not have any local or statewide laws that impact employers and their use of background reports akin to the Fair Credit Reporting Act. There may be industry-specific requirements and we encourage consultation with qualified legal counsel.

### Fair Credit Reporting Act-State Analogue

None.

### Ban the Box/Fair Chance

None.

### Credit Check Restrictions

None.

### Expungement/Record Sealing/Certificate of Good Conduct

Individuals may petition for expungement of certain criminal history information. Once an order of expungement is granted, individuals may respond to any inquiry as though the arrest or charge did not occur. [Wyo. Stat. § 7-13-1401](#).

### Social Media

None.

### Security Freeze

Individuals may place a security freeze on their credit report which is administered by one (or all) of the three nationwide credit bureaus. There is no specific notice of rights required. [Wyo. Stat. §40-12-503](#).



## ABOUT ASURINT

Asurint is leading the background screening industry forward. Our powerful, customizable technology—backed by expert answers and personalized assistance—helps employers hire the right candidates every time, and faster than ever before.

Our clients leverage better background checks to reduce manual workloads, minimize compliance risk, promote a safer workplace, and drive insights to boost hiring and recruitment success.

[www.asurint.com](http://www.asurint.com)