

By: Senator(s) Witherspoon, Jordan, Jackson
(11th)

To: Judiciary, Division B;
Labor

COMMITTEE SUBSTITUTE
FOR
SENATE BILL NO. 2112

1 AN ACT TO CREATE THE "BAN-THE-BOX ACT"; TO ENACT DEFINITIONS;
2 TO PROHIBIT CERTAIN PUBLIC EMPLOYERS FROM USING CRIMINAL HISTORY
3 INFORMATION AS A PRELIMINARY BAR TO EMPLOYMENT; TO PROVIDE FOR
4 JURISDICTION OVER COMPLAINTS FOR VIOLATION OF THE TERMS OF THIS
5 ACT; AND FOR RELATED PURPOSES.

6 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MISSISSIPPI:

7 **SECTION 1.** (1) **Short title.** This act shall be known and
8 may be cited as the "Ban-the-Box Act."

9 (2) **Definitions.** (a) "Public employer" means the State of
10 Mississippi and any office, department, agency, division, bureau,
11 commission, board, institution, hospital, college, university,
12 airport authority or other instrumentality thereof.

13 (b) "Inquiry" means any direct or indirect conduct
14 intended to gather information, using any mode of communication.

15 (c) "Applicant" means any person considered for, or who
16 requests to be considered for, public employment or any current
17 employee considered for, or who requests to be considered for,
18 another position of public employment.



19 (d) "Criminal history" means records and data collected
20 by criminal justice agencies consisting of identifiable
21 descriptions and notations of arrests, detentions, indictments,
22 information, or other formal charges, whether for a misdemeanor or
23 a felony.

24 (e) "Background check" means the action taken to obtain
25 a person's criminal history.

26 (2) **Scope.** (a) This act applies to public employers unless
27 a public employer is required under state or federal law to obtain
28 a criminal history as a preliminary qualification to be considered
29 for public employment, including, but not limited to, any position
30 that involves direct interaction with minors or the elderly.

31 (b) This act does not apply to:

32 (i) Private employers.

33 (ii) The practice of law; but nothing in this act
34 shall be construed to preclude the Supreme Court, in its
35 discretion, from adopting the policies set forth in this act.

36 (iii) The Performance, Evaluation and Expenditure
37 Review Committee or any other public body when making inquiry
38 about a particular person when the inquiry is related to the
39 consideration of the person for appointment or confirmation to an
40 office or position if the appointment is subject to the advice and
41 consent of the Mississippi Senate.



42 (c) It is the intent of the Legislature to encourage
43 similar hiring practices by private employers, local governments
44 and other political subdivisions.

45 (3) **Criminal history.** (a) A public employer shall not ask
46 an applicant to disclose, orally or in writing, information
47 concerning the applicant's criminal record or history, including
48 any inquiry on any employment application, until the applicant:
49 (i) has signed the appropriate waiver authorizing release, (ii) is
50 being considered for a specific position, and (iii) has received
51 an interview.

52 (b) If a background check has been lawfully completed
53 and a criminal history exists, the state will consider the
54 following criteria before either proffering or declining to
55 proffer an offer of employment:

56 (i) The nature and gravity of the offense;

57 (ii) The length of time that has elapsed since the
58 offense occurred;

59 (iii) The age of the person at the time of the
60 offense;

61 (iv) Whether the offense is reasonably related to
62 the duties and responsibilities of the employment sought by the
63 applicant;

64 (v) Any information pertaining to the degree of
65 rehabilitation that may have taken place in the applicant.



66 (c) A record of arrest that did not result in
67 conviction shall not be the basis for disqualification from public
68 employment.

69 (d) The public employer must inform the applicant of
70 the potential adverse employment decision based on the background
71 check report before a final decision and must provide to the
72 applicant an opportunity to demonstrate that the applicant was not
73 correctly identified in the background check report or that the
74 report is otherwise inaccurate.

75 (4) **Remedies.** Jurisdiction of a complaint or grievance
76 alleging a violation of this act by a public employer is in the
77 circuit court of the First Judicial District of Hinds County.

78 **SECTION 2.** This act shall take effect and be in force from
79 and after July 1, 2020.

