

**State “Ban the Box” Legislation,
Its Applicability to Public and/or Private Employers, and
How “Employer” or “Public Employer” Is Defined***

1. Arizona. “State agency” means a department, board, office, authority, commission or other governmental budget unit of this state and includes an agency assigned to a department for administrative purposes. State agency does not include the legislative and judicial branches, the Arizona board of regents, state universities, the Arizona state schools for the deaf and the blind, the department of public safety, the Arizona peace officer standards and training board, the cotton research and protection council or public corporations. Ariz. Rev. Stat. Ann. § 41-741(15).

2. California. California’s law applies to any “employer with five or more employees,” with exceptions for employment (1) in “a position for which a state or local agency is otherwise required by law to conduct conviction history background check;” (2) “a position with a criminal justice agency, as defined in Section 13101 of the Penal Code;” (3) “a position as a Farm Labor Contractor, as described in Section 1685 of the Labor Code; and (4) “a position where an employer or agent thereof is required by any state, federal, or local law to conduct criminal background checks for employment purposes or to restrict employment based on criminal history.” AB 1008 (2017). This bill replaced AB 218 (2013), which applied to state agencies, cities, counties, and special districts.

3. Colorado. Colorado law applies to state agencies and licensing agencies, and it was amended in May 2019 to apply to private sector employment.

4. Connecticut. Connecticut law applies to any “employer,” defined to mean “any person engaged in business who has one or more employees, including the state or any political subdivision of the state.”

5. Delaware. Delaware law applies to any “public employer,” and it defines “public employer to mean “the State of Delaware, its agencies, and political subdivisions,” and thus it extends to cities and counties.

6. Georgia. Georgia Executive Order applies to “government entities of the State of Georgia,” hence State employment.

7. Hawaii. Hawaii law applies to “the State or any of its branches, political subdivisions, or agencies” and to private employers “except employers who are *expressly* permitted to inquire into an individual’s criminal history for employment purposes pursuant to any federal or state law other than subsection (a), including,” among others, the State, its agencies, political subdivisions and counties pursuant to specific, cited statutes of the State.

- 8. Illinois.** Illinois law applies to private employers with 15 or more employees, to employment agencies, and—by Executive Order—to the State, employing agencies, boards, and commissions.
- 9. Indiana.** An Executive Order “bans the box” from applications for employment within the State’s Executive Branch, and a 2017 state law restricts local governments from prohibiting employers from “obtaining or using criminal history information during the hiring process *to the extent allowed by federal or state law, rules, or regulations.*” (Emphasis Added).
- 10. Kansas.** “Ban the Box” was adopted by Executive Order in 2018 for all departments, agencies, boards, and commissions in the Executive Branch.
- 11. Kentucky.** “Ban the Box” was adopted by Executive Order in 2017 for employment positions within the Executive Branch.
- 12. Louisiana.** Louisiana state “Ban the Box” law applies to “unclassified” state government positions, with exceptions for law enforcement, corrections, and other positions for which state or federal law requires a background check; and a Civil Service Rule change apparently extends “Ban the Box” to classified state positions.
- 13. Maine.** Maine “Ban the Box” law applies to applications “for a position in State Government,” by which it means “a position in the legislative, executive, or judicial branch of State Government or a position with a quasi-independent state entity or public instrumentality of the State.” It does not include “a position in a school administrative unit, municipality, county or other political subdivision of the State.”
- 14. Maryland.** Maryland “Ban the Box” law applies to state government employers, including the Judicial, Executive, and Legislative branches of state government.
- 15. Massachusetts.** Massachusetts “Ban the Box” law applies to both public and private employers unless there’s a legal restriction applicable to a specific job or occupation.
- 16. Michigan.** Michigan law applies to employment opportunities with state departments and agencies except for specific positions for which the department or agency is prohibited by federal or state law from hiring someone with a criminal history, and except for the Michigan Department of State and the Michigan Attorney General’s Office.

- 17. Minnesota.** Minnesota “Ban the Box” law applies to public and private employers. “Public employment” is defined and “includes all employment with the state of Minnesota, its agencies, or political subdivisions.” MN Stat. § 364.02(4).
- 18. Missouri.** By Executive Order in 2016 Missouri implemented “Ban the Box” applicable to public employment in the State’s Executive Branch—all departments, agencies, boards and commissions.
- 19. Nebraska.** Nebraska state law, LB 932 ((2104), applies to public employers only. For purposes of Nebraska’s “Ban the Box” law, “public employer means the State of Nebraska or any political or governmental subdivision of the State of Nebraska.”
- 20. Nevada.** Nevada “Ban the Box” law applies to “employment in the unclassified service of the State;” with exceptions, to “classified service;” and additional provisions extend the law to a county, incorporated city, or unincorporated town.
- 21. New Jersey.** New Jersey “Ban the Box” law applies to public and private employment. It defines “Employer” as follows: “‘Employer’ means any person, company, corporation, firm, labor organization, or association which has 15 or more employees over 20 calendar weeks and does business, employs persons, or takes application for employment within this State, including the State, any county or municipality, or any instrumentality thereof. The term shall include job placement and referral agencies any other employment agencies, but excludes the United States or any of its departments, agencies, boards, or commissions, or any employer or agent thereof.” Rev. Stat. § 34:6B-13.
- 22. New Mexico.** New Mexico “Ban the Box” law applies to private employment and to public employment, with the latter including not only the State and any of its boards, departments, or agencies, but also “any of its political subdivisions,” cities and counties. N.M. Stat. § 28-2-3(A).
- 23. New York.** New York’s “Ban the Box” bill applies to public employment with the State and State agencies.
- 24. North Dakota.** North Dakota’s “Ban the Box” law applies to public employers. It defines “public employer” to mean “the state or a county or city government, or an instrumentality or agency of the state or of a county or city government. The term includes a park district but does not include a school district.” N.D. Code § 12.1-33(4).
- 25. Ohio.** The Ohio “Ban the Box” bill applies to public employment and defines a “public employer” to mean “a state agency or a political subdivision of the state.” “Political subdivision,” in turn, is defined to mean “a county, township, municipal corporation, or any other body corporate and politic that is responsible for

government activities in a geographic area smaller than that of the state.” In addition, “State agency” is defined to mean “any organized body, office, agency, institution, or other entity established by the laws of the state for the exercise of any function of government.”

26. Oklahoma. Oklahoma adopted “Ban the Box” by Executive Order” in 2016. It applies to “all state agencies” and to all positions with them except that by its terms it “shall not affect applications for sensitive governmental positions in which a criminal history would be an immediate disqualification and initial disclosure on such application shall still be required.”

27. Oregon. Oregon’s “Ban the Box” bill applies to both public and private employers.

28. Pennsylvania. Pennsylvania’s Governor in 2017 announced “a Commonwealth-wide” Human Resources Policy banning the box applicable to “all departments, boards, commissions, and councils under the Governor’s jurisdiction” for non-civil service positions. The Governor “strongly encouraged” agencies not under the Governor’s jurisdiction to follow the new Human Resources Policy. The policy includes exceptions for security personnel, law enforcement, and those working with vulnerable populations.

29. Rhode Island. Rhode Island’s “Ban the Box” bill applies to both public and private employment. “Employer” is defined in the law to include “the state and all political subdivisions of the state and any person in this state employing four (4) or more individuals, and any person acting in the interest of an employer directly or indirectly.” However, the definition goes on to state, “Nothing in this subdivision shall be construed to apply to a religious corporation, association, educational institution, or society with respect to the employment of individuals of its religion to perform work connected with the carrying on of its activities.”

30. Tennessee. Tennessee’s “Ban the Box” bill defines “Employer” to mean “the state and any agency, authority, branch, bureau, commission, corporation, department, or instrumentality of the state, but does not include a political subdivision of the state.”

31. Utah. Utah’s “Ban the Box” bill applies to public employment, and “public employer” is broadly defined. “‘Public employer’ means an employer that is: (a) the state or any administrative subunit of the state, including a department, division, board, council, committee, institution, office, bureau, or other similar administrative unit of state government; (b) a state institution of higher education; or (c) a municipal corporation, county, municipality, school district, local district, special service district, or other political subdivision of the state.” Utah Code Annot. § 34-52-102(3).

32. Vermont. Vermont’s “Ban the Box” bill applies to private and public employment. “Employer” is defined “as set forth in section 495d of this chapter,” to wit, “Employer” means any individual, organization, or governmental body including any partnership, association, trustee, estate, corporation, joint stock company, insurance company, or legal representative, whether domestic or foreign, or the receiver, trustee in bankruptcy, trustee, or successor thereof, and any common carrier by mail, motor, water, air, or express company doing business in or operating within this State, and any agent of such employer, which has one or more individuals performing services for it within this State. Vt. Stat. Ann. tit. 21, § 495d.

33. Virginia. Virginia adopted “Ban the Box” by Executive Order. It removed questions relating to convictions and criminal history from the state employment application, and it applies to “all hiring authorities within the executive branch.”

34. Washington. Washington’s “Ban the Box” bill applies to both private and public employment, including “public agencies;” and local government is explicitly authorized to provide greater, but not less, protection than the bill otherwise provides.

35. Wisconsin. Wisconsin’s “Ban the Box” bill applies to state employment.

* The list of States and information regarding each State’s legislation or Executive Order was drawn from Ban the Box at pages 7-27 (July 2019), <https://s27147.pcdn.co/wp-content/uploads/Ban-the-Box-Fair-Chance-State-and-Local-Guide-July-2019.pdf> , published by the National Employment Law Project and written by Beth Avery, and the language in each such State’s legislation or Executive Order.