

“BAN THE BOX”

Since 2014, in order to address concerns of justice-involved and formerly incarcerated individuals being prevented from accessing employment due to their prior criminal record, Rhode Island’s Fair Employment Practices Act has contained a “Ban the Box” protection, codified at Rhode Island General Laws §28-5-7(7), which generally bars questions about criminal record history on an application for employment.

CAN EMPLOYERS ASK IF I’VE EVER BEEN ARRESTED FOR A CRIME?

Almost never. With only one exception, it is illegal for an employer to ask on an application form or to otherwise inquire, either orally or in writing, whether you have ever been arrested or charged with a crime. The exception is if you are applying for a law enforcement agency position or for “positions related to law enforcement agencies.”

UNDER WHAT CIRCUMSTANCES CAN AN APPLICATION FORM ASK ABOUT CRIMINAL CONVICTIONS?

Unless and until you are called in for an interview for a job, an employer is also generally prohibited at the first stages of the application process from asking about criminal convictions. However, this prohibition does not apply in the following circumstances:

- You can be asked if you are applying for a law enforcement-related position.
- If a federal or state law or regulation requires or allows an employer to disqualify you from employment if you have been convicted of specified criminal offenses, an employer may include a question or otherwise inquire whether you have been convicted of those offenses. However, the question must be limited to asking about those specific disqualifying offenses cited in the law.
- If a fidelity bond or other type of employment dishonesty insurance is required for the position and one or more specified convictions would disqualify you from obtaining such a bond, an employer can ask

whether you have been convicted of any of those offenses.

ARE EMPLOYERS ALLOWED TO INQUIRE *IN AN INTERVIEW* ABOUT PAST CRIMINAL CONVICTIONS?

Yes. While the statute prohibits all non-law enforcement employers from ever asking about your arrests for any crime, and sets the limits noted above on asking about criminal convictions during the initial application process, employers have the right to ask you for information about your criminal convictions “at the first interview or thereafter.” This is in keeping with the philosophy behind the “Ban the Box” law, which is to make sure you aren’t automatically disqualified from consideration for a job right at the beginning of the process.

WHAT CAN I DO IF AN EMPLOYER WRONGLY ASKS ABOUT MY ARREST OR CONVICTION RECORD?

The R.I. Commission for Human Rights is a state agency that has the authority to investigate and take action over violations of the Fair Employment Practices Act, including the “ban the box” law. Their phone number is 401-222-2662.

FAIR CHANCE LICENSING

In 2020, the Rhode Island General Assembly passed legislation, codified at Rhode Island General Laws §28-5.1-14, ensuring that justice-involved and formerly incarcerated individuals are not inappropriately prevented from obtaining state occupational licenses, based solely or in part on a criminal record, for professions that they are otherwise qualified for.

DOES THIS LAW APPLY TO ALL EMPLOYMENT OPPORTUNITIES OR ONLY OBTAINING OCCUPATIONAL LICENSES?

The statute applies only to licenses, permits, or certificates that are issued as part of a state-licensed profession. However, the law’s protections apply to both

the initial application for a license and any efforts to suspend or revoke a license that has already been granted. The “ban the box” protection, described previously, sets some limits on asking about criminal records in the general employment setting.

WHAT LIMITS DOES THIS LAW SET ON WHEN A CRIMINAL RECORD CAN BE USED TO CONSIDER A PERSON’S QUALIFICATIONS FOR AN OCCUPATIONAL LICENSE?

The law bars the use of a person’s criminal record in the licensing process unless the crime or crimes “substantially relate to the occupation to which the license applies.”

WHAT ARE THE CRITERIA FOR DETERMINING WHETHER A CRIMINAL CONVICTION IS “SUBSTANTIALLY RELATED” TO THE LICENSE BEING SOUGHT?

The licensing authority is required to consider the following factors in making that determination:

- The state’s “legitimate interest in equal access to employment for individuals who have had past contact with the criminal justice system.”
- The state’s “legitimate interest in protecting the property and safety and welfare of specific individuals or the general public.”
- The “relationship of the crime or crimes to the ability, capacity, and fitness required to perform the duties and discharge the responsibilities of the position of employment or occupation.”

I HAVE A CRIMINAL CONVICTION FOR AN OFFENSE THAT SUBSTANTIALLY RELATES TO THE LICENSE I AM SEEKING. DOES THAT AUTOMATICALLY DISQUALIFY ME FROM GETTING A LICENSE?

No. An applicant who has been convicted of a “substantially related” crime can still obtain a license “if the person can show competent evidence of sufficient rehabilitation” and current fitness to perform the duties

of the job for which the license is being sought. The licensing agency must consider how long ago the conviction occurred as well as any evidence provided of the following:

- Completion of at least two (2) years after release from imprisonment, or at least two (2) years after the sentencing date for a sentence not accompanied by incarceration, without subsequent conviction or pending criminal charge;
- The nature, seriousness, and relevance of the crime or crimes for which convicted;
- All circumstances relative to the crime or crimes and their commission;
- The age of the person at the time the crime or crimes were committed;
- Claims that the criminal record information is in error or is barred from consideration in the application process (as discussed further below); and
- Any other competent evidence of rehabilitation, including letters of reference.

ARE THERE ANY CRIMINAL RECORDS WHICH MAY NOT BE CONSIDERED AT ALL IN THE OCCUPATIONAL LICENSING PROCESS?

Yes. The following records cannot be considered by the licensing agency:

- Juvenile adjudications;
- Records of arrest not followed by a valid conviction;
- Convictions which have been annulled or expunged;
- Misdemeanor convictions for which no jail sentence can be imposed;
- A conviction that is not related to the occupation for which a license is being sought.

WHAT RIGHTS DO I HAVE IF THE AGENCY WANTS TO DENY ME A LICENSE?

Before making a final decision to deny, suspend, or revoke a license partly or wholly based on your criminal record, a licensing agency must first notify you in writing of the specific conviction(s) that they are relying on and the reason they consider the conviction to be

substantially related to the occupation. They must then give you an opportunity to provide, within 30 days, any evidence of rehabilitation you wish to offer, as described above. If the licensing agency still decides to deny or suspend the license, you must be given a written decision explaining their reasons and advised how to appeal the decision. You must also be informed when you can reapply for the license; under the law, the time period for reapplying cannot be longer than two years from the date of the agency's final decision.

THE LAW FOR THE LICENSE I AM APPLYING FOR STATES THAT THE CRIMINAL RECORD I HAVE AUTOMATICALLY DISQUALIFIES ME FOR A LICENSE. IS THERE ANYTHING I CAN DO?

Yes. The fair chance licensing law overrides any criminal record disqualification provisions in other licensing statutes that are in conflict with this law. The only exceptions to this are if federal law bars you from being licensed, or if the state licensing law at issue specifically states it is exempt from the fair chance licensing law's requirements.

WHAT CAN I DO IF MY RIGHTS HAVE BEEN VIOLATED UNDER THE LAW?


The licensing agency is required to specifically apprise you of the process for appealing the agency's decision. This may involve filing suit in RI Superior Court under a state law known as the Administrative Procedures Act. If the agency fails to notify you of your appeal rights, you can contact the ACLU of Rhode Island for assistance.

The information in this brochure should not be taken as legal advice. If you have additional questions, or feel your rights may have been violated, please contact the ACLU of Rhode Island.

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KNOW
YOUR
RIGHTS

BAN THE BOX & FAIR CHANCE LICENSING

This Know Your Rights brochure is intended to provide basic information about the protections that the “fair chance licensing law” and the Fair Employment Practices Act provide to people with criminal records.