

May 12, 2015

Dear State CPA Societies, CPA firms, and other interested parties:

In recent months, civil rights and ex-offenders advocates have undertaken a concerted effort on the local and state levels to institute policies that would prohibit an employer from including a “check box” on an employment application asking potential employees about their criminal background. These “Ban the Box” proposals appear as both legislation and executive orders.

The goal of these well-meaning efforts is to give reformed ex-offenders a chance to demonstrate their qualifications without discrimination for past mistakes. However, this approach poses unique challenges for CPAs and CPA firms, where trust, confidentiality, and the handling of sensitive materials are cornerstones of the CPA-client relationship. As such, the CPA profession is advocating that all “Ban the Box” proposals include exemptions for CPAs and CPA firms.

To assist in these efforts, the AICPA’s State Policy Priorities Task Force has put together the following toolkit for you to reference as you seek an exemption for the CPA profession from any “Ban the Box” proposals that arise in your community or state. We have included a two-page handout that you can print and deliver to local and state policymakers. This sheet includes information on the importance of exempting CPAs and CPA firms from “Ban the Box” proposals, along with sample language lawmakers can use.

We have also included a copy of Georgia Governor Nathan Deal’s executive order, which postpones questions about an applicant’s criminal history until the applicant has demonstrated he or she is one of the most qualified candidates. This order includes a good example of exemption language, as it excuses “sensitive governmental positions,” allows an applicant’s criminal history to be considered later in the hiring process, and only applies to applications for state government jobs.

I also encourage you to visit the AICPA State Regulation and Legislation Team’s CAPITOL webpage at <http://www.aicpa.org/capitol>, where you can access the following “Ban the Box” resources:

- [NY Daily News’ article: City Council debates 'ban the box' legislation](#)
- [Partnership for New York City’s testimony on NYC’s Fair Chance Act](#)
- [New Jersey Society of CPAs’ letter regarding “Ban the Box” legislation](#)
- [Washington DC Council research on “Ban the Box” legislation](#)
- [Wilson Elser newsletter: “Ban-the-Box” Legislation Limits Inquiries About Criminal Background Checks](#)
- [National Employment Law Project’s “Ban the Box” State and Local Resource Guide](#)
- [The Oregonian editorial: “Ban the Box” pits opportunity versus business' right to know](#)

If we can assist your organization in any way as you work with your lawmakers, please don’t hesitate to contact me at 202.434.9273 or at myoung@aicpa.org.

Sincerely,

Mat Young
Vice President, State Regulatory and Legislative Affairs
American Institute of CPAs

Protecting the Public: The need to exempt CPAs from “Ban the Box” proposals

The Issue

State and local governments across the country are enacting policies to ban employers from asking about an applicant’s criminal background on job applications, but such proposals need to include exemptions for positions that handle sensitive and confidential information – including those in the CPA profession.

Background

At least 13 states and over 90 cities and counties have already adopted policies that support the removal of questions about criminal convictions from job application forms. These proposals are commonly referred to as “Ban the Box” in reference to the check box on employment applications inquiring as to whether an applicant has a criminal history.

Many jurisdictions have already developed safeguards in their “Ban the Box” laws. In Georgia, for example, the governor’s executive order includes exemption language for “sensitive governmental positions,” allows an applicant’s criminal history to be considered later in the hiring process, and only applies to applications for state government jobs.

Unfortunately, other proposals may pose serious threats to client confidentiality. New Hampshire introduced legislation in early 2015 that would require the state to engage in business only with contractors who adopt and employ policies consistent with the “Ban the Box” requirement – including CPAs.

Exempting CPAs

While the well-intentioned goal has been to give reformed ex-offenders a chance to demonstrate their qualifications without discrimination for their past mistakes, the concept poses unique challenges for the CPA profession.

CPAs are often fiduciaries regarding people’s funds, investments, and life savings. Considering the large amount of personal and confidential information CPAs and CPA firms handle, only those individuals with the highest integrity should hold such a role. The misuse of this type of confidential information could cause significant financial harm to individual, business, and government clients. For example, CPA firms often prepare tax documents, including tax returns. State and federal government agencies rely on the integrity of CPAs to ensure the honesty and accuracy of these forms.

Moreover, CPAs play a key role in detecting fraud through audits and forensic accounting. As such, CPAs and the personnel working in those firms must be completely trustworthy – particularly since the reports CPA firms provide are often used in court proceedings.

Since trust, confidentiality, and the handling of sensitive materials are cornerstones of the CPA-client relationship, the AICPA supports exempting CPAs and CPA firms from “Ban the Box” requirements.

Model Language

The AICPA recommends that all “Ban the Box” proposals include exemption language for CPAs and CPA firms, such as:

Subsection XX

The provisions of [Section/Act/Chapter XX] shall not apply to any form or other document to be submitted by an individual to any other individual or entity, including a sole proprietorship, corporation, partnership, or any other form of organization, where such other individual or entity has been issued a license by the <STATE NAME> Board of Accountancy that allows such individual or entity to practice public accountancy, or where such other individual or entity is otherwise authorized by the <STATE NAME> Board of Accountancy to practice accountancy in <STATE NAME>, by:

- a) any individual who seeks to work in any capacity whatsoever, including as an employee, a contractor, or as a consultant, or
- b) any individual who seeks to become an owner of any entity described in this subsection.

Additional Resources

For more information, please contact Mat Young, AICPA Vice President for State Regulatory and Legislative Affairs, at myoung@aicpa.org or 202.434.9273.



THE STATE OF GEORGIA

EXECUTIVE ORDER

BY THE GOVERNOR:

WHEREAS: People with criminal records suffer from pervasive discrimination in many areas of life including employment, housing, education, and eligibility for many forms of social service benefits; and

WHEREAS: Approximately 97% of those sentenced to prison will eventually return to society, and currently over 1,300 offenders reenter into our communities every month without employment; and

WHEREAS: In their January 2014 Report to the General Assembly, the Special Council on Criminal Justice Reform for Georgians recognized that requiring prospective employees of the State of Georgia to disclose convictions on the initial employment application creates a barrier to employment. The Council appropriately recommended the implementation of “Ban the Box” hiring policies; and

WHEREAS: “Ban the Box” is a policy intended to improve public safety, enhance workforce development, and provide increased state employment opportunities for applicants with criminal convictions on their records by removing the criminal history related questions from the initial stage of the state employment application process. Such policies allow returning citizens an opportunity to explain their unique circumstances in person to a potential employer; and

WHEREAS: “Ban the Box” hiring policies enhance Georgia’s reputation as the number one place in which to do business by increasing qualified applicant pools and improving the likelihood that the employer will identify the best candidate for the position; and

WHEREAS: Georgia is positioned to enhance its reputation as regional leader by becoming the first state in the South to implement a fair hiring policy for applicants with criminal records, joining thirteen others including, New Mexico, New Jersey and Minnesota.

NOW, THEREFORE, BY VIRTUE OF THE POWER VESTED IN ME AS GOVERNOR OF THE STATE OF GEORGIA, IT IS HEREBY

ORDERED: That government entities of the State of Georgia shall implement a hiring policy intended to encourage the full participation of motivated and qualified persons with criminal histories in the workforce, reduce recidivism, and assure public safety. The “Ban the Box” policy should establish practices that:

1. Prohibit the use of a criminal record as an automatic bar to employment.
2. Prevent the use of an application form that inappropriately excludes and discriminates against qualified job applicants.
3. Promote the accurate use and interpretation of a criminal record.
4. Provide qualified applicants with the opportunity to discuss any inaccuracies, contest the content and relevance of a criminal record, and provide information that demonstrates rehabilitation.
5. Shall not affect applications for sensitive governmental positions in which a criminal history would be an immediate disqualification and initial disclosure on such applications shall still be required.

This the 23rd day of February, 2015.



GOVERNOR