

The Legal Strategist

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TEXAS ESOTERIC FACTS

Several state laws and local ordinances limit the use of arrest and conviction records by prospective employers. Commonly referred to as ban the box laws, these restrictions prohibit the employer from asking an applicant any questions about criminal records on the employment application or early on in the screening process. Other state laws restrict the employer's use of arrest or conviction data in making an employment decision except in limited circumstances, or may require such questions only be asked after an offer of employment has been made.

** According to Texas law, in some cities, running a bakery is considered to be an "agricultural business."

The Feature Topic is a cursory review. If you would like more information on this, or any other topic previously covered in my newsletter, which can be viewed on [The Legal Strategist](#) tab of my web site, please contact my office at 713.526.1883.

** According to the Texas Department of Transportation, one person is killed annually painting stripes on the state's highways and roads.

Scott Barrett

FEATURE TOPIC: **BAN THE BOX LAW**

On September 1, 2025, Texas's Ban-the-Box law, HB 2466, will take effect. As such, many employers will have until this start date to review or update their hiring practices to ensure compliance.

The Ban-the-Box regulation will regulate when an employer may ask a job applicant about their criminal history. This bill is similar to Ban-the-Box laws in other states. However, confusion about the term "otherwise qualified" has surfaced after reading the bill.

The primary Ban-the-Box regulation covers employers' ability to inquire about an applicant's criminal history. Employers cannot ask about this information until they have decided the applicant qualifies for the position, offer to interview the applicant, or present a conditional offer of employment. These restrictions allow individuals to prove their qualifications before answering questions about their criminal history.

The Ban-the-Box bill is not as expansive as those in some other states. Regardless, it applies to public and private employers with at least fifteen employees. However, it does not apply to gig workers or independent contractors. The Ban-the-Box regulations do not apply to workers employed by companies as a contract or freelance labor.

HB 2466 also includes exclusions for specific jobs. Examples include law enforcement, healthcare, childcare, and financial services required by law to run a background check. These employers may conduct background checks without added restrictions. However, employers must still comply with any other state or federal regulations.

One problem employers may encounter with this Ban-the-Box bill is the lack of explanation about "otherwise qualified." The bill does not clarify who counts as "otherwise qualified." It also fails to suggest steps employers should take to determine if a job applicant is "otherwise qualified."

It remains unknown if this term means employers must conduct a bifurcated background check first. Bifurcated background checks are two-step processes. The first step examines an applicant's education, employment history, and other qualifications. The second check assesses the applicant's criminal history. Many hope for clarifications as the Ban-the-Box's implementation date approaches.

According to the Ban-the-Box bill, employers do not have to conduct an individualized assessment of the job applicant's criminal record. However, the Equal Employment Opportunity Commission recommends that employers take this step in hiring and urges them to consider continuing individualized assessments. Employers who use individualized assessments should consider the following: The time that has passed since any convictions, the type of offense and its severity, and whether the offense relates to the position desired by the applicant.

If you would like more information on this or any other topic covered in *The Legal Strategist*, please contact [Scott Barrett](#) to set up a consultation.