

Appendix 2

Selected State Law Provisions Governing Preemployment Inquiries

Important note: This is a “model” or “sample” policy. It does not cover every issue that you may want to consider in the development of a safe church policy. Nor does it reflect the law of each and every state. Consistent with UCC polity and practice, Local Churches and other settings are encouraged to consider adopting policy which is revised or changed to meet their unique circumstances, state laws, or other factors.

It is very important that the policy you adopt and implement complies with applicable federal and state laws regarding employment, privacy, and inquiries regarding criminal history. While the model policy is designed to meet the needs of most, the law governing permissible inquiries in preemployment screening varies significantly in certain jurisdictions. Some examples of state laws that may need to be taken into account are set forth below. Moreover, all laws are subject to change from time to time by action of state legislature, Congress, and state and federal courts. Therefore, you should develop and periodically review your policy with the assistance of persons knowledgeable in these laws.

Please consult with your local attorney to make certain that the policy you adopt complies with your state’s laws while inquiring about relevant criminal history to the fullest extent permitted by that law. Parish Life and Leadership is not engaged in giving legal or professional advice or services by providing this model policy. You are encouraged to consult with your own legal counsel and professional advisors before adopting a safe church policy.

California

Cal. Labor Code Section 432.8

432.8 Prohibited inquiry about convictions of specified marijuana offenses more than certain number of years old.

The limitations on employers and the penalties provided for in Section 432.7 shall apply to a conviction for violation of subdivision (b) or (c) of Section 11357 of the Health and Safety Code or a statutory predecessor thereof, or subdivision (c) of Section 11360 of the Health and Safety Code, or Section 11364, 11365, or 11550 of the Health and Safety Code as they related to marijuana prior to January 1, 1976 ,or a statutory predecessor thereof, two years from the date of such a conviction.

Hawaii

Hawaii Rev. Stat. Section 378-2.5(a)-(b)

- (b) Inquiry into and consideration of conviction records for prospective employees shall take place only after the prospective employee has received a conditional offer of employment which may be withdrawn if the prospective employee has a conviction record that bears a rational relationship to the duties and responsibilities of the position.

Massachusetts

Mass. Gen. Laws ch. 151B Section 4(9)

§ 4 Unlawful Practices; Certain Records to be Kept; Employer, etc., Not Required to Grant Preferential Treatment to Any Individual or Group.

It shall be an unlawful practice:

- (9) For an employer, himself or through his agent, in connection with an application for employment, or the terms, conditions, or privileges of employment, or the transfer, promotion, bonding, or discharge of any person, or in any other matter relating to the employment of any person, to request any information, to make or keep a record of such information, to use any form of application or application blank which request such information, or to exclude, limit or otherwise discriminate against any person by reason of his or her failure to furnish such information through a written application or oral inquiry or otherwise regarding:
 - (i) an arrest, detention or disposition regarding any violation of law in which no conviction resulted, or
 - (ii) a first conviction for any of the following misdemeanors: drunkenness, simple assault, speeding, minor traffic violations, affray, or disturbance of the peace, or
 - (iii) any conviction of a misdemeanor where the date of such conviction or the completion of any period of incarceration resulting therefrom, whichever date is later, occurred five or more years prior to the date of such application for employment or such request for information, unless such person has been convicted of any offense within five years immediately preceding the date of such application for employment or such request for information.

No person shall be held under any provision of any law to be guilty of perjury or of otherwise giving a false statement by reason of his failure to recite or acknowledge such

information as he has a right to withhold by this subsection.

Nothing contained herein shall be construed to affect the application of section thirty-four of chapter ninety-four C, or of chapter two hundred and seventy-six relative to the sealing of records.

Mass Gen. Laws ch. 276 Section 100A

§100A Sealing of Certain Criminal Record Files By Commissioner of Probation; Conditions; Exceptions; Effect.

An application for employment used by an employer which seeks information concerning prior arrests or convictions of the applicant shall include the following statement: “An applicant for employment with a sealed record on file with the commissioner of probation may answer ‘no record’ with respect to an inquiry herein relative to prior arrests, criminal court appearances or convictions. An applicant for employment with a sealed record on file with the commissioner of probation may answer ‘no record’ to an inquiry herein relative to prior arrests or criminal court appearances. In addition, any applicant for employment may answer ‘no record’ with respect to any inquiry relative to prior arrest, court appearances and adjudications in all cases of delinquency or as a child in need of services which did not result in a complaint transferred to the superior court for criminal prosecution.” The attorney general may enforce the provision of this paragraph by a suit in equity commenced in the superior court.