

Department of Legislative Services
Maryland General Assembly
2010 Session

FISCAL AND POLICY NOTE

Senate Bill 110
Finance

(Senators Lenett and Pugh)

Labor and Employment - Job and Financial Privacy Protection Act

This bill prohibits an employer from requesting a credit report from an applicant for hire or an employee unless the request has a bona fide work-related purpose or the employer is required to request the credit report under State or federal law. The Commissioner of Labor and Industry must adopt regulations that outline legitimate work-related purposes.

An employer who denies employment to an applicant, or discharges an employee, because of a credit report received in violation of the bill may be liable for injunctive relief, damages, or other relief.

Fiscal Summary

State Effect: The bill may result in a minimal increase in the number of inquiries received by the Department of Labor, Licensing, and Regulation's (DLLR) Division of Labor and Industry; the additional workload can be handled with existing resources. Revenues are not affected.

Local Effect: Potential minimal increase in the number of cases heard in the circuit courts; the additional workload can be handled with existing resources.

Small Business Effect: Potential minimal.

Analysis

Current Law: The federal Fair Credit Reporting Act (FCRA) of 1971 regulates the use of consumer credit reports as a part of employment-related background checks. Consumer reporting agencies may only provide credit history information to persons with

a valid need, typically to consider an application with an employer, creditor, insurer, or landlord; FCRA specifies the instances that rise to the level of valid need. Consumer credit reporting agencies may not provide an employer with a credit report without the consent of the employee or applicant for hire. If an employer uses information contained in a credit report as a basis to deny an applicant for employment, or to take adverse action against an employee, the employer must provide the individual with a pre-adverse action disclosure that gives the individual an opportunity to review and collect information in the credit report. After taking an adverse action, the employer must inform the applicant or employee of the name, address, and phone number of the agency that provided the information. Employers who violate the Act's provisions may be liable for civil damages as specified in the Act.

If a credit report reveals that an applicant or employee has declared bankruptcy, the employer must comply with the federal Bankruptcy Act of 1978. Under the Bankruptcy Act, an employer may not discriminate against an applicant solely because a credit check reveals that an applicant has sought protection under the Act, been insolvent before seeking protection under the Act, and not paid a debt that is dischargeable under the Act.

Background: H.R. 3149, pending legislation in the U.S. Congress, proposes to amend FCRA to expand consumer protections by prohibiting a current or prospective employer from using a consumer credit report for either employment purposes or for taking an adverse action, if the report contains information that bears upon the consumer's creditworthiness, credit standing, or credit capacity. H.R. 3149 makes exceptions for employment: (1) that requires a national security or Federal Deposit Insurance Corporation clearance; (2) with a state or local government agency that otherwise requires use of a consumer report; or (3) in a supervisory, managerial, professional, or executive position at a financial institution.

State Fiscal Effect: DLLR advises that it anticipates the number of inquiries received by the Division of Labor and Industry's Employment Standards Investigation Team increases due to the bill. DLLR expects that these inquiries will be for explanations of the bill's provisions, general information about the use of credit reports by employers, and a discussion of possible remedies and the procedures to effectuate the remedies. DLLR advises that the additional workload can be handled with existing resources.

Additional Information

Prior Introductions: None.

Cross File: None.

Information Source(s): Library of Congress; Office of the Attorney General (Consumer Protection Division); Judiciary (Administrative Office of the Courts); Department of Labor, Licensing, and Regulation; Department of Legislative Services

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