

Department of Legislative Services
 Maryland General Assembly
 2011 Session

FISCAL AND POLICY NOTE

House Bill 934 (Delegate Carter, *et al.*)
 Economic Matters

Labor and Employment - Credit Reports and Credit Histories of Applicants and Employees - Limitations on Use by Employers

This bill prohibits an employer from using an individual’s credit report or credit history as a basis to deny employment to an applicant for hire, discharge an employee, or determine compensation or the terms of employment. The bill establishes certain exemptions whereby an employer may consider the credit history of an applicant or employee when making employment decisions.

Fiscal Summary

State Effect: General fund expenditures by the Department of Labor, Licensing, and Regulation (DLLR) increase by \$112,300 in FY 2012 due to additional staffing needed to enforce the bill’s provisions. Future year expenditures reflect annualization and inflation. Potential minimal increase in the number of cases heard in District Court; the additional workload can likely be handled with existing resources. Revenues are not affected.

(in dollars)	FY 2012	FY 2013	FY 2014	FY 2015	FY 2016
Revenues	\$0	\$0	\$0	\$0	\$0
GF Expenditure	112,300	141,700	148,600	156,000	163,800
Net Effect	(\$112,300)	(\$141,700)	(\$148,600)	(\$156,000)	(\$163,800)

Note:() = decrease; GF = general funds; FF = federal funds; SF = special funds; - = indeterminate effect

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

Small Business Effect: Potential minimal.

Analysis

Bill Summary: The bill does not apply to an employer that is (1) a financial institution authorized to do business under State or federal law; (2) an entity required under State or federal law to obtain bonding or other security; and (3) required to obtain an applicant's or employee's credit report under State or federal law.

An employer may request or consider an applicant's or employee's credit report if the applicant would have or the employee has (1) access to \$2,500 or more of cash or assets; (2) signatory power over business assets of \$100 per transaction; (3) a managerial position that involves setting the direction or control of the business; (4) access to personal or confidential information, financial information, trade secrets, or State or national security information; or (5) if the report or consideration of the applicant's or employee credit history or credit report has a *bona fide* work-related purpose.

An employer that requests or considers an applicant's or employee's credit history must disclose in writing the legal authority under which the employer is considering the individual's credit history. An employer may not retaliate or discriminate against an applicant or employee because the applicant or employee submits a complaint related to a violation of the bill or in any way participates in an investigation concerning a violation. An agreement between an applicant or an employee to waive any right under the bill is invalid and unenforceable.

An applicant or employee may submit a complaint to the Commissioner of Labor and Industry within DLLR if the individual believes an employer has violated the bill's provisions. The commissioner may attempt to resolve a complaint informally by mediation or request that the Attorney General bring an action on behalf of the applicant or employee. The Attorney General may bring an action for a violation related to the bill in the county where the violation allegedly occurred for injunctive relief, damages, or other relief. If the court finds that an employer has committed a violation, the court must award costs and reasonable attorney's fees to the applicant or employee.

The bill may not be construed to prohibit an employer from performing an employment-related background investigation that (1) includes use of a consumer report or investigative consumer report; (2) is authorized under the federal Fair Credit Reporting Act (FCRA) of 1971; and (3) does not involve investigation of credit information.

The commissioner must adopt regulations that specify the circumstances under which a request for or consideration of an applicant's or employee's credit history has a *bona fide* work-related purpose.

Current Law: FCRA 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 give the individual a pre-adverse action disclosure that offers the individual an opportunity to review and correct 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.

FCRA only applies to background checks conducted by a consumer reporting agency. (The Act does not apply in situations where an employer conducts a background investigation.) There are many types of consumer reporting agencies, including credit bureaus and specialty agencies (such as agencies that sell information about check writing histories, medical records, and rental history records). Further, the Act does not apply to individuals holding or seeking jobs with an annual salary greater than \$75,000 per year. Employers who violate the Act's provisions may be liable for specified civil damages.

FCRA defines a consumer report as any communication of information by a consumer reporting agency with bearing on a consumer's creditworthiness, credit standing, credit capacity, character, general reputation, personal characteristics, or mode of living which is used to determine the consumer's standing for credit, employment, or other authorized purposes. FCRA defines an investigative consumer report as a consumer report in which personal information about an individual is collected through interviews with the individual's acquaintances.

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: According to the National Conference of State Legislatures, 18 states and the District of Columbia introduced bills in 2010 relating to the use of credit information in employment. To date, four states have limited the use of credit information by employers: Hawaii, Illinois, Oregon, and Washington. As of January 2011, 11 states have pending legislation on this issue.

H.R. 312, 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. 312 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.

This bill does not specify that the State or units of government are subject to the bill's provisions. Thus, Legislative Services advises that the bill does not apply to employers that are units of government.

State Fiscal Effect: The bill requires the Commissioner of Labor and Industry to conduct investigations of potential violations of the bill, attempt informal mediation as a method of complaint resolution, and – in an unknown number of cases – file charges in court on behalf of an aggrieved applicant or employee in an effort to obtain damages from an employer who violated the bill's provisions. DLLR cannot estimate the extent to which the agency would receive complaints due to the bill; however, DLLR advises that the agency's Division of Financial Regulation receives a high volume of inquiries regarding the actions of employers vis-à-vis the credit history of an applicant or employee. Given the bill's wide application to employers in the State, DLLR estimates that a significant number of complaints may be received that require investigation and disposition in some regard. DLLR estimates that the agency likely cannot absorb the additional workload with existing resources and that additional staffing is necessary. Legislative Services concurs.

The staff needed to handle the responsibilities created by the bill include a full-time assistant Attorney General and one full-time office clerk. The assistant Attorney General is responsible for assisting in the development of required regulations, investigating complaints, conducting informal mediation, and pursuing action in civil court against employers accused of violating the bill's provisions. The office clerk will be responsible for managing case files, responding to inquiries, facilitating outreach efforts, and providing general administrative support.

As a result of the additional staff and other operating expenses necessary for enforcement, general fund expenditures increase by \$112,250 in fiscal 2012, which accounts for the bill's October 1, 2011 effective date. This estimate includes salaries, fringe benefits, one-time start-up costs, and ongoing operating expenses.

Positions	2
Salaries and Fringe Benefits	\$97,178
One-time Start-up Costs (including electronic licensing)	7,022
Ongoing Operating Expenses	<u>8,050</u>
Total FY 2012 State Expenditures	\$112,250

Future year expenditures reflect full salaries with 4.4% annual increases and 3% employee turnover as well as 1% annual increases in ongoing operating expenses.

Additional Information

Prior Introductions: None. However, similar bills, SB 312/HB 175 of 2010, received unfavorable reports from the Senate Finance Committee and House Economic Matters Committee, respectively.

Cross File: None.

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

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mc/mcr

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