

Department of Legislative Services
Maryland General Assembly
2010 Session

FISCAL AND POLICY NOTE

Senate Bill 312

(Senator Lenett, *et al.*)

Finance

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

This bill prohibits an employer, subject to specified exceptions, 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, conditions, or privileges of employment.

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 by the circuit courts; the additional workload can be handled with existing resources.

Small Business Effect: Potential minimal.

Analysis

Bill Summary: An employer may request the credit report of an applicant for hire if the employer has a bona fide work-related purpose or if the applicant has received an offer of employment and the information included in the report is not used for a purpose that is prohibited by the bill. The bill's provisions do not apply to financial institutions under the jurisdiction of a federal agency or employers that are required by State or federal law to request the credit report of an employee or applicant for hire.

The Commissioner of Labor and Industry must adopt regulations that specify the justifiable work-related purposes for an employer to request a credit report.

Employers who misuse the credit reports of applicants or employees, as specified by the bill, are liable for injunctive relief, damages, or other relief.

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 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. 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 to such prohibition 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 an increase in the number of inquiries received by the Division of Labor and Industry's Employment Standards Investigation Team 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 the possible remedies. DLLR advises that the additional workload can be handled with existing resources.

Additional Information

Prior Introductions: None.

Cross File: None.

Information Source(s): Kent, Montgomery, and Washington counties; Baltimore City; Judiciary (Administrative Office of the Courts); Department of Budget and Management; Department of Labor, Licensing, and Regulation; Department of Legislative Services

Fiscal Note History: First Reader - February 9, 2010
ncs/mcr

Analysis by: Michael T. Vorgetts

Direct Inquiries to:
(410) 946-5510
(301) 970-5510