

ASSEMBLY, No. 2310

STATE OF NEW JERSEY 216th LEGISLATURE

INTRODUCED FEBRUARY 6, 2014

Sponsored by:

Assemblyman WAYNE P. DEANGELO
District 14 (Mercer and Middlesex)

SYNOPSIS

Prohibits practice of requiring credit check as condition of employment.

CURRENT VERSION OF TEXT

As introduced.



1 AN ACT concerning employer discrimination and supplementing
2 Title 34 of the Revised Statutes.

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4 **BE IT ENACTED** by the Senate and General Assembly of the State
5 of New Jersey:

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7 1. No employer or employer's agent, representative, or
8 designee shall seek to obtain or require a current or prospective
9 employee to provide or consent to the creation of a credit report that
10 contains information about the current or prospective employee's
11 credit score, credit account balances, payment history, savings or
12 checking account balances, or savings or checking account numbers
13 as a condition of employment, unless the employer is required by
14 law to obtain a credit report, or the employer reasonably believes
15 that the employee has engaged in a specific activity that is financial
16 in nature and constitutes a violation of law.

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18 2. Nothing in section 1 of this act shall prevent a credit inquiry
19 or employment action if credit history is an established bona fide
20 occupational requirement of a particular position or employment
21 classification. Credit history shall be considered a bona fide job
22 qualification for any current or prospective employee being
23 evaluated for a position that:

24 a. Is a managerial position which involves setting the financial
25 direction or control of the business;

26 b. Involves access to customers', employees', or employers'
27 personal belongings or financial information, other than information
28 customarily provided in a retail transaction;

29 c. Involves a fiduciary responsibility to the employer,
30 including, but not limited to, the authority to issue payments,
31 transfer money or enter into contracts or involves leases of real
32 property;

33 d. Provides an expense account for travel; or

34 e. Is as a law enforcement officer for a law enforcement agency
35 in this State.

36 As used in this subsection, "law enforcement officer" means a
37 person whose public duties include the power to act as an officer for
38 the detection, apprehension, arrest and conviction of offenders
39 against the laws of this State, and "law enforcement agency" means
40 a department, division, bureau, commission, board or other
41 authority of the State or of any political subdivision thereof which
42 employs law enforcement officers.

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44 3. An employer shall not require an individual to waive or limit
45 any protection granted under this act as a condition of applying for
46 or receiving an offer of employment. An agreement to waive any
47 right or protection under this act is against the public policy of this
48 State and is void and unenforceable.

A2310 DEANGELO

1 4. A person shall not retaliate or discriminate against an
2 individual because the individual has done or was about to do any
3 of the following:

- 4 a. File a complaint under this act;
- 5 b. Testify, assist, or participate in an investigation, proceeding,
6 or action concerning a violation of this act; or
- 7 c. Otherwise oppose a violation of this act.

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9 5. Upon violation of any provision of this act, an aggrieved
10 person may, in addition to any other available remedy, institute a
11 civil action in a court of competent jurisdiction, within one year
12 from the date of the alleged violation. In response to the action, the
13 court may, as it deems appropriate, order or award any one or more
14 of the following:

- 15 a. With respect to a prospective employee:
 - 16 (1) injunctive relief;
 - 17 (2) compensatory and consequential damages incurred by the
18 prospective employee as a result of the violation, taking into
19 consideration any failure to hire in connection with credit reports
20 obtained in violation of this act; or
 - 21 (3) reasonable attorneys' fees and court costs.
- 22 b. With respect to a current or former employee:
 - 23 (1) injunctive relief as it deems appropriate, including
24 reinstatement of the employee to the same position held before the
25 violation or the position the employee would have held but for the
26 violation, as well as the reinstatement of full fringe benefits and
27 seniority rights;
 - 28 (2) compensatory and consequential damages incurred by the
29 employee or former employee as a result of the violation, including
30 compensation for lost wages, benefits and other remuneration; or
 - 31 (3) reasonable attorneys' fees and court costs.

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33 6. Any employer who violates any provision of this act shall be
34 subject to a civil penalty in an amount not to exceed \$5,000 for the
35 first violation and \$10,000 for each subsequent violation, collectible
36 by the Commissioner of Labor and Workforce Development in a
37 summary proceeding pursuant to the "Penalty Enforcement Law of
38 1999," P.L.1999, c.274 (C.2A:58-10 et seq.).

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40 7. This act shall take effect immediately.

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STATEMENT

45 This bill prohibits an employer from requiring a credit check on
46 a current or prospective employee as a condition of employment,
47 unless the employer is required to do so by law, or reasonably
48 believes that an employee has engaged in a specific activity that is

A2310 DEANGELO

1 financial in nature and constitutes a violation of law. The bill does
2 not prevent an employer from a credit inquiry or employment action
3 if credit history is a bona fide occupational requirement of a
4 particular position or employment classification, including:

5 (1) A managerial position which involves setting the financial
6 direction or control of the business;

7 (2) A position which involves access to customers', employees',
8 or employers' personal belongings or financial information, other
9 than information customarily provided in a retail transaction;

10 (3) A position which involves a fiduciary responsibility to the
11 employer, including, but not limited to, the authority to issue
12 payments, transfer money or enter into contracts or involves leases
13 of real property;

14 (4) A position which provides an expense account for travel; or

15 (5) A law enforcement officer for a law enforcement agency in
16 this State, as defined by the bill.

17 The bill prohibits an employer from requiring a prospective
18 employee to waive or limit any protection granted under the bill as
19 a condition of applying for or receiving an offer of employment.
20 The bill also prohibits retaliation or discrimination against an
21 individual because the individual has done or was about to do any
22 of the following:

23 (1) file a complaint pursuant to provisions of the bill;

24 (2) testify, assist, or participate in an investigation, proceeding,
25 or action concerning a violation of the bill; or

26 (3) otherwise oppose a violation of the bill.

27 Any current, prospective, or former employee aggrieved under
28 the provisions of the bill may bring an action in a court of
29 competent jurisdiction for appropriate injunctive relief and
30 damages, including reasonable attorneys' fees and court costs. In
31 addition, the bill provides for the imposition of civil penalties in an
32 amount not to exceed \$5,000 for the first violation, and \$10,000 for
33 each subsequent violation, collectible by the Commissioner of
34 Labor and Workforce Development.