

# SENATE, No. 545

## STATE OF NEW JERSEY 218th LEGISLATURE

PRE-FILED FOR INTRODUCTION IN THE 2018 SESSION

**Sponsored by:**

**Senator NIA H. GILL**

**District 34 (Essex and Passaic)**

**Senator SHIRLEY K. TURNER**

**District 15 (Hunterdon and Mercer)**

**Co-Sponsored by:**

**Senators Cunningham and Ruiz**

**SYNOPSIS**

Prohibits employers from obtaining, requiring, or discriminating on the basis of credit reports.

**CURRENT VERSION OF TEXT**

Introduced Pending Technical Review by Legislative Counsel.



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

3

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

6

7 1. No employer or employer's agent, representative, or  
8 designee shall:

9 a. Seek to obtain or require a current or prospective employee  
10 to provide or consent to the creation of a credit report that contains  
11 information about the current or prospective employee's credit  
12 history, credit score, credit account balances, payment history,  
13 savings or checking account balances, or savings or checking  
14 account numbers, unless the employer is required by law to obtain a  
15 credit report, or the employer reasonably believes that the employee  
16 has engaged in a specific activity that is financial in nature and  
17 constitutes a violation of law; or

18 b. Discharge, demote, suspend, retaliate, refuse to hire, or  
19 otherwise discriminate against a current or prospective employee  
20 with regard to promotion, compensation, or the terms, conditions or  
21 privileges of employment, based on information in a credit report  
22 on the employee.

23

24 2. Nothing in section 1 of this act shall prevent a credit inquiry  
25 or employment action if credit history is an established bona fide  
26 occupational qualification of a particular position or employment  
27 classification. Credit history shall be considered a bona fide  
28 occupational qualification for any current or prospective employee  
29 being evaluated for a position that:

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

32 b. Involves access to customers', employees', or employers'  
33 personal belongings, financial assets, or financial information other  
34 than information customarily provided in a retail transaction;

35 c. Involves a fiduciary responsibility to the employer,  
36 including, but not limited to, the authority to issue payments,  
37 transfer money or enter into contracts or involves leases of real  
38 property;

39 d. Provides an expense account for travel; or

40 e. Is as a law enforcement officer for a law enforcement agency  
41 in this State, or is as governmental or non-governmental security  
42 personnel, including security personnel in homeland security  
43 agencies.

44 As used in this section:

45 "Financial asset" means a financial asset as defined in  
46 N.J.S.12A:8-102;

47 "Law enforcement agency" means a department, division,  
48 bureau, commission, board or other authority of the State or of any

1 political subdivision thereof which employs law enforcement  
2 officers; and

3 “Law enforcement officer” means a person whose public duties  
4 include the power to act as an officer for the detection,  
5 apprehension, arrest and conviction of offenders against the laws of  
6 this State.

7  
8 3. An employer shall not require an individual to waive or limit  
9 any protection granted under this act as a condition of applying for  
10 or receiving an offer of employment. An agreement to waive any  
11 right or protection under this act is against the public policy of this  
12 State and is void and unenforceable.

13  
14 4. A person shall not retaliate or discriminate against an  
15 individual because the individual has done or was about to do any  
16 of the following:

- 17 a. File a complaint under this act;  
18 b. Testify, assist, or participate in an investigation, proceeding,  
19 or action concerning a violation of this act; or  
20 c. Otherwise oppose a violation of this act.

21  
22 5. Upon violation of any provision of this act, an aggrieved  
23 person may, in addition to any other available remedy, institute a  
24 civil action in a court of competent jurisdiction, within one year  
25 from the date of the alleged violation. In response to the action, the  
26 court may, as it deems appropriate, order or award any one or more  
27 of the following:

- 28 a. With respect to a prospective employee:  
29 (1) injunctive relief;  
30 (2) compensatory and consequential damages incurred by the  
31 prospective employee as a result of the violation, taking into  
32 consideration any failure to hire in connection with a violation of  
33 this act; or  
34 (3) reasonable attorneys’ fees and court costs.  
35 b. With respect to a current or former employee:  
36 (1) injunctive relief as it deems appropriate, including  
37 reinstatement of the employee to the same position held before the  
38 violation or the position the employee would have held but for the  
39 violation, as well as the reinstatement of full fringe benefits and  
40 seniority rights;  
41 (2) compensatory and consequential damages incurred by the  
42 employee or former employee as a result of the violation, including  
43 compensation for lost wages, benefits and other remuneration; or  
44 (3) reasonable attorneys’ fees and court costs.

45  
46 6. Any employer who violates any provision of this act shall be  
47 subject to a civil penalty in an amount not to exceed \$2,000 for the  
48 first violation and \$5,000 for each subsequent violation, collectible

1 by the Commissioner of Labor and Workforce Development in a  
2 summary proceeding pursuant to the “Penalty Enforcement Law of  
3 1999,” P.L.1999, c.274 (C.2A:58-10 et seq.).  
4

5 7. This act shall take effect immediately.  
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8 STATEMENT  
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10 This bill prohibits an employer from requiring a credit check on  
11 a current or prospective employee, unless the employer is required  
12 to do so by law, or reasonably believes that an employee has  
13 engaged in a specific activity that is financial in nature and  
14 constitutes a violation of law. It prohibits any employment  
15 discrimination against a current or prospective employee based on  
16 information in a credit report. The bill does not prevent an employer  
17 from performing a credit inquiry or taking an employment action if  
18 credit history is a bona fide occupational qualification of a  
19 particular position or employment classification, including:

20 1. A managerial position which involves setting the financial  
21 direction or control of the business;

22 2. A position which involves access to customers’, employees’,  
23 or employers’ personal belongings or financial assets or financial  
24 information, other than information customarily provided in a retail  
25 transaction;

26 3. A position which involves a fiduciary responsibility to the  
27 employer, including, but not limited to, the authority to issue  
28 payments, transfer money or enter into contracts or involves leases  
29 of real property;

30 4. A position which provides an expense account for travel; or

31 5. A law enforcement officer for a law enforcement agency, or a  
32 governmental or non-governmental security personnel position,  
33 including security personnel in a homeland security agency.

34 The bill prohibits an employer from requiring a prospective  
35 employee to waive or limit any protection granted under the bill as  
36 a condition of applying for or receiving an offer of employment.  
37 The bill also prohibits retaliation or discrimination against an  
38 individual because the individual has done or was about to do any  
39 of the following:

40 1. File a complaint pursuant to provisions of the bill;

41 2. Testify, assist, or participate in an investigation, proceeding,  
42 or action concerning a violation of the bill; or

43 3. Otherwise oppose a violation of the bill.

44 Any current, prospective, or former employee aggrieved under  
45 the provisions of the bill may bring an action in a court of  
46 competent jurisdiction for appropriate injunctive relief and  
47 damages, including reasonable attorneys’ fees and court costs. In  
48 addition, the bill provides for the imposition of civil penalties in an

**S545 GILL, TURNER**

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- 1 amount not to exceed \$2,000 for the first violation, and \$5,000 for
- 2 each subsequent violation, collectible by the Commissioner of
- 3 Labor and Workforce Development.