

SENATE, No. 2133

STATE OF NEW JERSEY 219th LEGISLATURE

INTRODUCED MARCH 16, 2020

Sponsored by:

Senator NIA H. GILL

District 34 (Essex and Passaic)

SYNOPSIS

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

CURRENT VERSION OF TEXT

As introduced.



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.

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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.

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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.

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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.).

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5 7. This act shall take effect immediately.

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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
32 a 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

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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.