

CONTACT

LEGISLATIVE AFFAIRS DEPARTMENT

MARIA CILENTI

212.382.6655 | mcilenti@nycbar.org

ELIZABETH KOCIENDA

212.382.4788 | ekocienda@nycbar.org

**REPORT ON LEGISLATION BY
THE CIVIL RIGHTS COMMITTEE**

Int. 0261-A-2014 Council Members Lander, Rose, Del Carmen Arroyo, Chin, Dickens, Dromm, Ferreras, Garodnick, King, Koslowitz, Levin, Mendez, Richards, Van Bramer, Williams, Wills, Gentile, Gibson, Constantinides, Levine, Miller, Reynoso, Rosenthal, Torres, Menchaca, Kallos, Cornegy, Cumbo, Crowley, Johnson, Eugene, Treyger, Rodriguez, Cabrera, Espinal, Barron, Mealy, Vallone, Koo, Deutsch, Maisel, Cohen; Public Advocate James

A Local Law to amend the administrative code of the city of New York, in relation to prohibiting discrimination based on one's consumer credit history.

The Stop Credit Discrimination in Employment Act

THIS LEGISLATION IS APPROVED

INTRODUCTION

Millions of Americans face barriers to employment because of bad credit. New York City, a City with one of the strongest civil rights laws in the country, should be a leader in outlawing discriminatory credit checks in employment. Intro 0261-A, the Stop Credit Discrimination in Employment Act, would amend the New York City Human Rights Law to protect individuals from discrimination in employment based on their consumer credit history.

Intro 0261-A would prohibit employers from using personal credit history in hiring and would eliminate a serious barrier to economic security for many New Yorkers. The law would amend the Administrative Code to make it an unlawful discriminatory practice for “an employer, labor organization, employment agency or licensing agency to request or to use for employment purposes information contained in the consumer credit history of an applicant for employment or to retaliate or otherwise discriminate against an applicant or an employee with regard to hiring, termination, promotion, demotion, discipline, compensation or the terms, conditions or privileges of employment based on information in the consumer credit history of the applicant or employee.” The bill does not apply to positions where: 1) inquiries into an individual’s consumer credit history are required by state or federal law or by the rules of a securities licensing organization; 2) the employee has access to trade secrets, classified information, or has

signing authority over assets valued at \$10,000 or more; or 3) the employee is a peace officer or high level appointment at a public agency.

CREDIT CHECKS ARE AN ARBITRARY DISCRIMINATORY BARRIER TO EMPLOYMENT

Research has shown that bad credit has no correlation to being a bad employee and that there is no correlation between damaged credit and job performance or criminal behavior.¹ However, because nearly half of U.S. employers conduct credit checks as a condition of employment on potential new hires, credit reports are increasingly being used to screen out job applicants. A recent survey found that one in four unemployed workers from low and middle-income households with credit card debt had been required to undergo a credit check as part of a job application.² The practice is flawed because not only is credit history unrelated to job performance, but as a practice, employers do not assess credit scores but subjectively assess credit reports, imposing their own discretion on these reports.³ Moreover, errors on credit reports are shockingly common, making the information contained in them unreliable to assess job applicants. In February 2013, the Federal Trade Commission released the results of a comprehensive study of credit reporting errors which found that one in four U.S. consumers identified errors on their credit reports serious enough to affect their credit scores.⁴

Employment credit checks are a form of employment discrimination. The Equal Employment Opportunity Commission has recognized that the use of credit checks for employment decisions can lead to discrimination against people of color⁵. Research has shown that African American and Latino households tend to have more problems with their credit history, on average, than white households.⁶ Racial disparities in credit may be a result of discriminatory practices in lending, housing and employment.⁷ Since households of color tend to be poorer, these households are more likely than white households to fall into debt, borrow money when faced with an emergency or fall prey to predatory lending schemes. Overall, credit

¹ For a discussion of the research, see: Laura Koppes Bryan and Jerry K. Palmer, "Do Job Applicant Credit Histories Predict Performance Appraisal Ratings or Termination Decisions?" *The Psychologist-Manager Journal*, 2012.

² Amy Traub, "Discredited: How Employment Credit Checks Keep Qualified Workers out of a Job," Demos, 2013.

³ Amy Traub, "Why New York Needs the Stop Credit Discrimination in Employment Act," Demos, 2014.

⁴ "Report to Congress Under Section 319 of the Fair and Accurate Credit Transactions Act of 2003," Federal Trade Commission, December 2012. Released to the public February 2013.

⁵ In 2010, the EEOC filed a lawsuit against Kaplan because the company "rejected job applicants based on their credit history. This practice has an unlawful discriminatory impact because of race and is neither job-related nor justified by business necessity". See <http://www.eeoc.gov/eeoc/newsroom/release/12-21-10a.cfm>.

⁶ See for example: Board of Governors of the Federal Reserve System, "Report to the Congress on Credit Scoring and Its Effects on the Availability and Affordability of Credit," 2007; Federal Trade Commission, "Credit-Based Insurance Scores: Impacts on Consumers of Automobile Insurance," 2007; Robert B. Avery, Paul S. Calem, and Glenn B. Canner, "Credit Report Accuracy and Access to Credit," *Federal Reserve Bulletin*, 2004; Matt Fellowes, "Credit Scores, Reports, and Getting Ahead in America," Brookings Institution, 2006.

⁷ Amy Traub, "Why New York Needs the Stop Credit Discrimination in Employment Act," Demos, 2014.

checks by employers seem to have a discriminatory impact on people of color, people with disabilities and victims of domestic violence.⁸

Poor credit also tends to be associated with unemployment and lack of health insurance. A Federal Reserve Board study found that more than half of all accounts reported by collection agencies on credit reports consist of medical debt.⁹ Employment credit checks are a particular concern for people with disabilities and survivors of domestic abuse. Domestic abuse, divorce and medical bills are among the leading contributors to credit problems. People with disabilities have additional concerns regarding the use of credit checks because information about medical debt may lead to disclosure of a medical condition that could lead the way to discriminatory treatment. All of these factors are unrelated to job performance and job applicants struggling with medical debt or other consumer debts may lose earning capacity and the ability to secure good jobs due to this practice.

CREDIT CHECKS VIOLATE THE PRIVACY RIGHTS OF WORKERS

In addition to being discriminatory, credit checks often contain personal information related to medical issues, disabilities and domestic violence. This information should not be made public to potential employers in order to protect a worker's right to privacy.

CONCLUSION

In sum, the use of an applicant's credit history in pre-employment screening conveys no useful information to employers about a job applicants' fitness for the position and has a discriminatory impact on job applicants of color, those with low incomes, and medical problems. Because the harms to New Yorkers of these credit checks is palpable and they serve no useful purpose to employers, the Council should support Intro 0261-A and ban discriminatory credit checks in employment.

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⁸ Id.

⁹ Robert Avery, Paul Calem, Glenn Canner & Raphael Bostic, "An Overview of Consumer Data and Credit Reporting," *Federal Reserve Bulletin*, 2003.