



**Testimony on SB-3**

Wednesday, March 2, 2011 8:00 PM

**From:** "Kevin Lynch" <kmblynch@sbcglobal.net>  
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To: Members of the Committee on Aging

March 4th, 2011

Please find attached a statement regarding SB-3. Although none of the writing is mine, I endorse the statement without reservation.

The author, Brendan Lynch, Esq., is an honors' graduate of Harvard Law School who has for the last twelve-plus years--since graduation-- worked on elderly and labor issues at Community Legal Services in Philadelphia. He has extensive experience in the issues addressed.

Kevin M. Lynch  
New England Regional Director  
Alliance for Retired Americans



RE: SB-3

Wednesday, March 2, 2011 10:19 AM

From: "Brendan Lynch" &lt;BLynch@clsphila.org&gt;

To: "Kevin Lynch" &lt;kmblynch@sbcglobal.net&gt;

It's not too bad - it incorporates the basic considerations that the EEOC has said employers should apply when reviewing an applicant's criminal history. And of course I understand the need for safeguards - these are low-paid and low-skilled workers going into the homes of a vulnerable population. I do wonder, though, if this legislation is needed, since I suspect virtually all of these employers are already doing background checks (they all fear liability, after all), and in my experience, employers usually screen out far more applicants than the state would require them to. A few problems jump out that I'd particularly like to see changed:

1. I would like to see employers required to make a conditional offer of employment before they solicit information about criminal backgrounds, rather than insisting that people divulge right up front before any offer is made. Making people explain their records up front is simply an invitation for employers to toss their applications in the trash without further consideration, and then to make up some other reason why they weren't hired. It's just too easy to pretend that there was some other reason. We want people to be informed about exactly what the problem is with their application - requiring a conditional offer of employment prior to the background check would leave no doubt, for people who were then rejected, that the record was the cause of the denial. That way, employees will know what they need to do - including, to the extent they're eligible, apply for a pardon or expungement, or correct any errors in their record (and there are many errors), and it will catch the (hopefully rare) case where employers are violating the guidelines and denying employment based on records that are so old/minor/unconnected to the job that it is not proper to exclude applicants on the basis of those record.
2. I don't see why there needs to be a criminal penalty for not correctly filling out a job application. The employer is going to check the criminal records anyway, right? Nobody's relying on the applicant's word here, right? So the misdemeanor for not being completely honest about your record isn't a way to protect the public - it's a way to criminalize job applicants for wasting a little bit of the employer's time. And for what - not knowing whether something is a "crime of dishonesty"? I'm a lawyer and I don't even know exactly what that means, and what it is understood to mean could vary widely from state to state. What if you are convicted of conspiring to commit robbery in an incident in which no one actually got hurt, yet in some states "robbery" by definition means you went in with a weapon. Did you commit a "crime of violence"? I assure you, no one sits these people down and explains "okay, you need to remember for future employment purposes that what you've been convicted of is considered a crime of dishonesty in Connecticut."
3. I'd like to see them require that the applicant be provided with a copy of the actual record. The federal Fair Credit Reporting Act already requires that employers provide a copy of the background check if it's performed by a third party background check company, but one common problem is that many employers don't bother complying with the law, and frankly it's difficult to enforce. In the context of a licensing statute, though, it might well be easier to enforce. As I say, these records often have errors, and it makes it much easier to correct those errors - or, perhaps, to explain to the prospective employer why the record isn't as bad as it looks at first glance - if you can get a copy of the record that the employer is looking at. Section 5(c)(1) of the bill is pretty good as far as it goes, but an actual copy of the record would be a simple and very useful addition to a mere statement of what evidence was reviewed - and it would be a simple and natural extension of the principle set out in FCRA.

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**From:** Kevin Lynch [mailto:kmblynch@sbcglobal.net]**Sent:** Tuesday, March 01, 2011 8:04 PM**To:** Brendan Lynch**Cc:** Kevin Lynch