



House of Representatives

General Assembly

File No. 659

January Session, 2011

House Bill No. 6641

House of Representatives, April 28, 2011

The Committee on Judiciary reported through REP. FOX, G. of the 146th Dist., Chairperson of the Committee on the part of the House, that the bill ought to pass.

AN ACT CONCERNING THE USE OF CREDIT REPORTS IN EMPLOYMENT DECISIONS.

Be it enacted by the Senate and House of Representatives in General Assembly convened:

1 Section 1. (NEW) (*Effective October 1, 2011*) (a) For the purposes of
2 this section:

3 (1) "Employee" means any person engaged in service to an employer
4 in the business of the employer; and

5 (2) "Employer" has the meaning set forth in section 31-51i of the
6 general statutes, as amended by this act.

7 (b) No employer or employer's agent, representative or designee
8 may require an applicant or employee to consent to a credit inquiry
9 that contains information about the applicant's or employee's credit
10 worthiness, credit standing or credit capacity, or savings or checking
11 account balances or savings or checking account numbers, as a
12 condition of employment unless:

13 (1) Such employer is a broker-dealer or investment adviser
14 registered under chapter 672a of the general statutes, an insured
15 depository institution, or an insurance producer licensed under
16 chapter 701a of the general statutes, that is permitted to obtain
17 information concerning the criminal history record of such applicant or
18 employee under subsection (g) of section 31-51i of the general statutes,
19 as amended by this act;

20 (2) Such report is required by law;

21 (3) As a condition of employment, such applicant or employee is (A)
22 required to be licensed as an insurance producer, as defined in section
23 38a-702a of the general statutes, or (B) required to obtain any other
24 license, certification or registration if such license, certification or
25 registration is subject to suspension, revocation, a refusal to issue or a
26 refusal to renew on the basis of an act or omission that demonstrates
27 financial irresponsibility or gross financial irresponsibility; or

28 (4) The employer or employer's agent, representative or designee
29 reasonably believes that the applicant or employee has engaged in
30 specific activity that constitutes a violation of the law related to the
31 employee's employment.

32 (c) Any applicant or employee may file a complaint with the Labor
33 Commissioner alleging a violation of subsection (b) of this section.
34 Upon the request of any party, the commissioner shall hold a hearing
35 in accordance with chapter 54 of the general statutes. An employer or
36 employer's agent, representative or designee shall be liable to the
37 Labor Department for a civil penalty of three hundred dollars for each
38 credit inquiry the employer, agent, representative or designee makes
39 in violation of subsection (b) of this section.

40 (d) The Attorney General, upon complaint of the Labor
41 Commissioner, shall institute a civil action to recover the penalties
42 provided for under subsection (c) of this section. Any amount
43 recovered shall be deposited in the General Fund and credited to a
44 separate nonlapsing appropriation to the Labor Department, for other

45 current expenses, and may be used by the Labor Department to
46 enforce the provisions of this section.

47 Sec. 2. Section 31-51i of the general statutes is repealed and the
48 following is substituted in lieu thereof (*Effective October 1, 2011*):

49 (a) For the purposes of this section, "employer" means any person
50 engaged in business who has one or more employees, including the
51 state or any political subdivision of the state.

52 (b) No employer or an employer's agent, representative or designee
53 may require an applicant or employee [or prospective employee] to
54 disclose the existence of any arrest, criminal charge or conviction, the
55 records of which have been erased pursuant to section 46b-146, 54-76o
56 or 54-142a.

57 (c) An employment application form that contains any question
58 concerning the criminal history of the applicant shall contain a notice,
59 in clear and conspicuous language: (1) That the applicant is not
60 required to disclose the existence of any arrest, criminal charge or
61 conviction, the records of which have been erased pursuant to section
62 46b-146, 54-76o or 54-142a, (2) that criminal records subject to erasure
63 pursuant to section 46b-146, 54-76o or 54-142a are records pertaining to
64 a finding of delinquency or that a child was a member of a family with
65 service needs, an adjudication as a youthful offender, a criminal charge
66 that has been dismissed or nolle, a criminal charge for which the
67 person has been found not guilty or a conviction for which the person
68 received an absolute pardon, and (3) that any person whose criminal
69 records have been erased pursuant to section 46b-146, 54-76o or 54-
70 142a shall be deemed to have never been arrested within the meaning
71 of the general statutes with respect to the proceedings so erased and
72 may so swear under oath.

73 (d) No employer or an employer's agent, representative or designee
74 shall deny employment to [a prospective employee] an applicant solely
75 on the basis that the [prospective employee] applicant had a prior
76 arrest, criminal charge or conviction, the records of which have been

77 erased pursuant to section 46b-146, 54-76o or 54-142a or that the
78 [prospective employee] applicant had a prior conviction for which the
79 [prospective employee] applicant has received a provisional pardon
80 pursuant to section 54-130a.

81 (e) No employer or an employer's agent, representative or designee
82 shall discharge, or cause to be discharged, or in any manner
83 discriminate against, any employee solely on the basis that the
84 employee had, prior to being employed by such employer, an arrest,
85 criminal charge or conviction, the records of which have been erased
86 pursuant to section 46b-146, 54-76o or 54-142a or that the employee
87 had, prior to being employed by such employer, a prior conviction for
88 which the employee has received a provisional pardon pursuant to
89 section 54-130a.

90 (f) The portion of an employment application form which contains
91 information concerning the criminal history record of an applicant or
92 employee shall only be available to the members of the personnel
93 department of the company, firm or corporation or, if the company,
94 firm or corporation does not have a personnel department, the person
95 in charge of employment, and to any employee or member of the
96 company, firm or corporation, or an agent of such employee or
97 member, involved in the interviewing of the applicant.

98 (g) Notwithstanding the provisions of subsection (f) of this section,
99 the portion of an employment application form which contains
100 information concerning the criminal history record of an applicant or
101 employee may be made available as necessary to persons other than
102 those specified in said subsection (f) by:

103 (1) A broker-dealer or investment adviser registered under chapter
104 672a in connection with (A) the possible or actual filing of, or the
105 collection or retention of information contained in, a form U-4 Uniform
106 Application for Securities Industry Registration or Transfer, (B) the
107 compliance responsibilities of such broker-dealer or investment
108 adviser under state or federal law, or (C) the applicable rules of self-
109 regulatory organizations promulgated in accordance with federal law;

110 (2) An insured depository institution in connection with (A) the
111 management of risks related to safety and soundness, security or
112 privacy of such institution, (B) any waiver that may possibly or
113 actually be sought by such institution pursuant to section 19 of the
114 Federal Deposit Insurance Act, 12 USC 1829(a), (C) the possible or
115 actual obtaining by such institution of any security or fidelity bond, or
116 (D) the compliance responsibilities of such institution under state or
117 federal law; and

118 (3) An insurance producer licensed under chapter 701a in
119 connection with (A) the management of risks related to security or
120 privacy of such insurance producer, or (B) the compliance
121 responsibilities of such insurance producer under state or federal law.

122 (h) (1) For the purposes of this subsection: (A) "Consumer reporting
123 agency" means any person who regularly engages, in whole or in part,
124 in the practice of assembling or preparing consumer reports for a fee,
125 which reports compile and report items of information on consumers
126 that are matters of public record and are likely to have an adverse
127 effect on a consumer's ability to obtain employment, but does not
128 include any public agency; (B) "consumer report" means any written,
129 oral or other communication of information bearing on an individual's
130 credit worthiness, credit standing, credit capacity, character, general
131 reputation, personal characteristics or mode of living; and (C)
132 "criminal matters of public record" means information obtained from
133 the Judicial Department relating to arrests, indictments, convictions,
134 outstanding judgments, and any other conviction information, as
135 defined in section 54-142g.

136 (2) Each consumer reporting agency that issues a consumer report
137 that is used or is expected to be used for employment purposes and
138 that includes in such report criminal matters of public record
139 concerning the consumer shall:

140 (A) At the time the consumer reporting agency issues such
141 consumer report to a person other than the consumer who is the
142 subject of the report, provide the consumer who is the subject of the

143 consumer report (i) notice that the consumer reporting agency is
144 reporting criminal matters of public record, and (ii) the name and
145 address of the person to whom such consumer report is being issued;

146 (B) Maintain procedures designed to ensure that any criminal
147 matter of public record reported is complete and up-to-date as of the
148 date the consumer report is issued, which procedures shall, at a
149 minimum, conform to the requirements set forth in section 54-142e.

150 (3) This subsection shall not apply in the case of an agency or
151 department of the United States government seeking to obtain and use
152 a consumer report for employment purposes if the head of the agency
153 or department makes a written finding pursuant to 15 USC
154 1681b(b)(4)(A).

155 (4) Nothing in this subsection shall be construed to permit an
156 employer or an employer's agent, representative or designee to obtain
157 a consumer report that contains information bearing on an individual's
158 credit worthiness, credit standing or credit capacity in violation of
159 section 1 of this act.

This act shall take effect as follows and shall amend the following sections:		
Section 1	October 1, 2011	New section
Sec. 2	October 1, 2011	31-51i

JUD *Joint Favorable*

The following Fiscal Impact Statement and Bill Analysis are prepared for the benefit of the members of the General Assembly, solely for purposes of information, summarization and explanation and do not represent the intent of the General Assembly or either chamber thereof for any purpose. In general, fiscal impacts are based upon a variety of informational sources, including the analyst's professional knowledge. Whenever applicable, agency data is consulted as part of the analysis, however final products do not necessarily reflect an assessment from any specific department.

OFA Fiscal Note

State Impact:

Agency Affected	Fund-Effect	FY 12 \$	FY 13 \$
Labor Dept.	GF - Cost	84,860	86,557
Labor Dept.	GF - Revenue Gain	Potential Minimal	Potential Minimal
State Comptroller - Fringe Benefits ¹	GF - Cost	20,162	20,565

Note: GF=General Fund

Municipal Impact: None

Explanation

The bill allows complaints to be filed with the Department of Labor (DOL) if an employer uses credit scores in certain hiring decisions. This is anticipated to increase the number of complaints received by the department and may require a half-time Special Investigator (salary of \$35,554). This is also anticipated to result in an increase in the number of probable cause hearings conducted by DOL, requiring a half-time Staff Attorney II (salary of \$49,306).

The bill establishes a \$300 civil penalty for each violation, which results in a potential minimal revenue gain. These funds are to be deposited into a separate non-lapsing account in the General Fund and may be used to enforce the provisions of this bill.

The Out Years

State Impact:

¹ The fringe benefit costs for most state employees are budgeted centrally in accounts administered by the Comptroller. The estimated non-pension fringe benefit cost associated with personnel changes is 23.76% of payroll in FY 12 and FY 13. In addition, there could be an impact to potential liability for the applicable state pension funds.

The annualized fiscal impact identified above would continue into the future subject to inflation.

Municipal Impact: None

OLR Bill Analysis**HB 6641*****AN ACT CONCERNING THE USE OF CREDIT REPORTS IN EMPLOYMENT DECISIONS.*****SUMMARY:**

This bill prohibits certain employers and their agents, representatives, or designees from requiring an employee or applicant for employment to consent to a credit inquiry as a condition of employment. The prohibition does not apply when:

1. the employer is a registered broker-dealer or investment adviser, insured depository institution, or someone licensed to sell, solicit, or negotiate insurance (i.e., an insurance producer), if existing law allows the employer to obtain information concerning the applicant's or employee's criminal history record;
2. the credit report is required by law;
3. as a condition of employment, the applicant or employee must (a) be licensed as an insurance producer or (b) obtain any other license, certification, or registration that is subject to suspension, revocation, or refusal to issue or renew on the basis of acts or omissions that show financial irresponsibility or gross financial irresponsibility; or
4. the employer, agent, representative, or designee reasonably believes that the employee or applicant committed a violation of the law related to the employee's employment.

The bill allows an employee or applicant to file a complaint about a violation of the bill's provisions with the labor commissioner. The commissioner must hold a hearing if either party requests it. Violators face a \$300 civil penalty for each credit inquiry that violates the bill. At

the request of the labor commissioner, the attorney general must bring a civil lawsuit to recover the penalties. Any amount recovered must be deposited in the General Fund and credited to a separate, nonlapsing Labor Department appropriation for other current expenses. Any recovered amount may be used to enforce the bill's provisions.

The bill makes a technical change in the law's current restrictions on employers or their agents, representatives, or designees from asking for the disclosure of, or taking certain actions related to, erased criminal records. The bill specifies that these provisions apply to applicants for employment (rather than prospective employees) as well as employees.

The bill also specifies that the law governing consumer reporting agencies issuing consumer reports for employment purposes that include criminal matters of public record does not allow an employer or an employer's agent, representative, or designee to obtain a consumer report containing information bearing on someone's credit worthiness, standing, or capacity in violation of the bill's credit inquiry provisions.

EFFECTIVE DATE: October 1, 2011

CREDIT INQUIRY

Under the bill, a credit inquiry contains information about the applicant's or employee's (1) credit worthiness, standing, or capacity or (2) savings or checking account numbers or balances.

EMPLOYERS AND EMPLOYEES

Except for the exclusions noted above, the bill applies to any employer engaged in business with at least one employee, including the state or a political subdivision.

An employee is anyone engaged in service to an employer in the employer's business.

BACKGROUND

Related Federal Law

The federal Fair Credit Reporting Act (FCRA) contains a number of requirements regarding the accuracy, fairness, and privacy of information in the files of consumer reporting agencies (CRAs). It allows CRAs to issue “consumer reports” in a number of circumstances, but contains special provisions for situations where the consumer or prospective employee does not initiate the transaction (i.e., for employment background screening). Among other things, FCRA prohibits an agency from furnishing a consumer report, which may include credit information, about a job candidate or employee without getting the person’s permission. If the employer or prospective employer decides to use information in the consumer report to deny a job application, refuse to promote an employee, or take any other “adverse action,” the employer must give the job candidate or employee a copy of the consumer report and a summary of the person’s rights under FCRA before taking the action. After taking the adverse action, the employer must give the job candidate or employee notice that adverse action has been taken and that he or she has the right to dispute the information’s accuracy (15 USC § 1681b).

Related Bills

sSB 361 (File 58), reported favorably by the Labor and Public Employees Committee, contains a similar prohibition on employers or their agents, representatives, or designees requiring an employee or prospective employee to consent to a credit inquiry as a condition of employment (some of the exceptions differ).

sSB 984 (File 165), reported favorably by the Labor and Public Employees Committee, prohibits an employer or an employer’s agent, representative, or designee from requiring a prospective employee to disclose his or her criminal history or submit to a criminal background check, if the prospective employee has provided at least one calendar year of service as a temporary employee to the employer. It does not apply to positions that require a criminal background check by law.

SB 1148 (File 607), reported favorably by the Judiciary Committee,

explicitly permits an employee or prospective employee to bring a civil action against an employer or the employer's agent, representative, or designee that knowingly takes certain actions related to erased arrests, criminal charges, or convictions.

COMMITTEE ACTION

Judiciary Committee

Joint Favorable

Yea 30 Nay 15 (04/15/2011)