



## EMPLOYER BULLETIN: CREDIT HISTORY CHECKS IN MICHIGAN

### PENDING LEGISLATION

Four states recently enacted state law restrictions on the use of credit history in making employment decisions. Similar legislation is pending in several states including Michigan. Michigan's House Bill 4528, entitled "Job Applicant Credit History Privacy Act", would prohibit employers, who have 1 or more employees, from making certain recruiting, hiring and employment decisions based upon an individual's credit history. Further, employers would be prohibited from inquiring about an applicant's credit history and requiring an individual to waive or limit rights under the act as a condition of applying for or receiving an offer of employment. The legislation would further protect against retaliation or discrimination against any individual who files a complaint under the law, testifies, assists or participates in any investigation, proceeding or action concerning a violation of the act, or opposes a violation of the act.

However, the prohibitions would not apply if a "good credit history" is an established bona fide occupational requirement of a particular position or employment classification. "Good credit history" shall be considered a bona fide job qualification for any employee of: a state or nationally chartered bank, bank holding company (or affiliate), a state or federally chartered savings and loan, savings bank or credit union (or affiliate), an individual or firm licensed in public accounting or a casino.

Individuals who are injured as a result of any violation of this act would be able to bring a civil suit to obtain damages or injunctive relief, or both. The court would also be required to award costs and reasonable attorneys fees to any individual who prevails as a plaintiff in any lawsuit. Although this state legislation is still pending, there are federal restrictions in place for employers who conduct background checks through use of a third party credit reporting agency under the Fair Credit Reporting Act ("FCRA").

### CURRENT LAW: THE FAIR CREDIT REPORTING ACT ("FCRA")

The FCRA was designed to protect privacy of consumer report information and to guaranty its accuracy to the extent possible. Employers have additional responsibilities under the FCRA due to concern that inaccurate or incomplete information could cause applicants to be denied jobs or employees be denied promotions. Under the FCRA, a background check is considered a "consumer report" which includes information provided by consumer reporting agencies that address credit, character, general reputation, personal characteristics or mode of living. Before an employer may obtain a consumer report, it must first provide applicants/employees with a disclosure/authorization form advising them that the employer and/or its agents may conduct a background check through a consumer report and/or investigative consumer report (or other type of check such as criminal history) and obtain an authorization allowing the background check. At this time, the applicant/employee must be provided a copy of the "Summary of Your Rights Under the FCRA" form. This federally required form explains what course of action an applicant/employee can take if he/she wishes to dispute the findings of the consumer report.

If the employer decides to hire the employee, nothing else need be done; however, if the employer decides not to hire an applicant or to take adverse action against an employee based upon information in the report, it must send a "Pre-Adverse Action" letter to the individual. The letter must include an actual copy of the report and a Summary of Rights form. After a reasonable period of time, the employer must send an "Adverse Action" letter to the employee which must include: (a) notice of the adverse action; (b) the name, address, phone number of the consumer reporting agency that furnished the report and a statement that the agency did not take the adverse action and is unable to provide the consumer the specific reasons adverse action was taken; (c) another copy of the Summary of Your Rights; (d) notice that the individual may obtain a free copy of the report from the agency; and (e) notice that the individual may dispute with the agency the accuracy or completeness of any information in the report.

If the employer is made aware of a dispute regarding the accuracy or completeness of the report, it must "conduct an investigation" with respect to the disputed information, review all relevant information provided by the reporting agency, report the results of the investigation to the reporting agency and if the information was found to be incomplete or inaccurate, report the results to all other reporting agencies to which the employer had furnished information. The investigation must be completed within 30 days of the reporting agency being notified that a dispute exists. If the employer is made aware of a dispute, it may not furnish any information in the report to any third parties without notifying the reporting agency of the dispute.

### CONCLUSION

Employers must comply with the FCRA requirements or they may be sued by unsuccessful applicants or employees for damages (including their legal fees) and punitive damages. Further, the FCRA and other agencies may sue employers for non-compliance and obtain civil penalties. Thus, it is important that employers understand the requirements of and their obligations under the FCRA.

We are experienced, proactive and aggressive legal counsel providing superior service in all areas of employment law. If you would like further information regarding the issues raised in this newsletter or any other employment related issues, please contact Heather G. Ptaszniak at (313) 259-8586, John T. Below at (313) 259-8597, or Matthew S. Derby at (313) 259-8653. For more information about Kotz Sangster, please visit us at [www.kotzsangster.com](http://www.kotzsangster.com). This newsletter is provided as general information service and should not be construed as and does not contain legal advice on any specific matter, nor does this message create an attorney-client relationship.