

TO: Members of the Assembly Workforce Development Committee

FROM: John Metcalf, Director, Human Resources Policy

DATE: August 27, 2009

RE: Opposition to Assembly Bill 367

Background

Current state law prohibits discrimination in employment a variety of bases including discrimination because of arrest record, includes discrimination on the basis of arrest or conviction record, except when employment depends on the bondability of the individual. Further, discrimination because of conviction record does not include refusing to employ an individual who has been convicted of an offense the circumstances of which substantially relate to the circumstances of the particular.

2009-2010 Session Legislation

This bill prohibits employment discrimination based on credit history. The bill specifies that employment discrimination because of credit history includes an employer, labor organization, employment agency, licensing agency, or other person requesting an applicant, employee, member, licensee, or any other individual, on an application form or otherwise, to authorize that person to procure the individual's credit history, except that it is not employment discrimination to request that authorization: 1) if the circumstances of an individual's credit history are substantially related to the circumstances of a particular job or licensed activity; or 2) if employment, membership, or licensing depends on the bondability of the individual and the individual may not be bondable due to his or her credit rating. The bill also specifies that it is not employment discrimination because of credit history to refuse to employ, admit, or license, or to bar or terminate from employment, membership, or licensing, any individual if: 1) the circumstances of an individual's credit history are substantially related to the circumstances of the particular job; or 2) if the individual is not bondable when bondability is required by state or federal law, administrative regulation, or established business practice of the employer.

Under the bill, "credit history" means information provided in a consumer report under the federal Fair Credit Reporting Act (FCRA), which defines "consumer report" as any written, oral, or other communication by a consumer reporting agency bearing on an individual's creditworthiness, credit standing, credit capacity, character, general reputation, personal characteristics, or mode of living, which is used or expected to be used as a factor in establishing the individual's eligibility for credit, insurance, employment, or any other purpose allowed under federal law.

The FCRA further defines "consumer reporting agency" as any person who, for monetary fees, dues, or on a cooperative nonprofit basis, regularly engages in whole or in part in the practice of assembling or evaluating consumer credit information or other information on individuals for the purpose of furnishing consumer reports to third parties, and who uses any means or facility of interstate commerce for the purpose of preparing or furnishing consumer reports.

WMC Position Oppose

This bill will create unnecessary administrative complexities and legal uncertainty for businesses seeking to check the credit history of job applicants. Without knowing the credit history of an applicant it will be difficult to determine whether the applicants' credit history status substantially relates to the job. Federal law simply requires applicants to be notified that a credit history report is part of the job screening process for employment, rather than a prohibition on credit history review as proposed in this legislation.