



SUPPORT CREDIT FAIRNESS IN EMPLOYMENT ACT

A.7056 (Dinowitz)

S.3868-B (Klein)

May 17, 2013

MFY Legal Services, Inc. strongly supports A.7056/S.3868-B, which would reduce unfair barriers to employment by prohibiting the harmful use of credit history in employment-related decisions. MFY Legal Services, Inc. (MFY) envisions a society in which no one is denied justice because he or she cannot afford an attorney. To make this vision a reality, for 50 years MFY has provided free legal assistance to residents of New York City on a wide range of civil legal issues, prioritizing services to vulnerable and under-served populations, while simultaneously working to end the root causes of inequities through impact litigation, law reform and policy advocacy. We provide advice and representation to more than 8,000 New Yorkers each year. Specifically, MFY'S Consumer Rights Project provides advice, counsel, and representation to low-income New Yorkers on a range of consumer problems. MFY's Workplace Justice Project advocates on behalf of low-income workers on a range of employment matters, including access to unemployment insurance, wage and hour violations, and employment opportunities for those with criminal records.

Employer Credit Checks are Pervasive and Create Barriers to Employment: Almost half of all employers check an employee's credit history when hiring.¹ The use of credit checks presents a significant barrier to employment, especially for low-income New Yorkers and unemployed New Yorkers, whose credit has been harmed because of the economic downturn and other events beyond their control. A recent study by Demos found that among job applicants with poor credit histories, one in seven had been told that they were being denied a job because of their credit history.² The use of credit checks also disadvantages students who graduate from college or vocational programs with crushing student loan debt.

Employer Credit Checks Are Discriminatory: Employer credit checks have a discriminatory impact on lower income New Yorkers, women and people of color, who have been disproportionately affected by the economic downturn. The Equal Employment Opportunity Commission has warned of a discriminatory impact on people of color due to the fact that credit reports reflect existing racial disparities caused, for example, by predatory lending and unequal employment opportunities.³ Moreover, civil rights organizations, including the NAACP, National Council of La Raza, Leadership Conference on Civil and Human Rights, and the Lawyers Committee for Civil Rights under Law have publically opposed the use of employer credit checks, citing their racially discriminatory potential.⁴ As reported by the National Partnership for Women in Families, employer credit checks are

¹ See Society of Human Resources Management, *SHRM Survey Findings: Background Checking – the Use of Credit Background Checks in Hiring Decisions*, July 19, 2012, available at <http://www.shrm.org/research/surveyfindings/articles/pages/criminalbackgroundcheck.aspx>.

² Demos, *Discredited: How Employment Credit Checks Keep Qualified Workers Out of a Job* 3 (Feb. 2013), available at <http://www.demos.org/sites/default/files/publications/Discredited-Demos.pdf>.

³ See Equal Employment Opportunity Commission, *Laws, Regulations and Guidance: Prohibited Practices, Pre-Employment Inquiries and Credit Rating or Economic Status*, available at http://www.eeoc.gov/laws/practices/inquiries_credit.cfm.

⁴ See *id* at 9.

particularly harmful to women, whose credit is often damaged because of domestic violence, and having been disproportionately targeted for toxic loans, among other reasons.⁵

Credit Reports are Notoriously Unreliable: Credit reports are often riddled with errors. According to a comprehensive study released in February 2013 by the Federal Trade Commission, 26 percent of American consumers had an error on a credit report from at least one of the three major credit reporting agencies.⁶ That same study found that 13 percent of consumers had errors that were damaging enough to lower their credit scores.⁷ And, although the Fair Credit Reporting Act provides people with a procedure for disputing errors on their reports, those disputes are often given a perfunctory review by the credit reporting agencies, which most often leave the errors uncorrected and the reports unchanged.⁸ Moreover, even successfully correcting errors often takes a very long time. Employers are not willing to hold jobs for potential employees while they sort out disputes with credit reporting agencies.

Employer Credit Checks Constitute an Invasion of Privacy: The use of credit checks by employers also represents an unprecedented invasion of privacy, particularly given that past due medical bills make up a significant number of accounts reported by collection agencies. For many job applicants, this means that, as a pre-requisite to employment, they have to expose and discuss their personal medical histories, as well as other highly personal events that appear in an individual's credit history, such as divorce.

There is No Correlation Between an Individual's Credit and Job Performance: There is no reliable research that has shown that an individual's credit history has a correlation with negative job performance.⁹ Nevertheless, and although credit reports were not designed as an employment screening tool, they are heavily marketed to employers by the major credit bureaus.

The Bill Would not Affect Local Small Businesses: A 2013 study by NYPIRG and NEDAP found that less than 4% of small businesses surveyed across New York City use credit checks of any kind in hiring decisions. This demonstrates that New York's small businesses know how to screen job applicants and that they don't need credit checks to do so.

For the reasons stated above, MFY Legal Services strongly supports the passage of A.7056/S.3868-B.

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⁵ See Fact Sheet, National Partnership for Women in Families, *Losing Ground: Unwarranted Credit Checks Create Barriers to Employment for Women* (November 2012) available at http://www.nationalpartnership.org/site/DocServer/Women_and_Credit_Checks_Fact_Sheet.pdf?docID=11521.

⁶ See Federal Trade Commission, Report to Congress Under Section 319 of the Fair and Accurate Credit Transactions Act of 2003 at 1 (December 2012); released to the public February 11, 2013), available at <http://www.ftc.gov/os/2013/02/130211factareport.pdf>.

⁷ See *id.*

⁸ *60 Minutes: 40 Million Mistakes: Is Your Credit Report Accurate?* (CBS television broadcast Feb. 10, 2013), available at http://www.cbsnews.com/8301-18560_162-57567957/40-million-mistakes-is-your-credit-report-accurate/.

⁹ See, e.g. Demos, *Discrediting Workers: How Credit Reports are Distorting the Job Market, Prolonging Unemployment, and Denying Equal Opportunity to Workers* 1-2 (2010) (quoting a TransUnion representative as saying "At this point we don't have any research to show any statistical correlation between what's in somebody's credit report and their job performance or their likelihood to commit fraud.") available at http://www.demos.org/sites/default/files/publications/Discrediting_Workers_Demos.pdf.