Proposed Changes in Massachusetts that Would Bar Use of Credit Reports by Employers

BY TRACY THOMAS BOLAND • APRIL 19, 2024

On March 14, 2024, the Massachusetts House of Representatives passed legislation that would prohibit employers from obtaining or using a true credit report for employment purposes. The bill is expected to pass the Senate and be signed by Governor Maura Healy. If passed, the law would go into effect January 1, 2025.

THE PROPOSED RULE

The proposed addition to the Massachusetts Consumer Protection Law, entitled "An Act Reducing Barriers to Employment Through Credit Discrimination", if passed, will be one of the most restrictive of its kind in the United States.

Under the proposed rule, employers are prohibited from using information in a credit report for the purpose of evaluating an individual for employment, promotion, reassignment, or retention. Employers cannot ask employees or applicants to waive the new law and any waivers will be considered void.

The rule is very broad and exceptions are only allowed under the following circumstances:

- Employer required by federal or state law (e.g. financial institutions) or the rules of a self-regulatory organization to use a consumer report for employment purposes; or
- Employee or applicant who applies for or holds a position that requires national security clearance.

The law also contains an anti-retaliation and anti-discrimination provision. Under the provision, employers are prohibited from taking adverse action against employees or applicants who:

- File a complaint alleging a violation of the Massachusetts Consumer Protection Act;

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- Allege violations of the law;
- Testify, assist, give evidence, or participate in an investigation concerning a violation of the law; or
- Oppose a violation of the new law.

Violation of the proposed rule would constitute a violation of the Massachusetts Consumer Protection Law, allowing individuals to recover monetary damages, attorneys' fees, costs, and if the violation is willful or knowing, double damages.

CLIENT TIP

Assuming the bill is passed, employers should review their background check process to determine if credit checks are being done on applicants or current employees. If credit reports are being conducted, the employer should determine if they fall under one of the narrow exceptions above. If an exception does not apply, employers need to stop performing credit checks for Massachusetts applicants or employees before January 1, 2025.

We will continue to monitor the development of the proposed law and provide further updates accordingly. Please contact your Bowditch employment lawyers with any questions.

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