



The Nelson A. Rockefeller Center at Dartmouth College

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ACCESS TO CREDIT HISTORY REPORTS IN THE HIRING PROCESS

An Analysis of Options for Legislation Limiting New Hampshire Employers' Use of Credit Reports

Presented to Senator David Pierce
New Hampshire Senate

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EXECUTIVE SUMMARY

The usage of credit history reports in employment decisions has emerged as a hotly-contested policy issue. For each of the last two legislative sessions, New Hampshire has considered a ban on the practice. Anticipating the possibility of similar proposed legislation in the future, we conduct an analysis of the practices that inform this issue and review a series of options that New Hampshire legislators may consider when determining whether or how to revisit the subject. We analyze the effectiveness, extensiveness, and reputation of the usage of credit history among employers, as well as the scope of legislation adopted by other states that limits the use of credit history reports. A review of existing literature provides insight into the credit score reporting process, the realities of poor credit, and the association between job performance and credit history. Analysis of national survey data, pro-business interest group statements, and an employer survey, deliver information on businesses' perspectives. Lastly, a comparative state analysis provides insight into the laws prohibiting the usage of credit history in employment decisions and reveals trends regarding the both the content of legislation and the legislative climate in which those laws were passed. We conclude by presenting possible policy options for New Hampshire legislators to consider.

1. INTRODUCTION

In 2014, New Hampshire legislators introduced SB 295, a bill designed to prevent employers from using information about job applicants' credit histories in hiring decisions. However, insufficient information about the efficiency and extensiveness of the practice created obstacles for that bill's advancement. This year, HB 365 proposed prohibitions to the use of job applicants' credit histories in the hiring process, with similar results. With strong proponents and opponents of this legislation both present, non-partisan research is necessary to present a series of policy options that legislators can consider as they decide whether to propose additional legislation, and options to keep in mind if they choose to draft it.

Three main issues guide this report. First, it is important to determine whether there is empirical evidence that directly supports the association between job performance and credit score history. This is vital for understanding why this practice exists and the extent of its utility as an evaluative measure for employers. Moreover, research is necessary to determine whether the association between credit history and job performance is the same in multiple sectors. This distinction could inform amendments that seek to reserve the use of credit history for some employment sectors like finance.

The second issue is the prevalence of this practice by employers. Do New Hampshire employers regularly use credit history checks as a part of their hiring practices? Determining the prevalence of the practice, as well as the extent to which employers in New Hampshire support or oppose curtailed access to credit history reports, will provide



context as to whether it is a practice that New Hampshire lawmakers may wish to continue to defend.

Finally, the third issue is how other similar states have come to pass legislation limiting the use of credit history reports in the hiring process. Analysis of other states that have successfully passed legislation on credit history will offer insight into the decisions that New Hampshire lawmakers may choose to consider as they determine how to proceed with regard to this issue.

2. METHODS

To derive a series of policy options, we review the current legislative context. After that, to address our first issue, we provide a comprehensive literature review in order to assess the relationship between credit history and job performance. Then, to address the prevalence of credit history checks, we take on three approaches: reviewing national trends, reporting the perspective of relevant New Hampshire interest groups, and conducting a survey of New Hampshire's largest employers. Finally a comparative analysis of two similar states offers options and possibilities for crafting future legislation, if that is the path New Hampshire's legislators choose.

3. LEGISLATIVE CONTEXT

3.1 New Hampshire Legislation

HB 365—the Employee Privacy Protection Act—would have prohibited employers from considering the credit history of an employee or applicant in employment decisions.¹ The bill made exemptions for financial institutions, state and local government agencies that require the usage of credit history in employment decisions, and any employer mandated to obtain an applicant's or employee's credit history under federal law or regulation. Additionally, it stipulated that employers may use credit history in employment decisions when such information is substantially related to an applicant's or employee's ability to perform the duties of a specific job. The posts that qualified for this exemption were managerial positions; positions that provide an employee with access to confidential financial information of customers, other employees, or the employer; posts that include a fiduciary responsibility to the employer; and positions that provide an employee with an expense account or corporate credit or debit card. The bill stated that employers in violation of this prohibition would be liable for a civil penalty and provided the labor commissioner with the authority to hand down these punishments. The bill also would have enabled employers to appeal these penalties.

3.2 New Hampshire Legislative Context

Introduced in 2014, SB 295, also called the Employee Privacy Protection Act, was a direct precursor to HB 365. Voting on SB 295, which similarly sought to prohibit the use



of credit history in New Hampshire, occurred predominantly along partisan lines. Democrats generally supported the new restrictions on credit history access and Republicans generally opposed it. SB 295 underwent two amendments and, after debate in two committees, was deemed inexpedient to legislate.

Representative Cushing introduced HB 365 in January of 2015.² This marked the second consecutive year that New Hampshire considered legislation limiting the use of credit history in employment decisions. The bill differed from SB 295 in only two ways. First, the earlier SB sought to disqualify credit history checks as an “unlawful discriminatory practice,”³ whereas the more recent HB did not use the language of discrimination. Second, the SB did not make provisions allowing for New Hampshire’s Labor Commissioner to apply penalties for employer violations, whereas the more recent HB did so. HB 365 did not make it out of the Labor, Industrial Services, and Rehabilitative Services Committee. Like its predecessor, it was deemed inexpedient to legislate. However, this recent legislative history suggests that it is possible that the issue could re-emerge in upcoming legislative sessions.

3.3 Federal Legislation and the Fair Credit Reporting Act

Understanding the strengths and weaknesses of the Fair Credit Reporting Act (FCRA) allows us to contextualize New Hampshire’s proposed legislation within the framework of federal laws. The FCRA promotes the accuracy, fairness, and privacy of information in the files of consumer reporting agencies. This act aims to reduce discrimination and promote fairness. Aspects of the FCRA aim to address similar issues illuminated in HB 365. The Fair Credit Reporting Act mandates employers to obtain authorization from employees before receiving a credit score report.

The FCRA provides protection for job candidates in the following ways. Companies that decide against a job candidate based on the information from a credit report are required by the Federal Trade Commission (FTC) to disclose that information.⁴ Moreover, they must: 1) share the contact information for the company that provided the credit report; 2) offer a statement that “the company that supplied the information didn’t make the decision to take the adverse action and can’t give you any specific reasons for it,”⁵ and; 3) inform individuals of their right to dispute the accuracy of their credit report. Finally, individuals who believe their credit report was used improperly by potential employers, according to the rules set out by the FCRA, are encouraged to report to the FTC, who may, in turn, bring a suit against the employer.⁶ Similarly, individuals who believe that their credit report was used to *discriminate* against them are encouraged to report to the Equal Employment Opportunity Commission, who may also file suit.⁷

Under the guidelines set by the FCRA, employers still have the right to refuse to hire individuals who do not agree to a credit check. Moreover, they still may choose to discriminate between candidates based on the results of a credit check, if the practice is “job related and consistent with business necessity.”⁸ Nevertheless, the FCRA promotes



protection (and provides recourse) for job candidates, and requires employers to explain to employees if they are taking adverse action against them in the hiring process based on their credit report.⁹ Therefore, some limits are already placed on the use of credit history in the hiring process without state action by New Hampshire. However, the FCRA differs from the legislation that New Hampshire has considered because it still allows all employers to use credit reports to inform any relevant hiring decision.

4. CREDIT HISTORY AND JOB PERFORMANCE

Various studies have analyzed the relationship between credit history and job performance. Overall, these studies reveal inaccuracies in credit score reporting which hamper an employer's ability to use credit history effectively. Additionally, factors used to generate credit reports vary and may have little relevance for job performance. Furthermore, credit reports can be discriminatory. The following analysis aims to provide insight into the association between credit history and job performance.

4.1 Inaccuracies in Credit Score Reporting

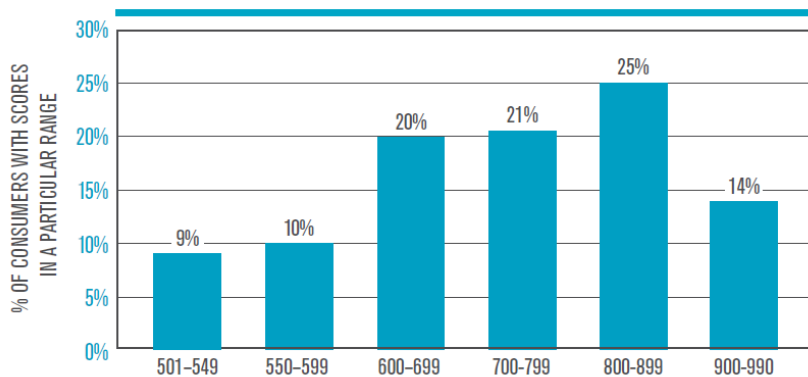
It is important to analyze credit score reports and their inaccuracies in order to understand whether credit score history is a useful evaluative measure in the hiring process. Literature reviews from Credit Scoring Associations and other institutions provide an account of the extent to which credit scores are able to predict employee performance. Credit Scoring Associations and other analytical organizations have identified the flaws in credit score reporting.

The bar graph in Figure 1 (shown on the next page) displays the distribution of the U.S. population by credit score. This information highlights how people compare to others within the country and how specific cut-off scores for certain jobs can affect large portions of the general population. For example, an employer requiring a credit score of 800 or higher is only allowing 39 percent of the U.S. population to vie for a position. This winnowing may be reasonable, given the scope of a position, such as for some jobs in the finance industry. However, cut-offs may become problematic if inaccuracies in credit reports lead to negative action against an otherwise-qualified job candidate. The question becomes: how common could this be?

A study conducted by the Consumer Federation of America revealed inconsistencies among reports provided by the three major credit reporting agencies. The study analyzed variances in the three reports generated for a single consumer and found that only 24 percent of the scores were consistent between the three reports.¹⁰ Credit report inexactitudes can be attributed to causes including but not limited to data entry errors and bureau processing errors.¹¹ Another key inaccuracy to consider is the fact that credit scores can be inaccurately interpreted because they use different scale ranges.¹² Furthermore, these reporting agencies omitted positive information, which would have increased a consumer's credit score.



Figure 1. Credit Score Distribution within the U.S. Population.



(Source: *Credit Score Basics, Part 1: What's Behind Credit Scores?*)

Similarly, a study by the Public Interest Research Group found that 29 percent of credit reports contained errors that could have resulted in a denial of credit.¹³ These same reports could be used by employers in the hiring process. This suggests that inaccuracies affecting decisions based on applied metrics and benchmarks may not be rare. Similarly, a study from the Federal Trade Commission found that many consumers have inaccuracies in their credit reports. While 21 percent of the participants in this study had an error in their credit reports, not all the errors were significant. Only one percent of the reports had a significant increase in credit score by 50 points.¹⁴ Overall, the studies suggest that errors are possible but are not necessarily reason enough to condone or ban the practice.

4.2 Realities of Poor Credit

In order to assess the association between credit score and job performance, it is important to understand what poor credit indicates. The literature on credit score yields little evidence that credit checks reveal relevant information related to employment. Instead, poor credit is often associated with factors like “lack of health coverage, and unpaid medical bills.”¹⁵ This information is vital for understanding that credit reports may be more indicative of the economic stresses on a household than on a candidate’s competencies and abilities.

Moreover, the factors that contribute to the generating of a poor credit score often have little association with effective money management. For example, Figure 2 (shown on the next page) lists a series of factors used to develop credit scoring systems. Several factors unrelated to financial decisions that an individual cannot control are included in the calculation of a credit score report, such as age, first letter of last name, and location of relatives.



Figure 2. List of Factors Used to Develop Credit Scoring Systems.
 (Source: *Credit Score Basics, Part 1: What’s Behind Credit Scores?*)

Telephone at home	Bank savings account
Own/rent living accommodations	Bank checking account
Age	Zip code of residence
Time at home address	Age of automobile
Industry in which employed	Make and model of automobile
Time with employer	Geographic area of U.S.
Time with previous employer	Finance company reference
Type of employment	Debt to income ratio
Number of dependents	Monthly rent/mortgage payment
Types of credit reference	Family size
Income	Telephone area code
Savings and loan references	Location of relatives
Trade union membership	Number of children
Age difference between man and wife	Number of other dependents
Telephone at work	Ownership of life insurance
Length of product being purchased	Width of product being purchased
First letter of last name	

A national survey on credit card debt of low and middle-income households reveals that poor credit is most often associated with traits such as having children, being African American, being unemployed, and having medical debt.¹⁶ Similarly, a study from the Federal Reserve found medical debt as a primary source for poor credit reports. For example, 15.7 percent of middle-income people and 23 percent of low-income people have large amounts of medical debt which can often result in poor credit.¹⁷

Additionally, the survey finds an association between job loss and poor credit. If a poor credit score, resulting from job loss, hinders applicants’ ability to be hired, those who are unemployed will be likely to remain unemployed.¹⁸ This association between job loss and poor credit results in a continuous cycle of unemployment and poor credit for many individuals.

4.3 Discrimination in Credit History

This literature also addresses the discriminatory aspect of credit scores and raises questions about the ethics of using credit history in the hiring process. The hiring process has taken measures to eliminate prejudice and discrimination. However, the use of credit history can invisibly reintroduce discrimination to the hiring process. “Credit Scoring Systems: A Critical Analysis” reveals that the credit scoring system is based on many discriminatory factors – such as age, race, and gender – that are may be ineffective when



it comes to predicting the performance of an employee.¹⁹ Credit score reports may therefore be discriminatory, making unfair prejudicial distinctions between different demographics. Consequently it is possible that unlawful discrimination could occur when a credit score is used to decide between candidates.

While the FTC states that “an employer must treat applicants equally regardless of race, national origin, color, sex, religion, disability, genetic information (including family medical history), or age,” the FCRA does allow for the use of credit checks (as well as other background checks) in hiring decisions. At the same time, the FTC concludes that the use of background information such as credit history can be considered illegal discrimination, “if it significantly disadvantages individuals of a particular race, national origin, or another protected characteristic.”²⁰ Consequently, the FTC specifies that employers should not implement a policy that is not related to the job or business necessity.²¹

Previously discussed literature shows how credit score can be discriminatory against income levels, health, family size, age, and race. The Equal Credit Opportunity Act attempts to address the potential for discrimination by preventing creditors from using credit reporting systems that include age as a factor. But because some scoring systems use age and race in a calculation opaque to many, the result is a situation where employers unknowingly discriminate by checking credit scores.²²

Quantitative studies regarding relationships between credit checks and race provide evidence that employers can potentially discriminate by using credit checks. Some members of the Equal Employment Opportunity Commission have found that credit checks have a greater negative impact on African Americans and Hispanics than on Caucasians.²³ Additionally, it has been found that African Americans and Hispanics typically have lower credit scores than non-Hispanic whites.²⁴ Another report provides evidence that counties with higher concentrations of racial minorities have lower credit scores and attributes this relationship to the lack of access for minorities to education and well-paying jobs.

The Brookings Institution maintains that further research is needed to determine whether the use of this information presented within a credit report should be used while screening applicants.²⁵ But many other organizations have taken a firmer stance on this issue. For example, civil rights organizations such as the NAACP, the National Council of La Raza, the Leadership Conference on Civil and Human Rights, and the Lawyers Committee for Civil Rights under Law have publicly opposed the use of credit reports in the hiring process due to the racially discriminatory aspect of credit checks.²⁶ These sources indicate that the use of credit scores in the hiring process can be discriminatory and have disproportionate detrimental effects on African-Americans and Latinos.



4.4 Association between Job Performance and Credit Score

Existing non-partisan research from academic and law journals indicates that there is little correlation between good credit score and good job performance. A study conducted in 2011 published in the *Journal of Applied Psychology* found no association between credit scores and negative workplace activity. Job performance was evaluated based on employer perspectives and credit scores were used to measure the association.²⁷ *The International Journal of Selection and Assessment* published their study's findings in 2008 which showed weak correlation between work behavior and an employee's self-reported survey about financial history.²⁸ Another study reveals negative effects on an employee that can result from personal financial stress.²⁹ However, this study does not show how stress can affect productivity.³⁰ Yet another study conducted on the predictability of job performance by credit history at a financial services corporation reveals that there is no relationship between the two factors. Another study found that no relationship between number of late payments and performance appraisal ratings existed.³¹ A paper published by Transunion, a credit scoring association, shows that one appropriate use of a credit score is as an indicator of the likelihood of defaulting on a debt.³² The likelihood to default on a debt may be relevant for employees in the financial sector because a main component of the job is money management. However, this information may not be applicable to all workforce sectors. Overall, policymakers and employers understand very little about the information revealed to employers through credit checks but, on the whole, the research suggests that the predictive value of credit scores on likely job performance is negligible.³³

4.5 Summary of Literature

As a whole, the current published research provides evidence that credit reports do not effectively predict job performance. Credit score reporting contains many inaccuracies. Additionally, many factors contributing to generating a credit score often are not indicative of effective money management. Moreover, the literature indicates several potential discriminatory aspects of credit reports. The inaccuracies, irrelevant factors, and discrimination revealed in the literature reviews provide evidence that credit history reports are largely ineffective at predicting job performance. Finally, there are few studies that assess the predictability of job performance by credit history and those that do exist do not prove correlation. The only sector where the use of credit history is shown to be a relevant benchmark for employment decisions is the financial sector.

5. EMPLOYER'S PERSPECTIVE

5.1 National Employer Usage and Perspective

Since businesses and other employers may use credit scoring as a measure to evaluate job candidates, understanding their perspective allows for a better understanding of credit



history's role in the hiring process. The following literature provides insight into why employers are interested in credit checks.

The Society for Human Resource Management conducted a survey about employer's use of credit checks from 544 randomly selected HR professionals. This survey reports national data but is relevant for New Hampshire businesses. The majority of the survey responses came from sectors such as manufacturing, healthcare, and social assistance, the three largest sectors in New Hampshire.³⁴ From 2010 to 2012, there has been a decrease in the use of credit checks by employers by 13 percent.³⁵

While this decrease suggests that employers are slowly beginning to stop using credit reports in the hiring process, this does not mean that employers think credit reports are ineffective at showing job performance. To the contrary, employers are finding favorable credit scores more important. This study reports an increase in employers' view of the importance of favorable credit scores from nine percent to 14 percent.³⁶ While previous work experience, education, and the interview still take precedent over credit score, this survey shows that credit scores do play a role in many hiring decisions.³⁷ Interestingly, this survey finds that larger organizations are more likely to conduct credit checks than smaller organizations.³⁸ Protecting the rights of small businesses is a major argument for allowing credit checks to be used in the hiring process; however, this survey shows that small businesses constitute a minority of users.

In 2010, Employment Screening Resources published a document intended to explain the "Use of Credit Reports for Employment Background Screening" for job applicants. This report acknowledges that credit scores have no relationship to job performance.³⁹ While employers are slowly beginning abandon credit checks as part of the hiring process, they still view it as a favorable predictor of job performance. Furthermore, this document suggests that employers order background checks when they are interested in hiring the applicant and want to ensure there is no business-related reason not to hire the applicant.⁴⁰

Other studies have shown how a majority of employers believe employees with good credit will be productive, less likely to steal from the company, and less likely to commit other crimes. Since employers believe that employees who manage their credit well will be the best employees, they are in favor of running credit checks on every employee in the company.⁴¹ Employers believe poor hiring decisions can have an impact of three times the salary of the individual who has an adverse impact on the company.⁴² Furthermore, they believe prior behavior can be indicative of future behavior. For all these reasons, employers may still wish to have the ability to conduct credit history reports when hiring. In sum, employers' beliefs regarding credit history reports run counter to both established research and their own practices. On the whole, they tend to believe credit checks provide valuable and meaningful information that can inform hiring decisions. But the frequency with which they check credit reports is on the decline, and the literature generally does not support their beliefs.



5.2 Interest Group Perspective

Larger economic and business interest groups can provide an overall perspective on the effects that legislation can have on individual businesses. Two interest groups' perspectives on the issue of using credit checks in the hiring process: the Business and Industry Association of New Hampshire (BIA) and the National Federation of Independent Business New Hampshire (NFIB) reveal support for using credit history in the hiring process. The BIA, in their 2014 Legislative Victories and Defeats for New Hampshire Businesses cited SB 295's failure to pass conference committee as a "victory" for businesses.⁴³ The BIA actively fought against the bill.⁴⁴ The organization admitted that the practice is not extensive in the state, however they felt that those who do use this method have "sound reasoning" for doing so. In a legislative update article this past April, the NFIB cited SB 295 as removing "yet another arrow from small business owner's quiver" in the hiring process referencing the necessity of these credit checks for those in retail and finance.⁴⁵ Overall, the interest groups that represent New Hampshire's employers strongly support the continued right for employers to conduct background checks, including credit history reports.

5.3 Employer Survey

We conducted an employer survey to provide a perspective on what New Hampshire employers actually think about this issue. A majority of the businesses in New Hampshire are small businesses with less than 500 employees. Of the 36,000 businesses in the state, only about 100 are considered large businesses employing more than 500 people. In contrast, there are 18,000 firms in New Hampshire that employ fewer than five people.⁴⁶ We looked at two lists of employers in the state of New Hampshire: the 50 largest employers in New Hampshire, and the top 24 fastest growing companies in the state, defined by Career One-Stop and Inc 5000 respectively. These 74 companies were compiled and sorted into representative key industries in the state. Of these 74 employers, 68 were reached out to via email and telephone at least once. Responses to interview requests were limited. The following table illustrates the survey response rate. Overall, local companies were extremely reluctant to participate in a survey about the use of credit history reports in hiring decisions.

Figure 3. Employer Survey Response Rate.

Total Number of Companies Contacted	68
Total Number of Respondents	8
Total Number of Interview Conducted	4
Representative Sector: Education	50% of respondents
Manufacturing	20% of respondents
Sales and Retail	20% of respondents



During interviews, the following questions were asked:

- 1 What do you think about SB 295?
2. Do you approve of using credit history in the hiring process?
3. To what extent do you currently use credit history in your hiring process, if you use it at all?
4. Do you believe credit history is a barrier to employment in New Hampshire?
5. How do you think the use of credit history in the hiring process affects a pool of job applicants?
6. Do you think that credit history is a good indicator of future job performance?

The few administrators we spoke with offered valuable perspectives. A representative from C & S Wholesale Growers, which specializes in wholesale food distribution, revealed that the company does not use credit checks in its hiring process.⁴⁷ Similarly, Hitchiner's Manufacturing Company does not use credit checks as a candidate's interview and aver that a candidate's previous experience within the industry is more useful to them than information provided by background checks.⁴⁸ An administrator at a university in the state informed us that her institution had only begun to use credit checks within the last three years. Under the new policy, average administrators and faculty members did not have to undergo a credit check. Only administrators with a signatory power of over \$50,000 underwent a credit check. The number of people with that administrative capacity is very limited within the university, and to the extent of her knowledge, no new employees had undergone a credit check. Only current administrators had their financial history looked into. She was of the opinion that a credit check may indeed be a barrier to employment within the state of New Hampshire since background checks are expensive. Given the size of her institution, such a cost was accounted for within the annual budget, but she believed that smaller businesses and institutions would most likely not have the means to extensively research their potential employees. This is of particular importance, she said, because a credit check can be a safeguard for companies against possible embezzlement of funds. During her previous job at a wholesale and retail store, an employee had been convicted for embezzling money from a cash room. As a result, she was of the strong personal opinion that a credit check may have prevented the firm from legal and financial trouble as a result of this incident.⁴⁹

Another state university administrator expressed that HB 365 poses important questions about credit history. Her academic institution also does not employ credit history checks in their general hiring process. It is only used in the instance of hiring administrators that would have a financial responsibility to uphold. She was of the opinion that individuals should not be penalized for mistakes that they had made earlier in life with the management of their finances. This was especially the case, she said, since our society perpetuates a culture of debt where it is often necessary for young adults to take out loans to complete an education, or to buy their first car or house. It may often be the case that young people are not aware of the repercussions that poor credit history can have on their futures, so to have it affect their future job prospects is unfair in her opinion. She also



expressed that a person's current state of credit history is not indicative of any proactive measures they may be taking to remedy their credit situation.⁵⁰

Because only four interviews were successfully conducted, no generalizations are possible. However, it is worth noting that these interviews are consistent with the national trends about the use of credit history previously described in Section 5.1. None of the interviewed parties expressed that they used credit history on a wide scale. And one of these interviewees independently offered agreement with the findings from the national survey conducted by the Society for Human Resource Management about the ability of smaller businesses to conduct credit checks, as she explained that it is a cumbersome cost. However, as this survey did not aim to survey small business owners, the number of small companies that conducts credit checks remains unknown. Consequently, in reviewing the perspective of local employers, this report can only conclude that New Hampshire's business interest groups do articulate their opposition to legislation curtailing credit checks, while the practice is on the decline nation-wide.

6. CASE STUDIES

A comparative state analysis sheds light on other states that have passed legislation restricting the use of credit history in hiring decisions. This report considers the economic makeup of these states, the legislative history of their bills and the content of their legislation.

6.1 Selection Criteria

Eleven states have passed legislation restricting the use of credit history in hiring decisions: California, Connecticut, Maryland, Illinois, Hawaii, Vermont, Colorado, Nevada, Washington, Oregon and Delaware. This report analyzes Hawaii and Illinois because of similarities between these two states and New Hampshire.

This report focuses on Hawaii because, of the eleven that have passed credit history legislation, it is the most economically comparable state to New Hampshire. Hawaii has a slightly larger gross domestic product than the Granite State and a workforce about 10 percent smaller. Hawaii ranks 39th nationwide in terms of GDP and 42nd in terms of the size of the state workforce,⁵¹ while New Hampshire ranks 41st and 40th, respectively.⁵² The five largest sectors are Office and Administrative Support occupations, Sales and Related occupations, Production and Manufacturing occupations, Food Preparation occupations, and Transportation and Material Moving occupations.⁵³ Similarly, the five largest sectors of the New Hampshire economy are Administration, Sales Related occupations, Food Preparation, Production and Manufacturing, and Management.⁵⁴ Accordingly, analyzing credit history legislation in Hawaii enables us to consider how an economically similar state grappled with this economic policy issue.



This report spotlights Illinois because of the relative bipartisanship that surrounded the passage of its credit history legislation. Although the Democrats controlled both chambers of the Illinois legislature when this legislation passed, members of both parties voted in favor of the bill. Given that passage of similar legislation in the Granite State would require bipartisanship, Illinois’s legislation and legislative history offer insight into potential avenues to achieve compromise on credit history legislation. But the relevance of Illinois to New Hampshire ends with its legislative history. Illinois has a substantially larger economy, ranking fifth in the nation in terms of both GDP and size of workforce.⁵⁵ Nevertheless, the state’s legislative history renders it a worthwhile inclusion in our comparative analysis.

The following table presents the two states we compare to New Hampshire in terms of their legislative exemption, GDP, and size of the state labor force.

Figure 4. Comparative State Analysis

(Source: U.S. Bureau of Economic Analysis (2007 NAICS) and U.S. Bureau of Labor Statistics)

State	Total Read GDP by State in 2013 (millions of 2009 chained dollars)	Nationwide Ranking by GDP	Size of the Labor Force By Population (2013)	Nationwide Ranking by Labor Force Size	Bona Fide Exemption
New Hampshire	64,118	41	736,228	40	N/A
Hawaii	70,110	39	666,714	42	Yes
Illinois	671,407	5	6,510,680	5	Yes

6.2 Hawaii Legislative History

HB 31—Hawaii’s prohibition on the usage of credit history in employment decisions—passed in 2009 during the 25th Hawaii Legislature, comprised of a Senate made up of 23 Democrats and 2 Republicans⁵⁶ and a House made up of 45 Democrats and six Republicans.⁵⁷ The final version of the bill passed 43 yeas to six nays in the House, with 43 Democrats voting in favor, all six Republicans voting in opposition, with two Democrats not voting.⁵⁸ In the Senate, the bill passed 23 yeas to two nays, with all Democrats voting in favor and both Republicans in opposition.⁵⁹ Governor Lingle, a Republican, vetoed the bill, citing concerns that the bill would make it more difficult for companies to hire and retain employees and that it would impose higher costs on businesses during hard economic times.⁶⁰ However, her veto was overruled by a vote of 23 yeas to two nays in the Senate, with all Democrats in favor and both Republicans in opposition,⁶¹ and a vote of 41 yeas to four nays in the House, with no Republicans voting in favor and only one Democrat voting in opposition.⁶² As in most states, the use of credit history in employment decisions became a highly partisan issue in Hawaii.



6.2.1 Hawaii Legislation

HB 31 prohibits employers from considering an applicant's or employee's credit history in decisions to refuse to hire, fire or otherwise discriminate against an employee.⁶³ HB 31 grants certain types of employers and positions bona fide occupational exemptions, in which case the act permits employers to discriminate based on credit history.⁶⁴ Bona fide occupational exemptions include employers who are permitted or required to inquire about an applicant's or employee's credit history or credit report by federal or state law, if the employer is a financial institution where deposits are insured by a federal agency with jurisdiction over the institution, and positions that are managerial or supervisory.⁶⁵ The act defines managerial positions as those that grant the employee the authority to create and carry out company policy by expressing and implementing business decisions.⁶⁶ The act defines supervisory positions as those that grant the employee the authority to hire, transfer, suspend, lay off, recall, promote, discharge, assign reward, or discipline other employees, direct other employees, resolve employee grievances, or recommend any of the above action.⁶⁷ However, under the act, the employee must use his or her judgment rather than follow routine or clerical protocol for the position to qualify as supervisory under HB 31. In cases that qualify for a bona fide occupational exemption, the employer may only inquire into an applicant's credit history after extending a conditional offer of employment.⁶⁸ Furthermore, HB 31 amends the state statute on discriminatory employment practices, including discrimination based on credit history alongside discrimination based on factors such as race, gender, sexual orientation and religion.⁶⁹

6.3 Illinois Legislative History

For HB 4658, Illinois's legislation banning credit history usage in the hiring process, passage through both legislative chambers was relatively smooth. The bill had 24 cosponsors between the House and the Senate. The bill was introduced to the House's Judiciary I - Civil Law Committee in January 2010.⁷⁰ Two amendments were introduced and approved before the bill was passed on to the Senate where two more amendments were shortly debated and approved. All four amendments were predominantly about changing the terminology and language of the bill. For example, the second House amendment sought to change the language from only including credit score to also including references to "credit history."⁷¹ SB 4658 was signed into law in August 2010.⁷² In the Senate, all Democrats voted in favor of the bill, while four Republicans voted in favor, 12 voted against and six did not vote.⁷³ In the House, 66 Democrats voted in favor while two were excused and two were absent. Twenty-three Republicans voted in favor, 24 voted against and one was excused.⁷⁴

While we do not know definitively why the Illinois bill enjoyed relative bipartisan support while the Hawaii bill did not, a key difference between the bills presents a potential reason. The most significant difference between the two bills lies in Illinois' definition of credit checks an employment issue and Hawaii's definition of credit checks



as a human rights issue. Given this divergence and the discrepancy in bipartisan support between the two bills, we believe how potential legislation categorizes the usage of credit history is an important consideration that potentially impacts support.

6.3.1 Illinois Legislation

Similar to other states, HB 4658 has exemptions for employers who are hiring for government agencies, banks, and other financial institutions. These jobs are considered to have "bona fide occupational requirements" because they carry an element of integrity, require working directly with money, deal with other confidential matters, or require having a say in the direction of a business.⁷⁵ Employers cannot acquire credit reports and use it as factor in hiring, terminating, or establish contractual conditions with an employee. Companies in Illinois are asked to carefully consider whether they qualify for the bona fide exemption before referring to an individual's credit history in their employer decisions.⁷⁶

7. POLICY OPTIONS

The challenges of credit history legislation present state policymakers with three areas of concern for NH: the precise definition of credit history legislation as either an employment or civil rights issue, the tradeoff between exemptions and legislative strength, and whether or not to implement credit history legislation for government employees. For each of these issues, there are options that New Hampshire can use to shape future credit history legislation, if it chooses to do so. Beyond that, however, New Hampshire legislators must decide whether they wish to pursue the issue in the next legislative session.

7.1 Deciding Whether to Legislate on Credit History

The first question that New Hampshire faces is whether it should draft another bill to limit an employer's access to credit histories of job applicants. On the one hand, the research reviewed above shows that credit history is a poor indicator of job performance. Moreover, credit history is shown to correlate with other protected traits, and consequently it could be used to discriminate in a way that may significantly disadvantage individuals with a particular characteristic. In other words, employers may be unknowingly discriminating when they make hiring decisions based on credit history. Thus, the strongest reasons to pursue credit history legislation are because credit history has no proven correlation with workplace performance and because credit history does have a correlation with other characteristics so that its use could lead to discrimination.

On the other hand, the FCRA has already put in place a series of measures to protect workers against discrimination based on background checks. While the information used to calculate a credit score may be opaque to many, the decision not to hire someone based on their credit score cannot legally be opaque. Companies that decide against a job



candidate based on the information from a credit report are required by the FTC to disclose that information.⁷⁷ Individuals who believe that their credit report was used inappropriately may seek recourse through the FTC or EEOC.⁷⁸ Therefore, some federal protections already exist for individuals who believe that their credit history was used unfairly in a hiring decision. Moreover, it is currently unclear how common a practice it is for New Hampshire employers to check an applicant's credit history before making hiring decisions. The employer survey conducted by this report cannot be used to make any determination on this matter, as the state's employers overwhelmingly chose not to participate in the survey. However, national surveys, such as the one conducted by the Society for Human Resource Management, show the practice to be on the decline. This survey focused on sectors of the economy that are prevalent in New Hampshire, indicating that state trends may match national trends.

With all this in mind, if state legislators determine that the FCRA provides adequate protection for New Hampshire's workforce, then they may decide that no further legislation is necessary. At this point, no additional decisions would be needed; a revised version of the Employee Privacy Protection Act would not be required, according to this perspective.

Alternatively, if legislators decide that the current knowledge of employers' hiring practices does not presently impel additional legislation, they may choose to undertake further study. That study may need to take place under the imprimatur of a New Hampshire agency, such as the Department of Labor, as employers proved unwilling to discussing hiring practices to a private outside party. A better understanding of hiring practices in the state could affect decisions about legislation. If a study determines that credit checks are rare among New Hampshire employers, then it is possible that legislation would be less necessary than it would be if it were a common practice.

If, however, legislators conclude that the possibility of discrimination or other malfeasance resulting from a candidate's credit report could potentially outweigh the benefit employers may receive from knowing a candidate's credit history, then they may determine that some degree of additional legislation is warranted, irrespective of the frequency of credit history checks. Should legislators decide to pursue additional legislation, then they would need to make additional decisions that would shape the scope and limits of their proposed regulations. The next sections enumerate those options.

7.2 Definition as Employment or Civil Rights Issue

The two states we use in our comparative analysis, Illinois and Hawaii, define the issue of discrimination based on credit history differently. As noted earlier, Illinois treats the usage of credit history solely as an employment issue, whereas Hawaii includes discrimination based on credit history as a violation of the state statute on discriminatory practices, grouping it with discrimination based on factors such as race, gender, sexual orientation and religion. This is important because, if credit history checks by potential



employers are defined as unlawful *discriminatory* practices rather than unlawful employment practices, then they may be more likely to be prosecuted through the EEOC.

Defining the usage of credit history as a civil rights issue indicates the state's view that discrimination based on credit information is a particularly egregious violation. However, if the legislature believes discrimination based on credit history is not a civil rights issue, such a categorization is inappropriate. Therefore it is possible that one way to move past partisanship if a bill does not have adequate public or legislative support for passage would be to ensure that the practice is defined narrowly as an employment issue rather than a civil rights issue.

We base this observation on Illinois' legislative history. The primary sponsor of HB 4658 introduced another bill that was considered simultaneously which would have amended the Illinois Human Rights Act to prohibit discrimination based on credit history.⁷⁹ However, this bill was tabled in favor of HB 4658,⁸⁰ which eventually passed with bipartisan support.⁸¹ Narrowing the scope of the bill ultimately led to broader support in Illinois. While this remains an option for New Hampshire, the fate of HB 365 indicates that definitional changes are not, on their own, significant enough to affect the path of credit history legislation in the Granite State. After all, the language of SB 295 focused on unlawful discriminatory practices, whereas the later HB 365 did not.

Despite Illinois' example, Hawaii proves that legislation defining credit checks as discriminatory is possible. However, few other states include language explicitly speaking to the practice of discrimination. Voting on Hawaii's bill took place along highly partisan lines, but it was ultimately possible because of the high proportion of pro-legislation Democrats. All in all, New Hampshire will need to determine for itself how it wishes to define and contextualize the usage of credit history in its legislation.

7.3 Tradeoff between Exemptions and Legislative Strength

As detailed in the sections on legislation, both the Hawaii and Illinois acts provide numerous exemptions from the prohibition on using credit history in employment decisions, including exceptions not included in proposed New Hampshire legislation. Hawaii allows the usage of credit history if the position in consideration is of a supervisory nature. As previously noted, such positions grant an employee the authority to hire, transfer, suspend, lay off, recall, promote, discharge, assign reward, or discipline other employees, direct other employees, resolve employee grievances, or recommend any of the above action. Furthermore, Illinois permits consideration of credit history if the employer is required by law to bond or secure an employee (such action constitutes taking out insurance against employee misconduct that causes company losses). Additionally, Illinois exempts employers from its prohibition that current New Hampshire legislation does not. These employers are insurance companies, debt collectors and law enforcement and state investigative units (see previous sections for detailed exemptions in both states).



Broad exemptions help to ensure that companies will not be exposed to additional risk through their compliance to these provisions. Additionally, such exemptions help to guarantee that the prohibition on credit discrimination will not place an undue burden on companies as they navigate the hiring process. However, such broad exemptions may significantly dilute the power of the legislation. Heidi Lane, a Connecticut Department of Labor attorney, noted that one Connecticut exemption allows companies to consider an applicant's credit if the position provides access to the employer's nonfinancial assets valued at \$2,005 or more, enabling employers to consider almost all employees' and applicants' credit history.⁸² For example, a position that provides access to the company's computers would likely qualify for this exemption. She noted that a bill has been proposed in the current legislative session which would eliminate this provision.

Consequently, New Hampshire may want to carefully consider the included exemptions. One option to consider is that exemptions can be presented narrowly as in the case of Hawaii, or they can be more expansive as in the case of Illinois. The most expansive example of included exemptions is Connecticut's, which effectively included language so broad that it significantly tempered the effectiveness of the bill. As more exemptions are defined, opposition may become less pronounced. However, the legislation becomes progressively less effective as the language is mitigated. Exemptions, in short, could bolster support of a credit history bill while simultaneously lessening its effectiveness. New Hampshire legislators will need to determine for themselves the balance that they want to strike as they consider such legislation.

7.4 Government Usage of Credit History

Prohibiting the usage of credit history in employment decisions made by both local and state government agencies has been suggested by the literature and was noticeably lacking from both the Hawaii and Illinois legislation.⁸³ Similarly, no provision currently exists that would restrict an employer's ability to access an employee's credit history in New Hampshire. Irrespective of whether New Hampshire does use credit history in hiring decision, it currently could if it so chose. Therefore one course of action would be to effectively pass credit history legislation affecting hiring processes for government employees.

Mandating that the government follow the same rules as the private sector would demonstrate that state and local governments have confidence in such a prohibition and would give the legislation additional legitimacy. Additionally, such a provision would enable state and municipal governments "to directly remove a barrier to public employment for citizens with impaired credit and send a message to private firms about the shortcomings of employment credit checks."⁸⁴ Alternatively, prohibiting government use of credit history for some positions would be a possible strategy to adopt, even if a wider bill does not pass.



8. CONCLUSION

This report aims to evaluate the policy implications of a prohibition on the usage of credit history in the hiring process by analyzing the practice's effectiveness, extensiveness and reputation amongst employers. To assess whether credit history is an appropriate indicator of an employee's job performance, we analyzed the literature on credit history. The few studies that investigate this topic do not suggest a correlation between credit history and job performance. Furthermore, the literature suggests credit scores are often inaccurate, irrelevant and discriminatory. Accordingly, credit history does not appear to effectively predict job performance.

A review of national interest polls and interest group perspectives, and an employer survey, illustrates employer attitude towards credit checks. National data suggests that employers believe credit history indicates job performance. Additionally, business interest groups in the state believe employers should be permitted to utilize credit checks. However, interviewees expressed mixed opinions regarding the effectiveness and appropriateness of this practice. Furthermore, the interviewed businesses generally only use credit checks if the position in consideration grants signatory power, suggesting that most corporations will not have to drastically change their employment practices if HB 365 passes.

Lastly, this report considered other states that have imposed bans on the consideration of credit history in employment decisions to ascertain the extensiveness of the practice. Eleven states currently prohibit the usage of credit history, most of which have instituted these policies within the last five years. The two states we specifically considered in our comparative analysis—Illinois and Hawaii—demonstrated two main patterns. Both passed legislation with Democratically controlled legislature. Additionally, both laws have provisions exempting positions and industries that require employees to exhibit high degrees of fiscal responsibility. These states offer possibilities for New Hampshire's legislators to consider as they debate legislation on the use of credit history in the hiring process. Contextualizing credit history within the law, deciding on the extent of exemptions, and evaluating the role of the state government all can affect the outcome of this legislation.



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