

Offered by Councilors Andrea J. Campbell and Kim Janey



## CITY OF BOSTON

IN THE YEAR TWO THOUSAND TWENTY

### AN ORDINANCE AMENDING CHAPTER 12-9 OF THE CITY OF BOSTON CODE – ORDINANCES, REGARDING HUMAN RIGHTS

*WHEREAS*, Employment is necessary to achieve independence in today’s society; and a right for City residents; *and*

*WHEREAS*, The City of Boston Code currently protects persons from discrimination based on race, sex, gender identity or expression, age, religious affiliation, ability, national origin, ancestry, sexual orientation, marital status, parental status, ex-offender status, prior psychiatric treatment, and military status; *and*

*WHEREAS*, Some employers use credit checks as one determinative criterion in the hiring process; *and*

*WHEREAS*, Credit checks have proven to be a barrier to employment for individuals burdened with student loans, medical bills, or those who have been involved in the criminal justice system; *and*

*WHEREAS*, Hiring practices based on credit reports are discriminatory and should be undertaken as complaints by the Boston Human Rights Commission.

*NOW, THEREFORE*

*Be it ordained by the City Council of Boston, as follows:*

SECTION 1. The City of Boston Code, Ordinances, is hereby amended in Chapter II by inserting the following new sections and subsections after existing Section 12-9.3:

#### **Chapter 12-9.3A. Discriminatory Practices Regarding Protections Against Unlawful Credit Discrimination**

##### **12.9.3A.1. Purpose and Definitions**

The procurement or use of credit information in connection with hiring, discharge, tenure, promotion, discipline or consideration of any other term of employment, that are neither job related nor consistent with business necessity and causes a disparate impact on the basis of race, color, national origin, sex,

or religion, shall be an unlawful discriminatory practice. The enforcing agency shall be the Boston Human Rights Commission.

(1) For purposes of Chapter 12-9.3A the following terms shall have the following meanings:

*Applicant* shall mean any person considered for, or who requests to be considered for, employment by an employer.

*Credit Information* shall mean any written, oral, or other communication of information regarding a person's: debt; credit worthiness, standing, capacity, score or history; payment history; charged-off debts; bank account balances or other information; or bankruptcies, judgments, liens, or items under collection.

*Commission* shall mean the Human Rights Commission.

*Employer* shall mean any individual, partnership, association, corporation, trustees, public charity, foundation, political subdivision, board, department, commission, agency or any other person which engages and controls the services of an individual in the City of Boston in exchange for monetary or other valuable consideration, except that it shall not include any employer with six (6) or less persons in its employ, exclusive of parents, spouse or children, nor does it include a club exclusively social, or a fraternal association or religious organization, incorporated or unincorporated, if such fraternal association or religious organization is not incorporated for profit and if the primary function thereof is religious or fraternal. See City of Boston Code 12-9.2.

*Financial Institution* shall mean any bank, savings and loan association, credit union, trust company, insurance or surety company, bank holding company, financial holding company, investment advisor, broker-dealer, entity registered with the U.S. Securities and Exchange Commission, or any subsidiary or affiliate thereof.

Any terms not defined should be read consistent with Federal Trade Commission (FTC) and Fair Credit Reporting Act (FCRA) definitions and regulations.

(2) Subsection (1) shall not apply to a particular position or employment classification where credit information is an established bona fide occupational requirement. Credit Information shall be considered a bona fide job qualification for the following:

- (a) to any law enforcement agency or financial institution;
- (b) to the City of Boston with respect to efforts to obtain information regarding taxes or other debts owed to the City;
- (c) if such information must be obtained pursuant to state or federal law;
- (d) if the job requires an employee to be bonded under City, state, or federal law;
- (e) if the job is supervisory or managerial in nature and involves setting the direction or policies of a business or a division, unit or similar part of a business;

(f) if the job involves significant financial responsibility to the employer, including the authority to make payments, transfer money, have custody of or access to business assets or cash valued at over \$2,500, collect debts, or enter into contracts, but not including handling transactions in a retail setting;

(g) if the job requires access to financial information pertaining to customers, other employees, or the employer, other than information customarily provided in a retail transaction; or

(h) if the job requires access to confidential or proprietary information that derives substantial value from secrecy;

Subsection (2) does not prevent employers from researching potential employee's background and experience including resumes and references through online searches such as Google or LinkedIn.

### **12-9.3A.2 Penalties**

(1) If a person believes that an employer has engaged in an unlawful discriminatory practice related to credit history, the Boston Human Rights Commission retains the right to issue a complaint and follow investigative procedures according to CBC 12-9.11 through 12-9.12.

(2) If an employer relies, in whole or in part, on credit information to consider adverse employment action with respect to any person, and subsection 12.9.3A(2)(d),(e),(f),(g), or (h) applies, the employer:

(a) shall disclose the fact of such reliance to the person in writing and identify and provide the particular information upon which the employer relied; and

(b) give the employee or applicant an opportunity to explain the circumstances surrounding the information at issue before taking any such adverse action.

(3) If an employer relies, in whole or in part, on credit information to consider adverse employment action with respect to any person, they shall be subject to:

(a) fines in the amount of one hundred (\$100.00) dollars for each discriminatory complaint incident found to be valid by the Boston Human Rights Commission investigation process.

SECTION 2. The provisions of this ordinance shall take effect thirty (30) days after passage.

SECTION 3. The provisions of this ordinance are severable and if any provision, or portion thereof, should be held to be unconstitutional or otherwise invalid by any court of competent jurisdiction, such unconstitutionality or invalidity shall not affect the remaining provisions, which remain in full force and effect.

Filed on: August 19, 2020