THE CRIMINAL FOR CRIMINAL-IN-EMBRYO EFFECT: 
A DISTURBING CONSEQUENCE OF SECOND CHANCE LAWS

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ABSTRACT
Second chance laws (also known as criminal record expungement laws) enacted in the presence of equal employment laws, as currently scripted, can effectuate the preferential treatment of convicted criminals over individuals with no criminal record in hiring decisions – what this paper identifies as the “Criminal for Criminal-in-Embryo Effect” or simply, the “CCE Effect.” This paper formalizes the CCE Effect using rational choice and signal detection models. State and federal laws and bills are analyzed; their likelihood of producing the CCE Effect is discussed. Demonstrably, in order to prevent the CCE Effect or the possibility that laws will cause the preferential hiring of convicted criminals over individuals who abide the law, where second chance laws exist, bankruptcy filers must be granted a better fresh start - one which effectively prevents employer detection of bankruptcy records. Moreover, this paper advocates for improvements to equal employment laws in order to prevent the CCE Effect and provide greater equity for law-abiding bankruptcy filers in the sphere of employment.


INTRODUCTION
Imagine that you are asked on a job application “Have you ever been convicted of a crime that has not been expunged?” You have never been convicted of a crime. You answer “no.” A credit check is run and due to a bankruptcy record, you are denied employment. Meanwhile, a convicted criminal who had his record expunged also answers “no.” He does not have a bankruptcy record and gets the job over you.

Can you fathom a hiring sign that reads: “Now Hiring: FELONS convicted of FRAUD. (Honest Debtors: Please take your honesty elsewhere.)”? It goes without saying that a legitimate business typically would not be inclined to knowingly hire individuals who have been convicted of crimes over those who have not. Similarly, law-abiding job seekers would likely take umbrage, justifiably so, if convicted criminals were to receive preferential treatment over them in hiring decisions. Nonetheless, the federal government and a number of state legislators have either proposed bills or enacted laws which induce employers into hiring convicted criminals over law-abiders. Indiana legislation is a prime example of this travesty of justice.

In 2012, the Indiana legislature passed a “Second Chance Law” (the House Enrollment Act No. 1482) to eliminate discrimination against those

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1 In the spirit of the principle underlying the American legal system, “innocent until proven guilty,” the authors of this paper will presume an individual is “law-abiding” if such individual does not have a criminal record.
with arrest, prosecution, or conviction records and to give those with conviction records “a second chance to elevate their lives,” especially in securing employment. Unfortunately, the law helps to elevate convicts above law-abiding bankruptcy filers, who, although entitled to a fresh start, are not granted similar provisions to ameliorate the adverse effects bankruptcy records have on their lives going forward, especially with respect to employment. (Local Loan Co. v. Hunt, 292 U.S. 234, 244) As will be more thoroughly explained, second chance laws (“second chance laws” will be used in reference to criminal record expungement2 laws) and equal employment laws (“equal employment laws” will be used in reference to laws which aim to protect an individual against credit history discrimination), as currently scripted, can effectuate preferential treatment of convicted criminals over individuals with no criminal record in hiring decisions – what this paper terms the “Criminal for Criminal-in-Embryo Effect” or simply, the “CCE Effect.” This paper attempts to argue for revisions of equal employment laws by means of a novel reason not yet found in current literature: prevention of the CCE Effect. Specifically, in order to prevent the CCE Effect or the possibility that laws will cause the preferential hiring of convicted criminals over individuals who abide the law, bankruptcy filers must be granted a better fresh start - one which effectively prevents employer detection of bankruptcy records.

The rationale for this paper is justified by and rooted in the self-evident principle that convicted criminals should not be provided a better fresh start than law-abiding bankruptcy filers who are guaranteed a fresh start by law. Hence, the current paper excludes discussion of empirical evidence of the CCE Effect, as such data, although deserving of merit, is inessential for this paper to have substantive value and to foster rational credulity. It is more important that lawmakers acknowledge the reasoned existence of the CCE phenomena and concede that additional steps must be taken to provide equity for law-abiders in the sphere of employment.

BANKRUPTCY RECORDS

Adverse Employment Decisions

Bankruptcy is a legal right intended to provide a “fresh start” for the “honest but unfortunate debtor” in order to “clear the field for future effort.” (Local Loan Co. v. Hunt, 292 U.S. 234, 244) Although bankruptcy is not a crime, bankruptcy filers suffer from adverse effects that their public records have on their lives going forward. It is estimated that bankruptcy is considered in hiring decisions by 25% of employers, (Minehan) and one particular study revealed that bankruptcy was the reason for employment denial according to 45% of post-bankruptcy job applicants who were denied employment. (Thorne)

Accessibility

Bankruptcy records are accessible to employers. Not only can employers directly access bankruptcy records through court systems (GPO.gov), credit reports also include bankruptcy filings. (Credit Reports and Credit Scores) Although the Bankruptcy Code generally prohibits employment discrimination on the basis of bankruptcy filing, such discrimination is difficult to regulate (Traub, Discredited: How Employment Credit Checks Keep Qualified Workers Out of a Job) and many courts have agreed that section 525(b) of the Bankruptcy Code actually permits discrimination in hiring decisions in the private sector (Herz). In addition, the Fair Credit Reporting Act (FCRA) permits employers to run credit checks on potential hires and existing employees and to make employment decisions based on information contained therein. (Fair Credit Reporting Act 15 USC 1681)

Credit Reports

Employer use of credit reports for hiring decisions is common. Research firm GFK Knowledge Networks revealed that among households included in a study of low and middle-income households, over 14% recalled being asked by an employer or prospective

2 Expungement will be defined as the “process by which [a] record of criminal conviction is destroyed or sealed.” (Garner)
employer to authorize a credit check. The number was even higher among unemployed respondents at 25%. (Traub, Discredited: How Employment Credit Checks Keep Qualified Workers Out of a Job) The firm’s researchers also opined that these estimates may tend conservative, due to applicant forgetfulness as a result of the “flurry of paperwork” during the application process and because higher-income households were excluded from the survey – a population more likely to be credit checked by employers. (Traub, Discredited: How Employment Credit Checks Keep Qualified Workers Out of a Job) A study conducted by SHRM (Society for Human Resource Management) lends support to this conjecture and suggests that in actuality almost half of organizations (47%) perform credit checks on potential hires. (Management)

Profiling

James Whitcomb Riley is credited to have said: “When I see a bird that walks like a duck and swims like a duck and quacks like a duck, I call that bird a duck.” (Heim) This logic seems rather intuitive. Unfortunately, many employers tend to judge according to a less sensible criteria: “When I see a bird that might walk like a duck and might swim like a duck and might quack like a duck – I call that bird a duck.” Although credit records were originally intended to be used for lending purposes as opposed to job screening, employers tend to use them to gauge an applicant’s propensity towards fraud, theft, bribery, and blackmail. (Traub, Guest Commentary: Unfair use of credit checks on job seekers) (Dwoskin) (Huhman) (Reilly) According to SHRM, the most common reason cited by employers for use of credit histories in employment decisions is to prevent theft, embezzlement, or other criminal activity. (Background Checking—The Use of Credit Background Checks in Hiring Decisions ) To this end, employers “generally use credit checks only for jobs involving financial or fiduciary responsibilities, senior executives, and positions where employees will have access to highly confidential information.” (Gurchiek) In sum, credit reports are being used to identify future criminals, especially for jobs relating to the handling of money, of executory capacity, or requiring a significant degree of confidentiality. Employers are deciding who to hire based on the discriminatory criteria: “If I see a job applicant that might commit theft like a criminal, might embezzle like a criminal, or might commit other criminal activity like a criminal, I call that job applicant a criminal.”

INNOCENT UNTIL PROFILED GUILTY

An individual who exercises his/her right to file for bankruptcy must be precluded from being profiled a criminal. In fact, numerous studies confirm that the magnitude of correlation is insignificant or that the correlation is nonexistent between adverse credit and the following: an enhanced propensity to steal, theft, credit card misuse, solicitation or acceptance of anything of value that is prohibited by law, or production deviance. (Berneth) (Oppler) Additionally, a Transunion Credit Bureau (one of the three major credit bureaus that furnish credit reports to employers) representative has stated under oath that there exists no “research to show any statistical correlation between what’s in somebody’s credit report and…their likelihood to commit fraud.” (Martin) Moreover, U.S. laws are principally premised on the presumption of an individual’s innocence until proven guilty, as opposed to innocence until profiled guilty via an irrelevant credit history evaluation. (Coffin vs. U.S., 156 U.S. 432, 432–463) Permitting the discrimination of bankruptcy filers is antithetical to the principles underlying America’s judicial system. Bankruptcy filers have a right to a fresh start and a right not to be treated like criminals as filing for bankruptcy is not a crime.

CRIMINAL FOR CRIMINAL-IN-EMBRYO EFFECT

Bob “The Bankrupt” and Frank “The Felon”

Please meet Bob “The Bankrupt” and Frank “The Felon.” Bob is applying for a job. He has no criminal record, but has recently filed for bankruptcy. Frank is applying for the same job and is a felon convicted of fraud. His criminal record has been expunged. Martha is looking to hire either Bob or Frank and does not want to hire someone who may engage in counterproductive work behavior such as fraud. Due to Frank’s
criminal record expungement, Martha is unaware he was ever convicted of committing fraud. Martha pulls a credit report for each applicant and Bob’s bankruptcy record prompts concern. In effort to mitigate company risk of fraud, she hires Frank over Bob. This simple example illustrates the phenomenon called the “Criminal for Criminal-in-Embryo Effect.”

Definitions

The authors of this paper define a “Criminal-in-Embryo” as a law-abider perceived by another to be inclined towards criminal activity – any crime(s) such as murder, conspiracy, fraud, etc., despite a lack of criminal record to justify such a perception. Such profiling would occur due to the observance of one or more factors believed to be predictive of criminal activity. For example, in the case of a bankruptcy filer, such a factor could be a bankruptcy record. The Criminal for Criminal-in-Embryo Effect or CCE Effect describes the unjust situation in which a convicted criminal receives preferential treatment over a Criminal-in-Embryo due to a legal landscape which causes a type II error or false negative (a convicted criminal goes undetected) and a type I error or false positive (an individual with no criminal record is detected as a Criminal-in-Embryo). The current paper restricts its discussion of the CCE Effect to the sphere of employment. Also, although individuals with adverse credit histories who have not filed for bankruptcy are arguably also victims of the CCE Effect, this paper will focus strictly on bankruptcy filers, since they, by virtue of an approved bankruptcy discharge, qualify for a legal right to a fresh start by applying for jobs undetected.

CCE Effect in Employment

The CCE Effect in the sphere of employment occurs for two reasons: a false negative (a convicted criminal goes undetected during the hiring process due to second chance laws which effectively prevent criminal record detection) and a false positive (a law-abider with a bankruptcy record is detected as a Criminal-in-Embryo due to equal employment laws which ineffectively prevent bankruptcy record detection). Indeed, the CCE Effect is a function of signal detection – the interplay of false positives and false negatives.

Correspondingly, false positives and false negatives are a function of judicial record detection. And judicial record detection is a function of law. Hence, by modifying laws, detection can be influenced, signaling errors managed, and the CCE Effect prevented.

Figure 1 illustrates the relationship between judicial record detection and a fresh start.

<table>
<thead>
<tr>
<th>Record Detection</th>
<th>Fresh Start B</th>
<th>No Fresh Start B or C</th>
</tr>
</thead>
<tbody>
<tr>
<td>C</td>
<td>B &gt; C</td>
<td>B &gt; C</td>
</tr>
<tr>
<td>No Record Detection</td>
<td>Fresh Start B and C</td>
<td>C &gt; B</td>
</tr>
<tr>
<td></td>
<td>B = C</td>
<td></td>
</tr>
<tr>
<td></td>
<td>No Record Detection</td>
<td>Record Detection</td>
</tr>
</tbody>
</table>

Figure 1: Record Detection vs. Fresh Start

Referencing Figure 1, if both parties, party “B” (bankruptcy filer) and party “C” (convicted criminal) experience judicial record detection, neither party receives a fresh start. (Note that in this outcome, B is still greater than C because it is assumed that employers would typically be apt to hire non-convicts over convicts.) In contrast, if party B is not detected, but party C is detected, only party B would experience a fresh start. If party B is detected, but party C is not detected, only party C would receive a fresh start – the situation described by the CCE Effect.

Employer Preferences

Each outcome has an employer-preference associated with it. This model assumes that employers prefer “detection” to “no detection” and prefer “no detection” of bankruptcy filers to “no detection” of convicted criminals (provided employers would view an actual criminal conviction more unfavorably than a bankruptcy). Hence, the preferences of employers in order of
most preferred to least preferred could be scripted: B>C (Detection of both B and C), B>C (Detection of C), C>B (Detection of B), B=C (Detection of neither B nor C).  

**Type I and Type II Errors**

Figure 2 compares record detection with errors in identifying “criminals.” A false negative is produced when C’s record is not detected and the employer will treat C as a non-criminal. Although record detection of B is not an accurate identifier of a criminal, the employer responds as if it is (via Criminal-in-Embryo profiling), and thus creates a false positive. It can also be observed that the CCE Effect can only exist when both a false negative and a false positive exist in a hiring situation. The more pervasive false negatives and false positives are, the more pervasive the CCE Effect can be. Thus, given a situation in which second chance laws are instituted creating a false negative, equal employment laws which effectively prevent false positives must be instituted to prevent the CCE Effect from occurring.

**LEGAL BREEDING GROUNDS FOR THE CCE EFFECT**

It seems agreeable to a reasonable mind that the expungement of criminal records has the potential to effectively create false negatives or prevent criminal record detection. If equal employment laws allow for bankruptcy record detection, false positives can occur and the legal landscape permits the CCE Effect. Hence, a legal landscape’s permissance of the CCE Effect can largely be ascertained by analyzing equal employment laws within states with second chance laws.

**State Laws**

With respect to record disclosure laws for individuals with a criminal record, as of May 8, 2014, there were thirty-two (32) states which had expungement laws: Arkansas, California, Florida, Georgia, Illinois, Indiana, Kansas, Louisiana, Massachusetts, Michigan, Minnesota, Mississippi, Montana, Nevada, New Hampshire, New Jersey, New York, North Carolina, North Dakota, Ohio, Oklahoma, Oregon, Pennsylvania, Rhode Island, South Carolina, Tennessee, Texas, Utah, Vermont, Washington, West Virginia, and Wyoming.  

Wisconsin expungement laws require disclosure for job applications and thus, have been excluded from this list.

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3 As a side note, this rational choice model demonstrates that employers’ least preferred outcome is the same as the most equitable outcome – a fresh start for both parties. This could naturally create a legislative tug-of-war in passing effective disclosure laws for bankruptcy filers and convicted criminals.

4 Wisconsin expungement laws require disclosure for job applications and thus, have been excluded from this list.

As of January 1, 2014, ten (10) states (California, Colorado, Connecticut, Hawaii, Illinois, Maryland, Nevada, Oregon, Vermont, and Washington) have enacted laws restricting employer use of credit information of job applicants or employees. (Gordon) However, exceptions to these restrictions abound and include 1) positions at banks or financial institutions, 2) law enforcement positions 3) executive or managerial positions, 4) public safety positions, 5) positions involving bonding or security per state or federal law, or positions involving 6) access to an expense account or corporate debit or credit card, 7) the exercise of fiduciary responsibility (e.g., the power to issue payments, collect debts, transfer money, or enter into contracts), 8) access to third parties’ personal or financial information, 9) access to confidential information, including trade secrets, 10) access to valuable assets, including for example, library or museum collections or prescription drugs, 11) the signatory power of business assets as little as $100, and 12) the unsupervised access to assets of more than $2,500. (Credit Reports) (California) (Colorado) (Connecticut) (Hawaii) (Illinois) (Maryland) (Nevada) (Vermont) (Oregon) (Washington, RCW 19.182.020) (Washington, Chapter 19.182 RCW) (Shepard, Toward a Stronger Financial History Antidiscrimination Norm)

Unlike convicted criminals, bankruptcy filers are not provided expungement opportunities to prevent record detection. On the contrary, multitudinous exceptions appear to exist within equal employment laws permitting considerable bankruptcy record detection. Therefore, false positives are likely extensive in the states that have second chance laws, and the CCE Effect is not prevented in these states. In states with second chance laws which lack their own equal employment laws, only the scant federal protections provided by the Bankruptcy Code and the Fair Credit Reporting Act apply, which serve to increase the likelihood of the CCE Effect.

Indiana Laws

Indiana is an illuminating forum to discuss the CCE Effect. It provides an opportunity to explore how a state’s second chance laws can interact with federal equal employment protections to produce pervasive false negatives and false positives, and hence, a pervasiveness of the CCE Effect.

In 2013, the Indiana legislature revised its “Second Chance Law” with improved employment protections for convicts by enabling individuals convicted of misdemeanors or Class D felonies (e.g., fraud, theft, embezzlement, etc.) to expunge their records after demonstrating: 1) they have not been charged with or have not committed other crimes; 2) they have successfully completed their sentence; 3) they do not have a pending or existing driver’s license suspension; and 4) they have paid the required licensing fee. Petitions for misdemeanors may occur after five (5) years have passed since the conviction and
after eight (8) years for class D felonies, unless the prosecuting attorney consents in writing to an earlier period. Records that can be expunged include files from court, department of correction, bureau of motor vehicles, and any court ordered treatment or service providers. (Indiana) (House Enrolled Act 1482 updates Indiana’s criminal records law)

Revisions to the law also essentially make it unlawful for employers to discriminate in any way “any person because of a conviction or arrest record expunged or sealed” and also restricts the manner in which questions regarding prior criminal records may be phrased to exclude expunged convictions or arrests. An acceptable form would be: “Have you ever been arrested for or convicted of a crime that has not been expunged by a court?” (Assembly)

Second chance laws help to prevent criminal detection by allowing for the expungement of various forms of public records, imposing question format restrictions on employers, providing a “no-exception” policy against discrimination by prohibiting discrimination in any way against criminals who have had their record(s) expunged, and disincentivizing detection with the penalty of a Class C infraction and injunctive relief for the victim. Exceptions limit record disclosure to a prosecuting attorney, the Federal Bureau of Investigation, or the Department of Homeland Security. (Assembly) Indiana legislators have taken a clear posture with regards to the hiring of convicts granted a second chance: convicts should not be detected.

Currently, Indiana does not have state laws which protect bankruptcy filers from discrimination. Job seekers with bankruptcy records are left to rely on current federal protections found within section 525 of the Bankruptcy Code and the Fair Credit Reporting Act. Originally, only public-sector employees were protected from bankruptcy discrimination via the Bankruptcy Code. However, in 1984 section 525 was amended by congress to extend employment discrimination protections to private-sector employees. Hence, section 525(a) governs public employers and 525(b) governs private employers. (15 U.S.C. 1681b(a)(3)(B)) Although a reading of section 525 of the Bankruptcy Code would lead one to conclude the existence of a general prohibition against discrimination based on bankruptcy status, a majority of courts who have considered the wording of section 525(b), have concluded that it does not prohibit private employers from discriminating against bankruptcy filers during hiring. (Herz) In addition, despite anti-discrimination prohibitions explicitly written into law, credit history use by employers is still permitted during hiring, promotion, reassignment, or retention, according to the Fair Credit Reporting Act, provided an employer clearly disclose in writing and obtain written authorization prior to conducting a credit check. (Fair Credit Reporting Act 15 USC 1681) Also, in contrast to criminal records which can typically be expunged as early as five (5) years post-conviction, bankruptcy records appear in credit reports for up to ten (10) years if a chapter 7 bankruptcy is filed, up to seven (7) years if a chapter 13 bankruptcy is filed, and even longer as a public record. (Bankruptcies) (Court Records)

Among other things, employers are permitted access to bankruptcy records either through public records or credit reports with little restraint - access of which also extends longer than for criminal records which qualify for expungement. Employers are also permitted to discriminate against bankruptcy filers in the private sector with respect to hiring decisions and are not forbidden by law to inquire about bankruptcy history. Equal employment law protections created by the Bankruptcy Code and Fair Credit Reporting Act pale in comparison to protections provided by Indiana’s Second Chance Law. Indeed, many record detection prevention mechanisms appear to be in place for convicted criminals, encouraging false negatives, while bankruptcy filers suffer from a severe lack of record detection protections, encouraging false positives. Hence, opportunities for the CCE Effect abound.

Some efforts have been made by legislators in order to further limit employers’ use of credit information in hiring decisions, such as Indiana’s Randolph Stoops’ introduction of bill No. 214 in 2013. (Sen. Mark Stoops) Unfortunately, the bill fails to commit to a sufficient degree of protection for bankruptcy filers. Bill No. 214 still permits...
employers to use a job applicant’s credit history in making hiring decisions provided that written consent is obtained prior to the procurement of such report (if the consumer objects, the employer is permitted to deny employment), and provided that the position for which the consumer is applying “is a position in which the consumer has, or would have, access to money, other assets, or confidential information” and is classified as one or more of the following: a managerial position; a position with the office of the attorney general; a position with a city, town, or country; any law enforcement position, etc. (Sen. Mark Stoops) Unfortunately, Bill No. 214 does not sufficiently improve upon current equal employment laws. It continues to allow widespread bankruptcy record detection in the private and public sectors and thus likely continues to permit the CCE Effect.

Federal Laws

On June 1, 2011, in order to restore the convicted criminal to “the status such individual occupied before the arrest or institution of criminal proceedings for the crime” committed (or in other words, a “fresh start”), New York Senator Thomas Rangel introduced to congress H. R. 2065, otherwise cited as the “Second Chance for Ex-Offenders Act of 2011.” (Rangel) This bill permits the expungement of criminal records of a convicted criminal or felon who has “never been convicted of a violent offense,…has fulfilled all requirements of the sentence of the court of which conviction was obtained, including completion of any term of imprisonment or period of probation, meeting all conditions of a supervised release, and paying all fines” and who has also met substance abuse, educational, and community service requirements. (Rangel) Moreover, unlike the Indiana Second Chance Law which requires a waiting period of at least five (5) years post-conviction before an expungement is permitted, the Second Chance for Ex-Offenders Act of 2011 includes no such fixed time period which can provide significantly more disclosure protection for criminals than the Indiana Second Chance Law. (Rangel) (Assembly)

The proposed bill also protects an individual from disqualification from pursuing or engaging in any occupation or profession and explicitly absolves such individual from guilt of denying or failing to acknowledge his/her prior conviction. (Rangel) However, access to information regarding prior conviction is not as limiting as Indiana’s Second Chance Law. Access is limited to relevant law enforcement personnel who have the “responsibility for criminally investigating, prosecuting, or adjudicating” the applicant or to the “prospective city, State, or Federal employer or agency, involved in investigating and/or prosecuting…and every person who is an applicant” or “State or local office or agency with responsibility for the issuance of licenses to possess guns” if an application has been made by the applicant. (Rangel) Otherwise, records are to be kept sealed from view of potential private sector employers with punishment for improper disclosure to include fines and/or imprisonment, further discouraging detection of convicted criminal records. (Rangel)

H. R. 645 (otherwise known as the “Equal Employment for All Act”) was proposed to congress on February 13, 2013, by Steve Cohen, to help protect individuals with adverse credit histories from adverse employment decisions. (beta.congress.gov) In contrast to the Fair Credit and Reporting Act, the Equal Employment for All Act prohibits the use of credit checks in employment decisions (even if a consumer consents) which decreases the degree to which discrimination against law-abiding bankruptcy filers is encouraged. (beta.congress.gov) However, exceptions create weakness in an otherwise well intentioned bill. Such exceptions include jobs which require “national security clearance or FDIC clearance,” if the job is for a “State or local government agency,” or if the job is “supervisory, managerial, professional, or executive” at a financial institution. (beta.congress.gov)

Thus, substantive bankruptcy record detection safeguards are lacking in jobs including those at federal, state or local government agencies not involved with investigating and/or prosecuting or private sector jobs at financial institutions - a plethora of jobs. Unfortunately, because the Equal Employment for All Act still permits a significant amount of record detection and
Criminal-in-Embryo profiling, it too appears to ineffectively prevent the CCE Effect.

CONCLUSION

Shouldn’t law-abiding bankruptcy filers who have never been convicted of fraud, theft, embezzlement, or the like, be offered at least the same second chance opportunities afforded criminals actually convicted of such crimes? Why should a felon convicted of fraud be given a leg up in applying for a job with a financial institution over, for example, a competent financial manager who filed for bankruptcy due to an unexpected medical complication that her insurance failed to cover? Why should a bankruptcy filer be vexed with the adverse effects of a public record longer than a convicted criminal? The fairness disparity between laws aimed at protecting the convicted criminal and the law-abiding bankruptcy filer remains incomprehensible and breathes continued life into the CCE Effect.

The vast majority of states have enacted second chance laws which help convicted criminals obtain employment by decreasing criminal record detection. However, a lack of sufficient record detection laws for bankruptcy filers permit the unjust profiling of law-abiders as Criminals-in-Embryo. Law-makers must acknowledge that second chance laws for criminals coupled with ineffective equal employment laws for bankruptcy filers serve to exalt criminals while abasing honest law-abiding debtors, permitting an unjust CCE Effect. Legislators must also come to understand that given the enactment of second chance laws, the CCE Effect can only be prevented if equal employment laws are amended to provide a fresh start for bankruptcy filers by preventing bankruptcy record detection. But until laws are improved and the CCE Effect is prevented...If you are a law-abiding debtor with a recent bankruptcy and are applying for a job in a state that offers criminal record expungement, an employer may prefer to hire a felon over you. In which case, you’ll have to take your honesty...elsewhere.

REFERENCES


64. Local Loan Co. v. Hunt, 292 U.S. 234, 244. 1934.


