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LEGISLATIVE ACTION

Senate	.	House
Comm: FAV	.	
01/19/2012	.	
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The Committee on Commerce and Tourism (Detert) recommended the following:

**Senate Amendment (with title amendment)**

Delete everything after the enacting clause  
and insert:

Section 1. Use of a job applicant's credit report or credit history.-

(1) Except as provided in subsection (2), an employer may not use an applicant's credit report or credit history for the purpose of denying employment to the applicant or for determining the applicant's compensation or the terms, conditions, or privileges of employment.

(2) An employer may request or use an applicant's credit



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13 report or credit history if:

14 (a) The information will be used for a purpose other than  
15 one prohibited by this section;

16 (b) The employer has a bona fide purpose for requesting or  
17 using information in the credit report or credit history which  
18 is substantially related to the job; and

19 (c) The ability to request such information was disclosed  
20 to the applicant and the employer obtained permission from the  
21 applicant to request the information.

22 (3) For purposes of this section, a position for which an  
23 employer has a bona fide purpose includes a position that:

24 (a) Is managerial or supervisory;

25 (b) Involves access to personal information of a customer,  
26 employee, or employer, except for personal information  
27 customarily provided in a retail transaction;

28 (c) Involves a fiduciary responsibility to the employer,  
29 including the authority to issue payments, collect debts,  
30 transfer money, or enter into contracts;

31 (d) Involves the use of an expense account or a corporate  
32 debit or credit card;

33 (e) Authorizes the employee to have access to information,  
34 including a trade secret, formula, pattern, compilation,  
35 program, device, method, technique, or process that derives  
36 actual or potential independent economic value from not being  
37 generally known to, and not being readily ascertainable by  
38 proper means by, other persons who can obtain economic value  
39 from the disclosure or use of the information and is the subject  
40 of efforts that are reasonable under the circumstances to  
41 maintain its secrecy; or



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42           (f) Involves public safety, such as a law enforcement  
43 officer, peace officer, or other position involving enforcement  
44 of state or federal criminal laws.

45           (4) As used in paragraph (3)(a), the term:

46           (a) "Managerial" means a position that requires an  
47 individual to formulate and effectuate management policies by  
48 expressing and making operative the decisions of the employer.

49           (b) "Supervisory" means a position in which an individual  
50 has the authority, in the interest of the employer, to hire,  
51 transfer, suspend, lay off, recall, promote, discharge, assign,  
52 reward, or discipline other employees, or the responsibility to  
53 direct them, adjust their grievances, or recommend such action  
54 where the authority or responsibility is not merely routine or  
55 clerical, but requires the use of independent judgment.

56           (5) This section does not apply to an employer that is:

57           (a) Expressly permitted or required to inquire into an  
58 applicant's credit report or credit history for employment  
59 purposes pursuant to a federal or state law.

60           (b) A financial institution that accepts deposits that are  
61 insured by a federal agency, or an affiliate or subsidiary of  
62 the financial institution.

63           (c) A credit union or state-chartered bank registered with  
64 the Office of Financial Regulation.

65           (d) An entity that is registered as an investment advisor  
66 with the United States Securities and Exchange Commission, or an  
67 affiliate of the entity.

68           (6)(a) Without regard to any other remedy or relief to  
69 which a person is entitled, a person aggrieved by a violation of  
70 this section may bring an action to obtain a declaratory



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71 judgment that an act or practice violates this section and to  
72 enjoin the violator from further violations.

73 (b) A person who has suffered a loss as a result of a  
74 violation of this section and prevails may recover actual  
75 damages, plus court costs.

76 (c) In any action brought under this section, upon motion  
77 of the defendant, alleging that the action is frivolous, without  
78 legal or factual merit, or brought for the purpose of  
79 harassment, the court may, after hearing evidence as to the  
80 necessity therefor, require the plaintiff to post bond in an  
81 amount that the court finds reasonable to indemnify the  
82 defendant for any damages incurred, including reasonable  
83 attorney fees. This subsection does not apply to any action  
84 initiated by the enforcing authority.

85 Section 2. This act shall take effect July 1, 2012.

86  
87 ===== T I T L E A M E N D M E N T =====

88 And the title is amended as follows:

89 Delete everything before the enacting clause  
90 and insert:

91 A bill to be entitled  
92 An act relating to credit reports; prohibiting an  
93 employer from using a job applicant's credit report or  
94 credit history to make certain hiring, compensation,  
95 or other employment decisions; providing specific  
96 situations where an employer may use such information;  
97 providing definitions; providing exemptions for  
98 certain types of employers; providing remedies for  
99 aggrieved persons; providing for court costs;



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providing for a plaintiff to post a bond in certain  
situations; providing an effective date.