

By Senator Detert

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1 A bill to be entitled
2 An act relating to employment practices; prohibiting
3 an employer from using a job applicant's credit report
4 or credit history to make certain hiring,
5 compensation, or other employment decisions; providing
6 specific situations where an employer may use such
7 information; providing definitions; providing
8 exemptions for certain types of employers; providing
9 remedies for aggrieved persons; providing for attorney
10 fees and court costs; providing for a plaintiff to
11 post a bond in certain situations; providing an
12 effective date.

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14 Be It Enacted by the Legislature of the State of Florida:

15
16 Section 1. Use of a job applicant's credit report or credit
17 history.-

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

23 (2) An employer may request or use an applicant's credit
24 report or credit history if:

25 (a) The applicant has received an offer of employment and
26 the credit report or credit history will be used for a purpose
27 other than one prohibited by this section.

28 (b) The employer has a bona fide purpose for requesting or
29 using information in the credit report or credit history which

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30 is substantially related to the job and disclosed in writing to
31 the applicant.

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

34 (a) Is managerial or supervisory;

35 (b) Involves access to personal information of a customer,
36 employee, or employer, except for personal information
37 customarily provided in a retail transaction;

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

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

43 (e) Authorizes the employee to have access to information,
44 including a trade secret, formula, pattern, compilation,
45 program, device, method, technique, or process that derives
46 actual or potential independent economic value from not being
47 generally known to, and not being readily ascertainable by
48 proper means by, other persons who can obtain economic value
49 from the disclosure or use of the information and is the subject
50 of efforts that are reasonable under the circumstances to
51 maintain its secrecy; or

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

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

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

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59 (b) "Supervisory" means a position in which an individual
60 has the authority, in the interest of the employer, to hire,
61 transfer, suspend, lay off, recall, promote, discharge, assign,
62 reward, or discipline other employees, or the responsibility to
63 direct them, adjust their grievances, or recommend such action
64 where the authority or responsibility is not merely routine or
65 clerical, but requires the use of independent judgment.

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

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

70 (b) A financial institution that accepts deposits that are
71 insured by a federal agency, or an affiliate or subsidiary of
72 the financial institution.

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

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

78 (6) (a) Without regard to any other remedy or relief to
79 which a person is entitled, a person aggrieved by a violation of
80 this section may bring an action to obtain a declaratory
81 judgment that an act or practice violates this section and to
82 enjoin the violator from further violations.

83 (b) A person who has suffered a loss as a result of a
84 violation of this section may recover actual damages, plus
85 attorney fees and court costs.

86 (c) In any action brought under this section, upon motion
87 of the defendant, alleging that the action is frivolous, without

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88 legal or factual merit, or brought for the purpose of
89 harassment, the court may, after hearing evidence as to the
90 necessity therefor, require the plaintiff to post bond in an
91 amount that the court finds reasonable to indemnify the
92 defendant for any damages incurred, including reasonable
93 attorney fees. This subsection does not apply to any action
94 initiated by the enforcing authority.

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