

By the Committee on Commerce and Tourism; and 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 court
10 costs; providing for a plaintiff to post a bond to
11 indemnify the defendant for damages, including
12 attorney fees, in certain situations; providing an
13 effective date.

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

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

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

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

26 (a) The information will be used for a purpose other than
27 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

31 (c) The ability to request such information was disclosed
32 to the applicant and the employer obtained permission from the
33 applicant to request the information.

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

36 (a) Is managerial or supervisory;

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

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

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

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

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

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

58 (a) "Managerial" means a position that requires an

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59 individual to formulate and effectuate management policies by
60 expressing and making operative the decisions of the employer.

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

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

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

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

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

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

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

85 (b) A person who has suffered a loss as a result of a
86 violation of this section and prevails may recover actual
87 damages plus court costs.

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88 (c) In any action brought under this section, upon motion
89 of the defendant, alleging that the action is frivolous, without
90 legal or factual merit, or brought for the purpose of
91 harassment, the court may, after hearing evidence as to the
92 necessity therefor, require the plaintiff to post bond in an
93 amount that the court finds reasonable to indemnify the
94 defendant for any damages incurred, including reasonable
95 attorney fees. This subsection does not apply to any action
96 initiated by the enforcing authority.

97 Section 2. This act shall take effect July 1, 2013.