

By Senator Detert

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1 A bill to be entitled
2 An act relating to employment practices; creating s.
3 448.071, F.S.; providing definitions; prohibiting an
4 employer from using a job applicant's credit report or
5 credit history to make certain hiring, compensation,
6 or other employment decisions; providing specific
7 situations in which an employer may use such
8 information; providing exemptions for certain types of
9 employers; providing remedies for an aggrieved person;
10 providing for the award of actual damages and court
11 costs; providing for a plaintiff to post a bond to
12 indemnify the defendant for damages, including
13 attorney fees, in certain situations; providing an
14 effective date.

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

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18 Section 1. Section 448.071, Florida Statutes, is created to
19 read:

20 448.071 Use of a job applicant's credit report or credit
21 history.-

22 (1) As used in this section, the term:

23 (a) "Managerial" means a position that requires an employee
24 to formulate and carry out management policies by expressing and
25 making operative the decisions of the employer.

26 (b) "Supervisory" means a position in which an employee has
27 the authority, in the interest of the employer, to hire,
28 transfer, suspend, lay off, recall, promote, discharge, assign,
29 reward, or discipline other employees, or the responsibility to

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30 direct them, adjust their grievances, or recommend such action
31 where such authority or responsibility is not merely routine or
32 clerical, but requires the use of independent judgment.

33 (2) An employer may not use an applicant's credit report or
34 credit history to deny employment to the applicant or to
35 determine the applicant's compensation or the terms, conditions,
36 or privileges of employment.

37 (3) Notwithstanding subsection (2), an employer may request
38 or use an applicant's credit report or credit history if all of
39 the following conditions are met:

40 (a) The information in the credit report or credit history
41 will be used for a purpose other than one prohibited under
42 subsection (2).

43 (b) The employer notifies the applicant of the employer's
44 ability to request or use the applicant's credit report or
45 credit history, and the employer obtains permission from the
46 applicant to request such information.

47 (c) The employer has a bona fide purpose for requesting or
48 using information in the credit report or credit history which
49 is substantially related to the position.

50 (4) For purposes of this section, a position for which an
51 employer has a bona fide purpose includes a position that:

52 (a) Is managerial or supervisory;

53 (b) Involves access to personal information of a customer,
54 employee, or employer, other than personal information
55 customarily provided in a retail transaction;

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

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

61 (e) Authorizes the employee to have access to information,
62 including a trade secret, formula, pattern, compilation,
63 program, device, method, technique, or process, which derives
64 actual or potential independent economic value from not being
65 generally known to, and not being readily ascertainable by
66 proper means by, other persons who can obtain economic value
67 from the disclosure or use of the information and which is the
68 subject of efforts that are reasonable under the circumstances
69 to maintain its secrecy; or

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

73 (5) This section does not apply to an employer that is any
74 of the following:

75 (a) An entity that is expressly authorized or required to
76 inquire into an applicant's credit report or credit history for
77 employment purposes pursuant to a federal or state law.

78 (b) A financial institution that accepts deposits that are
79 insured by a federal agency or an affiliate or subsidiary of the
80 financial institution.

81 (c) A credit union or a state-chartered bank that is
82 registered with the Office of Financial Regulation.

83 (d) An entity that is registered as an investment advisor
84 with the United States Securities and Exchange Commission or an
85 affiliate of the entity.

86 (6) In addition to any other remedy provided by law, a
87 person aggrieved by a violation of this section may bring an

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88 action to obtain a declaratory judgment that an act or practice
89 violates this section and to enjoin the violator from continuing
90 such act or practice.

91 (7) A person who has suffered a loss as a result of a
92 violation of this section and prevails may recover actual
93 damages plus court costs.

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

103 Section 2. This act shall take effect July 1, 2014.