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

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

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

448.071 Use of a job applicant’s credit report or credit history.—
(1) As used in this section, the term:
(a) “Managerial” means a position that requires an employee to formulate and carry out management policies by expressing and making operative the decisions of the employer.
(b) “Supervisory” means a position in which an employee has the authority, in the interest of the employer, to hire, transfer, suspend, lay off, recall, promote, discharge, assign, reward, or discipline other employees, or the responsibility to
direct them, adjust their grievances, or recommend such action where such authority or responsibility is not merely routine or clerical, but requires the use of independent judgment.

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

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

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

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

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

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

(a) Is managerial or supervisory;

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

(c) Involves a fiduciary responsibility to the employer, including the authority to issue payments, collect debts, transfer money, or enter into contracts;
(d) Involves the use of an expense account or a corporate debit or credit card;

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

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

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

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

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

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

(d) An entity that is registered as an investment advisor, broker, or dealer with the United States Securities and Exchange Commission, the Office of Financial Regulation, or the Financial Industry Regulatory Authority, or an affiliate of the entity.

(6) In addition to any other remedy provided by law, a
person aggrieved by a violation of this section may bring an
action to obtain a declaratory judgment that an act or practice
violates this section and to enjoin the violator from continuing
such act or practice.

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

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

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