

By Senator Detert

23-01225-12

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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.

13  
14 Be It Enacted by the Legislature of the State of Florida:

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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.