

Stricken language would be deleted from and underlined language would be added to the law as it existed prior to this session of the General Assembly.

1 State of Arkansas
2 88th General Assembly
3 Regular Session, 2011

A Bill

HOUSE BILL 1987

4
5 By: Representative Allen

For An Act To Be Entitled

8 AN ACT TO PROHIBIT THE USE OF CONSUMER CREDIT
9 INFORMATION FOR EMPLOYMENT PURPOSES; AND FOR OTHER
10 PURPOSES.

Subtitle

12 TO PROHIBIT THE USE OF CONSUMER CREDIT
13 INFORMATION FOR EMPLOYMENT PURPOSES.

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17 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:

18
19 SECTION 1. Arkansas Code Title 11, Chapter 3 is amended to add an
20 additional subchapter to read as follows:

21 Subchapter 5 -- Employee Credit Privacy Act

22 11-3-501. Title.

23 This subchapter shall be known and may be cited as the "Employee Credit
24 Privacy Act".

25
26 11-3-502. Definitions.

27 As used in this subchapter:

28 (1) "Credit history" means an individual's past borrowing and
29 repaying behavior, including paying bills on time and managing debt and other
30 financial obligations;

31 (2) "Credit report" means any written, oral, or other
32 communication of information by a consumer reporting agency that bears on a
33 consumer's creditworthiness, credit standing, credit capacity, or credit
34 history;

35 (3) "Employee" means an individual who receives compensation for
36 performing services for an employer either at will or under an express or



1 implied contract of hire;

2 (4)(A) "Employer" means an individual or entity that:

3 (i) Employs one (1) or more individuals;

4 (ii) Accepts applications for employment; or

5 (iii) Is an agent of an employer.

6 (B) "Employer" does not include:

7 (i) A bank holding company, financial holding
8 company, bank, savings bank, savings and loan association, credit union, or
9 trust company, or any subsidiary or affiliate thereof, that is authorized to
10 do business under the laws of this state or of the United States;

11 (ii) A company authorized to engage in any kind of
12 insurance or surety business under the laws of this state, including any
13 employee, agent, or employee of an agent acting on behalf of a company
14 engaged in the insurance or surety business;

15 (iii) A state law enforcement or investigative unit,
16 including without limitation the Department of Arkansas State Police or the
17 Department of Correction;

18 (iv) Any state or local government agency that
19 otherwise requires use of an employee's or applicant's credit history or
20 credit report; and

21 (v) Any entity that is defined as a debt collector
22 under federal or state law;

23 (5) "Financial information" means nonpublic information on the
24 overall financial direction of an organization, including without limitation
25 company taxes or profit and loss reports;

26 (6) "Job applicant" means a person who seeks employment with an
27 employer;

28 (7)(A) "Marketable assets" means company property that is
29 specially safeguarded from the public and to which access is only entrusted
30 to managers and select other employees.

31 (B) "Marketable assets" does not include the fixtures,
32 furnishings, or equipment of an employer;

33 (8) "Personal or confidential information" means sensitive
34 information that:

35 (A) A customer or client of the employer gives explicit
36 authorization for the employer to obtain, process, or keep;

1 (B) The employer entrusts only to managers and a select
2 few employees; or

3 (C) Is stored in secure repositories not accessible by the
4 public or low-level employees;

5 (9) "State or national security information" means information
6 offered only to select employees because it might jeopardize the security of
7 the state or the nation if it were entrusted to the general public; and

8 (10)(A) "Trade secrets" means sensitive information regarding an
9 employer's overall strategy and business plans.

10 (B) "Trade secrets" does not include general proprietary
11 information such as handbooks, policies, or low-level strategies.

12
13 11-3-503. Employment decisions based on credit information prohibited.

14 (a) Except as provided in subsection (b) of this section, an employer
15 shall not:

16 (1) Fail or refuse to hire, recruit, discharge, or otherwise
17 discriminate against a job applicant or an employee with respect to
18 employment, compensation, or a term, condition, or privilege of employment
19 because of the individual's credit history or credit report;

20 (2) Inquire about the credit history or credit report of an
21 employee or job applicant; or

22 (3) Order or obtain a credit report of an employee or job
23 applicant.

24 (b)(1) The prohibition in subsection (a) of this section does not
25 prevent an inquiry or employment action if a satisfactory credit history or
26 credit report is an established bona fide occupational requirement of a
27 particular position or a particular group of an employer's employees.

28 (2) A satisfactory credit history or credit report is a bona
29 fide occupational requirement when at least one (1) of the following
30 circumstances is present:

31 (A) State or federal law requires bonding or other
32 security covering an employee holding the position;

33 (B) The duties of the position include custody of or
34 unsupervised access to cash or marketable assets valued at two thousand five
35 hundred dollars (\$2,500) or more;

36 (C) The duties of the position include signatory power

1 over business assets of one hundred dollars (\$100) or more per transaction;

2 (D) The position is a managerial position that involves
 3 setting the direction or control of the business;

4 (E) The position involves access to personal or
 5 confidential information, financial information, trade secrets, or state or
 6 national security information;

7 (F) The position meets criteria in administrative rules,
 8 if any, that the United States Department of Labor or the Arkansas Department
 9 of Labor has promulgated to establish the circumstances in which a credit
 10 history or credit report is a bona fide occupational requirement; or

11 (G) The employee's or job applicant's credit history or
 12 credit report is otherwise required by federal or state law.

13
 14 11-3-504. Retaliatory or discriminatory acts.

15 An employer shall not retaliate or discriminate against a person for
 16 performing or attempting to perform any of the following actions:

17 (1) Filing a complaint under this subchapter;

18 (2) Testifying, assisting, or participating in an investigation,
 19 proceeding, or action concerning a violation of this subchapter; or

20 (3) Opposing a violation of this subchapter.

21
 22 11-3-505. Waiver of rights prohibited.

23 (a) An employer shall not require a job applicant or an employee to
 24 waive any rights under this subchapter.

25 (b) An agreement by a job applicant or an employee to waive any right
 26 under this subchapter is invalid and unenforceable.

27
 28 11-3-506. Remedies.

29 (a) An individual who is injured by a violation of this subchapter may
 30 bring a civil action in circuit court to obtain injunctive relief or damages,
 31 or both.

32 (b) The circuit court shall award costs and reasonable attorney's fees
 33 to an individual who prevails as a plaintiff in an action authorized under
 34 subsection (a) of this section.

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 36 11-3-507. Fair Credit Reporting Act exception.

1 This subchapter shall not prohibit employers from conducting a thorough
2 background investigation that may include obtaining a report without
3 information on credit history or an investigative report without information
4 on credit history, or both, as permitted under the Fair Credit Reporting Act,
5 15 U.S.C. § 1681 et seq., as it existed on January 1, 2011, if the
6 information is used solely for employment purposes.

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