

SENATE BILL 132

K3

(11r0832)

ENROLLED BILL

— Finance/Economic Matters —

Introduced by **Senators Pugh, Currie, Jones-Rodwell, Kelley, Madaleno, Manno, Montgomery, Peters, and Raskin** ~~Raskin~~ Raskin, and Muse

Read and Examined by Proofreaders:

Proofreader.

Proofreader.

Sealed with the Great Seal and presented to the Governor, for his approval this

_____ day of _____ at _____ o'clock, _____ M.

President.

CHAPTER _____

1 AN ACT concerning

2 **Job Applicant Fairness Act**

3 FOR the purpose of prohibiting an employer from using the credit report or credit
4 history of an employee or applicant for employment for certain purposes;
5 authorizing an employer to request or ~~consider~~ use an applicant's or employee's
6 credit report or credit history under certain circumstances; providing that, for
7 the purpose of this Act, a position for which an employer has a bona fide
8 purpose that is substantially job-related for requesting or using information in
9 a credit report or credit history includes a position that meets certain criteria;
10 authorizing certain ~~civil actions under certain circumstances~~ individuals to file
11 a complaint with the Commissioner of Labor and Industry; requiring that a
12 complaint filed by an employee under this Act be investigated promptly by the
13 Commissioner; requiring the Commissioner to attempt to resolve a certain
14 matter informally; authorizing the Commissioner to assess certain civil

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.

Underlining indicates amendments to bill.

~~Strike out~~ indicates matter stricken from the bill by amendment or deleted from the law by amendment.

Italics indicate opposite chamber/conference committee amendments.



1 penalties and send a certain order to pay a certain penalty to certain parties
 2 under certain circumstances; authorizing an employer to request a certain
 3 hearing under certain circumstances; requiring the Commissioner to schedule a
 4 certain hearing under certain circumstances; establishing that an order to pay a
 5 civil penalty becomes final under certain circumstances; authorizing the
 6 Commissioner or a complainant to bring certain court actions under certain
 7 circumstances; providing that this Act does not apply to certain employers;
 8 specifying that this Act does not prohibit an employer from performing an
 9 employment-related background investigation that meets certain requirements;
 10 and generally relating to the use by employers of credit reports and credit
 11 histories of employees and applicants for employment.

12 BY adding to
 13 Article – Labor and Employment
 14 Section 3-711
 15 Annotated Code of Maryland
 16 (2008 Replacement Volume and 2010 Supplement)

17 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF
 18 MARYLAND, That the Laws of Maryland read as follows:

19 **Article – Labor and Employment**

20 **3-711.**

21 **(A) THIS SECTION DOES NOT APPLY TO AN EMPLOYER THAT IS:**

22 **(1) REQUIRED TO INQUIRE INTO AN APPLICANT’S OR EMPLOYEE’S**
 23 **CREDIT REPORT OR CREDIT HISTORY UNDER FEDERAL LAW OR ANY PROVISION**
 24 **OF STATE LAW FOR THE PURPOSE OF EMPLOYMENT;**

25 **(2) A FINANCIAL INSTITUTION, ~~OR AN AFFILIATE OR SUBSIDIARY~~**
 26 **~~OF THE FINANCIAL INSTITUTION,~~ THAT ACCEPTS DEPOSITS THAT ARE INSURED**
 27 **BY A FEDERAL AGENCY, OR AN AFFILIATE OR SUBSIDIARY OF THE FINANCIAL**
 28 **INSTITUTION; ~~OR~~**

29 **(3) A CREDIT UNION SHARE GUARANTY CORPORATION THAT IS**
 30 **APPROVED BY THE MARYLAND COMMISSIONER OF FINANCIAL REGULATION;**
 31 **OR**

32 **~~(3)~~ (4) AN ENTITY, OR AN AFFILIATE OF THE ENTITY, THAT IS**
 33 **REGISTERED AS AN INVESTMENT ADVISOR WITH THE UNITED STATES**
 34 **SECURITIES AND EXCHANGE COMMISSION.**

1 **(B) ~~AN~~ EXCEPT AS PROVIDED IN SUBSECTION (C) OF THIS SECTION, AN**
2 **EMPLOYER MAY NOT USE AN APPLICANT'S OR EMPLOYEE'S CREDIT REPORT OR**
3 **CREDIT HISTORY IN DETERMINING WHETHER TO:**

4 **(1) DENY EMPLOYMENT TO THE APPLICANT;**

5 **(2) DISCHARGE THE EMPLOYEE; OR**

6 **(3) DETERMINE COMPENSATION OR THE TERMS, CONDITIONS, OR**
7 **PRIVILEGES OF EMPLOYMENT.**

8 **(C) (1) AN EMPLOYER MAY REQUEST OR ~~CONSIDER~~ USE AN**
9 **APPLICANT'S OR EMPLOYEE'S CREDIT REPORT OR CREDIT HISTORY IF:**

10 ~~(I)~~ ~~(I)~~ **1.** THE APPLICANT HAS RECEIVED AN OFFER OF
11 **EMPLOYMENT; AND**

12 ~~(II)~~ **2.** THE CREDIT REPORT OR CREDIT HISTORY WILL
13 **BE USED FOR A PURPOSE OTHER THAN A PURPOSE PROHIBITED BY SUBSECTION**
14 **(B) OF THIS SECTION; OR**

15 ~~(2)~~ **(II)** THE EMPLOYER HAS A BONA FIDE PURPOSE FOR
16 ~~OBTAINING~~ **REQUESTING** OR USING INFORMATION IN THE CREDIT REPORT OR
17 **CREDIT HISTORY THAT IS:**

18 ~~(I)~~ **1.** SUBSTANTIALLY JOB-RELATED; AND

19 ~~(II)~~ **2.** DISCLOSED IN WRITING TO THE EMPLOYEE OR
20 **APPLICANT.**

21 **(2)** **FOR THE PURPOSES OF THIS SUBSECTION, A POSITION FOR**
22 **WHICH AN EMPLOYER HAS A BONA FIDE PURPOSE THAT IS SUBSTANTIALLY**
23 **JOB-RELATED FOR REQUESTING OR USING INFORMATION IN A CREDIT REPORT**
24 **OR CREDIT HISTORY INCLUDES A POSITION THAT:**

25 **(I)** **IS MANAGERIAL AND INVOLVES SETTING THE**
26 **DIRECTION OR CONTROL OF A BUSINESS, OR A DEPARTMENT, DIVISION, UNIT,**
27 **OR AGENCY OF A BUSINESS;**

28 **(II)** **INVOLVES ACCESS TO PERSONAL INFORMATION, AS**
29 **DEFINED IN § 14-3501 OF THE COMMERCIAL LAW ARTICLE, OF A CUSTOMER,**
30 **EMPLOYEE, OR EMPLOYER, EXCEPT FOR PERSONAL INFORMATION**
31 **CUSTOMARILY PROVIDED IN A RETAIL TRANSACTION;**

1 (III) INVOLVES A FIDUCIARY RESPONSIBILITY TO THE
2 EMPLOYER, INCLUDING THE AUTHORITY TO ISSUE PAYMENTS, COLLECT DEBTS,
3 TRANSFER MONEY, OR ENTER INTO CONTRACTS;

4 (IV) IS PROVIDED AN EXPENSE ACCOUNT OR A CORPORATE
5 DEBIT OR CREDIT CARD; OR

6 (V) HAS ACCESS TO:

7 1. INFORMATION, INCLUDING A FORMULA, PATTERN,
8 COMPILATION, PROGRAM, DEVICE, METHOD, TECHNIQUE, OR PROCESS, THAT:

9 A. DERIVES INDEPENDENT ECONOMIC VALUE,
10 ACTUAL OR POTENTIAL, FROM NOT BEING GENERALLY KNOWN TO, AND NOT
11 BEING READILY ASCERTAINABLE BY PROPER MEANS BY, OTHER PERSONS WHO
12 CAN OBTAIN ECONOMIC VALUE FROM THE DISCLOSURE OR USE OF THE
13 INFORMATION; AND

14 B. IS THE SUBJECT OF EFFORTS THAT ARE
15 REASONABLE UNDER THE CIRCUMSTANCES TO MAINTAIN ITS SECRECY; OR

16 2. OTHER CONFIDENTIAL BUSINESS INFORMATION;

17 (D) (1) IF AN EMPLOYER VIOLATES SUBSECTION (B) ~~OR (C)~~ OF THIS
18 SECTION, THE APPLICANT OR EMPLOYEE MAY ~~BRING AN ACTION FOR~~
19 ~~INJUNCTIVE RELIEF, DAMAGES, OR OTHER RELIEF~~ FILE A WRITTEN COMPLAINT
20 WITH THE COMMISSIONER.

21 (2) IF THE COMMISSIONER RECEIVES A WRITTEN COMPLAINT
22 UNDER PARAGRAPH (1) OF THIS SUBSECTION, THE COMMISSIONER SHALL
23 INVESTIGATE THE MATTER PROMPTLY.

24 (3) IF THE COMMISSIONER DETERMINES THAT THE EMPLOYER
25 HAS WILLFULLY OR NEGLIGENTLY VIOLATED SUBSECTION (B) OR (C) OF THIS
26 SECTION, THE COMMISSIONER SHALL TRY TO RESOLVE THE MATTER
27 INFORMALLY.

28 (4) IF THE COMMISSIONER IS UNABLE TO RESOLVE THE MATTER
29 INFORMALLY, THE COMMISSIONER MAY:

30 (I) ASSESS A CIVIL PENALTY OF:

31 1. UP TO \$500 FOR AN INITIAL VIOLATION OF
32 SUBSECTION (B) OR (C) OF THIS SECTION; OR

1 **2. UP TO \$2,500 FOR A REPEAT VIOLATION OF**
2 **SUBSECTION (B) OR (C) OF THIS SECTION; AND**

3 **(II) SEND AN ORDER TO PAY THE CIVIL PENALTY TO THE**
4 **COMPLAINANT AND THE EMPLOYER.**

5 **(5) (I) WITHIN 30 DAYS AFTER AN EMPLOYER RECEIVES AN**
6 **ORDER TO PAY A CIVIL PENALTY UNDER PARAGRAPH (4) OF THIS SECTION, THE**
7 **EMPLOYER MAY REQUEST A DE NOVO ADMINISTRATIVE HEARING, SUBJECT TO**
8 **THE REQUIREMENTS OF TITLE 10, SUBTITLE 2 OF THE STATE GOVERNMENT**
9 **ARTICLE.**

10 **(II) ON RECEIPT OF A REQUEST FOR A HEARING UNDER**
11 **ITEM (I) OF THIS PARAGRAPH, THE COMMISSIONER SHALL SCHEDULE A**
12 **HEARING.**

13 **(III) IF A HEARING IS NOT REQUESTED UNDER ITEM (I) OF**
14 **THIS PARAGRAPH, THE ORDER TO PAY A CIVIL PENALTY BECOMES A FINAL**
15 **ORDER OF THE COMMISSIONER.**

16 **(6) IF AN EMPLOYER FAILS TO COMPLY WITH A FINAL ORDER TO**
17 **PAY A CIVIL PENALTY, THE COMMISSIONER OR THE COMPLAINANT MAY BRING**
18 **AN ACTION TO ENFORCE THE ORDER TO PAY A CIVIL PENALTY IN THE CIRCUIT**
19 **COURT IN THE COUNTY WHERE THE EMPLOYER OR THE COMPLAINANT IS**
20 **LOCATED.**

21 **(E) THIS SECTION MAY NOT BE CONSTRUED TO PROHIBIT AN**
22 **EMPLOYER FROM PERFORMING AN EMPLOYMENT-RELATED BACKGROUND**
23 **INVESTIGATION THAT:**

24 **(1) INCLUDES USE OF A CONSUMER REPORT OR INVESTIGATIVE**
25 **CONSUMER REPORT;**

26 **(2) IS AUTHORIZED UNDER THE FEDERAL FAIR CREDIT**
27 **REPORTING ACT; AND**

28 **(3) DOES NOT INVOLVE INVESTIGATION OF CREDIT**
29 **INFORMATION.**

30 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect
31 October 1, 2011.