

SENATE BILL 132

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11r0832
CF HB 87

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

Introduced and read first time: January 24, 2011

Assigned to: Finance

Committee Report: Favorable with amendments

Senate action: Adopted with floor amendments

Read second time: March 16, 2011

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
15 penalties and send a certain order to pay a certain penalty to certain parties
16 under certain circumstances; authorizing an employer to request a certain
17 hearing under certain circumstances; requiring the Commissioner to schedule a
18 certain hearing under certain circumstances; establishing that an order to pay a
19 civil penalty becomes final under certain circumstances; authorizing the
20 Commissioner or a complainant to bring certain court actions under certain
21 circumstances; providing that this Act does not apply to certain employers;
22 specifying that this Act does not prohibit an employer from performing an
23 employment-related background investigation that meets certain requirements;

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.



1 and generally relating to the use by employers of credit reports and credit
2 histories of employees and applicants for employment.

3 BY adding to
4 Article – Labor and Employment
5 Section 3–711
6 Annotated Code of Maryland
7 (2008 Replacement Volume and 2010 Supplement)

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

10 **Article – Labor and Employment**

11 **3–711.**

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

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

16 **(2) A FINANCIAL INSTITUTION, ~~OR AN AFFILIATE OR SUBSIDIARY~~**
17 **~~OF THE FINANCIAL INSTITUTION,~~ THAT ACCEPTS DEPOSITS THAT ARE INSURED**
18 **BY A FEDERAL AGENCY, OR AN AFFILIATE OR SUBSIDIARY OF THE FINANCIAL**
19 **INSTITUTION; ~~OR~~**

20 **(3) A CREDIT UNION SHARE GUARANTY CORPORATION THAT IS**
21 **APPROVED BY THE MARYLAND COMMISSIONER OF FINANCIAL REGULATION;**
22 **OR**

23 **~~(3)~~ (4) AN ENTITY, OR AN AFFILIATE OF THE ENTITY, THAT IS**
24 **REGISTERED AS AN INVESTMENT ADVISOR WITH THE UNITED STATES**
25 **SECURITIES AND EXCHANGE COMMISSION.**

26 **(B) AN EMPLOYER MAY NOT USE AN APPLICANT’S OR EMPLOYEE’S**
27 **CREDIT REPORT OR CREDIT HISTORY IN DETERMINING WHETHER TO:**

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

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

30 **(3) DETERMINE COMPENSATION OR THE TERMS, CONDITIONS, OR**
31 **PRIVILEGES OF EMPLOYMENT.**

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

3 ~~(1)~~ ~~(H)~~ (I) 1. THE APPLICANT HAS RECEIVED AN OFFER OF
 4 EMPLOYMENT; AND

5 ~~(H)~~ 2. THE CREDIT REPORT OR CREDIT HISTORY WILL
 6 BE USED FOR A PURPOSE OTHER THAN A PURPOSE PROHIBITED BY SUBSECTION
 7 (B) OF THIS SECTION; OR

8 ~~(2)~~ (II) THE EMPLOYER HAS A BONA FIDE PURPOSE FOR
 9 ~~OBTAINING~~ REQUESTING OR USING INFORMATION IN THE CREDIT REPORT OR
 10 CREDIT HISTORY THAT IS:

11 ~~(H)~~ 1. SUBSTANTIALLY JOB-RELATED; AND

12 ~~(H)~~ 2. DISCLOSED IN WRITING TO THE EMPLOYEE OR
 13 APPLICANT.

14 (2) FOR THE PURPOSES OF THIS SUBSECTION, A POSITION FOR
 15 WHICH AN EMPLOYER HAS A BONA FIDE PURPOSE THAT IS SUBSTANTIALLY
 16 JOB-RELATED FOR REQUESTING OR USING INFORMATION IN A CREDIT REPORT
 17 OR CREDIT HISTORY INCLUDES A POSITION THAT:

18 (I) IS MANAGERIAL AND INVOLVES SETTING THE
 19 DIRECTION OR CONTROL OF A BUSINESS, OR A DEPARTMENT, DIVISION, UNIT,
 20 OR AGENCY OF A BUSINESS;

21 (II) INVOLVES ACCESS TO PERSONAL INFORMATION, AS
 22 DEFINED IN § 14-3501 OF THE COMMERCIAL LAW ARTICLE, OF A CUSTOMER,
 23 EMPLOYEE, OR EMPLOYER, EXCEPT FOR PERSONAL INFORMATION
 24 CUSTOMARILY PROVIDED IN A RETAIL TRANSACTION;

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

28 (IV) IS PROVIDED AN EXPENSE ACCOUNT OR A CORPORATE
 29 DEBIT OR CREDIT CARD; OR

30 (V) HAS ACCESS TO:

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

1 A. DERIVES INDEPENDENT ECONOMIC VALUE,
2 ACTUAL OR POTENTIAL, FROM NOT BEING GENERALLY KNOWN TO, AND NOT
3 BEING READILY ASCERTAINABLE BY PROPER MEANS BY, OTHER PERSONS WHO
4 CAN OBTAIN ECONOMIC VALUE FROM THE DISCLOSURE OR USE OF THE
5 INFORMATION; AND

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

8 2. OTHER CONFIDENTIAL BUSINESS INFORMATION;

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

13 (2) IF THE COMMISSIONER RECEIVES A WRITTEN COMPLAINT
14 UNDER PARAGRAPH (1) OF THIS SUBSECTION, THE COMMISSIONER SHALL
15 INVESTIGATE THE MATTER PROMPTLY.

16 (3) IF THE COMMISSIONER DETERMINES THAT THE EMPLOYER
17 HAS WILLFULLY OR NEGLIGENTLY VIOLATED SUBSECTION (B) OR (C) OF THIS
18 SECTION, THE COMMISSIONER SHALL TRY TO RESOLVE THE MATTER
19 INFORMALLY.

20 (4) IF THE COMMISSIONER IS UNABLE TO RESOLVE THE MATTER
21 INFORMALLY, THE COMMISSIONER MAY:

22 (I) ASSESS A CIVIL PENALTY OF:

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

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

27 (II) SEND AN ORDER TO PAY THE CIVIL PENALTY TO THE
28 COMPLAINANT AND THE EMPLOYER.

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

1 **(II) ON RECEIPT OF A REQUEST FOR A HEARING UNDER**
2 **ITEM (I) OF THIS PARAGRAPH, THE COMMISSIONER SHALL SCHEDULE A**
3 **HEARING.**

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

7 **(6) IF AN EMPLOYER FAILS TO COMPLY WITH A FINAL ORDER TO**
8 **PAY A CIVIL PENALTY, THE COMMISSIONER OR THE COMPLAINANT MAY BRING**
9 **AN ACTION TO ENFORCE THE ORDER TO PAY A CIVIL PENALTY IN THE CIRCUIT**
10 **COURT IN THE COUNTY WHERE THE EMPLOYER OR THE COMPLAINANT IS**
11 **LOCATED.**

12 **(E) THIS SECTION MAY NOT BE CONSTRUED TO PROHIBIT AN**
13 **EMPLOYER FROM PERFORMING AN EMPLOYMENT-RELATED BACKGROUND**
14 **INVESTIGATION THAT:**

15 **(1) INCLUDES USE OF A CONSUMER REPORT OR INVESTIGATIVE**
16 **CONSUMER REPORT;**

17 **(2) IS AUTHORIZED UNDER THE FEDERAL FAIR CREDIT**
18 **REPORTING ACT; AND**

19 **(3) DOES NOT INVOLVE INVESTIGATION OF CREDIT**
20 **INFORMATION.**

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

Approved:

Governor.

President of the Senate.

Speaker of the House of Delegates.