

**First Regular Session
Sixty-ninth General Assembly
STATE OF COLORADO**

REVISED

*This Version Includes All Amendments Adopted
on Second Reading in the Second House*

LLS NO. 13-0504.01 Thomas Morris x4218

SENATE BILL 13-018

SENATE SPONSORSHIP

Ulibarri,

HOUSE SPONSORSHIP

Fischer,

Senate Committees
Business, Labor, & Technology

House Committees
Business, Labor, Economic, & Workforce
Development

A BILL FOR AN ACT

101 **CONCERNING THE USE OF CONSUMER CREDIT INFORMATION BY**
102 **EMPLOYERS.**

Bill Summary

(Note: This summary applies to this bill as introduced and does not reflect any amendments that may be subsequently adopted. If this bill passes third reading in the house of introduction, a bill summary that applies to the reengrossed version of this bill will be available at <http://www.leg.state.co.us/billsummaries>.)

The bill creates the "Employment Opportunity Act", which specifies the purposes for which consumer credit information (i.e., consumer credit reports and credit scores) can be used by an employer or potential employer (jointly referred to as "employer"). Specifically, the

Shading denotes HOUSE amendment. Double underlining denotes SENATE amendment.
*Capital letters indicate new material to be added to existing statute.
Dashes through the words indicate deletions from existing statute.*

HOUSE
Amended 2nd Reading
March 22, 2013

SENATE
3rd Reading Unamended
February 12, 2013

SENATE
Amended 2nd Reading
February 11, 2013

bill:

- ! Prohibits an employer's use of consumer credit information for employment purposes if the information is unrelated to the job;
- ! Requires an employer to disclose to an employee or applicant for employment (jointly referred to as "employee") when the employer uses the employee's consumer credit information to take adverse action against him or her and the particular credit information upon which the employer relied;
- ! Authorizes an employee aggrieved by a violation of the above provisions to bring suit for an injunction, damages, or both; and
- ! Requires the department of labor and employment to enforce the laws related to employer use of consumer credit information.

1 *Be it enacted by the General Assembly of the State of Colorado:*

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3 **SECTION 1.** In Colorado Revised Statutes, **add** 8-2-126 as
4 follows:

5 **8-2-126. Employer use of consumer credit information -**
6 **violation - short title - definitions.** (1) THIS SECTION SHALL BE KNOWN
7 AND MAY BE CITED AS THE "EMPLOYMENT OPPORTUNITY ACT".

8 (2) AS USED IN THIS SECTION:

9 (a) "ADVERSE ACTION" MEANS:

10 (I) FOR AN APPLICANT FOR EMPLOYMENT, DENIAL OF
11 EMPLOYMENT; AND

12 (II) FOR AN EMPLOYEE, DEMOTION, REASSIGNMENT TO A
13 LOWER-RANKED POSITION OR TO A POSITION WITH A LOWER LEVEL OF
14 COMPENSATION, DECREASE IN COMPENSATION LEVEL, DENIAL OF
15 PROMOTION, OR TERMINATION OF EMPLOYMENT; OR

16 (III) ANY OTHER DECISION FOR EMPLOYMENT PURPOSES THAT

1 ADVERSELY AFFECTS AN EMPLOYEE OR APPLICANT.

2 (b) "CONSUMER CREDIT INFORMATION" MEANS A WRITTEN, ORAL,
3 OR OTHER COMMUNICATION OF INFORMATION BEARING ON A CONSUMER'S
4 CREDITWORTHINESS, CREDIT STANDING, CREDIT CAPACITY, OR CREDIT
5 HISTORY. "CONSUMER CREDIT INFORMATION" INCLUDES A CREDIT SCORE
6 BUT DOES NOT INCLUDE THE ADDRESS, NAME, OR DATE OF BIRTH OF AN
7 EMPLOYEE ASSOCIATED WITH A SOCIAL SECURITY NUMBER.

8 (c) "CREDIT SCORE" MEANS AN ATTEMPTED NUMERICAL
9 QUANTIFICATION OF A PERSON'S CREDITWORTHINESS OR CREDIT HISTORY.

10 (d) "EMPLOYEE" MEANS EVERY PERSON WHO MAY BE PERMITTED,
11 REQUIRED, OR DIRECTED BY ANY EMPLOYER IN CONSIDERATION OF DIRECT
12 OR INDIRECT GAIN OR PROFIT, TO ENGAGE IN ANY EMPLOYMENT AND
13 INCLUDES AN APPLICANT FOR EMPLOYMENT.

14 (e) "EMPLOYER" HAS THE MEANING SET FORTH IN SECTION 8-1-101
15 AND INCLUDES A PROSPECTIVE EMPLOYER; EXCEPT THAT "EMPLOYER"
16 DOES NOT INCLUDE ANY STATE OR LOCAL LAW ENFORCEMENT AGENCY.

17 (f) "EMPLOYMENT PURPOSES" MEANS EVALUATING A PERSON FOR
18 EMPLOYMENT, HIRING, PROMOTION, DEMOTION, REASSIGNMENT,
19 ADJUSTMENT IN COMPENSATION LEVEL, OR RETENTION AS AN EMPLOYEE.

20 (g) "SUBSTANTIALLY RELATED TO THE EMPLOYEE'S CURRENT OR
21 POTENTIAL JOB" MEANS THE INFORMATION CONTAINED IN A CREDIT
22 REPORT IS RELATED TO THE POSITION FOR WHICH THE EMPLOYEE WHO IS
23 THE SUBJECT OF THE REPORT IS BEING EVALUATED BECAUSE THE POSITION:

24 (I) CONSTITUTES EXECUTIVE OR MANAGEMENT PERSONNEL OR
25 OFFICERS OR EMPLOYEES WHO CONSTITUTE PROFESSIONAL STAFF TO
26 EXECUTIVE AND MANAGEMENT PERSONNEL, AND THE POSITION INVOLVES
27 ONE OR MORE OF THE FOLLOWING:

1 (A) SETTING THE DIRECTION OR CONTROL OF A BUSINESS,
2 DIVISION, UNIT, OR AN AGENCY OF A BUSINESS;

3 (B) A FIDUCIARY RESPONSIBILITY TO THE EMPLOYER;

4 (C) ACCESS TO CUSTOMERS', EMPLOYEES', OR THE EMPLOYER'S
5 PERSONAL OR FINANCIAL INFORMATION OTHER THAN INFORMATION
6 CUSTOMARILY PROVIDED IN A RETAIL TRANSACTION; OR

7 (D) THE AUTHORITY TO ISSUE PAYMENTS, COLLECT DEBTS, OR
8 ENTER INTO CONTRACTS; OR

9 (II) INVOLVES CONTRACTS WITH DEFENSE, INTELLIGENCE,
10 NATIONAL SECURITY, OR SPACE AGENCIES OF THE FEDERAL GOVERNMENT;

11 (3) (a) AN EMPLOYER SHALL NOT USE CONSUMER CREDIT
12 INFORMATION FOR EMPLOYMENT PURPOSES UNLESS THE INFORMATION IS
13 SUBSTANTIALLY RELATED TO THE EMPLOYEE'S CURRENT OR POTENTIAL
14 JOB. AN EMPLOYER OR EMPLOYER'S AGENT, REPRESENTATIVE, OR
15 DESIGNEE SHALL NOT REQUIRE AN EMPLOYEE TO CONSENT TO A REQUEST
16 FOR A CREDIT REPORT THAT CONTAINS INFORMATION ABOUT THE
17 EMPLOYEE'S CREDIT SCORE, CREDIT ACCOUNT BALANCES, PAYMENT
18 HISTORY, SAVINGS OR CHECKING ACCOUNT BALANCES, OR SAVINGS OR
19 CHECKING ACCOUNT NUMBERS AS A CONDITION OF EMPLOYMENT UNLESS:

20 (I) THE EMPLOYER IS A BANK OR FINANCIAL INSTITUTION;

21 (II) THE REPORT IS REQUIRED BY LAW; OR

22 (III) THE REPORT IS SUBSTANTIALLY RELATED TO THE EMPLOYEE'S
23 CURRENT OR POTENTIAL JOB AND THE EMPLOYER HAS A BONA FIDE
24 PURPOSE FOR REQUESTING OR USING INFORMATION IN THE CREDIT REPORT
25 THAT IS SUBSTANTIALLY RELATED TO THE EMPLOYEE'S CURRENT OR
26 POTENTIAL JOB AND IS DISCLOSED IN WRITING TO THE EMPLOYEE.

27 (b) WHEN CONSUMER CREDIT INFORMATION IS SUBSTANTIALLY

1 RELATED TO THE EMPLOYEE'S CURRENT OR POTENTIAL JOB, AN EMPLOYER
2 MAY INQUIRE FURTHER OF THE EMPLOYEE TO GIVE HIM OR HER THE
3 OPPORTUNITY TO EXPLAIN ANY UNUSUAL OR MITIGATING CIRCUMSTANCES
4 WHERE THE CONSUMER CREDIT INFORMATION MAY NOT REFLECT MONEY
5 MANAGEMENT SKILLS BUT IS RATHER ATTRIBUTABLE TO SOME OTHER
6 FACTOR, INCLUDING A LAYOFF, ERROR IN THE CREDIT INFORMATION,
7 ACT OF IDENTITY THEFT, MEDICAL EXPENSE, MILITARY SEPARATION,
8 DEATH, DIVORCE, OR SEPARATION IN THE EMPLOYEE'S FAMILY, STUDENT
9 DEBT, OR A LACK OF CREDIT HISTORY.

10 (4) IF AN EMPLOYER RELIES, IN WHOLE OR IN PART, ON CONSUMER
11 CREDIT INFORMATION TO TAKE ADVERSE ACTION REGARDING THE
12 EMPLOYEE WHOSE INFORMATION WAS OBTAINED, THE EMPLOYER SHALL
13 DISCLOSE THAT FACT, AND THE PARTICULAR INFORMATION UPON WHICH
14 THE EMPLOYER RELIES, TO THE EMPLOYEE. THE EMPLOYER SHALL MAKE
15 THE DISCLOSURE REQUIRED UNDER THIS SUBSECTION (4) TO AN EMPLOYEE
16 IN WRITING OR TO AN APPLICANT USING THE SAME MEDIUM IN WHICH THE
17 APPLICATION WAS MADE.

18 (5) A PERSON WHO IS INJURED BY A VIOLATION OF THIS SECTION
19 MAY FILE A COMPLAINT WITH THE DIVISION OF LABOR, UPON WHICH THE
20 DIVISION OF LABOR SHALL PROMPTLY INVESTIGATE AND ISSUE FINDINGS
21 WITHIN THIRTY DAYS AFTER A HEARING AND MAY AWARD CIVIL PENALTIES
22 NOT TO EXCEED TWO THOUSAND FIVE HUNDRED DOLLARS TO A
23 PREVAILING PARTY IN AN ACTION BROUGHT UNDER THIS SUBSECTION (5).

24 (6) THE DIRECTOR OF THE DIVISION OF LABOR IN THE DEPARTMENT
25 OF LABOR AND EMPLOYMENT SHALL ENFORCE THIS SECTION.

26 (7) NOTHING IN THIS SECTION IMPOSES ANY LIABILITY ON A
27 PERSON, INCLUDING A CONSUMER REPORTING AGENCY, AS THAT TERM IS

1 DEFINED IN SECTION 12-14.3-102 (4), C.R.S., FOR PROVIDING AN
2 EMPLOYER WITH CONSUMER CREDIT INFORMATION.

3 **SECTION 2. Effective date - applicability.** This act takes effect
4 July 1, 2013, and applies to acts occurring on or after said date.

5 **SECTION 3. Safety clause.** The general assembly hereby finds,
6 determines, and declares that this act is necessary for the immediate
7 preservation of the public peace, health, and safety.