

HOUSE BILL 1321

By Camper

AN ACT to amend Tennessee Code Annotated, Title 4;
Title 8 and Title 50, Chapter 1, relative to
employers and employees.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. Tennessee Code Annotated, Title 50, Chapter 1, is amended by adding the following as a new, appropriately designated part:

50-1-1001.

(a) This section shall not apply to an employer that is:

(1) Required by federal law or state law to inquire into an applicant's or employee's credit report or credit history for the purpose of employment;

(2) A financial institution that accepts deposits that are insured by a federal agency, or an affiliate or subsidiary of the financial institution; or

(3) An entity, or an affiliate of an entity, that is registered as an investment advisor with the United States Securities and Exchange Commission.

(b) Except as provided in subsection (c), an employer shall not use an applicant's or employee's credit report or credit history to:

(1) Deny employment to an applicant;

(2) Discharge an employee; or

(3) Determine compensation or the terms, conditions or privileges of employment.

(c)

(1) An employer may request or use an applicant's or employee's credit report or credit history if:

(A) The applicant has received:

(i) An offer of employment; and

(ii) The credit report or credit history will be used for a purpose other than a purpose prohibited by subsection (b); or

(B) The employer has a bona fide purpose for requesting or using information in the credit report or credit history that is:

(i) Substantially job-related; and

(ii) Disclosed in writing to the employee or applicant.

(2) For purposes of this section, an employer may request or use information in a credit report or credit history if the applicant's or employee's position:

(A) Is managerial and involves setting the direction or control of a business, or a department, division, unit or agency of a business;

(B) Involves access to personal information as defined in § 47-18-2107;

(C) Involves a fiduciary responsibility to the employer, including the authority to issue payments, collect debts, transfer money or enter into contracts;

(D) Is provided an expense account or a corporate debit or credit card; or

(E) Has access to:

(i) Information, including a formula, pattern, compilation, program, device, method, technique or process that:

(a) Derives independent economic value, actual or potential, from not being generally known to, and not being readily ascertainable by proper means by, other persons who can obtain economic value from the disclosure or use of the information; and

(b) Is the subject of efforts that are reasonable under the circumstances to maintain its secrecy; or

(ii) Other confidential business information.

(d)

(1) If an employer violates subsection (b) then the applicant or employee may file a written complaint with the commissioner of labor and workforce development.

(2) If the commissioner receives a written complaint under subdivision (d)(1), then the commissioner shall investigate the matter.

(3) If the commissioner determines that the employer willfully or negligently violated subsection (b) or (c), then the commissioner shall try to resolve the matter informally.

(4) If the commissioner is unable to resolve the matter informally, then the commissioner may:

(A) Assess a civil penalty to the employer of:

(i) Up to five hundred dollars (\$500) for an initial violation of subsection (b) or (c); or

(ii) Up to two thousand and five hundred dollars (\$2,500) for a repeat violation of subsection (b) or (c); and

(B) Send an order to pay the civil penalty to the complainant, the employer or both.

(5)

(A) Within thirty (30) days after an employer receives an order to pay a civil penalty under subdivision (d)(4)(B), the employer may request a de novo administrative hearing, subject to the requirements of title 4, chapter 21.

(B) Upon receipt of a request for a hearing, the commissioner shall schedule a hearing.

(C) If a hearing is not requested, then the order to pay a civil penalty becomes a final order of the commissioner.

(6) If an employer fails to comply with a final order to pay a civil penalty, then the commissioner or the complainant may bring an action to enforce the order to pay a civil penalty in the circuit court in the county where the employer or the complainant is located.

(e) This section shall not be construed to prohibit an employer from performing an employment-related background investigation that:

(1) Includes use of a consumer report or investigative consumer report;

(2) Is authorized under the Federal Fair Credit Reporting Act, codified at 15 U.S.C. § 1681, et seq.; and

(3) Does not involve investigation of credit information.

SECTION 2. The commissioner is authorized to promulgate rules and regulations to effectuate the purposes of this act. All such rules and regulations shall be promulgated in accordance with Tennessee Code Annotated, Title 4, Chapter 5.

SECTION 3. This act shall take effect upon becoming a law, the public welfare requiring it.