

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

PREAMENDED

*This Unofficial Version Includes Committee
Amendments Not Yet Adopted on Second Reading*

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

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 bill:

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.

- ! 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
17 ADVERSELY AFFECTS AN EMPLOYEE OR APPLICANT.

1 (b) "CONSUMER CREDIT INFORMATION" MEANS A WRITTEN, ORAL,
2 OR OTHER COMMUNICATION OF INFORMATION BEARING ON A CONSUMER'S
3 CREDITWORTHINESS, CREDIT STANDING, CREDIT CAPACITY, OR CREDIT
4 HISTORY. "CONSUMER CREDIT INFORMATION" INCLUDES A CREDIT SCORE.

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

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

11 (e) "EMPLOYER" HAS THE MEANING SET FORTH IN SECTION 8-1-101
12 AND INCLUDES A PROSPECTIVE EMPLOYER.

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

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

20 (I) CONSTITUTES EXECUTIVE OR MANAGEMENT PERSONNEL OR
21 OFFICERS OR EMPLOYEES WHO CONSTITUTE PROFESSIONAL STAFF TO
22 EXECUTIVE AND MANAGEMENT PERSONNEL, AND THE POSITION INVOLVES
23 ONE OR MORE OF THE FOLLOWING:

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

26 (B) A FIDUCIARY RESPONSIBILITY TO THE EMPLOYER;

27 (C) ACCESS TO CUSTOMERS', EMPLOYEES', OR THE EMPLOYER'S

1 PERSONAL OR FINANCIAL INFORMATION OTHER THAN INFORMATION
2 CUSTOMARILY PROVIDED IN A RETAIL TRANSACTION; OR

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

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

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

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

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

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

23 (b) WHEN CONSUMER CREDIT INFORMATION IS SUBSTANTIALLY
24 RELATED TO THE EMPLOYEE'S CURRENT OR POTENTIAL JOB, AN EMPLOYER
25 MAY INQUIRE FURTHER OF THE EMPLOYEE TO GIVE HIM OR HER THE
26 OPPORTUNITY TO EXPLAIN ANY UNUSUAL OR MITIGATING CIRCUMSTANCES
27 WHERE THE CONSUMER CREDIT INFORMATION MAY NOT REFLECT MONEY

1 MANAGEMENT SKILLS BUT IS RATHER ATTRIBUTABLE TO SOME OTHER
2 FACTOR, INCLUDING A LAYOFF, ERROR IN THE CREDIT INFORMATION,
3 ACT OF IDENTITY THEFT, MEDICAL EXPENSE, MILITARY SEPARATION,
4 DEATH, DIVORCE, OR SEPARATION IN THE EMPLOYEE'S FAMILY, STUDENT
5 DEBT, OR A LACK OF CREDIT HISTORY.

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

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

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

22 (7) NOTHING IN THIS SECTION IMPOSES ANY LIABILITY ON A
23 PERSON, INCLUDING A CONSUMER REPORTING AGENCY, AS THAT TERM IS
24 DEFINED IN SECTION 12-14.3-102 (4), C.R.S., FOR PROVIDING AN
25 EMPLOYER WITH CONSUMER CREDIT INFORMATION.

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

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