

1 STATE OF OKLAHOMA

2 2nd Session of the 53rd Legislature (2012)

3 HOUSE BILL 2860

By: Hoskin

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5
6 AS INTRODUCED

7 An Act relating to labor; creating the Employee
8 Credit Privacy Act; defining terms; prohibiting
9 employer from using credit history or credit reports
10 as hiring criteria; providing applicability for
11 employees and applicants; exempting certain
12 employers; prohibiting waiver of rights under the
13 act; providing civil remedies for violations of act;
14 mandating attorney fees; allowing certain background
15 investigations; providing for codification; and
16 providing an effective date.

17 BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA:

18 SECTION 1. NEW LAW A new section of law to be codified
19 in the Oklahoma Statutes as Section 10-101 of Title 40, unless there
20 is created a duplication in numbering, reads as follows:

21 A. This act shall be known and may be cited as the "Employee
22 Credit Privacy Act".

23 B. As used in the Employee Credit Privacy Act:

24 1. "Credit history" means past borrowing and repaying behavior
of an individual, including paying bills on time and managing debt
and other financial obligations;

1 2. "Credit report" means any written or other communication of
2 any information by a consumer reporting agency that bears on the
3 creditworthiness, credit standing, credit capacity, or credit
4 history of a consumer;

5 3. "Employee" means an individual who receives compensation for
6 performing services for an employer under an express or implied
7 contract of hire;

8 4. "Employer" means an individual or entity that permits one or
9 more individuals to work or that accepts applications for employment
10 or is an agent of an employer. Employer shall not include:

11 a. any bank holding company, financial holding company,
12 bank, savings bank, savings and loan association,
13 credit union, or trust company, or any subsidiary or
14 affiliate thereof, that is authorized to do business
15 under the laws of this state or of the United States,

16 b. any company authorized to engage in any kind of
17 insurance or surety business pursuant to the Oklahoma
18 Insurance Code, including any employee, agent, or
19 employee of an agent acting on behalf of a company
20 engaged in the insurance or surety business,

21 c. any state law enforcement or investigative unit,

22 d. any state or local government agency which otherwise
23 requires use of the credit history or credit report of
24 the employee or applicant, or

1 e. any entity that is defined as a debt collector under
2 federal or state laws;

3 5. "Financial information" means nonpublic information on the
4 overall financial direction of an organization, including, but not
5 limited to, company taxes or profit and loss reports;

6 6. "Marketable assets" means company property that is specially
7 safeguarded from the public and to which access is only entrusted to
8 managers and select other employees. Marketable assets shall not
9 include the fixtures, furnishings, or equipment of an employer;

10 7. "Personal or confidential information" means sensitive
11 information that a customer or client of the employing organization
12 gives explicit authorization for the organization to obtain,
13 process, and keep; that the employer entrusts only to managers and a
14 select few employees; or that is stored in secure repositories not
15 accessible by the public or low-level employees;

16 8. "State or national security information" means information
17 only offered to select employees because it may jeopardize the
18 security of the state or the nation if it were entrusted to the
19 general public; and

20 9. "Trade secrets" means sensitive information regarding a
21 company's overall strategy or business plans. This shall not
22 include general proprietary company information such as handbooks,
23 policies, or low-level strategies.

24 C. Except as provided in this section, an employer shall not:

1 1. Fail or refuse to hire or recruit, discharge, or otherwise
2 discriminate against an individual with respect to employment,
3 compensation, or a term, condition, or privilege of employment based
4 on the credit history or credit report of the individual;

5 2. Inquire about the credit history of an employee or
6 applicant; or

7 3. Order or obtain the credit report of an applicant or
8 employee from a consumer reporting agency.

9 D. The prohibition in subsection C of this section shall not
10 prevent an inquiry or employment action if a satisfactory credit
11 history is an established bona fide occupational requirement of a
12 particular position or a particular group of employees. A
13 satisfactory credit history shall not be a bona fide occupational
14 requirement unless at least one of the following circumstances is
15 present:

16 1. State or federal law requires bonding or other security
17 covering an individual holding the position;

18 2. The duties of the position include custody of or
19 unsupervised access to cash or marketable assets valued at Two
20 Thousand Five Hundred Dollars (\$2,500.00) or more;

21 3. The duties of the position include signatory power over
22 business assets of One Hundred Dollars (\$100.00) or more per
23 transaction;

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1 4. The position is a managerial position which involves setting
2 the direction or control of the business;

3 5. The position involves access to personal or confidential
4 information, financial information, trade secrets, or state or
5 national security information;

6 6. The position meets criteria in administrative rules, if any,
7 that the U.S. Department of Labor or the Department of Labor has
8 promulgated to establish the circumstances in which a credit history
9 is a bona fide occupational requirement; or

10 7. The credit history of the employee or applicant is otherwise
11 required by or exempt under federal or state law.

12 E. An employer shall not require an applicant or employee to
13 waive any right under the Employee Credit Privacy Act. An agreement
14 by an applicant or employee to waive any right under the Employee
15 Credit Privacy Act is invalid and unenforceable.

16 F. A person who is injured by a violation of the Employee
17 Credit Privacy Act may bring a civil action in district court to
18 obtain injunctive relief or damages, or both injunctive relief and
19 damages. The court shall award costs and reasonable attorney fees
20 to a person who prevails as a plaintiff in an action authorized by
21 the Employee Credit Privacy Act.

22 G. Nothing in the Employee Credit Privacy Act shall prohibit
23 employers from conducting a thorough background investigation, which
24 may include obtaining a report without information on credit history

1 or an investigative report without information on credit history, or
2 both, as permitted under the Fair Credit Reporting Act. This
3 information shall be used for employment purposes only.

4 SECTION 2. This act shall become effective November 1, 2012.

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