

LEGISLATURE OF NEBRASKA
ONE HUNDRED THIRD LEGISLATURE
FIRST SESSION
LEGISLATIVE BILL 95

Introduced by Dubas, 34.

Read first time January 10, 2013

Committee:

A BILL

1 FOR AN ACT relating to labor and employment; to adopt the Employee

2 Credit Privacy Act.

3 Be it enacted by the people of the State of Nebraska,

1 Section 1. Sections 1 to 8 of this act shall be known and
2 may be cited as the Employee Credit Privacy Act.

3 Sec. 2. It is the policy of this state that a person
4 should not be discriminated against in obtaining or retaining
5 employment because of his or her credit history or credit report
6 unless such information directly relates to a bona fide occupational
7 requirement for employment.

8 Sec. 3. For purposes of the Employee Credit Privacy Act:

9 (1) Credit history means an individual's past borrowing
10 and repaying behavior, including paying bills on time and managing
11 debt and other financial obligations;

12 (2) Credit report means any written or other
13 communication of any information by a consumer reporting agency that
14 bears on a consumer's creditworthiness, credit standing, credit
15 capacity, or credit history;

16 (3) Employee means an individual who receives
17 compensation for performing services for an employer under an express
18 or implied contract of hire;

19 (4) Employer means an individual or entity that permits
20 one or more individuals to work or that accepts applications for
21 employment or is an agent of an employer. Employer does not include:

22 (a) Any bank holding company, financial holding company,
23 bank, savings bank, savings and loan association, credit union, or
24 trust company, or any subsidiary or affiliate thereof, that is
25 authorized to do business under the laws of this state or of the

1 United States;

2 (b) Any company authorized to engage in any kind of
3 insurance or surety business under the laws of this state, including
4 any employee, agent, or employee of an agent acting on behalf of a
5 company engaged in the insurance or surety business;

6 (c) Any state law enforcement agency;

7 (d) Any state or local government agency which otherwise
8 requires use of the employee's or applicant's credit history or
9 credit report; or

10 (e) Any entity that is defined as a debt collector under
11 federal or state statute; and

12 (5) Marketable assets means company property that is
13 specially safeguarded from the public and to which access is only
14 entrusted to managers and select other employees. Marketable assets
15 do not include the fixtures, furnishings, or equipment of an
16 employer.

17 Sec. 4. (1) Except as otherwise provided in subsection
18 (2) of this section, an employer shall not do any of the following:

19 (a) Fail or refuse to hire or recruit, discharge, or
20 otherwise discriminate against an individual with respect to
21 employment, compensation, or a term, condition, or privilege of
22 employment because of the individual's credit history or credit
23 report;

24 (b) Inquire about an applicant's or employee's credit
25 history; or

1 (c) Order or obtain an applicant's or employee's credit
2 report from a consumer reporting agency.

3 (2) The prohibition in subsection (1) of this section
4 does not prevent an inquiry or employment action if a satisfactory
5 credit history is an established bona fide occupational requirement
6 of a particular position or a particular group of an employer's
7 employees. A satisfactory credit history is not a bona fide
8 occupational requirement unless at least one of the following
9 circumstances is present:

10 (a) State or federal law requires bonding or other
11 security covering an individual holding the position;

12 (b) The duties of the position include signatory power
13 over marketable assets of one hundred dollars or more per
14 transaction;

15 (c) The position is a managerial position which involves
16 setting the direction or control of the business; or

17 (d) The position meets criteria in administrative rules,
18 if any, that the United States Department of Labor or the Nebraska
19 Department of Labor has adopted and promulgated to establish the
20 circumstances in which a credit history is a bona fide occupational
21 requirement.

22 Sec. 5. An employer shall not discharge or in any other
23 manner discriminate against any employee because such employee has
24 filed any complaint or instituted or caused to be instituted any
25 proceeding under or related to the Employee Credit Privacy Act, or

1 has testified or is about to testify in any such proceeding.

2 Sec. 6. An employer shall not require an applicant or
3 employee to waive any right under the Employee Credit Privacy Act. An
4 agreement by an applicant or employee to waive any right under the
5 act is invalid and unenforceable.

6 Sec. 7. (1) A person who is injured by a violation of the
7 Employee Credit Privacy Act may bring a civil action in district
8 court to obtain injunctive relief, damages, or both.

9 (2) The court shall award costs and reasonable attorney's
10 fees to a person who prevails as a plaintiff in an action authorized
11 under subsection (1) of this section.

12 Sec. 8. Nothing in the Employee Credit Privacy Act shall
13 prohibit employers from conducting a thorough background
14 investigation, which may include obtaining a report without
15 information on credit history or an investigative report without
16 information on credit history, or both, as permitted under the
17 federal Fair Credit Reporting Act, 15 U.S.C. 1681 et seq. Such
18 information shall be used for employment purposes only.