

**Second Regular Session
Sixty-eighth General Assembly
STATE OF COLORADO**

PREAMENDED

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

LLS NO. 12-0302.02 Kate Meyer x4348

SENATE BILL 12-003

SENATE SPONSORSHIP

Carroll,

HOUSE SPONSORSHIP

Fischer,

Senate Committees
Judiciary

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, "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:*

2 **SECTION 1. Legislative declaration.** (1) The general assembly
3 hereby finds and declares that:

4 (a) Consumer credit scores and credit reports often exclude
5 relevant information or include inaccurate information, and some
6 research, including a 2011 study conducted by the Policy and Economic
7 Research Council, suggests that more than twenty million Americans
8 have material errors on their credit reports;

9 (b) There is also evidence, according to researchers at the Center
10 for Economic Justice and the National Consumer Law Center, that racial
11 and ethnic disparities exist in, and are perpetuated by, consumer credit
12 scoring and credit reporting;

13 (c) In spite of these systemic flaws, the nonpartisan public policy
14 research and advocacy organization Demos concluded in its 2011 report
15 "Discrediting America" that consumer credit scores and credit reports are
16 being used more often and in more contexts than ever before, including
17 by employers, utility companies, and insurers;

1 (d) Despite a lack of evidence showing that consumer credit
2 history correlates to an individual's job performance or likelihood to
3 commit fraud, the number of employers relying on consumer credit
4 information to evaluate employees or potential employees has increased
5 dramatically, with sixty percent of employers using consumer credit
6 information to evaluate job candidates;

7 (e) Currently, job-seekers may have no way of knowing whether
8 or not their credit scores are being used as a factor in considering their
9 applications for employment; and

10 (f) People who have lost their jobs are more likely to have lower
11 credit scores and yet, as a result of employers' use of credit information
12 to make employment decisions, people with lower credit scores are less
13 likely to become re-employed. The impact of this practice has been to
14 create chronic barriers to employment for otherwise qualified people who
15 may have a reduced credit score as a result of one or more layoffs in the
16 family, being a single parent, a medical emergency, a divorce, or a death
17 in the family.

18 (2) The general assembly, therefore, intends to remove
19 unnecessary barriers to employment and to mitigate some of the
20 inequality that inheres in consumer credit information by ensuring that
21 credit scoring is not used in making employment decisions unless it is
22 legitimately related to the job.

23 **SECTION 2.** In Colorado Revised Statutes, **add** 8-2-126 as
24 follows:

25 **8-2-126. Employer use of consumer credit information -**
26 **violation - short title - definitions.** (1) THIS SECTION SHALL BE KNOWN
27 AND MAY BE CITED AS THE "EMPLOYMENT OPPORTUNITY ACT".

1 (2) AS USED IN THIS SECTION:

2 (a) "ADVERSE ACTION" MEANS:

3 (I) FOR AN APPLICANT FOR EMPLOYMENT, DENIAL OF
4 EMPLOYMENT; AND

5 (II) FOR AN EMPLOYEE, DEMOTION, REASSIGNMENT TO A
6 LOWER-RANKED POSITION OR TO A POSITION WITH A LOWER LEVEL OF
7 COMPENSATION, DECREASE IN COMPENSATION LEVEL, DENIAL OF
8 PROMOTION, OR TERMINATION OF EMPLOYMENT; OR

9 (III) ANY OTHER DECISION FOR EMPLOYMENT PURPOSES THAT
10 ADVERSELY AFFECTS AN EMPLOYEE OR APPLICANT.

11 (b) "CONSUMER CREDIT INFORMATION" MEANS A WRITTEN, ORAL,
12 OR OTHER COMMUNICATION OF INFORMATION BEARING ON A CONSUMER'S
13 CREDITWORTHINESS, CREDIT STANDING, CREDIT CAPACITY, OR CREDIT
14 HISTORY. "CONSUMER CREDIT INFORMATION" INCLUDES A CREDIT SCORE.

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

17 (d) "EMPLOYEE" HAS THE MEANING SET FORTH IN SECTION
18 8-1-101.

19 (e) "EMPLOYER" HAS THE MEANING SET FORTH IN SECTION
20 8-1-101.

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

24 (3) (a) AN EMPLOYER SHALL NOT USE CONSUMER CREDIT
25 INFORMATION FOR EMPLOYMENT PURPOSES UNLESS THE INFORMATION IS
26 SUBSTANTIALLY JOB-RELATED, MEANING THAT THE POSITION OF THE
27 PERSON FOR WHOM THE INFORMATION IS SOUGHT IS WITH A BANK OR IS

1 OTHERWISE IN THE FINANCIAL SERVICES SECTOR OR IF THE PERSON'S
2 CONSUMER CREDIT INFORMATION IS OTHERWISE REQUIRED BY A DEFENSE
3 OR SECURITY CONTRACT, INCLUDING CONTRACTS WITH THE FEDERAL
4 DEPARTMENT OF DEFENSE.

5 (b) WHEN CONSUMER CREDIT INFORMATION IS SUBSTANTIALLY
6 JOB-RELATED, AN EMPLOYER MAY INQUIRE FURTHER OF THE EMPLOYEE OR
7 APPLICANT FOR EMPLOYMENT TO GIVE HIM OR HER THE OPPORTUNITY TO
8 EXPLAIN ANY UNUSUAL OR MITIGATING CIRCUMSTANCES WHERE A CREDIT
9 SCORE MAY NOT REFLECT MONEY MANAGEMENT SKILLS BUT IS RATHER
10 ATTRIBUTABLE TO SOME OTHER FACTOR, SUCH AS A LAYOFF, AN ERROR IN
11 THE CREDIT INFORMATION, A MEDICAL EXPENSE, A DIVORCE, OR A DEATH
12 IN THE PERSON'S FAMILY.

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

22 (5) A PERSON WHO IS INJURED BY A VIOLATION OF THIS SECTION
23 MAY BRING A CIVIL ACTION IN A COURT OF COMPETENT JURISDICTION TO
24 OBTAIN INJUNCTIVE RELIEF OR DAMAGES, OR BOTH. THE COURT SHALL
25 AWARD REASONABLE COSTS AND ATTORNEY FEES TO A PREVAILING PARTY
26 IN AN ACTION BROUGHT UNDER THIS SUBSECTION (5).

27 (6) IT IS THE DUTY OF THE DIRECTOR OF THE DIVISION OF LABOR IN

1 THE DEPARTMENT OF LABOR AND EMPLOYMENT TO ENFORCE THIS
2 SECTION.

3 **SECTION 3. Effective date - applicability.** This act takes effect
4 July 1, 2012, and applies to acts occurring on or after said date.

5 **SECTION 4. 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.