

CHAPTER 125

CONSUMER AND COMMERCIAL TRANSACTIONS

SENATE BILL 13-018

BY SENATOR(S) Ulibarri, Aguilar, Carroll, Giron, Guzman, Heath, Hodge, Hudak, Jones, Kefalas, Kerr, Nicholson, Schwartz, Steadman, Tochtrop, Todd, Morse;
 also REPRESENTATIVE(S) Fischer, Buckner, Court, Fields, Ginal, Hamner, Hullinghorst, Kraft-Tharp, Labuda, Lebsack, Melton, Moreno, Pabon, Pettersen, Primavera, Rosenthal, Salazar, Schafer, Singer, Tyler, Williams, Young, Ferrandino.

AN ACT**CONCERNING THE USE OF CONSUMER CREDIT INFORMATION BY EMPLOYERS.**

Be it enacted by the General Assembly of the State of Colorado:

SECTION 1. In Colorado Revised Statutes, **add** 8-2-126 as follows:

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

(2) AS USED IN THIS SECTION:

(a) "ADVERSE ACTION" MEANS:

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

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

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

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

Capital letters indicate new material added to existing statutes; dashes through words indicate deletions from existing statutes and such material not part of act.

INFORMATION" INCLUDES A CREDIT SCORE BUT DOES NOT INCLUDE THE ADDRESS, NAME, OR DATE OF BIRTH OF AN EMPLOYEE ASSOCIATED WITH A SOCIAL SECURITY NUMBER.

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

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

(e) "EMPLOYER" HAS THE MEANING SET FORTH IN SECTION 8-1-101 AND INCLUDES A PROSPECTIVE EMPLOYER; EXCEPT THAT "EMPLOYER" DOES NOT INCLUDE ANY STATE OR LOCAL LAW ENFORCEMENT AGENCY.

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

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

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

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

(B) A FIDUCIARY RESPONSIBILITY TO THE EMPLOYER;

(C) ACCESS TO CUSTOMERS', EMPLOYEES', OR THE EMPLOYER'S PERSONAL OR FINANCIAL INFORMATION OTHER THAN INFORMATION CUSTOMARILY PROVIDED IN A RETAIL TRANSACTION; OR

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

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

(3) (a) AN EMPLOYER SHALL NOT USE CONSUMER CREDIT INFORMATION FOR EMPLOYMENT PURPOSES UNLESS THE INFORMATION IS SUBSTANTIALLY RELATED TO THE EMPLOYEE'S CURRENT OR POTENTIAL JOB. AN EMPLOYER OR EMPLOYER'S AGENT, REPRESENTATIVE, OR DESIGNEE SHALL NOT REQUIRE AN EMPLOYEE TO CONSENT TO A REQUEST FOR A CREDIT REPORT THAT CONTAINS INFORMATION ABOUT THE EMPLOYEE'S CREDIT SCORE, CREDIT ACCOUNT BALANCES, PAYMENT HISTORY,

SAVINGS OR CHECKING ACCOUNT BALANCES, OR SAVINGS OR CHECKING ACCOUNT NUMBERS AS A CONDITION OF EMPLOYMENT UNLESS:

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

(II) THE REPORT IS REQUIRED BY LAW; OR

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

(b) WHEN CONSUMER CREDIT INFORMATION IS SUBSTANTIALLY RELATED TO THE EMPLOYEE'S CURRENT OR POTENTIAL JOB, AN EMPLOYER MAY INQUIRE FURTHER OF THE EMPLOYEE TO GIVE HIM OR HER THE OPPORTUNITY TO EXPLAIN ANY UNUSUAL OR MITIGATING CIRCUMSTANCES WHERE THE CONSUMER CREDIT INFORMATION MAY NOT REFLECT MONEY MANAGEMENT SKILLS BUT IS RATHER ATTRIBUTABLE TO SOME OTHER FACTOR, INCLUDING A LAYOFF, ERROR IN THE CREDIT INFORMATION, ACT OF IDENTITY THEFT, MEDICAL EXPENSE, MILITARY SEPARATION, DEATH, DIVORCE, OR SEPARATION IN THE EMPLOYEE'S FAMILY, STUDENT DEBT, OR A LACK OF CREDIT HISTORY.

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

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

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

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

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

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

Approved: April 19, 2013