

1 HB657  
2 131095-1  
3 By Representative Hall  
4 RFD: Commerce and Small Business  
5 First Read: 24-MAY-11

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8 SYNOPSIS: This bill would provide for when an employer  
9 may use the credit report or credit history of an  
10 employee or applicant for employment.

11 This bill would authorize certain  
12 individuals to file a complaint with the  
13 Commissioner of Labor; require that a complaint  
14 filed by an employee shall be investigated promptly  
15 by the commissioner; authorize the commissioner to  
16 assess civil penalties and send an order to pay the  
17 penalty to the parties; provide for an employer to  
18 request a hearing and for the commission to  
19 schedule a hearing; establish when an order to pay  
20 a civil penalty becomes final; authorize the  
21 commissioner or a complainant to bring certain  
22 court actions; and exempt certain employers.

23  
24 A BILL  
25 TO BE ENTITLED  
26 AN ACT  
27

1 Relating to employment; to provide for when an  
2 employer may use the credit report or credit history of an  
3 employee or applicant for employment; to authorize certain  
4 individuals to file a complaint with the Commissioner of  
5 Labor; to require the investigation of a complaint filed by an  
6 employee by the commissioner; to authorize the commissioner to  
7 assess civil penalties and send an order to pay the penalty to  
8 the parties; to authorize an employer to request a hearing  
9 under certain circumstances; to establish when an order to pay  
10 a civil penalty becomes final; to authorize the commissioner  
11 or complainant to bring certain court actions; and to exempt  
12 certain employers.

13 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

14 Section 1. This act shall be known and may be cited  
15 as the Job Fairness Act.

16 Section 2. (a) Except as provided in subsection (b),  
17 an employer may not use an applicant's or employee's credit  
18 report or credit history in determining whether to do any of  
19 the following:

20 (1) Deny employment to the applicant.

21 (2) Discharge the employee.

22 (3) Determine compensation or the terms, conditions,  
23 or privileges of employment.

24 (b) (1) An employer may request or use an applicant's  
25 or employee's credit report or credit history if any of the  
26 following applies:

1           a.1. The applicant has received an offer of  
2 employment.

3           2. The credit report or credit history will be used  
4 for a purpose other than a purpose prohibited by subsection  
5 (a).

6           b. The employer has a bona fide purpose for  
7 requesting or using information in the credit report or credit  
8 history that is all of the following:

9           1. Substantially job-related.

10          2. Disclosed in writing to the employee or  
11 applicant.

12          (2) For the purposes of this subsection, a position  
13 for which an employer has a bona fide purpose that is  
14 substantially job-related for requesting or using information  
15 in a credit report or credit history includes a position that:

16          a. Is managerial and involves setting the direction  
17 or control of a business, or a department, division, unit, or  
18 agency of a business.

19          b. Involves access to personal information of a  
20 customer, employee, or employer, except for personal  
21 information customarily provided in a retail transaction.

22          c. Involves a fiduciary responsibility to the  
23 employer, including the authority to issue payments, collect  
24 debts, transfer money, or enter into contracts.

25          d. Is provided an expense account or a corporate  
26 debit or credit card.

27          e. Has access to any of the following:

1           1. information, including a formula, pattern,  
2           compilation, program, device, method, technique, or process,  
3           that:

4                 (i) Derives independent economic value, actual or  
5                 potential, from not being generally known to, and not being  
6                 readily ascertainable by proper means by other persons who can  
7                 obtain economic value from the disclosure or use of the  
8                 information.

9                 (ii) Is the subject of efforts that are reasonable  
10                under the circumstances to maintain its secrecy.

11           2. Other confidential business information.

12                 (c) (1) If an employer violates subsection (a), the  
13                 applicant or employee may file a written complaint with the  
14                 Commissioner of Labor.

15                 (2) If the commissioner receives a written complaint  
16                 pursuant to this subsection, the commissioner shall  
17                 investigate the matter promptly.

18                 (3) If the commissioner determines that the employer  
19                 has willfully or negligently violated subsection (a) or (b),  
20                 the commissioner may resolve the matter informally.

21                 (4) If the commissioner is unable to resolve the  
22                 matter informally, the commissioner may do any of the  
23                 following:

24                         a. Assess a civil penalty of:

25                                 1. Up to five hundred dollars (\$500) for an initial  
26                                 violation of subsection (a).

1                   2. Up to two thousand five hundred dollars (\$2,500)  
2 for a repeat violation of subsection (a).

3                   b. Send an order to pay the civil penalty to the  
4 complainant and the employer.

5                   (5)a. Within 30 days after an employer receives an  
6 order to pay a civil penalty pursuant to this section, the  
7 employer may request a de novo administrative hearing.

8                   b. On receipt of a request for a hearing, the  
9 commissioner shall schedule a hearing.

10                  c. If a hearing is not requested, the order to pay a  
11 civil penalty shall be a final order of the commissioner.

12                  (6) If an employer fails to comply with a final  
13 order to pay a civil penalty, the commissioner or the  
14 complainant may bring an action to enforce the order to pay a  
15 civil penalty in the circuit court in the county where the  
16 employer or the complainant is located.

17                  (d) This section may not be construed to prohibit an  
18 employer from performing an employment-related background  
19 investigation that:

20                   (1) Includes use of a consumer report or  
21 investigative consumer report.

22                   (2) Is authorized under the federal Fair Credit  
23 Reporting Act.

24                   (3) Does not involve investigation of credit  
25 information.

26                  (e) This section shall not apply to an employer that  
27 is:

1           (1) Required to inquire into an applicant's or  
2           employee's credit report or credit history under federal law  
3           or any provision of state law for the purpose of employment.

4           (2) A financial institution that accepts deposits  
5           that are insured by a federal agency, or an affiliated or  
6           subsidiary of the financial institution.

7           (3) A credit union share guaranty corporation that  
8           is approved by the Banking Commissioner.

9           (4) An entity, or an affiliate of the entity, that  
10          is registered as an investment advisor with the United States  
11          Securities and Exchange Commission.

12          Section 3. This act shall become effective on the  
13          first day of the third month following its passage and  
14          approval by the Governor, or its otherwise becoming law.