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SENATE BILL 72

50TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2011

INTRODUCED BY

Timothy M. Keller

AN ACT

RELATING TO CONSUMER CREDIT INFORMATION; PROHIBITING EMPLOYERS FROM USING AN EMPLOYEE'S OR PROSPECTIVE EMPLOYEE'S CREDIT INFORMATION AS A BASIS FOR EMPLOYMENT, RECRUITMENT, DISCHARGE OR COMPENSATION WITH SOME EXCEPTIONS; PROVIDING NOTICE TO EMPLOYEES OR PROSPECTIVE EMPLOYEES WHEN CREDIT INFORMATION IS USED BY EMPLOYERS OR PROSPECTIVE EMPLOYERS AS A BASIS FOR EMPLOYMENT, RECRUITMENT, DISCHARGE OR COMPENSATION.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

SECTION 1. SHORT TITLE.--This act may be cited as the "Employee Credit Information Privacy Act".

SECTION 2. PURPOSE OF ACT.--The purpose of the Employee Credit Information Privacy Act is to prevent a person's credit information from being used by an employer in an employment decision.

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1 **SECTION 3. DEFINITIONS.**--As used in the Employee Credit
2 Information Privacy Act:

3 A. "consumer reporting agency" means a person that,
4 for monetary fees, dues or on a cooperative nonprofit basis,
5 regularly engages, in whole or in part, in the practice of
6 assembling or evaluating consumer credit information or other
7 information on consumers for the purpose of furnishing consumer
8 reports to third parties; and

9 B. "credit information" means a written, oral or
10 other communication prepared by a consumer reporting agency or
11 provided by the employee or prospective employee to an employer
12 or prospective employer, bearing on an employee's or
13 prospective employee's credit worthiness, credit standing or
14 credit capacity, that is used or is expected to be used or
15 collected, in whole or in part, for the purpose of an
16 employment decision.

17 **SECTION 4. USE OF CREDIT INFORMATION IN EMPLOYMENT**
18 **DECISIONS PROHIBITED.**--Except as provided in Section 5 of the
19 Employee Credit Information Privacy Act, an employer or
20 prospective employer shall not:

21 A. fail or refuse to hire or recruit, or discharge
22 or otherwise discriminate against, a person with respect to
23 employment or compensation or with respect to a term, condition
24 or privilege of employment, based on the person's credit
25 information; or

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1 B. inquire about an applicant's or employee's
2 credit information.

3 **SECTION 5. EXCEPTIONS TO THE PROHIBITION ON THE USE OF**
4 **CREDIT INFORMATION IN EMPLOYMENT DECISIONS.--**The prohibition in
5 Section 4 of the Employee Credit Information Privacy Act does
6 not prevent an employment or inquiry action if good credit
7 information is an established bona fide occupational
8 requirement of a particular position or a particular group of
9 the employer's employees. Information regarding a person's
10 credit information is not a bona fide occupational requirement
11 unless:

12 A. the person applies for, or currently holds,
13 employment that requires federal deposit insurance corporation
14 clearance;

15 B. the person applies for, or currently holds,
16 employment at a financial service institution; or

17 C. the person applies for, or currently holds,
18 employment that requires United States security clearance.

19 **SECTION 6. INITIAL NOTIFICATION OF USE OF CREDIT**
20 **INFORMATION.--**

21 A. If an employer or prospective employer uses
22 credit information to fail or refuse to hire or recruit, or to
23 discharge or otherwise discriminate against, a person with
24 respect to employment or compensation, or with respect to a
25 term, condition or privilege of employment, the employer or

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1 prospective employer shall disclose to the employee or
2 prospective employee at least once, either at the time of
3 application or upon the first renewal subsequent to December
4 31, 2010, in writing or in the same medium as the application
5 or renewal, that it uses that information.

6 B. An employer or prospective employer shall use
7 the following disclosure language to comply with the
8 requirements of this section: "In connection with your
9 application for employment or compensation or a term, condition
10 or privilege of employment, we may review and use your credit
11 information."

12 SECTION 7. EFFECTIVE DATE.--The effective date of the
13 provisions of this act is July 1, 2011.