AN ACT

AMENDING TITLE 23, CHAPTER 2, ARTICLE 1, ARIZONA REVISED STATUTES, BY ADDING SECTION 23-204; RELATING TO EMPLOYMENT PRACTICES.

(TEXT OF BILL BEGINS ON NEXT PAGE)
Be it enacted by the Legislature of the State of Arizona:

Section 1. Title 23, chapter 2, article 1, Arizona Revised Statutes, is amended by adding section 23-204, to read:

23-204. Credit report or credit history; prohibition; exceptions; requirements; discrimination; damages; definitions

A. AN EMPLOYER SHALL NOT DO EITHER OF THE FOLLOWING:
   1. FAIL OR REFUSE TO HIRE OR RECRUIT, DISCHARGE OR OTHERWISE
      DISCRIMINATE AGAINST AN INDIVIDUAL WITH RESPECT TO COMPENSATION OR A TERM,
      CONDITION OR PRIVILEGE OF EMPLOYMENT, BECAUSE OF THE INDIVIDUAL’S CREDIT
      REPORT OR CREDIT HISTORY.
   2. INQUIRE ABOUT AN APPLICANT’S OR EMPLOYEE’S CREDIT REPORT OR CREDIT
      HISTORY.

B. SUBSECTION A OF THIS SECTION DOES NOT APPLY IF ANY OF THE FOLLOWING
   ARE TRUE:
   1. THE INFORMATION IS REQUIRED BY STATE OR FEDERAL LAW.
   2. THE POSITION OF EMPLOYMENT INVOLVES ACCESS TO CONFIDENTIAL
      FINANCIAL INFORMATION.
   3. THE EMPLOYER IS A FINANCIAL INSTITUTION AS DEFINED IN SECTION
      6-1101 OR A CREDIT UNION AS DEFINED IN SECTION 6-501.
   4. THE POSITION OF EMPLOYMENT IS THAT OF A LAW ENFORCEMENT OFFICER AS
      DEFINED IN SECTION 38-1001, PARAMEDIC AS DEFINED IN SECTION 36-2201 OR
      FIREFIGHTER AS DEFINED IN SECTION 38-1108.
   5. THE POSITION OF EMPLOYMENT REQUIRES A FINANCIAL FIDUCIARY
      RESPONSIBILITY TO THE EMPLOYER OR A CLIENT OF THE EMPLOYER, INCLUDING THE
      AUTHORITY TO ISSUE PAYMENTS, COLLECT DEBTS, TRANSFER MONEY OR ENTER INTO
      CONTRACTS.
   6. THE EMPLOYER CAN DEMONSTRATE THAT THE INFORMATION IS A VALID AND
      RELIABLE PREDICTOR OF EMPLOYEE PERFORMANCE IN THE SPECIFIC POSITION OF
      EMPLOYMENT.
   7. THE POSITION OF EMPLOYMENT INVOLVES ACCESS TO AN EMPLOYER’S PAYROLL
      INFORMATION.

C. AN EMPLOYER THAT RECEIVES A CREDIT REPORT OR CREDIT HISTORY
   INFORMATION PURSUANT TO SUBSECTION B OF THIS SECTION SHALL NOT USE THIS
   INFORMATION AS THE SOLE FACTOR IN DECISIONS REGARDING EMPLOYMENT,
   COMPENSATION OR A TERM, CONDITION OR PRIVILEGE OF EMPLOYMENT.

D. IF AN EMPLOYER SEEKS TO OBTAIN OR ACT ON AN EMPLOYEE’S OR
   APPLICANT’S CREDIT REPORT OR CREDIT HISTORY PURSUANT TO SUBSECTION C OF THIS
   SECTION AND THE REPORT OR HISTORY CONTAINS INFORMATION ABOUT THE EMPLOYEE’S
   OR APPLICANT’S CREDIT SCORE, CREDIT ACCOUNT BALANCES, PAYMENT HISTORY OR
   SAVINGS OR CHECKING ACCOUNT BALANCES OR ACCOUNT NUMBERS, THE EMPLOYER SHALL
   DO ALL OF THE FOLLOWING:
   1. OBTAIN THE EMPLOYEE’S OR APPLICANT’S WRITTEN CONSENT EACH TIME THE
      EMPLOYER SEEKS TO OBTAIN THE EMPLOYEE’S OR APPLICANT’S CREDIT REPORT.
2. DISCLOSE IN WRITING TO THE EMPLOYEE OR APPLICANT THE EMPLOYER'S REASONS FOR ACCESSING THE CREDIT REPORT AND, IF AN ADVERSE EMPLOYMENT ACTION IS TAKEN BASED ON THE CREDIT REPORT, DISCLOSE THE REASONS FOR THE ACTION IN WRITING. THE EMPLOYEE OR APPLICANT MAY CONTEST THE ACCURACY OF THE CREDIT REPORT OR CREDIT HISTORY.

3. ENSURE THAT NONE OF THE COSTS ASSOCIATED WITH OBTAINING AN EMPLOYEE'S OR AN APPLICANT'S CREDIT REPORT OR CREDIT HISTORY IS PASSED ON TO THE EMPLOYEE OR APPLICANT.

4. ENSURE THAT THE INFORMATION IN THE EMPLOYEE’S OR APPLICANT’S CREDIT REPORT OR CREDIT HISTORY IS KEPT CONFIDENTIAL AND, IF THE EMPLOYMENT IS TERMINATED OR THE APPLICANT IS NOT HIRED BY THE EMPLOYER, PROVIDE THE EMPLOYEE OR APPLICANT WITH THE CREDIT REPORT OR HAVE THE CREDIT REPORT DESTROYED IN A SECURE MANNER THAT ENSURES THE CONFIDENTIALITY OF THE INFORMATION IN THE REPORT.

E. AN EMPLOYER SHALL NOT DISCHARGE OR IN ANY OTHER MANNER DISCRIMINATE AGAINST AN EMPLOYEE OR APPLICANT WHO HAS FILED A COMPLAINT OF UNLAWFUL EMPLOYMENT PRACTICES IN VIOLATION OF THIS SECTION, WHO HAS COOPERATED WITH THE ATTORNEY GENERAL IN AN INVESTIGATION OF THESE PRACTICES OR WHO IS ABOUT TO LODGE A COMPLAINT OR COOPERATE IN AN INVESTIGATION, AND AN EMPLOYER SHALL NOT DISCHARGE OR IN ANY OTHER MANNER DISCRIMINATE AGAINST AN EMPLOYEE OR APPLICANT BECAUSE THE EMPLOYER BELIEVES THAT THE EMPLOYEE OR APPLICANT MAY LODGE A COMPLAINT OR COOPERATE IN AN INVESTIGATION.

F. NOTWITHSTANDING SUBSECTION C OF THIS SECTION, AN EMPLOYER SHALL NOT SEEK OR ACT ON CREDIT REPORTS OR CREDIT HISTORIES IN A MANNER THAT RESULTS IN ADVERSE EMPLOYMENT DISCRIMINATION PROHIBITED BY FEDERAL OR STATE LAW, INCLUDING TITLE VII OF THE CIVIL RIGHTS ACT OF 1964.

G. THIS SECTION APPLIES ONLY TO EMPLOYERS, EMPLOYEES AND APPLICANTS FOR EMPLOYMENT AND ONLY TO EMPLOYMENT-RELATED DECISIONS BASED ON A PERSON’S CREDIT HISTORY OR CREDIT REPORT. THIS SECTION DOES NOT AFFECT THE RIGHTS OF ANY PERSON, INCLUDING FINANCIAL LENDERS OR INVESTORS, TO OBTAIN CREDIT REPORTS PURSUANT TO ANY OTHER LAW.

H. AN EMPLOYER THAT VIOLATES THIS SECTION IS LIABLE TO THE INJURED INDIVIDUAL FOR THE ACTUAL DAMAGES SUFFERED BY THE INDIVIDUAL AND THE REASONABLE ATTORNEY FEES INCURRED BY THE INDIVIDUAL IN ASSERTING A CLAIM PURSUANT TO THIS SECTION.

I. FOR THE PURPOSES OF THIS SECTION:

1. "CONFIDENTIAL FINANCIAL INFORMATION" MEANS SENSITIVE FINANCIAL INFORMATION OF COMMERCIAL VALUE THAT A CUSTOMER OR CLIENT OF THE EMPLOYER GIVES EXPLICIT AUTHORIZATION FOR THE EMPLOYER TO OBTAIN, PROCESS AND STORE, AND THAT THE EMPLOYER ENTRUSTS ONLY TO MANAGERS OR EMPLOYEES AS A NECESSARY FUNCTION OF THEIR JOB DUTIES.

2. "CREDIT HISTORY" MEANS INFORMATION OBTAINED FROM A THIRD PARTY, WHETHER OR NOT CONTAINED IN A CREDIT REPORT, THAT REFLECTS OR PERTAINS TO EITHER OF THE FOLLOWING FOR AN INDIVIDUAL:
(a) PRIOR OR CURRENT BORROWING OR REPAYING BEHAVIOR, INCLUDING THE
ACCUMULATION, PAYMENT, OR DISCHARGE OF FINANCIAL OBLIGATIONS.
(b) PRIOR OR CURRENT FINANCIAL CONDITION OR ABILITY TO MEET FINANCIAL
OBLIGATIONS, INCLUDING DEBTS OWED, PAYMENT HISTORY OR SAVINGS OR CHECKING
ACCOUNT BALANCES OR ACCOUNT NUMBERS.
Sec. 2. Legislative findings
The Legislature finds that:
1. Studies on middle and low income households have found that most
indebted families go into debt to pay for basic expenses, such as groceries,
utilities, child care and health care. A study has shown that families with
medical debt had forty-three per cent more credit card debt than those
without medical debt.
2. Employer surveys conducted by the society of human resources
management suggest that over the last fifteen years, employers’ use of credit
reports in the hiring process has increased from a practice used by fewer
than one in five employers in 1996 to six of every ten employers in 2010.
3. Social science research thus far has shown that information
contained in a credit report has no correlation to job performance. The
Palmer-Koppes study conducted in 2004 found that those employees who were
late on payments were more likely to be associated with a positive job
performance.
4. Further, there is no common standard among employers as to how to
interpret credit reports, which reinforces the fact that credit reports do
not provide meaningful insight into a candidate’s character, responsibility
or prospective job performance.
5. The equal employment opportunity commission has stated that:
"Inquiry into an applicant’s current or past assets, liabilities, or credit
rating . . . generally should be avoided because they tend to impact more
adversely on minorities and females."