

REFERENCE TITLE: **employee credit history check; limitations**

State of Arizona
Senate
Fifty-first Legislature
First Regular Session
2013

SB 1394

Introduced by
Senators McGuire: Bradley, Farley, Landrum Taylor, Tovar

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)

1 Be it enacted by the Legislature of the State of Arizona:

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

4 23-204. Credit report or credit history: prohibition:
5 exceptions: requirements: discrimination: damages:
6 definitions

7 A. AN EMPLOYER SHALL NOT DO EITHER OF THE FOLLOWING:

8 1. FAIL OR REFUSE TO HIRE OR RECRUIT, DISCHARGE OR OTHERWISE
9 DISCRIMINATE AGAINST AN INDIVIDUAL WITH RESPECT TO COMPENSATION OR A TERM,
10 CONDITION OR PRIVILEGE OF EMPLOYMENT, BECAUSE OF THE INDIVIDUAL'S CREDIT
11 REPORT OR CREDIT HISTORY.

12 2. INQUIRE ABOUT AN APPLICANT'S OR EMPLOYEE'S CREDIT REPORT OR CREDIT
13 HISTORY.

14 B. SUBSECTION A OF THIS SECTION DOES NOT APPLY IF ANY OF THE FOLLOWING
15 ARE TRUE:

16 1. THE INFORMATION IS REQUIRED BY STATE OR FEDERAL LAW.

17 2. THE POSITION OF EMPLOYMENT INVOLVES ACCESS TO CONFIDENTIAL
18 FINANCIAL INFORMATION.

19 3. THE EMPLOYER IS A FINANCIAL INSTITUTION AS DEFINED IN SECTION
20 6-1101 OR A CREDIT UNION AS DEFINED IN SECTION 6-501.

21 4. THE POSITION OF EMPLOYMENT IS THAT OF A LAW ENFORCEMENT OFFICER AS
22 DEFINED IN SECTION 38-1001, PARAMEDIC AS DEFINED IN SECTION 36-2201 OR
23 FIREFIGHTER AS DEFINED IN SECTION 38-1108.

24 5. THE POSITION OF EMPLOYMENT REQUIRES A FINANCIAL FIDUCIARY
25 RESPONSIBILITY TO THE EMPLOYER OR A CLIENT OF THE EMPLOYER, INCLUDING THE
26 AUTHORITY TO ISSUE PAYMENTS, COLLECT DEBTS, TRANSFER MONEY OR ENTER INTO
27 CONTRACTS.

28 6. THE EMPLOYER CAN DEMONSTRATE THAT THE INFORMATION IS A VALID AND
29 RELIABLE PREDICTOR OF EMPLOYEE PERFORMANCE IN THE SPECIFIC POSITION OF
30 EMPLOYMENT.

31 7. THE POSITION OF EMPLOYMENT INVOLVES ACCESS TO AN EMPLOYER'S PAYROLL
32 INFORMATION.

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

37 D. IF AN EMPLOYER SEEKS TO OBTAIN OR ACT ON AN EMPLOYEE'S OR
38 APPLICANT'S CREDIT REPORT OR CREDIT HISTORY PURSUANT TO SUBSECTION C OF THIS
39 SECTION AND THE REPORT OR HISTORY CONTAINS INFORMATION ABOUT THE EMPLOYEE'S
40 OR APPLICANT'S CREDIT SCORE, CREDIT ACCOUNT BALANCES, PAYMENT HISTORY OR
41 SAVINGS OR CHECKING ACCOUNT BALANCES OR ACCOUNT NUMBERS, THE EMPLOYER SHALL
42 DO ALL OF THE FOLLOWING:

43 1. OBTAIN THE EMPLOYEE'S OR APPLICANT'S WRITTEN CONSENT EACH TIME THE
44 EMPLOYER SEEKS TO OBTAIN THE EMPLOYEE'S OR APPLICANT'S CREDIT REPORT.

1 2. DISCLOSE IN WRITING TO THE EMPLOYEE OR APPLICANT THE EMPLOYER'S
2 REASONS FOR ACCESSING THE CREDIT REPORT AND, IF AN ADVERSE EMPLOYMENT ACTION
3 IS TAKEN BASED ON THE CREDIT REPORT, DISCLOSE THE REASONS FOR THE ACTION IN
4 WRITING. THE EMPLOYEE OR APPLICANT MAY CONTEST THE ACCURACY OF THE CREDIT
5 REPORT OR CREDIT HISTORY.

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

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

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

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

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

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

36 I. FOR THE PURPOSES OF THIS SECTION:

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

42 2. "CREDIT HISTORY" MEANS INFORMATION OBTAINED FROM A THIRD PARTY,
43 WHETHER OR NOT CONTAINED IN A CREDIT REPORT, THAT REFLECTS OR PERTAINS TO
44 EITHER OF THE FOLLOWING FOR AN INDIVIDUAL:

1 (a) PRIOR OR CURRENT BORROWING OR REPAYING BEHAVIOR, INCLUDING THE
2 ACCUMULATION, PAYMENT, OR DISCHARGE OF FINANCIAL OBLIGATIONS.

3 (b) PRIOR OR CURRENT FINANCIAL CONDITION OR ABILITY TO MEET FINANCIAL
4 OBLIGATIONS, INCLUDING DEBTS OWED, PAYMENT HISTORY OR SAVINGS OR CHECKING
5 ACCOUNT BALANCES OR ACCOUNT NUMBERS.

6 Sec. 2. Legislative findings

7 The Legislature finds that:

8 1. Studies on middle and low income households have found that most
9 indebted families go into debt to pay for basic expenses, such as groceries,
10 utilities, child care and health care. A study has shown that families with
11 medical debt had forty-three per cent more credit card debt than those
12 without medical debt.

13 2. Employer surveys conducted by the society of human resources
14 management suggest that over the last fifteen years, employers' use of credit
15 reports in the hiring process has increased from a practice used by fewer
16 than one in five employers in 1996 to six of every ten employers in 2010.

17 3. Social science research thus far has shown that information
18 contained in a credit report has no correlation to job performance. The
19 Palmer-Koppes study conducted in 2004 found that those employees who were
20 late on payments were more likely to be associated with a positive job
21 performance.

22 4. Further, there is no common standard among employers as to how to
23 interpret credit reports, which reinforces the fact that credit reports do
24 not provide meaningful insight into a candidate's character, responsibility
25 or prospective job performance.

26 5. The equal employment opportunity commission has stated that:
27 "Inquiry into an applicant's current or past assets, liabilities, or credit
28 rating . . . generally should be avoided because they tend to impact more
29 adversely on minorities and females."