

LEGISLATURE OF NEBRASKA

ONE HUNDRED SECOND LEGISLATURE

FIRST SESSION

**LEGISLATIVE BILL 530**

Introduced by Council, 11.

Read first time January 18, 2011

Committee: Business and Labor

A BILL

1 FOR AN ACT relating to labor and employment; to adopt the Employee

2 Credit Privacy Act.

3 Be it enacted by the people of the State of Nebraska,

1           Section 1. Sections 1 to 7 of this act shall be known and  
2 may be cited as the Employee Credit Privacy Act.

3           Sec. 2. For purposes of the Employee Credit Privacy Act:

4           (1) Credit history means an individual's past borrowing  
5 and repaying behavior, including paying bills on time and managing  
6 debt and other financial obligations;

7           (2) Credit report means any written or other  
8 communication of any information by a consumer reporting agency that  
9 bears on a consumer's creditworthiness, credit standing, credit  
10 capacity, or credit history;

11           (3) Employee means an individual who receives  
12 compensation for performing services for an employer under an express  
13 or implied contract of hire;

14           (4) Employer means an individual or entity that permits  
15 one or more individuals to work or that accepts applications for  
16 employment or is an agent of an employer. Employer does not include:

17           (a) Any bank holding company, financial holding company,  
18 bank, savings bank, savings and loan association, credit union, or  
19 trust company, or any subsidiary or affiliate thereof, that is  
20 authorized to do business under the laws of this state or of the  
21 United States;

22           (b) Any company authorized to engage in any kind of  
23 insurance or surety business under the laws of this state, including  
24 any employee, agent, or employee of an agent acting on behalf of a  
25 company engaged in the insurance or surety business;

1           (c) Any state law enforcement agency;

2           (d) Any state or local government agency which otherwise  
3 requires use of the employee's or applicant's credit history or  
4 credit report; or

5           (e) Any entity that is defined as a debt collector under  
6 federal or state statute; and

7           (5) Marketable assets means company property that is  
8 specially safeguarded from the public and to which access is only  
9 entrusted to managers and select other employees. Marketable assets  
10 do not include the fixtures, furnishings, or equipment of an  
11 employer.

12           Sec. 3. (1) Except as otherwise provided in subsection  
13 (2) of this section, an employer shall not do any of the following:

14           (a) Fail or refuse to hire or recruit, discharge, or  
15 otherwise discriminate against an individual with respect to  
16 employment, compensation, or a term, condition, or privilege of  
17 employment because of the individual's credit history or credit  
18 report;

19           (b) Inquire about an applicant's or employee's credit  
20 history; or

21           (c) Order or obtain an applicant's or employee's credit  
22 report from a consumer reporting agency.

23           (2) The prohibition in subsection (1) of this section  
24 does not prevent an inquiry or employment action if a satisfactory  
25 credit history is an established bona fide occupational requirement

1 of a particular position or a particular group of an employer's  
2 employees. A satisfactory credit history is not a bona fide  
3 occupational requirement unless at least one of the following  
4 circumstances is present:

5 (a) State or federal law requires bonding or other  
6 security covering an individual holding the position;

7 (b) The duties of the position include signatory power  
8 over marketable assets of one hundred dollars or more per  
9 transaction;

10 (c) The position is a managerial position which involves  
11 setting the direction or control of the business; or

12 (d) The position meets criteria in administrative rules,  
13 if any, that the United States Department of Labor or the Nebraska  
14 Department of Labor has adopted and promulgated to establish the  
15 circumstances in which a credit history is a bona fide occupational  
16 requirement.

17 Sec. 4. An employer shall not retaliate or discriminate  
18 against a person because such person has done or was about to do any  
19 of the following:

20 (1) File a complaint under the Employee Credit Privacy  
21 Act;

22 (2) Testify, assist, or participate in an investigation,  
23 proceeding, or action concerning a violation of the act; or

24 (3) Oppose a violation of the act.

25 Sec. 5. An employer shall not require an applicant or

1 employee to waive any right under the Employee Credit Privacy Act. An  
2 agreement by an applicant or employee to waive any right under the  
3 act is invalid and unenforceable.

4           Sec. 6. (1) A person who is injured by a violation of the  
5 Employee Credit Privacy Act may bring a civil action in district  
6 court to obtain injunctive relief, damages, or both.

7           (2) The court shall award costs and reasonable attorney's  
8 fees to a person who prevails as a plaintiff in an action authorized  
9 under subsection (1) of this section.

10           Sec. 7. Nothing in the Employee Credit Privacy Act shall  
11 prohibit employers from conducting a thorough background  
12 investigation, which may include obtaining a report without  
13 information on credit history or an investigative report without  
14 information on credit history, or both, as permitted under the  
15 federal Fair Credit Reporting Act, 15 U.S.C. 1681 et seq. Such  
16 information shall be used for employment purposes only.