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## FISCAL IMPACT REPORT

SPONSOR O'Neill ORIGINAL DATE 1/23/15  
LAST UPDATED 3/17/15 HB \_\_\_\_\_  
SHORT TITLE Use of Credit Info for Employee Recruitment SB 145/aSFI#1  
ANALYST Daly

### ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY15	FY16	FY17	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
<b>Total</b>	NFI	NFI	NFI			

(Parenthesis ( ) Indicate Expenditure Decreases)

### SOURCES OF INFORMATION

LFC Files

#### Responses Received From

Workforce Solutions Department (WSD)  
State Personnel Office (SPO)  
Administrative Office of the Courts (AOC)

### SUMMARY

#### Synopsis of SFI Amendment #1

The Senate Floor Amendment #1 to Senate Bill 145 adds two additional exceptions to the Act's prohibitions on the use of credit information in decisions to recruit or interview a prospective employee with respect to employment: 1) when the person is applying for a safety-sensitive position that requires a background check pursuant to the State Personnel act; and 2) when a person is applying for employment in a law enforcement agency.

The exception for safety-sensitive positions also may have application in a non-public employment setting, but as drafted would not cover any private employer.

#### Synopsis of Bill

Senate Bill 145 enacts the Prospective Employee Credit Information Privacy Act, which prohibits a prospective employer from failing or refusing to recruit or interview a prospective employee based on that person's credit information. Good credit information is a bona fide occupational requirement exempting an employer from this prohibition if a person has applied

for employment 1) that requires federal deposit insurance corporation clearance; 2) at a financial services institution, including insurance companies, agents and adjusters; 3) that requires United States security clearance; or 4) when the employee would owe a fiduciary responsibility to the employer, including the authority to issue payments, collect debts, transfer money or enter into contracts.

A person harmed by a violation of this Act may bring a civil action to obtain injunctive relief or damages or both.

The effective date of this bill is July 1, 2015.

## **FISCAL IMPLICATIONS**

Responding agencies report no fiscal impact on the State.

## **SIGNIFICANT ISSUES**

SPO calls attention to the absence of an exemption for safety-sensitive positions at the State level, where full background checks are routinely conducted. It also raises a concern that failing to exempt an employer when an employee would have access to private or confidential data could result in allegations of negligent hiring if embezzlement or identity theft occurs and a credit report as part of a background check would have led to relevant information.

More generally, SPO reports that employment credit reports are much different than credit reports used for lending and do not contain credit scores, since there is no connection between credit scores and successful employment, and that a background check that includes a credit report is usually run after an employer has expended time, cost and effort to find the right candidate, and are interested in hiring a particular applicant and are conducting due diligence. Further, under the federal Fair Credit Reporting Act (FCRA), a credit report is obtained only after required disclosure has been given and an applicant consents.

AOC supplies another point of view, as expressed in a CreditReport.com March 2010 online article:

A number of ... states have eyed bans against the procedure, which is generally defended by some companies as a way to screen out people who may be untrustworthy with financial matters. However, the controversy comes at a time when millions of Americans have seen their credit scores plummet simply because they have lost jobs and have been unable to find new ones so far, putting them at greater risk for mortgage foreclosure and credit card delinquencies.

The practice is most common among financial services companies, but a survey by a leading human resources organization found earlier this year that it has spread to about 60 percent of companies. Critics of the policy also point out that those with damaged credit scores may often turn out to be more motivated and hard-working than average, simply because they are taking advantage of an opportunity to rebuild their personal finances.

## **ADMINISTRATIVE IMPLICATIONS**

AOC reports that this legislation would not impact its practices in hiring, as the background checks the judicial branch performs for hiring into several positions (including those involving money handling or fiscal responsibilities) do not include credit checks.

## **OTHER SUBSTANTIVE ISSUES**

The National Conference of State Legislatures reports that as of March 2013 numerous states were considering legislation regarding use of credit information in hiring, and eight states had enacted legislation:

To date, 35 bills in 17 states and the District of Columbia were pending in the 2012 legislative session. Out of the total 35 bills, 34 addressed restrictions on the use of credit information in employment decisions. The total number of states that limit employers' use of credit information in employment is now eight: California, Connecticut, Hawaii, Illinois, Maryland, Oregon, Vermont and Washington. Washington enacted legislation in 2007, Hawaii enacted legislation in 2009, Illinois and Oregon enacted legislation in 2010. California, Connecticut and Maryland enacted legislation in 2011. Vermont enacted its legislation in 2012.

SPO advises that the number of states restricting use of credit information has increased to ten. WSD adds that efforts have been made to pass similar legislation at the federal level, most recently during the 113<sup>th</sup> Congress when the Equal Employment For All Act (S. 1837 and H.R. 645) was introduced in 2013 but was not enacted.

In addition, SPO cites a study by the Society for Human Resource Management (SHRM) which found that in 2010 60 percent of employers ran a credit check on at least some applicants, an increase from the 42 percent in 2006 and 25 percent in 1998.

## **AMENDMENTS**

A clear definition of the term “financial service institution”, which appears in the exception, may be helpful. A similar term—“financial institution”—has been subjected to varying definitions in existing statute: as to employment references provided by one financial institution to another it covers three entities and their employees, see Section 58-25-1, NMSA; in the context of the crime of money laundering it includes 17 different entities, see Section 30-51-2, NMSA 1978; and when legislation governing transfers to minors, it applies four entities, see Section 46-7-12, NMSA 1978.

MD/bb/je/aml/je