

Fiscal impact reports (FIRs) are prepared by the Legislative Finance Committee (LFC) for standing finance committees of the NM Legislature. The LFC does not assume responsibility for the accuracy of these reports if they are used for other purposes.

Current and previously issued FIRs are available on the NM Legislative Website (www.nmlegis.gov) and may also be obtained from the LFC in Suite 101 of the State Capitol Building North.

FISCAL IMPACT REPORT

SPONSOR Tallman ORIGINAL DATE 02/09/17
 LAST UPDATED 03/10/17 HB _____

SHORT TITLE Employee Credit Information Privacy Act SB 280/aSCORC

ANALYST Klundt

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY17	FY18	FY19	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
Total		Unknown, possibly minimal	Unknown, possibly minimal		Recurring	General

(Parenthesis () Indicate Expenditure Decreases)

SOURCES OF INFORMATION

LFC Files

Responses Received From

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

SUMMARY

Synopsis of SCORC Amendment

The Senate Corporations and Transportation Committee amendment makes some minor technical corrections. The amendment also allows the use of a prospective employee’s credit information in very limited circumstances, such as when employment requires Federal Deposit Insurance Corporation or United States security clearance, is with a financial institution or insurance company, or requires a fiduciary responsibility to the employer.

Synopsis of Original Bill

Senate Bill 280 (SB 280) prohibits employers, labor organizations, apprenticeship programs, or employment agencies from discriminating against or taking action regarding an employee, prospective employee or prospective member based upon “credit information” from a “consumer reporting agency.” “Credit information” is defined, in two separate places in the Bill, as “a written, oral or other communication” relating to the person’s credit. A “credit reporting agency” is defined as a “person” who prepares consumer credit information for third parties.

The Bill also provides that anyone harmed as the result of a violation may file a civil action for

damages or injunctive relief. The misuse of “credit information” is added as an unlawful discriminatory practice for employment related activity under the Human Rights Act.

FISCAL IMPLICATIONS

The Workforce Solutions Department (WSD) reported SB 280 is likely to increase the number of complaints filed with and number of hearings heard by the Human Rights Commission but fiscal implications are uncertain.

SIGNIFICANT ISSUES

The Fair Credit Reporting Act (FCRA) permits employers to obtain a consumer report for “employment purposes.” An employer may obtain a consumer report only for the limited purposes of evaluating a consumer for employment, promotion, or reassignment or retention as an employee. Ten states limit employers’ use of credit information in employment decisions.

WSD reported concerns stating protected classes under the Human Rights Act are based on personal traits over which we as individuals have little or no control. Adding “credit information” as a protected class may not be in accordance with the other protected classes.

The Administrative Office of the Courts (AOC) stated section 28-1-7 makes it an unlawful discriminatory practice to refuse to “hire” someone due to credit information; however Section 3 does not include the language “hire;” rather, a “prospective employer shall not fail to or refuse to recruit or interview.”

TECHNICAL ISSUES

WSD reported:

“Based on a computer search of the term, the word “person” is defined or appears in definitions in our New Mexico statutes 930 times. The ordinary meaning of the word only applies to individual humans. “Person” as used in the act needs to be defined. As an example, “person” as used in the Human Rights Act, “means one or more individuals, a partnership, association, organization, corporation, joint venture, legal representative, trustees, receivers or the state and all of its political subdivisions.” This definition may or may not be appropriate.

The definition of “person” appearing in 15 U.S.C.A. § 1681a regarding credit reporting agencies is “any individual, partnership, corporation, trust, estate, cooperative, association, government or governmental subdivision or agency, or other entity.”

KK/sb