



# Ohio Legislative Service Commission

## Bill Analysis

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### H.B. 131

129th General Assembly  
(As Introduced)

**Reps.** Reece, Murray, Hagan, Ramos, Antonio, Clyde

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## BILL SUMMARY

- Prohibits an employer from taking specified adverse employment actions based upon a consumer report or investigative consumer report if the report contains information concerning the person's consumer creditworthiness, credit standing, or credit capacity.
- Exempts from the bill's prohibition an employer's use of a consumer report or investigative consumer report if the position of employment is a supervisory, managerial, professional, or executive position at a financial institution.

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## CONTENT AND OPERATION

### Use of consumer report for employment purposes

The bill prohibits any employer from discharging, refusing to hire, or otherwise discriminating against any person with respect to hire, tenure, terms, conditions, or privileges of employment, or any matter directly or indirectly related to employment based upon a consumer report or investigative consumer report if the report contains information concerning the person's consumer creditworthiness, credit standing, or credit capacity (see **COMMENT**). An employer that violates this prohibition is guilty of a minor misdemeanor, which, if the violator is an individual, may result in a possible fine of not more than \$150 and other possible sanctions, and if the violator is an organization, may result in a fine of not more than \$1,000.<sup>1</sup>

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<sup>1</sup> R.C. 4113.73(A) and 4113.99(B), and R.C. 2929.27, 2929.28, and 2929.31, not in the bill.

## Exception

The bill does not apply to an employer's use of a consumer report or investigative consumer report if the position of employment is a supervisory, managerial, professional, or executive position at a financial institution. The bill does not specifically define "financial institution."

## Definitions

The bill defines the following terms:

"Employer" means any person who has one or more employees and includes an agent of an employer, the state or any agency or instrumentality of the state, and any municipal corporation, county, township, school district, or other political subdivision or any agency or instrumentality of a municipal corporation, county, township, school district, or other political subdivision.<sup>2</sup>

"Consumer report," as defined under the federal Fair Credit Reporting Act (FCRA), generally means any written, oral, or other communication of any information by a consumer reporting agency bearing on a consumer's credit worthiness, credit standing, credit capacity, character, general reputation, personal characteristics, or mode of living that is used or expected to be used or collected in whole or in part for the purpose of serving as a factor in establishing the consumer's eligibility for credit or insurance to be used primarily for personal, family, or household purposes; employment purposes (which includes evaluating a consumer for employment, promotion, reassignment or retention as an employee); or any other purpose authorized under the Act.<sup>3</sup>

"Investigative consumer report," as defined under the FCRA, means a consumer report or portion of consumer report in which information on a consumer's character, general reputation, personal characteristics, or mode of living is obtained through personal interviews with neighbors, friends, or associates of the consumer reported on or with others with whom the consumer is acquainted or who may have knowledge concerning any of these items of information. However, the information does not include specific factual information on a consumer's credit record obtained directly from a creditor of the consumer or from a consumer reporting agency when the

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<sup>2</sup> R.C. 4113.73(C), by reference to R.C. 4113.51, not in the bill.

<sup>3</sup> R.C. 4113.73(C), by reference to 15 United States Code (U.S.C.) 1681a(d).

information was obtained directly from a creditor of the consumer or from the consumer.<sup>4</sup>

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## COMMENT

The federal FCRA authorizes the use of consumer credit reports for employment purposes. Under the FCRA, the person obtaining the consumer report must certify to the credit reporting agency (1) that the person has complied with federal notification requirements to the consumer, including obtaining a written authorization from the consumer to obtain the information, and (2) that the information from the report will not be used in violation of applicable federal and state equal employment opportunity laws. The FCRA also requires an employer who uses a consumer report for employment purposes, prior to taking an adverse action relating to employment based either wholly or partially because of information contained in the report, to provide to the consumer a copy of the report and a description of the consumer's rights under the FCRA. Additional requirements apply for the use of an investigative consumer report.<sup>5</sup>

Except as otherwise provided under the FCRA, the FCRA does not annul, alter, affect, or exempt any person subject to the FCRA from complying with state law with respect to the collection, distribution, or use of any information on consumers, or for the prevention or mitigation of identity theft, except to the extent that those laws are inconsistent with any provision of the FCRA, and then only to the extent of the inconsistency.<sup>6</sup> Because the FCRA permits the use of consumer reports for employment purposes under specified circumstances and the bill prohibits that use in most circumstances, to the extent that the FCRA and the bill conflict, it appears that the FCRA prevails.

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## HISTORY

ACTION	DATE
Introduced	03-01-11

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<sup>4</sup> R.C. 4113.73(C), by reference to 15 U.S.C. 1681a(e).

<sup>5</sup> 15 U.S.C. 1681b and 1681d.

<sup>6</sup> 15 U.S.C. 1681t.

