SENATE BILL No. 220

DIGEST OF INTRODUCED BILL

Citations Affected: IC 22-5-6.

Synopsis: Use of consumer reports for employment purposes. Prohibits an employer from using a consumer report for employment purposes unless certain conditions apply. Allows a consumer to bring a civil action against an employer for a violation of this provision. Provides that if the attorney general has reason to believe that an employer has violated the provision, the attorney general may bring either of the following: (1) An action to enjoin the violation. (2) An action to recover damages sustained by Indiana residents as a result of the violation. Makes it: (1) a Class B infraction for a knowing or intentional violation of the provision; or (2) a Class A infraction if an employer has a prior unrelated judgment for a violation of the provision.

Effective: July 1, 2011.

Randolph

January 5, 2011, read first time and referred to Committee on Corrections, Criminal, and Civil Matters.

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Introduced

First Regular Session 117th General Assembly (2011)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type.~~

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~*this style type*~~ reconciles conflicts between statutes enacted by the 2010 Regular Session of the General Assembly.

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SENATE BILL No. 220

A BILL FOR AN ACT to amend the Indiana Code concerning labor and safety.

Be it enacted by the General Assembly of the State of Indiana:

SECTION 1. IC 22-5-6 IS ADDED TO THE INDIANA CODE AS A **NEW** CHAPTER TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2011]:

Chapter 6. Use of Consumer Reports by Employers

Sec. 1. As used in this chapter, "consumer" means an individual whose credit information and history are recorded in a consumer report.

Sec. 2. As used in this chapter, "consumer report" has the meaning set forth in 15 U.S.C. 1681a(d).

Sec. 3. As used in this chapter, "employer" has the meaning set forth in IC 22-8-1.1-1.

Sec. 4. As used in this chapter, "employment purposes", when used in connection with a consumer report, means the use of the consumer report for the purpose of evaluating a consumer for Indiana employment, including:

(1) initial employment;

(2) promotion;

(3) reassignment; or

(4) retention as an employee.

Sec. 5. As used in this chapter, "Indiana employment" means service, including service in interstate commerce, that is performed:

(1) for remuneration or under any contract of hire, written or oral, or expressed or implied; and

(2) within or both within and outside Indiana if the service:

(A) is localized in Indiana; or

(B) is not localized in any state, but some of the service is performed in Indiana and:

(i) the base of operations, or, if there is no base of operations, the place from which the service is directed or controlled, is in Indiana; or

(ii) the base of operations or place from which the service is directed or controlled is not in any state in which some part of the service is performed but the individual's residence is in Indiana.

Sec. 6. For purposes of section 5 of this chapter, service performed by an individual is considered localized in a state if:

(1) the service is performed entirely within the state; or

(2) the service is performed both within and outside the state, but the service performed outside the state is incidental to the individual's service within the state, such as service that is temporary or transitory in nature or that consists of isolated transactions.

Sec. 7. Except as otherwise provided under state or federal law, and to the extent not inconsistent with the Fair Credit Reporting Act (15 U.S.C. 1681 et seq.), an employer may not use a consumer report for employment purposes unless the following apply:

(1) The information used from the consumer report is substantially job related in that the position that the consumer holds or for which the consumer is applying is a position in which the consumer has, or would have, access to money, other assets, or confidential information.

(2) The position of the consumer or the position for which the consumer is applying is one (1) or more of the following:

(A) A managerial position.

(B) A position with the office of the attorney general.

(C) A position with a city, town, or county.

(D) Any law enforcement position.

(E) A position for which the information used from the

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consumer report is required to be:

(i) disclosed by law; or

(ii) obtained by the employer under state or federal law.

(3) The employer does the following:

(A) Provides to the credit reporting agencies from which a consumer report will be procured a general or specific certification described in 15 U.S.C. 1681e(a), as required by 15 U.S.C. 1681b(f).

(B) Complies with 15 U.S.C. 1681b(b)(2) by:

(i) providing to the consumer, at any time before the consumer report is procured, a written disclosure that a consumer report may be obtained for employment purposes; and

(ii) obtaining the consumer's written authorization for the procurement of the consumer report.

(C) If applicable, complies with 15 U.S.C. 1681b(b)(3) concerning adverse employment actions based in whole or in part on consumer reports.

Sec. 8. (a) In addition to any remedy that a consumer may have under:

(1) 15 U.S.C. 1681n with respect to a person's willful failure to comply with the Fair Credit Reporting Act (15 U.S.C. 1681 et seq.); or

(2) 15 U.S.C. 1681o with respect to a person's negligent failure to comply with the Fair Credit Reporting Act (15 U.S.C. 1681 et seq.);

a consumer may bring, in any court with jurisdiction, a civil action against an employer that uses the consumer's consumer report in violation of section 7 of this chapter.

(b) In an action brought by a consumer under subsection (a), if the court determines that an employer has violated section 7 of this chapter, the court may do the following:

(1) Award:

(A) actual damages;

(B) punitive damages, in the case of a willful violation of section 7 of this chapter; and

(C) court costs and reasonable attorney's fees;

to the prevailing consumer.

(2) Enjoin further violation of this chapter by the employer.

Sec. 9. If the attorney general has reason to believe an employer has violated or is violating section 7 of this chapter, the attorney general may, in conjunction with or independent of an action

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authorized under 15 U.S.C. 1681s(c), do one (1) or more of the following:

(1) Bring an action, in any court with jurisdiction, to enjoin the violation.

(2) Bring an action, in any court with jurisdiction, on behalf of Indiana residents to recover damages sustained by Indiana residents as a result of the violation.

In a successful action under subdivision (1) or (2), the attorney general shall be awarded the costs of the action and reasonable attorney's fees, as determined by the court.

Sec. 10. An employer who knowingly or intentionally violates this chapter commits a Class B infraction. However, the offense is a Class A infraction if the employer has a prior unrelated judgment for an infraction under this section.

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