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## HOUSE BILL NO. 2116

Offered January 11, 2023

Prefiled January 10, 2023

A *BILL to amend the Code of Virginia by adding a section numbered 40.1-28.02, relating to employment; restrictions on use of credit report for employment purposes.*

Patrons—Hudson, Anderson, Kory and Shin

Referred to Committee on Commerce and Energy

**Be it enacted by the General Assembly of Virginia:**

- 1. That the Code of Virginia is amended by adding a section numbered 40.1-28.02 as follows:**  
**§ 40.1-28.02. Restrictions on use of credit report for employment purposes; enforcement.**

A. As used in this section:

"Credit report" means a consumer report as defined in § 603(d) of the Fair Credit Reporting Act (15 U.S.C. § 1681a(d)) that contains any information related to a consumer's creditworthiness, credit standing, or credit capacity.

"Employment purposes" means purposes related to the evaluation of an employee or prospective employee for employment, promotion, reassignment or retention, termination, demotion, discipline, compensation, or the terms, conditions, or privileges of employment.

B. No employer shall (i) use a credit report in connection with or as a criterion for employment purposes; (ii) request or procure a credit report for employment purposes; or (iii) require an employee or prospective employee to answer a question about the contents of a credit report or the information contained in such report regarding credit worthiness, credit standing, or credit capacity.

C. Notwithstanding the provisions of subsection B, an employer may use or request a credit report for employment purposes under subsection E if either of the following conditions is met:

1. The employer is required by federal or state law or regulation or the rules of a self-regulatory organization, as defined in 15 U.S.C. § 78c(a)(26), to use a credit report for employment purposes; or

2. An employee or prospective employee applies for or holds a position that requires national security clearance.

Except as provided in this subsection, no person shall use a credit report in a manner that results in adverse employment discrimination prohibited by law.

D. No employer or person acting on behalf of an employer for employment purposes shall obtain, use, or seek a credit report from an employee or prospective employee under subsection C unless the employer or person acting on behalf of the employer (i) obtains the written consent of the employee or prospective employee in a document that consists solely of such consent, and the employer or person acting on behalf of the employer does so each time it seeks to obtain the credit report of an employee or prospective employee; (ii) discloses the employer's reason for accessing the credit report to the employee or prospective employee in writing; and (iii) ensures that costs associated with obtaining a credit report are not paid by or passed on to the employee or prospective employee. If an employer intends to take an adverse employment action that is based, in whole or in part, on the credit report, then the employer shall (a) disclose the reason for such action, including the information in the credit report that was the basis for such action, in writing at least 14 days prior to taking such action along with a copy of the credit report and the notice of consumer rights required by 15 U.S.C. § 1681g(c)(1) and (b) provide the employee or prospective employee, in a private discussion, the opportunity to dispute the relevance of the information upon which the employer based its adverse employment action, and the employer shall consider the dispute before making a final decision. If, during the 14-day period required by clause (a), the employee or prospective employee provides oral or written notice to an employer or person acting on behalf of the employer that the employee or prospective employee is disputing the accuracy of the credit report with a consumer reporting agency, the employer or person acting on behalf of the employer shall not take an adverse employment action until the resolution of the dispute and shall consider the results of the resolution before taking an adverse action.

E. No employer or person acting on behalf of an employer shall retaliate or otherwise discriminate against or take adverse action against an employee or prospective employee on the basis that the employee or prospective employee has or intends to (i) allege that the employer or person acting on behalf of an employer violated this section; (ii) testify, assist, give evidence, or participate in an investigation, proceeding, or action concerning a violation of this section; or (iii) otherwise oppose a violation of this section.

F. A waiver of the requirements of this section shall be void and no employer or person acting on

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59 *behalf of an employer shall require or request that an employee or prospective employee waive these*  
60 *requirements for employment purposes.*  
61 *G. Failure to comply with the requirements of this section shall constitute an unfair employment*  
62 *practice and shall be enforceable by the Commission in the same manner and to the same extent as*  
63 *provided in subsections B and C of § 40.1-28.7:9.*