

Union Calendar No. 246

116TH CONGRESS
1ST SESSION

H. R. 3614

[Report No. 116–305]

To amend the Fair Credit Reporting Act to ban the use of credit information for most employment decisions, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

JULY 2, 2019

Mr. LAWSON of Florida introduced the following bill; which was referred to the Committee on Financial Services

NOVEMBER 21, 2019

Additional sponsors: Ms. TLAIB, Ms. PRESSLEY, Ms. OCASIO-CORTEZ, Mr. CLEAVER, and Mr. COHEN

NOVEMBER 21, 2019

Reported with an amendment, committed to the Committee of the Whole House on the State of the Union, and ordered to be printed

[Strike out all after the enacting clause and insert the part printed in *italie*]

[For text of introduced bill, see copy of bill as introduced on July 2, 2019]

A BILL

To amend the Fair Credit Reporting Act to ban the use of credit information for most employment decisions, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 *This Act may be cited as the “Restricting Credit*
5 *Checks for Employment Decisions Act”.*

6 **SEC. 2. FINDINGS.**

7 *Congress finds the following:*

8 *(1) The use of credit reports as a factor in mak-*
9 *ing hiring decisions has been found to be prevalent in*
10 *a diverse array of occupations, and is not limited to*
11 *certain high-level management or executive positions.*

12 *(2) According to the California Labor Federa-*
13 *tion, only 25 percent of employers researched the cred-*
14 *it history of job applicants in 1998. However, this*
15 *practice had increased to 43 percent by 2006 and to*
16 *60 percent by 2011.*

17 *(3) A study titled “Do Job Applicant Credit*
18 *Histories Predict Job Performance Appraisal Ratings*
19 *or Termination Decisions?”, published in 2012, found*
20 *that, while credit history might conceptually measure*
21 *a person’s level of responsibility, ability to meet dead-*
22 *lines, dependability, or integrity, it does not, in prac-*
23 *tice, actually predict an employee’s performance or*
24 *likelihood to quit. Credit reports contain many inac-*
25 *curacies and credit history can be contaminated by*

1 *events that are sometimes outside a person’s control,*
2 *such as a sudden medical expense after an accident*
3 *or the loss of a job during an economic downturn. The*
4 *study found that there is no benefit from using credit*
5 *history to predict job performance or turnover.*

6 *(4) Despite the absence of data showing a cor-*
7 *relation between job performance and credit-worthi-*
8 *ness, employers continue to use credit checks as a*
9 *proxy for assessing character and integrity. According*
10 *to a 2012 Society for Human Resource Management*
11 *survey, organizations indicated that they used credit*
12 *checks on job candidates primarily to reduce or pre-*
13 *vent theft and embezzlement and to minimize legal li-*
14 *ability for negligent hiring.*

15 *(5) The use of credit checks for employment pur-*
16 *poses creates a true “catch-22” for unemployed people*
17 *with impaired credit. For example, the financial*
18 *hardship caused by losing a job may cause some un-*
19 *employed individuals to make late or partial pay-*
20 *ments on their bills, but their poor credit standing*
21 *caused by this negative information on their con-*
22 *sumer report can also impede their chances of obtain-*
23 *ing a new job to end their financial distress.*

24 *(6) A September 2014 report by the New York*
25 *City Council’s Committee on Civil Rights noted that,*

1 *for those who have been unemployed for an extended*
2 *period of time and whose credit has suffered as they*
3 *fell behind on bills, the use of credit reports in the*
4 *hiring process can exacerbate and perpetuate an al-*
5 *ready precarious situation.*

6 *(7) In a March 2013 Demos report titled “Dis-*
7 *credited: How Employment Credit Checks Keep Out*
8 *Qualified Workers Out of a Job”, one in four survey*
9 *participants who were unemployed said that a poten-*
10 *tial employer had requested to check their credit re-*
11 *port as part of a job application. Among job appli-*
12 *cants with blemished credit histories in the survey,*
13 *one in seven had been told that they were not being*
14 *hired because of their credit history.*

15 *(8) While job applicants must give prior ap-*
16 *proval for a prospective employer to pull their credit*
17 *reports under the FCRA, this authorization, as a*
18 *practical matter, does not constitute an effective con-*
19 *sumer protection because an employer may reject any*
20 *job applicant who refuses a credit check.*

21 *(9) Some negative information on a report may*
22 *stem from uncontrollable circumstances, or significant*
23 *life events in a consumer’s life, such as a medical cri-*
24 *sis or a divorce. Demos found that poor credit is asso-*
25 *ciated with household unemployment, lack of health*

1 *coverage, and medical debt, which are factors that re-*
2 *flect economic conditions in the country and personal*
3 *misfortune that have little relationship with how well*
4 *a job applicant would perform at work.*

5 *(10) In October 2011, FICO noted that from*
6 *2008 to 2009 approximately 50 million people experi-*
7 *enced a 20-point drop in their credit scores and about*
8 *21 million saw their scores decline by more than 50*
9 *points. While the Great Recession reduced many con-*
10 *sumers' credit scores due to foreclosures and other fi-*
11 *nancial hardships, the financial crisis had a particu-*
12 *larly harsh impact on African Americans and*
13 *Latinos, as racial and ethnic minorities and commu-*
14 *nities of color were frequently targeted by predatory*
15 *mortgage lenders who steered borrowers into high-cost*
16 *subprime loans, even when these borrowers would*
17 *have qualified for less costly prime credit.*

18 *(11) A May 2006 Brookings Institution report*
19 *titled "Credit Scores, Reports, and Getting Ahead in*
20 *America" found that counties with a relatively higher*
21 *proportion of racial and ethnic minorities in the*
22 *United States tended to have lower credit scores com-*
23 *pared with counties that had a lower concentration of*
24 *communities of color.*

1 (12) *Studies have consistently found that African*
 2 *American and Latino households tend, on average, to*
 3 *have lower credit scores than White households. The*
 4 *growing use of credit checks, therefore, may dispropor-*
 5 *tionately screen otherwise qualified racial and ethnic*
 6 *minorities out of jobs, leading to discriminatory hir-*
 7 *ing practices, and further exacerbating the trend*
 8 *where unemployment for African American and*
 9 *Latino communities is elevated well above the rate of*
 10 *Whites.*

11 (13) *A 2012 Demos survey found that 65 percent*
 12 *of White respondents reported having good or excellent*
 13 *credit scores while over half of African American*
 14 *households reported only having fair or bad credit.*

15 **SEC. 3. PROHIBITION ON THE USE OF CREDIT INFORMA-**
 16 **TION FOR MOST EMPLOYMENT DECISIONS.**

17 (a) *IN GENERAL.*—Section 604 of the *Fair Credit Re-*
 18 *porting Act (15 U.S.C. 1681b) is amended—*

19 (1) *in subsection (a)(3)(B), by inserting “, sub-*
 20 *ject to the requirements of subsection (b)” after “pur-*
 21 *poses”; and*

22 (2) *in subsection (b)—*

23 (A) *in paragraph (1)—*

1 (i) by amending the paragraph head-
 2 ing to read as follows: “USE OF CONSUMER
 3 REPORTS FOR EMPLOYMENT PURPOSES”;

4 (ii) in subparagraph (A), by redesign-
 5 ating clauses (i) and (ii) as subclauses (I)
 6 and (II), respectively (and conforming the
 7 margins accordingly);

8 (iii) by redesignating subparagraphs
 9 (A) and (B) as clauses (i) and (ii), respec-
 10 tively (and conforming the margins accord-
 11 ingly);

12 (iv) by striking the period at the end
 13 of clause (ii) (as so redesignated) and in-
 14 serting “; and”;

15 (v) by striking “agency may furnish”
 16 and inserting “agency—
 17 “(A) may furnish”; and

18 (vi) by adding at the end the following
 19 new subparagraph:

20 “(B) except as provided in paragraph (5),
 21 may not furnish a consumer report with respect
 22 to any consumer in which any information con-
 23 tained in the report bears on the consumer’s
 24 creditworthiness, credit standing, or credit ca-
 25 pacity.”; and

1 (B) by adding at the end the following new
2 paragraphs:

3 “(5) *REQUIREMENTS FOR CONSUMER REPORTS*
4 *BEARING ON THE CONSUMER’S CREDITWORTHINESS,*
5 *CREDIT STANDING, OR CREDIT CAPACITY.—*

6 “(A) *IN GENERAL.—A person may use a*
7 *consumer report with respect to any consumer in*
8 *which any information contained in the report*
9 *bears on the consumer’s creditworthiness, credit*
10 *standing, or credit capacity only if—*

11 “(i) *either—*

12 “(I) *the person is required to ob-*
13 *tain the report by a Federal, State, or*
14 *local law or regulation; or*

15 “(II) *the information contained*
16 *in the report is being used with respect*
17 *to a national security investigation (as*
18 *defined in paragraph (4)(D));*

19 “(ii) *none of the cost associated with*
20 *obtaining the consumer report will be*
21 *passed on to the consumer to whom the re-*
22 *port relates; and*

23 “(iii) *the information contained in the*
24 *consumer report will not be disclosed to any*
25 *other person other than—*

1 “(I) in an aggregate format that
2 protects a consumer’s personally iden-
3 tifiable information; or

4 “(II) as may be necessary to com-
5 ply with any applicable Federal, State,
6 or local equal employment opportunity
7 law or regulation.

8 “(B) *DISCLOSURES*.—A person who pro-
9 cures, or causes to be procured, a consumer re-
10 port described in subparagraph (A) for employ-
11 ment purposes shall, in the disclosure made pur-
12 suant to paragraph (2), include—

13 “(i) an explanation that a consumer
14 report is being obtained for employment
15 purposes;

16 “(ii) the reasons for obtaining such a
17 report; and

18 “(iii) the citation to the applicable
19 Federal, State, or local law or regulation
20 described in subparagraph (A)(i)(I).

21 “(C) *ADVERSE ACTIONS*.—In using a con-
22 sumer report described in subparagraph (A) for
23 employment purposes and before taking an ad-
24 verse action based in whole or in part on the re-
25 port, the person intending to take such adverse

1 *action shall, in addition to the information de-*
2 *scribed in paragraph (3), provide to the con-*
3 *sumer to whom the report relates—*

4 *“(i) the name, address, and telephone*
5 *number of the consumer reporting agency*
6 *that furnished the report (including, for a*
7 *consumer reporting agency that compiles*
8 *and maintains files on consumers on a na-*
9 *tionwide basis, a toll-free telephone number*
10 *established by such agency);*

11 *“(ii) the date on which the report was*
12 *furnished; and*

13 *“(iii) the specific factors from the re-*
14 *port upon which the adverse action (as de-*
15 *finied in section 603(k)(1)(B)(ii)) was based.*

16 *“(D) NATIONAL SECURITY INVESTIGA-*
17 *TIONS.—The requirements of paragraph (4) shall*
18 *apply to a consumer report described under sub-*
19 *paragraph (A).*

20 *“(E) NON-CIRCUMVENTION.—With respect*
21 *to a consumer report in which any information*
22 *contained in the report bears on the consumer’s*
23 *creditworthiness, credit standing, or credit ca-*
24 *capacity, if a person is prohibited from using the*
25 *consumer report pursuant to subparagraph (A),*

1 *such person may not, directly or indirectly, ei-*
2 *ther orally or in writing, require, request, sug-*
3 *gest, or cause any employee or prospective em-*
4 *ployee to submit such information to the person*
5 *as a condition of employment.*

6 *“(F) NON-WAIVER.—A consumer may not*
7 *waive the requirements of this paragraph with*
8 *respect to a consumer report.*

9 *“(6) RULE OF CONSTRUCTION.—Nothing in this*
10 *subsection shall be construed to require a consumer*
11 *reporting agency to prevent a Federal, State, or local*
12 *law enforcement agency from accessing information*
13 *in a consumer report to which the law enforcement*
14 *agency could otherwise obtain access.”.*

15 *(b) TECHNICAL AMENDMENT.—The Fair Credit Re-*
16 *porting Act (15 U.S.C. 1681 et seq.) is amended by striking*
17 *“section 604(b)(4)(E)(i)” each place such term appears and*
18 *inserting “section 604(b)(4)(D)(i)”.*

19 *(c) RULE OF CONSTRUCTION.—The amendments made*
20 *by this Act may not be construed as limiting the ability*
21 *of a person to use non-financial or non-credit related con-*
22 *sumer report information.*

23 *(d) RULEMAKING.—Not later than the end of the 2-*
24 *year period beginning on the date of the enactment of this*
25 *Act, the Bureau of Consumer Financial Protection shall*

1 *issue final rules to implement the amendments made by this*
2 *Act.*

3 *(e) EFFECTIVE DATE.—The amendments made by this*
4 *section shall take effect 2 years after the date of the enact-*
5 *ment of this Act.*

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