

116TH CONGRESS
1ST SESSION

H. R. 3614

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

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
9 making hiring decisions has been found to be preva-
10 lent in a diverse array of occupations, and is not

1 limited to certain high-level management or execu-
2 tive positions.

3 (2) According to the California Labor Federa-
4 tion, only 25 percent of employers researched the
5 credit history of job applicants in 1998. However,
6 this practice had increased to 43 percent by 2006
7 and to 60 percent by 2011.

8 (3) A study titled “Do Job Applicant Credit
9 Histories Predict Job Performance Appraisal Rat-
10 ings or Termination Decisions?”, published in 2012,
11 found that, while credit history might conceptually
12 measure a person’s level of responsibility, ability to
13 meet deadlines, dependability, or integrity, it does
14 not, in practice, actually predict an employee’s per-
15 formance or likelihood to quit. Credit reports contain
16 many inaccuracies and credit history can be con-
17 taminated by events that are sometimes outside a
18 person’s control, such as a sudden medical expense
19 after an accident or the loss of a job during an eco-
20 nomic downturn. The study found that there is no
21 benefit from using credit history to predict job per-
22 formance or turnover.

23 (4) Despite the absence of data showing a cor-
24 relation between job performance and credit-worthi-
25 ness, employers continue to use credit checks as a

1 proxy for assessing character and integrity. Accord-
2 ing to a 2012 Society for Human Resource Manage-
3 ment survey, organizations indicated that they used
4 credit checks on job candidates primarily to reduce
5 or prevent theft and embezzlement and to minimize
6 legal liability for negligent hiring.

7 (5) The use of credit checks for employment
8 purposes creates a true “catch-22” for unemployed
9 people with impaired credit. For example, the finan-
10 cial hardship caused by losing a job may cause some
11 unemployed individuals to make late or partial pay-
12 ments on their bills, but their poor credit standing
13 caused by this negative information on their con-
14 sumer report can also impede their chances of ob-
15 taining a new job to end their financial distress.

16 (6) A September 2014 report by the New York
17 City Council’s Committee on Civil Rights noted that,
18 for those who have been unemployed for an extended
19 period of time and whose credit has suffered as they
20 fell behind on bills, the use of credit reports in the
21 hiring process can exacerbate and perpetuate an al-
22 ready precarious situation.

23 (7) In a March 2013 Demos report titled “Dis-
24 credited: How Employment Credit Checks Keep Out
25 Qualified Workers Out of a Job”, one in four survey

1 participants who were unemployed said that a poten-
2 tial employer had requested to check their credit re-
3 port as part of a job application. Among job appli-
4 cants with blemished credit histories in the survey,
5 one in seven had been told that they were not being
6 hired because of their credit history.

7 (8) While job applicants must give prior ap-
8 proval for a prospective employer to pull their credit
9 reports under the FCRA, this authorization, as a
10 practical matter, does not constitute an effective
11 consumer protection because an employer may reject
12 any job applicant who refuses a credit check.

13 (9) Some negative information on a report may
14 stem from uncontrollable circumstances, or signifi-
15 cant life events in a consumer's life, such as a med-
16 ical crisis or a divorce. Demos found that poor credit
17 is associated with household unemployment, lack of
18 health coverage, and medical debt, which are factors
19 that reflect economic conditions in the country and
20 personal misfortune that have little relationship with
21 how well a job applicant would perform at work.

22 (10) In October 2011, FICO noted that from
23 2008 to 2009 approximately 50 million people expe-
24 rienced a 20-point drop in their credit scores and
25 about 21 million saw their scores decline by more

1 than 50 points. While the Great Recession reduced
2 many consumers' credit scores due to foreclosures
3 and other financial hardships, the financial crisis
4 had a particularly harsh impact on African Ameri-
5 cans and Latinos, as racial and ethnic minorities
6 and communities of color were frequently targeted
7 by predatory mortgage lenders who steered bor-
8 rowers into high-cost subprime loans, even when
9 these borrowers would have qualified for less costly
10 prime credit.

11 (11) A May 2006 Brookings Institution report
12 titled "Credit Scores, Reports, and Getting Ahead in
13 America" found that counties with a relatively high-
14 er proportion of racial and ethnic minorities in the
15 United States tended to have lower credit scores
16 compared with counties that had a lower concentra-
17 tion of communities of color.

18 (12) Studies have consistently found that Afri-
19 can American and Latino households tend, on aver-
20 age, to have lower credit scores than White house-
21 holds. The growing use of credit checks, therefore,
22 may disproportionately screen otherwise qualified ra-
23 cial and ethnic minorities out of jobs, leading to dis-
24 crimination hiring practices, and further exacer-
25 bating the trend where unemployment for African

1 American and Latino communities is elevated well
2 above the rate of Whites.

3 (13) A 2012 Demos survey found that 65 per-
4 cent of White respondents reported having good or
5 excellent credit scores while over half of African
6 American households reported only having fair or
7 bad credit.

8 **SEC. 3. BANS THE USE OF CREDIT INFORMATION FOR**
9 **MOST EMPLOYMENT DECISIONS.**

10 (a) IN GENERAL.—Section 604 of the Fair Credit
11 Reporting Act (15 U.S.C. 1681b) is amended—

12 (1) in subsection (a)(3)(B), by inserting “, sub-
13 ject to the requirements of subsection (b)” after
14 “purposes”; and

15 (2) in subsection (b)—

16 (A) in paragraph (1)—

17 (i) by amending the paragraph head-
18 ing to read as follows: “USE OF CON-
19 SUMER REPORTS FOR EMPLOYMENT PUR-
20 POSES”;

21 (ii) in subparagraph (A), by redesign-
22 ating clauses (i) and (ii) as subclauses (I)
23 and (II), respectively (and conforming the
24 margins accordingly);

1 (iii) by redesignating subparagraphs
 2 (A) and (B) as clauses (i) and (ii), respec-
 3 tively (and conforming the margins accord-
 4 ingly);

5 (iv) by striking the period at the end
 6 of clause (ii) (as so redesignated) and in-
 7 serting “; and”;

8 (v) by striking “agency may furnish”
 9 and inserting “agency—
 10 “(A) may furnish”; and

11 (vi) by adding at the end the following
 12 new subparagraph:

13 “(B) except as provided in paragraph (5),
 14 may not furnish a consumer report with respect
 15 to any consumer in which any information con-
 16 tained in the report bears on the consumer’s
 17 creditworthiness, credit standing, or credit ca-
 18 pacity.”; and

19 (B) by adding at the end the following new
 20 paragraphs:

21 “(5) REQUIREMENTS FOR CONSUMER REPORTS
 22 BEARING ON THE CONSUMER’S CREDITWORTHINESS,
 23 CREDIT STANDING, OR CREDIT CAPACITY.—

24 “(A) IN GENERAL.—A person may use a
 25 consumer report with respect to any consumer

1 in which any information contained in the re-
2 port bears on the consumer's creditworthiness,
3 credit standing, or credit capacity only if—

4 “(i) either—

5 “(I) the person is required to ob-
6 tain the report by a Federal, State, or
7 local law; or

8 “(II) the information contained
9 in the report is being used with re-
10 spect to a national security investiga-
11 tion (as defined in paragraph (4)(D));

12 “(ii) none of the cost associated with
13 obtaining the consumer report will be
14 passed on to the consumer to whom the re-
15 port relates; and

16 “(iii) the information contained in the
17 consumer report will not be disclosed to
18 any other person other than—

19 “(I) in an aggregate format that
20 protects a consumer's personally iden-
21 tifiable information; or

22 “(II) as may be necessary to
23 comply with any applicable Federal,
24 State, or local equal employment op-
25 portunity law or regulation.

1 “(B) DISCLOSURES.—A person who pro-
2 cures, or causes to be procured, a consumer re-
3 port described in subparagraph (A) for employ-
4 ment purposes shall, in the disclosure made
5 pursuant to paragraph (2), include—

6 “(i) an explanation that a consumer
7 report is being obtained for employment
8 purposes;

9 “(ii) the reasons for obtaining such a
10 report; and

11 “(iii) the citation to the applicable
12 Federal, State, or local law or regulation
13 described in subparagraph (A)(i)(I).

14 “(C) ADVERSE ACTIONS.—In using a con-
15 sumer report described in subparagraph (A) for
16 employment purposes and before taking an ad-
17 verse action based in whole or in part on the re-
18 port, the person intending to take such adverse
19 action shall, in addition to the information de-
20 scribed in paragraph (3), provide to the con-
21 sumer to whom the report relates—

22 “(i) the name, address, and telephone
23 number of the consumer reporting agency
24 that furnished the report (including, for a
25 consumer reporting agency that compiles

1 and maintains files on consumers on a na-
2 tionwide basis, a toll-free telephone number
3 established by such agency);

4 “(ii) the date on which the report was
5 furnished; and

6 “(iii) the specific factors from the re-
7 port upon which the adverse action (as de-
8 fined in section 603(k)(1)(B)(ii)) was
9 based.

10 “(D) NATIONAL SECURITY INVESTIGA-
11 TIONS.—The requirements of paragraph (4)
12 shall apply to a consumer report described
13 under subparagraph (A).

14 “(E) NON-CIRCUMVENTION.—With respect
15 to a consumer report in which any information
16 contained in the report bears on the consumer’s
17 creditworthiness, credit standing, or credit ca-
18 pacity, if a person is prohibited from using the
19 consumer report pursuant to subparagraph (A),
20 such person may not, directly or indirectly, ei-
21 ther orally or in writing, require, request, sug-
22 gest, or cause any employee or prospective em-
23 ployee to submit such information to the person
24 as a condition of employment.

1 “(F) NON-WAIVER.—A consumer may not
2 waive the requirements of this paragraph with
3 respect to a consumer report.

4 “(6) RULE OF CONSTRUCTION.—Nothing in
5 this subsection shall be construed to require a con-
6 sumer reporting agency to prevent a Federal, State,
7 or local law enforcement agency from accessing in-
8 formation in a consumer report to which the law en-
9 forcement agency could otherwise obtain access.”.

10 (b) TECHNICAL AMENDMENT.—The Fair Credit Re-
11 porting Act (15 U.S.C. 1681 et seq.) is amended by strik-
12 ing “section 604(b)(4)(E)(i)” each place such term ap-
13 pears and inserting “section 604(b)(4)(D)(i)”.

14 (c) RULEMAKING.—Not later than the end of the 2-
15 year period beginning on the date of the enactment of this
16 Act, the Bureau of Consumer Financial Protection shall
17 issue final rules to implement the amendments made by
18 this Act.

19 (d) EFFECTIVE DATE.—The amendments made by
20 this section shall take effect 2 years after the date of the
21 enactment of this Act.

○