

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 italic]
[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-
- tion, only 25 percent of employers researched the cred-
- it history of job applicants in 1998. However, this
- 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
- 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

- events that are sometimes outside a person's control, such as a sudden medical expense after an accident or the loss of a job during an economic downturn. The study found that there is no benefit from using credit history to predict job performance or turnover.
 - (4) Despite the absence of data showing a correlation between job performance and credit-worthiness, employers continue to use credit checks as a proxy for assessing character and integrity. According to a 2012 Society for Human Resource Management survey, organizations indicated that they used credit checks on job candidates primarily to reduce or prevent theft and embezzlement and to minimize legal liability for negligent hiring.
 - (5) The use of credit checks for employment purposes creates a true "catch-22" for unemployed people with impaired credit. For example, the financial hardship caused by losing a job may cause some unemployed individuals to make late or partial payments on their bills, but their poor credit standing caused by this negative information on their consumer report can also impede their chances of obtaining a new job to end their financial distress.
 - (6) A September 2014 report by the New York City Council's Committee on Civil Rights noted that,

- for those who have been unemployed for an extended period of time and whose credit has suffered as they fell behind on bills, the use of credit reports in the hiring process can exacerbate and perpetuate an already precarious situation.
 - (7) In a March 2013 Demos report titled "Discredited: How Employment Credit Checks Keep Out Qualified Workers Out of a Job", one in four survey participants who were unemployed said that a potential employer had requested to check their credit report as part of a job application. Among job applicants with blemished credit histories in the survey, one in seven had been told that they were not being hired because of their credit history.
 - (8) While job applicants must give prior approval for a prospective employer to pull their credit reports under the FCRA, this authorization, as a practical matter, does not constitute an effective consumer protection because an employer may reject any job applicant who refuses a credit check.
 - (9) Some negative information on a report may stem from uncontrollable circumstances, or significant life events in a consumer's life, such as a medical crisis or a divorce. Demos found that poor credit is associated with household unemployment, lack of health

- coverage, and medical debt, which are factors that reflect economic conditions in the country and personal misfortune that have little relationship with how well a job applicant would perform at work.
- (10) In October 2011, FICO noted that from 2008 to 2009 approximately 50 million people experienced a 20-point drop in their credit scores and about 21 million saw their scores decline by more than 50 points. While the Great Recession reduced many consumers' credit scores due to foreclosures and other financial hardships, the financial crisis had a particularly harsh impact on African Americans and Latinos, as racial and ethnic minorities and communities of color were frequently targeted by predatory mortgage lenders who steered borrowers into high-cost subprime loans, even when these borrowers would have qualified for less costly prime credit.
 - (11) A May 2006 Brookings Institution report titled "Credit Scores, Reports, and Getting Ahead in America" found that counties with a relatively higher proportion of racial and ethnic minorities in the United States tended to have lower credit scores compared with counties that had a lower concentration of 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 redesig-
5	nating 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	fined 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	pacity, if a person is prohibited from using the
25	consumer report pursuant to subparagraph (A),

- such person may not, directly or indirectly, either orally or in writing, require, request, suggest, or cause any employee or prospective employee to submit such information to the person
 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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