AMENDMENT IN THE NATURE OF A SUBSTITUTE
TO H.R. 3614
OFFERED BY MR. LAWSON OF FLORIDA

Strike all after the enacting clause and insert the following:

1 SECTION 1. SHORT TITLE.

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

2 SEC. 2. FINDINGS.

Congress finds the following:

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

1 (2) According to the California Labor Federation, only 25 percent of employers researched the credit history of job applicants in 1998. However, this practice had increased to 43 percent by 2006 and to 60 percent by 2011.

1 (3) A study titled “Do Job Applicant Credit Histories Predict Job Performance Appraisal Ratings or Termination Decisions?”, published in 2012,
found that, while credit history might conceptually
measure a person’s level of responsibility, ability to
meet deadlines, dependability, or integrity, it does
not, in practice, actually predict an employee’s per-
formance or likelihood to quit. Credit reports contain
many inaccuracies and credit history can be con-
taminated 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 eco-
nomic downturn. The study found that there is no
benefit from using credit history to predict job per-
formance or turnover.

(4) Despite the absence of data showing a cor-
relation between job performance and credit-worthi-
ness, employers continue to use credit checks as a
proxy for assessing character and integrity. Accord-
ing to a 2012 Society for Human Resource Manage-
ment 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 finan-
cial hardship caused by losing a job may cause some
unemployed individuals to make late or partial pay-
ments on their bills, but their poor credit standing
caused by this negative information on their con-
sumer report can also impede their chances of ob-
taining 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 al-
ready precarious situation.

(7) In a March 2013 Demos report titled “Disc-
credited: How Employment Credit Checks Keep Out
Qualified Workers Out of a Job”, one in four survey
participants who were unemployed said that a poten-
tial employer had requested to check their credit re-
port as part of a job application. Among job appli-
cants 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 ap-
proval 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.

(12) Studies have consistently found that African American and Latino households tend, on average, to have lower credit scores than White households. The growing use of credit checks, therefore, may disproportionately screen otherwise qualified racial and ethnic minorities out of jobs, leading to discriminatory hiring practices, and further exacerbating the trend where unemployment for African American and Latino communities is elevated well above the rate of Whites.

(13) A 2012 Demos survey found that 65 percent of White respondents reported having good or excellent credit scores while over half of African American households reported only having fair or bad credit.
SEC. 3. PROHIBITION ON THE USE OF CREDIT INFORMATION FOR MOST EMPLOYMENT DECISIONS.

(a) In General.—Section 604 of the Fair Credit Reporting Act (15 U.S.C. 1681b) is amended—

(1) in subsection (a)(3)(B), by inserting “, subject to the requirements of subsection (b)” after “purposes”; and

(2) in subsection (b)—

(A) in paragraph (1)—

(i) by amending the paragraph heading to read as follows: “USE OF CONSUMER REPORTS FOR EMPLOYMENT PURPOSES”;

(ii) in subparagraph (A), by redesignating clauses (i) and (ii) as subclauses (I) and (II), respectively (and conforming the margins accordingly);

(iii) by redesignating subparagraphs (A) and (B) as clauses (i) and (ii), respectively (and conforming the margins accordingly);

(iv) by striking the period at the end of clause (ii) (as so redesignated) and inserting “; and”;

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

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

“(B) except as provided in paragraph (5), may not furnish a consumer report with respect to any consumer in which any information contained in the report bears on the consumer’s creditworthiness, credit standing, or credit capacity.”; and

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

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

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

“(i) either—

“(I) the person is required to obtain the report by a Federal, State, or local law or regulation; or

“(II) the information contained in the report is being used with re-
spect to a national security investigation (as defined in paragraph (4)(D));

“(ii) none of the cost associated with obtaining the consumer report will be passed on to the consumer to whom the report relates; and

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

“(I) in an aggregate format that protects a consumer’s personally identifiable information; or

“(II) as may be necessary to comply with any applicable Federal, State, or local equal employment opportunity law or regulation.

“(B) DISCLOSURES.—A person who procures, or causes to be procured, a consumer report described in subparagraph (A) for employment purposes shall, in the disclosure made pursuant to paragraph (2), include—

“(i) an explanation that a consumer report is being obtained for employment purposes;
“(ii) the reasons for obtaining such a report; and

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

“(C) ADVERSE ACTIONS.—In using a consumer report described in subparagraph (A) for employment purposes and before taking an adverse action based in whole or in part on the report, the person intending to take such adverse action shall, in addition to the information described in paragraph (3), provide to the consumer to whom the report relates—

“(i) the name, address, and telephone number of the consumer reporting agency that furnished the report (including, for a consumer reporting agency that compiles and maintains files on consumers on a nationwide basis, a toll-free telephone number established by such agency);

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

“(iii) the specific factors from the report upon which the adverse action (as de-
fined in section 603(k)(1)(B)(ii)) was based.

“(D) National security investigations.—The requirements of paragraph (4) shall apply to a consumer report described under subparagraph (A).

“(E) Non-circumvention.—With respect to a consumer report in which any information contained in the report bears on the consumer’s creditworthiness, credit standing, or credit capacity, if a person is prohibited from using the 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.

“(F) Non-waiver.—A consumer may not waive the requirements of this paragraph with respect to a consumer report.

“(6) Rule of construction.—Nothing in this subsection shall be construed to require a consumer reporting agency to prevent a Federal, State, or local law enforcement agency from accessing in-
(b) TECHNICAL AMENDMENT.—The Fair Credit Reporting Act (15 U.S.C. 1681 et seq.) is amended by striking “section 604(b)(4)(E)(i)” each place such term appears and inserting “section 604(b)(4)(D)(i)”.

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

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