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(Original Signature of Member)

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

M. _____ introduced the following bill; which was referred to the Committee on _____

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:

1 (1) The use of credit reports as a factor in
2 making hiring decisions has been found to be preva-
3 lent in a diverse array of occupations, and is not
4 limited to certain high-level management or execu-
5 tive positions.

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

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

1 (4) Despite the absence of data showing a cor-
2 relation between job performance and credit-worthi-
3 ness, employers continue to use credit checks as a
4 proxy for assessing character and integrity. Accord-
5 ing to a 2012 Society for Human Resource Manage-
6 ment survey, organizations indicated that they used
7 credit checks on job candidates primarily to reduce
8 or prevent theft and embezzlement and to minimize
9 legal liability for negligent hiring.

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

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

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

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

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

1 (10) In October 2011, FICO noted that from
2 2008 to 2009 approximately 50 million people experi-
3 enced a 20-point drop in their credit scores and
4 about 21 million saw their scores decline by more
5 than 50 points. While the Great Recession reduced
6 many consumers' credit scores due to foreclosures
7 and other financial hardships, the financial crisis
8 had a particularly harsh impact on African Ameri-
9 cans and Latinos, as racial and ethnic minorities
10 and communities of color were frequently targeted
11 by predatory mortgage lenders who steered bor-
12 rowers into high-cost subprime loans, even when
13 these borrowers would have qualified for less costly
14 prime credit.

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

22 (12) Studies have consistently found that Afri-
23 can American and Latino households tend, on aver-
24 age, to have lower credit scores than White house-
25 holds. The growing use of credit checks, therefore,

1 may disproportionately screen otherwise qualified ra-
2 cial and ethnic minorities out of jobs, leading to dis-
3 criminatory hiring practices, and further exacer-
4 bating the trend where unemployment for African
5 American and Latino communities is elevated well
6 above the rate of Whites.

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

12 **SEC. 3. BANS THE USE OF CREDIT INFORMATION FOR**
13 **MOST EMPLOYMENT DECISIONS.**

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

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

19 (2) in subsection (b)—

20 (A) in paragraph (1)—

21 (i) by amending the paragraph head-
22 ing to read as follows: “USE OF CON-
23 SUMER REPORTS FOR EMPLOYMENT PUR-
24 POSES”;

1 (ii) in subparagraph (A), by redesignig-
2 nating clauses (i) and (ii) as subclauses (I)
3 and (II), respectively (and conforming the
4 margins accordingly);

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

9 (iv) by striking the period at the end
10 of clause (ii) (as so redesignated) and in-
11 sserting “; and”;

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

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

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

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

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

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

9 “(i) either—

10 “(I) the person is required to ob-
11 tain the report by a Federal, State, or
12 local law; or

13 “(II) the information contained
14 in the report is being used with re-
15 spect to a national security investiga-
16 tion (as defined in paragraph (4)(D));

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

21 “(iii) the information contained in the
22 consumer report will not be disclosed to
23 any 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
5 comply with any applicable Federal,
6 State, or local equal employment op-
7 portunity 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
12 pursuant 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
16 based.

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

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

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

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

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

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

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

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