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.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

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

SEC. 2. FINDINGS.

Congress finds the following:
(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.

(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.

(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 performance or likelihood to quit. Credit reports contain many inaccuracies 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.
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.

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.

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 ra-
cial and ethnic minorities out of jobs, leading to dis-
criminatory hiring practices, and further exacer-
bating 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 per-
cent 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. BANS 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 ‘‘, sub-
ject to the requirements of subsection (b)’’ after
‘‘purposes’’; and

(2) in subsection (b)—

(A) in paragraph (1)—

(i) by amending the paragraph head-
ing to read as follows: ‘‘USE OF CON-
SUMER REPORTS FOR EMPLOYMENT PUR-
POSES’’;
(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

“(II) the information contained in the report is being used with respect 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 defined 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 information in a consumer report to which the law enforcement agency could otherwise obtain access.”.

(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)”.

(c) 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.