

105TH CONGRESS
2D SESSION

S. 2561

To amend the Fair Credit Reporting Act with respect to furnishing and using consumer reports for employment purposes.

IN THE SENATE OF THE UNITED STATES

OCTOBER 6 (legislative day, OCTOBER 2), 1998

Mr. NICKLES (for himself and Mr. BRYAN) introduced the following bill; which was read twice, considered, read the third time, and passed

A BILL

To amend the Fair Credit Reporting Act with respect to furnishing and using consumer reports for employment 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 “Consumer Reporting
5 Employment Clarification Act of 1998”.

6 **SEC. 2. USE OF CONSUMER REPORTS FOR EMPLOYMENT**
7 **PURPOSES.**

8 (a) DISCLOSURE TO CONSUMER.—Section 604(b)(2)
9 of the Fair Credit Reporting Act (15 U.S.C. 1681b(b)(2))
10 is amended to read as follows:

1 “(2) DISCLOSURE TO CONSUMER.—

2 “(A) IN GENERAL.—Except as provided in
3 subparagraph (B), a person may not procure a
4 consumer report, or cause a consumer report to
5 be procured, for employment purposes with re-
6 spect to any consumer, unless—

7 “(i) a clear and conspicuous disclosure
8 has been made in writing to the consumer
9 at any time before the report is procured
10 or caused to be procured, in a document
11 that consists solely of the disclosure, that
12 a consumer report may be obtained for em-
13 ployment purposes; and

14 “(ii) the consumer has authorized in
15 writing (which authorization may be made
16 on the document referred to in clause (i))
17 the procurement of the report by that per-
18 son.

19 “(B) APPLICATION BY MAIL, TELEPHONE,
20 COMPUTER, OR OTHER SIMILAR MEANS.—If a
21 consumer described in subparagraph (C) applies
22 for employment by mail, telephone, computer,
23 or other similar means, at any time before a
24 consumer report is procured or caused to be
25 procured in connection with that application—

1 “(i) the person who procures the con-
2 sumer report on the consumer for employ-
3 ment purposes shall provide to the con-
4 sumer, by oral, written, or electronic
5 means, notice that a consumer report may
6 be obtained for employment purposes, and
7 a summary of the consumer’s rights under
8 section 615(a)(3); and

9 “(ii) the consumer shall have con-
10 sented, orally, in writing, or electronically
11 to the procurement of the report by that
12 person.

13 “(C) SCOPE.—Subparagraph (B) shall
14 apply to a person procuring a consumer report
15 on a consumer in connection with the consum-
16 er’s application for employment only if—

17 “(i) the consumer is applying for a
18 position over which the Secretary of Trans-
19 portation has the power to establish quali-
20 fications and maximum hours of service
21 pursuant to the provisions of Section
22 31502 of Title 49, or a position subject to
23 safety regulation by a state transportation
24 agency; and

1 “(ii) as of the time at which the per-
2 son procures the report or causes the re-
3 port to be procured the only interaction be-
4 tween the consumer and the person in con-
5 nection with that employment application
6 has been by mail, telephone, computer, or
7 other similar means.”

8 (b) CONDITIONS ON USE FOR ADVERSE ACTIONS.—
9 Section 604(b)(3) of the Fair Credit Reporting Act (15
10 U.S.C. 1681b(b)(3)) is amended to read as follows:

11 “(3) CONDITIONS ON USE FOR ADVERSE AC-
12 TIONS.—

13 “(A) IN GENERAL.—Except as provided in
14 subparagraph (B), in using a consumer report
15 for employment purposes, before taking any ad-
16 verse action based in whole or in part on the re-
17 port, the person intending to take such adverse
18 action shall provide to the consumer to whom
19 the report relates—

20 “(i) a copy of the report; and

21 “(ii) a description in writing of the
22 rights of the consumer under this title, as
23 prescribed by the Federal Trade Commis-
24 sion under section 609(c)(3).

1 “(B) APPLICATION BY MAIL, TELEPHONE,
2 COMPUTER, OR OTHER SIMILAR MEANS.—

3 “(i) If a consumer described in sub-
4 paragraph (C) applies for employment by
5 mail, telephone, computer or other similar
6 means, and if a person who has procured
7 a consumer report on the consumer for
8 employment purposes takes adverse action
9 on the employment application based in
10 whole or in part on the report, then the
11 person must provide to the consumer to
12 whom the report relates, in lieu of the no-
13 tices required under subparagraph (A) of
14 this section and under section 615(a),
15 within 3 business days of taking such ac-
16 tion, an oral, written or electronic notifica-
17 tion—

18 “(I) that adverse action has been
19 taken based in whole or in part on a
20 consumer report received from a con-
21 sumer reporting agency;

22 “(II) of the name, address and
23 telephone number of the consumer re-
24 port agency that furnished the con-
25 sumer report (including a toll-free

1 telephone number established by the
2 agency if the agency compiles and
3 maintains files on consumers on a na-
4 tionwide basis);

5 “(III) that the consumer report-
6 ing agency did not make the decision
7 to take the adverse action and is un-
8 able to provide to the consumer the
9 specific reasons why the adverse ac-
10 tion was taken; and

11 “(IV) that the consumer may,
12 upon providing proper identification,
13 request a free copy of a report and
14 may dispute with the consumer re-
15 porting agency the accuracy or com-
16 pleteness of any information in a re-
17 port.

18 “(ii) If, under clause (B)(i)(IV), the
19 consumer requests a copy of a consumer
20 report from the person who procured the
21 report, then, within 3 business days of re-
22 ceiving the consumer’s request, together
23 with proper identification, the person must
24 send or provide to the consumer a copy of
25 a report and a copy of the consumer’s

1 rights as prescribed by the Federal Trade
2 Commission under section 609(e)(3).”.

3 “(C) SCOPE.—Subparagraph (B) shall
4 apply to a person procuring a consumer report
5 on a consumer in connection with the consum-
6 er’s application for employment only if—

7 (i) the consumer is applying for a po-
8 sition over which the Secretary of Trans-
9 portation has the power to establish quali-
10 fications and maximum hours of service
11 pursuant to the provisions of section
12 31502 of title 49, or a position subject to
13 safety regulation by a state transportation
14 agency; and

15 (ii) as of the time at which the person
16 procures the report or causes the report to
17 be procured the only interaction between
18 the consumer and the person in connection
19 with that employment application has been
20 by mail, telephone, computer, or other
21 similar means.”

22 **SEC. 3. PROVISION OF SUMMARY OF RIGHTS.**

23 Section 604(b)(1)(B) of the Fair Credit Reporting
24 Act (15 U.S.C. 1681b(b)(1)(B)) is amended by inserting
25 “, or has previously provided,” before “a summary”.

1 **SEC. 4. NATIONAL SECURITY INVESTIGATION CONFORMING**
 2 **AMENDMENTS.**

3 (a) GOVERNMENT AS END USER.—Section 609(a)(3)
 4 of the Fair Credit Reporting Act (15 U.S.C. 1681g(a)(3))
 5 is amended by adding at the end the following:

6 “(C) Subparagraph (A) does not apply if—

7 “(i) the end user is an agency or de-
 8 partment of the United States Government
 9 that procures the report from the person
 10 for purposes of determining the eligibility
 11 of the consumer to whom the report relates
 12 to receive access or continued access to
 13 classified information (as defined in section
 14 604(b)(4)(E)(i)); and

15 “(ii) the head of the agency or depart-
 16 ment makes a written finding as prescribed
 17 under section 604(b)(4)(A).”.

18 (b) NATIONAL SECURITY INVESTIGATIONS.—Section
 19 613 of the Fair Credit Reporting Act (15 U.S.C. 1681k)
 20 is amended—

21 (1) by inserting “(a) IN GENERAL.—” before
 22 “A consumer”; and

23 (2) by adding at the end the following:

24 “(b) EXEMPTION FOR NATIONAL SECURITY INVES-
 25 TIGATIONS.—Subsection (a) does not apply in the case of
 26 an agency or department of the United States Government

1 that seeks to obtain and use a consumer report for em-
2 ployment purposes, if the head of the agency or depart-
3 ment makes a written finding as prescribed under section
4 604(b)(4)(A).”.

5 **SEC. 5. CIVIL SUITS AND JUDGMENTS.**

6 Section 605(a) of the Fair Credit Reporting Act (15
7 U.S.C. 1681c(a)) is amended—

8 (1) in paragraph (2), by striking “Suits and
9 Judgments which” and inserting “Civil suits, civil
10 judgments, and records of arrest that”;

11 (2) by striking paragraph (5);

12 (3) in paragraph (6), by inserting “, other than
13 records of convictions of crimes” after “of informa-
14 tion”; and

15 (4) by redesignating paragraph (6) as para-
16 graph (5).

17 **SEC. 6. TECHNICAL AMENDMENTS.**

18 The Fair Credit Reporting Act (15 U.S.C. 1601 et
19 seq.) is amended—

20 (1) in section 603(d)(2)(A)(iii), by striking
21 “any communication” and inserting “communica-
22 tion”;

23 (2) in section 603(o)(1), by striking
24 “(d)(2)(E)” and inserting “(d)(2)(D)”;

1 (3) in section 603(o)(4), by striking “or” at the
2 end and inserting “and”;

3 (4) in section 604(g), by striking “or a direct
4 marketing transaction”;

5 (5) in section 611(a)(7), by striking
6 “(6)(B)(iv)” and inserting “(6)(B)(iii)”; and

7 (6) in section 621(b), by striking “or (e)”.

8 **SEC. 7. EFFECTIVE DATE.**

9 The amendments made by this title shall be deemed
10 to have the same effective date as the amendments made
11 by section 2403 of the Consumer Credit Reporting Reform
12 Act of 1996 (Public Law 104–208; 110 Stat. 3009–1257).

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