

SENATE No. 2425

Senate, July 12, 2016 -- Text of the Senate Bill regulating the use of credit reports by employers
(Senate, No. 2425) (being the text of Senate, No. 2394, printed as amended)

The Commonwealth of Massachusetts

In the One Hundred and Eighty-Ninth General Court
(2015-2016)

An Act regulating the use of credit reports by employers.

Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:

1 SECTION 1. Section 51 of chapter 93 of the General Laws, as appearing in the 2014
2 Official Edition, is hereby amended by inserting after the word “ purposes”, in line 12, the
3 following words:- under section 51B.

4 SECTION 2. Said chapter 93 is hereby further amended by inserting after section 51A
5 the following section:-

6 Section 51B. (a) For the purposes of this section, the following terms shall have the
7 following meanings unless the context clearly indicates otherwise:

8 “Credit report”, a communication of information by a consumer reporting agency or
9 information contained within a communication, written, oral or otherwise, bearing on a
10 consumer's credit worthiness, credit standing or credit capacity; provided, however, that a “credit
11 report” shall include, but not be limited to, the following information: (i) a credit score or other
12 numerical quantification of a person's creditworthiness; or (ii) other information related to: (A) a
13 consumer loan; (B) credit card debt; (C) an education loan; (D) medical debt; (E) a savings

14 account; (F) a credit account; (G) a checking account; (H) past borrowing and repaying behavior
15 including, but not limited to, paying bills on time and the management, accumulation, payment
16 or ability to repay; or discharge of a debt or other financial obligation.

17 “Employment purposes”, when used in connection with a credit report, a purpose related
18 to the evaluation of a consumer for employment, promotion, reassignment or retention,
19 termination, demotion, discipline, compensation or the terms, conditions or privileges of
20 employment.

21 “Financial institution”, a trust company, state or federally chartered savings bank, state
22 chartered cooperative bank, national banking association, state or federally chartered savings and
23 loan association, state or federally chartered credit union, insurance or surety company,
24 investment advisor, broker-dealer, bank holding company, financial holding company or an
25 entity registered with the United States Securities and Exchange Commission.

26 (b) A person shall not: (i) use a credit report in connection with or as a criterion for an
27 employment purpose; (ii) request or procure a credit report for employment purposes; or (iii)
28 require an employee or applicant to answer a question about the contents of a credit report or the
29 information contained in it regarding credit worthiness, credit standing or credit capacity.

30 (c) Notwithstanding subsection (b), a person may use or request a credit report under
31 subsection (e) if 1 of the following conditions are met:

32 (i) a person is required by federal or state law or regulation or the rules of a self-
33 regulatory organization, as defined in 15 U.S.C. 78c(a)(26), to use a credit report for
34 employment purposes;

35 (ii) the employee or applicant applies for or holds an executive or managerial
36 position at a financial institution that is exempt from minimum wage and maximum hour
37 requirements under the federal Fair Labor Standards Act, 29 U.S.C. 213(a)(1);

38 (iii) the employee or applicant applies for or holds a position that requires national
39 security clearance; or

40 (iv) the position involves financial responsibility to the employer that includes: (i)
41 signatory authority over third-party funds or assets valued at not less than \$6,000; or (ii) a
42 fiduciary responsibility to the employer with the authority to enter into financial agreements
43 valued at not less than \$6,000 on behalf of the employer.

44 (d) Notwithstanding subsection (c), a person shall not use a credit report in a manner that
45 results in adverse employment discrimination prohibited by law.

46 (e) An employer, or person acting on behalf of the employer for an employment purpose,
47 shall not obtain, use or seek the credit report of an employee or applicant under subsection (c)
48 unless the employer or person acting on behalf of the employer:

49 (i) obtains the written consent of the employee or applicant in a document that
50 consists solely of the consent and does so each time that the person seeks to obtain the credit
51 report of an employee or applicant;

52 (ii) discloses the employer's reason for accessing the credit report to the employee
53 or applicant in writing; provided, however, that if an employer intends to take an adverse
54 employment action that is based, in whole or in part, on the report, the employer shall disclose
55 the reason for the action, including the information in the report that was the basis for the action,

56 in writing at least 14 days prior to the taking the action, along with a copy of the report and the
57 notice of consumer rights required by 15 U.S.C. 1681g(c)(1); and provided further, that the
58 employer shall provide the employee or applicant, in a private discussion, the opportunity to
59 dispute the relevance of the information upon which the employer based the adverse employment
60 action and shall consider the dispute before making a final decision; and

61 (iii) ensures that costs associated with obtaining a credit report are not paid by or
62 passed on to the employee or applicant.

63 If, during the 14 day period under clause (ii), the employee or applicant provides oral or
64 written notice to an employer or person acting on behalf of the employer that the employee or
65 applicant is disputing the accuracy of the credit report with a consumer reporting agency, the
66 employer or person acting on behalf of the employer shall not take an adverse employment
67 action until the resolution of the dispute under section 58 or 15 U.S.C. 1681i(a) and shall
68 consider the results of the resolution before taking an adverse action.

69 (f) An employer or person acting on behalf of the employer shall not retaliate,
70 discriminate or take an adverse action against an employee or applicant on the basis that the
71 employee or application has or intends to: (i) file a complaint pursuant to subsection (h); (ii)
72 allege that the person violated this section; (iii) testify, assist, give evidence or participate in an
73 investigation, proceeding or action concerning a violation of this section; or (iv) otherwise
74 oppose a violation of this section.

75 (g) A waiver of this section shall be void and a person shall not require or request that an
76 employee or applicant waive it.

77 (h) Failure to comply with this section shall constitute an unfair practice under clause (a)
78 of section 2 of chapter 93A.

79 SECTION 3. This act shall take effect on January 1, 2017.