111TH CONGRESS
1ST SESSION

# H. R. 3149

To amend the Fair Credit Reporting Act to prohibit the use of consumer credit checks against prospective and current employees for the purposes of making adverse employment decisions.

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## IN THE HOUSE OF REPRESENTATIVES

JULY 9, 2009

Mr. COHEN (for himself, Mr. GUTIERREZ, Mr. MEEK of Florida, Ms. ED-WARDS of Maryland, Mr. CONYERS, Mr. AL GREEN of Texas, Ms. WA-TERS, Ms. CLARKE, Mr. JOHNSON of Georgia, Ms. KILPATRICK of Michigan, Ms. WATSON, Ms. MOORE of Wisconsin, Ms. EDDIE BERNICE JOHNSON of Texas, Mr. DAVIS of Illinois, Mr. ELLISON, Mr. MCGOVERN, Mr. GRIJALVA, Mr. TOWNS, Ms. VELÁZQUEZ, Mr. THOMPSON of Mississippi, Mr. JACKSON of Illinois, Ms. SUTTON, Mr. LEWIS of Georgia, Ms. JACKSON-LEE of Texas, Mr. HASTINGS of Florida, Mr. RUSH, and Mr. MEEKS of New York) introduced the following bill; which was referred to the Committee on Financial Services

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# A BILL

To amend the Fair Credit Reporting Act to prohibit the use of consumer credit checks against prospective and current employees for the purposes of making adverse employment decisions.

1    *Be it enacted by the Senate and House of Representa-*

2    *tives of the United States of America in Congress assembled,*

**SECTION 1. SHORT TITLE.**

This Act may be cited as the "Equal Employment for All Act".

**SEC. 2. USE OF CREDIT CHECKS PROHIBITED FOR EMPLOY-**

**MENT PURPOSES.**

(a) PROHIBITION FOR EMPLOYMENT AND ADVERSE ACTION.—Section 604 of the Fair Credit Reporting Act (15 U.S.C. 1681b) is amended—

(1) in subsection (a)(3)(B), by inserting "within the restrictions set forth in subsection (b)" after "purposes";

(2) by redesignating subsections (b) through (g) as subsections (c) through (h), respectively; and

(3) by inserting after subsection (a) the following new subsection:

"(b) USE OF CERTAIN CONSUMER REPORT PROHIBITED FOR EMPLOYMENT PURPOSES OR ADVERSE ACTION.—

"(1) GENERAL PROHIBITION.—Except as provided in paragraph (3), a person, including a prospective employer or current employer, may not use a consumer report or investigative consumer report, or cause a consumer report or investigative consumer report to be procured, with respect to any consumer where any information contained in the re-

1 port bears on the consumer's creditworthiness, credit

2 standing, or credit capacity—

3        "(A) for employment purposes; or

4        "(B) for making an adverse action, as de-

5        scribed in section 603(k)(1)(B)(ii).

6     "(2) SOURCE OF CONSUMER REPORT IRRELE-

7 VANT.—The prohibition described in paragraph (1)

8 shall apply even if the consumer consents or other-

9 wise authorizes the procurement or use of a con-

10 sumer report for employment purposes or in connec-

11 tion with an adverse action with respect to such con-

12 sumer.

13     "(3) EXCEPTIONS.—Notwithstanding the prohi-

14 bitions set forth in this subsection, and consistent

15 with the other sections of this Act, an employer may

16 use a consumer report with respect to a consumer

17 in the following situations:

18        "(A) When the consumer applies for, or

19        currently holds, employment that requires na-

20        tional security or FDIC clearance.

21        "(B) When the consumer applies for, or

22        currently holds, employment with a State or

23        local government agency which otherwise re-

24        quires use of a consumer report.

1           "(C) When the consumer applies for, or

2     currently holds, a supervisory, managerial, pro-

3     fessional, or executive position at a financial in-

4     stitution.

5           "(D) When otherwise required by law.

6     "(4) EFFECT ON DISCLOSURE AND NOTIFICA-

7 TION REQUIREMENTS.—The exceptions described in

8 paragraph (3) shall have no effect upon the other re-

9 quirements of this Act, including requirements in re-

10 gards to disclosure and notification to a consumer

11 when permissibly using a consumer report for em-

12 ployment purposes or for making an adverse action

13 against such consumer.".

14   (b) CONFORMING AMENDMENTS AND CROSS REF-

15 ERENCES.—Such Act is further amended as follows:

16     (1) In section 603 (15 U.S.C. 1681a)—

17         (A) in subsection (d)(3), by striking

18     "604(g)(3)" and inserting "604(h)(3)"; and

19         (B) in subsection (o), by striking "A" and

20     inserting "Subject to the restrictions set forth

21     in section 604(b), a".

22     (2) In section 604 (15 U.S.C. 1681b)—

23         (A) in subsection (a), by striking "sub-

24     section (c)" and inserting "subsection (d)";

(B) in subsection (c), as redesignated by subsection (a)(2) of this section—

(i) in paragraph (2)(A), by inserting "and subject to the restrictions set forth in subsection (b)" after "subparagraph (B)"; and

(ii) in paragraph (3)(A), by inserting "and subject to the restrictions set forth in subsection (b)" after "subparagraph (B)";

(C) in subsection (d)(1), as redesignated by subsection (a)(2) of this section, by striking "subsection (e)" in both places it appears and inserting "subsection (f)";

(D) in subsection (f), as redesignated by subsection (a)(2) of this section—

(i) in paragraph (1), by striking "subsection (c)(1)(B)" and inserting "subsection (d)(1)(B)"; and

(ii) in paragraph (5), by striking "subsection (c)(1)(B)" and inserting "subsection (d)(1)(B)".

(3) In section 607(e)(3)(A) (15 U.S.C. 1681e(e)(3)(A)), by striking "604(b)(4)(E)(i)" and inserting "604(c)(4)(E)(i)".

(4) In section 609 (15 U.S.C. 1681g)—

1     (A) in subsection (a)(3)(C)(i), by striking

2     "604(b)(4)(E)(i)"          and          inserting

3     "604(c)(4)(E)(i)"; and

4     (B) in subsection (a)(3)(C)(ii), by striking

5     "604(b)(4)(A)" and inserting "604(c)(4)(A)".

6     (5) In section 613(a) (15 U.S.C. 1681k(a)) by

7     striking "section 604(b)(4)(A)" and inserting "sec-

8     tion 604(c)(4)(A)".

9     (6) In section 615 (15 U.S.C. 1681m)—

10    (A) in subsection (d)(1), by striking "sec-

11    tion 604(c)(1)(B)" and inserting "section

12    604(d)(1)(B)";

13    (B) in subsection (d)(1)(E), by striking

14    "section 604(e)" and inserting "section

15    604(f)"; and

16    (C) in subsection (d)(2)(A), by striking

17    "section 604(e)" and inserting "section

18    604(f)".

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