

118TH CONGRESS
1ST SESSION

S. 2690

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.

IN THE SENATE OF THE UNITED STATES

JULY 27, 2023

Ms. WARREN (for herself, Ms. HIRONO, Mr. MERKLEY, Mr. WHITEHOUSE, Mr. MARKEY, Mr. MURPHY, Mrs. GILLIBRAND, Mr. DURBIN, Mr. FETTERMAN, Mr. BLUMENTHAL, Mr. BOOKER, Mr. MENENDEZ, Mr. BROWN, Mr. WYDEN, Mr. SANDERS, and Mr. WELCH) introduced the following bill; which was read twice and referred to the Committee on Banking, Housing, and Urban Affairs

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,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Equal Employment
5 for All Act of 2023”.

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

3 (a) PROHIBITION FOR EMPLOYMENT AND ADVERSE
4 ACTION.—Section 604 of the Fair Credit Reporting Act
5 (15 U.S.C. 1681b) is amended—

6 (1) in subsection (a)(3)(B), by inserting “within
7 the restrictions set forth in subsection (b)” after
8 “purposes”;

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

11 (3) by inserting after subsection (a) the fol-
12 lowing new subsection:

13 “(b) USE OF CERTAIN CONSUMER REPORT PROHIB-
14 ITED FOR EMPLOYMENT PURPOSES OR ADVERSE AC-
15 TION.—

16 “(1) GENERAL PROHIBITION.—Except as pro-
17 vided in paragraph (3), a person, including a pro-
18 spective employer or current employer, may not use
19 a consumer report or investigative consumer report,
20 or cause a consumer report or investigative con-
21 sumer report to be procured, with respect to any
22 consumer where any information contained in the re-
23 port bears on the creditworthiness, credit standing,
24 or credit capacity of the consumer—

25 “(A) for employment purposes; or

1 “(B) for making an adverse action, as de-
2 scribed in section 603(k)(1)(B)(ii).

3 “(2) SOURCE OF CONSUMER REPORT IRRELE-
4 VANT.—The prohibition described in paragraph (1)
5 shall apply even if the consumer consents or other-
6 wise authorizes the procurement or use of a con-
7 sumer report for employment purposes or in connec-
8 tion with an adverse action with respect to the con-
9 sumer.

10 “(3) EXCEPTIONS.—Notwithstanding the prohi-
11 bitions set forth in this subsection, and consistent
12 with the other sections of this Act, an employer may
13 use a consumer report with respect to a consumer
14 in the following situations:

15 “(A) When the consumer applies for, or
16 currently holds, employment that requires na-
17 tional security clearance.

18 “(B) When otherwise required by law.

19 “(4) EFFECT ON DISCLOSURE AND NOTIFICA-
20 TION REQUIREMENTS.—The exceptions described in
21 paragraph (3) shall have no effect upon the other re-
22 quirements of this Act, including requirements in re-
23 gards to disclosure and notification to a consumer
24 when permissibly using a consumer report for em-

1 employment purposes or for making an adverse action
2 against the consumer.”; and

3 (4) in subsection (c), as so redesignated—

4 (A) in paragraph (1)—

5 (i) by amending the paragraph head-
6 ing to read as follows: “USE OF CON-
7 SUMER REPORTS FOR EMPLOYMENT PUR-
8 POSES”;

9 (ii) in subparagraph (A), by redesign-
10 nating clauses (i) and (ii) as subclauses (I)
11 and (II), respectively, and by moving such
12 subclauses two ems to the right;

13 (iii) by redesignating subparagraphs
14 (A) and (B) as clauses (i) and (ii), respec-
15 tively, and by moving such clauses two ems
16 to the right;

17 (iv) by striking the period at the end
18 of clause (ii) (as so redesignated) and in-
19 serting “; and”;

20 (v) by striking “agency may furnish”
21 and inserting “agency—

22 “(A) may furnish”; and

23 (vi) by adding at the end the following
24 new subparagraph:

1 “(B) except as provided in paragraph (5),
2 may not furnish a consumer report with respect
3 to any consumer in which any information con-
4 tained in the report bears on the consumer’s
5 creditworthiness, credit standing, or credit ca-
6 pacity to an employer if the employer seeks to
7 use such information in a denial of employment
8 or any other decision made for employment pur-
9 poses.”; and

10 (B) by adding at the end the following new
11 paragraph:

12 “(5) REQUIREMENTS FOR CONSUMER REPORTS
13 BEARING ON THE CONSUMER’S CREDITWORTHINESS,
14 CREDIT STANDING, OR CREDIT CAPACITY.—

15 “(A) EXCEPTIONS.—An employer may use
16 a consumer report with respect to any con-
17 sumer in which any information contained in
18 the report bears on the consumer’s credit-
19 worthiness, credit standing, or credit capacity
20 in a decision made for employment purposes or
21 before taking an adverse action for employment
22 purposes only if the consumer authorizes the
23 procurement of the report as described in para-
24 graph (2)(A)(ii) and—

1 “(i) the consumer applies for, or cur-
2 rently holds, employment that requires the
3 consumer to be eligible for access to classi-
4 fied information; or

5 “(ii) when otherwise required by law.

6 “(B) LIMITATION.—A person who seeks to
7 obtain or use a consumer report with respect to
8 any consumer in which any information con-
9 tained in the report bears on the consumer’s
10 creditworthiness, credit standing, or credit ca-
11 pacity may not deny employment to the con-
12 sumer or make any other decision for employ-
13 ment purposes with respect to the consumer be-
14 cause the consumer has not authorized the pro-
15 curement of the report as described in para-
16 graph (2)(A)(ii).”.

17 (b) CONFORMING AMENDMENTS AND CROSS REF-
18 ERENCES.—The Fair Credit Reporting Act is further
19 amended as follows:

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

21 (A) in subsection (d)(3), by striking
22 “604(g)(3)” and inserting “604(h)(3)”; and

23 (B) in subsection (o), by striking “A” and
24 inserting “Subject to the restrictions set forth
25 in subsection 604(b), a”.

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

2 (A) in subsection (a), by striking “sub-
3 section (c)” and inserting “subsection (d)”;

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

6 (i) in paragraph (2)(A), by inserting
7 “and subject to the restrictions set forth in
8 subsection (b)” after “subparagraph (B)”;
9 and

10 (ii) in paragraph (3)(A), by inserting
11 “and subject to the restrictions set forth in
12 subsection (b)” after “subparagraph (B)”;

13 (C) in subsection (d)(1), as redesignated
14 by subsection (a)(2) of this section, by striking
15 “subsection (e)” in both places that term ap-
16 pears and inserting “subsection (f)”;

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

19 (i) in paragraph (1), by striking “sub-
20 section (c)(1)(B)” and inserting “sub-
21 section (d)(1)(B)”;

22 (ii) in paragraph (5), by striking
23 “subsection (c)(1)(B)” and inserting “sub-
24 section (d)(1)(B)”.

1 (3) In section 607(e)(3)(A) (15 U.S.C.
2 1681e(e)(3)(A)), by striking “604(b)(4)(E)(i)” and
3 inserting “604(c)(4)(E)(i)”.

4 (4) In section 609 (15 U.S.C. 1681g)—

5 (A) in subsection (a)(3)(C)(i), by striking
6 “604(b)(4)(E)(i)” and inserting
7 “604(c)(4)(E)(i)”; and

8 (B) in subsection (a)(3)(C)(ii), by striking
9 “604(b)(4)(A)” and inserting “604(c)(4)(A)”.

10 (5) In section 613(b) (15 U.S.C. 1681k(b)) by
11 striking section “604(b)(4)(A)” and inserting “sec-
12 tion 604(c)(4)(A)”.

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

14 (A) in subsection (d)(1), by striking “sec-
15 tion 604(c)(1)(B)” and inserting “section
16 604(d)(1)(B)”;

17 (B) in subsection (d)(1)(E), by striking
18 “section 604(e)” and inserting “section
19 604(f)”; and

20 (C) in subsection (d)(2)(A), by striking
21 “section 604(e)” and inserting “section
22 604(f)”.

○