To amend the Fair Credit Reporting Act to ban the use of credit information for most employment decisions, and for other purposes.
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 Representa-
atives 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 mak-
ing 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 Federa-
tion, only 25 percent of employers researched the cred-
it 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 dead-
lines, dependability, or integrity, it does not, in prac-
tice, actually predict an employee’s performance or
likelihood to quit. Credit reports contain many inac-
curacies 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 al-
ready precarious situation.

(7) In a March 2013 Demos report titled “Dis-
credited: How Employment Credit Checks Keep Out Qualified Workers Out of a Job”, one in four survey participants who were unemployed said that a poten-
tial employer had requested to check their credit re-
port as part of a job application. Among job appli-
cants 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 ap-
proval for a prospective employer to pull their credit reports under the FCRA, this authorization, as a practical matter, does not constitute an effective con-
sumer 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 cri-
sis or a divorce. Demos found that poor credit is asso-
ciated with household unemployment, lack of health
coverage, and medical debt, which are factors that re-
pect economic conditions in the country and personal
misfortune that have little relationship with how well
a job applicant would perform at work.

(10) In October 2011, FICO noted that from
2008 to 2009 approximately 50 million people experi-
enced 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 con-
sumers’ credit scores due to foreclosures and other fi-
nancial hardships, the financial crisis had a particu-
larly harsh impact on African Americans and
Latinos, as racial and ethnic minorities and commu-
nities 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.

(11) 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 com-
pared with counties that had a lower concentration of
communities of color.
(12) 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 racial and ethnic minorities out of jobs, leading to discriminatory hiring practices, and further exacerbating 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 percent 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. PROHIBITION ON 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 “, subject to the requirements of subsection (b)” after “purposes”; and

(2) in subsection (b)—

(A) in paragraph (1)—
(i) by amending the paragraph heading to read as follows: “USE OF CONSUMER REPORTS FOR EMPLOYMENT PURPOSES”;

(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 regulation; 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, ei-
ther orally or in writing, require, request, sug-
gest, or cause any employee or prospective em-
ployee 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 Re-
porting 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) RULE OF CONSTRUCTION.—The amendments made
by this Act may not be construed as limiting the ability
of a person to use non-financial or non-credit related con-
sumer report information.

(d) 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.

(e) **EFFECTIVE DATE.**—The amendments made by this section shall take effect 2 years after the date of the enactment of this Act.
A BILL

[Report No. 116-305]

H. R. 3614

116TH CONGRESS

NOVEMBER 21, 2019

A BILL

To amend the Fair Credit Reporting Act to ban the use of credit information for most employment decisions, and for other purposes.

[Report with an amendment, committed to the Committee of the Whole House on the State of the Union, and ordered to be printed.