

105TH CONGRESS
2^D SESSION

S. 2561

AN ACT

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”.

1 **SEC. 2. USE OF CONSUMER REPORTS FOR EMPLOYMENT**
2 **PURPOSES.**

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

6 “(2) DISCLOSURE TO CONSUMER.—

7 “(A) IN GENERAL.—Except as provided in
8 subparagraph (B), a person may not procure a
9 consumer report, or cause a consumer report to
10 be procured, for employment purposes with re-
11 spect to any consumer, unless—

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

19 “(ii) the consumer has authorized in
20 writing (which authorization may be made
21 on the document referred to in clause (i))
22 the procurement of the report by that per-
23 son.

24 “(B) APPLICATION BY MAIL, TELEPHONE,
25 COMPUTER, OR OTHER SIMILAR MEANS.—If a
26 consumer described in subparagraph (C) applies

1 for employment by mail, telephone, computer,
2 or other similar means, at any time before a
3 consumer report is procured or caused to be
4 procured in connection with that application—

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

13 “(ii) the consumer shall have con-
14 sented, orally, in writing, or electronically
15 to the procurement of the report by that
16 person.

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

21 “(i) the consumer is applying for a
22 position over which the Secretary of Trans-
23 portation has the power to establish quali-
24 fications and maximum hours of service
25 pursuant to the provisions of section

1 31502 of title 49, or a position subject to
2 safety regulation by a State transportation
3 agency; and

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

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

14 “(3) CONDITIONS ON USE FOR ADVERSE AC-
15 TIONS.—

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

23 “(i) a copy of the report; and

24 “(ii) a description in writing of the
25 rights of the consumer under this title, as

1 prescribed by the Federal Trade Commis-
2 sion under section 609(c)(3).

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

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

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

24 “(II) of the name, address and
25 telephone number of the consumer re-

1 reporting agency that furnished the con-
2 sumer report (including a toll-free
3 telephone number established by the
4 agency if the agency compiles and
5 maintains files on consumers on a na-
6 tionwide basis);

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

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

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

1 send or provide to the consumer a copy of
2 a report and a copy of the consumer’s
3 rights as prescribed by the Federal Trade
4 Commission under section 609(e)(3).

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

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

17 “(ii) as of the time at which the per-
18 son procures the report or causes the re-
19 port to be procured the only interaction be-
20 tween the consumer and the person in con-
21 nection with that employment application
22 has been by mail, telephone, computer, or
23 other similar means.”.

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

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

5 **SEC. 4. NATIONAL SECURITY INVESTIGATION CONFORMING**
6 **AMENDMENTS.**

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

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

11 “(i) the end user is an agency or de-
12 partment of the United States Government
13 that procures the report from the person
14 for purposes of determining the eligibility
15 of the consumer to whom the report relates
16 to receive access or continued access to
17 classified information (as defined in section
18 604(b)(4)(E)(i)); and

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

22 (b) NATIONAL SECURITY INVESTIGATIONS.—Section
23 613 of the Fair Credit Reporting Act (15 U.S.C. 1681k)
24 is amended—

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

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

2 “(b) EXEMPTION FOR NATIONAL SECURITY INVES-
3 TIGATIONS.—Subsection (a) does not apply in the case of
4 an agency or department of the United States Government
5 that seeks to obtain and use a consumer report for em-
6 ployment purposes, if the head of the agency or depart-
7 ment makes a written finding as prescribed under section
8 604(b)(4)(A).”.

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

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

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

15 (2) by striking paragraph (5);

16 (3) in paragraph (6), by inserting “, other than
17 records of convictions of crimes” after “of informa-
18 tion”; and

19 (4) by redesignating paragraph (6) as para-
20 graph (5).

21 **SEC. 6. TECHNICAL AMENDMENTS.**

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

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

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

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

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

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

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

13 **SEC. 7. EFFECTIVE DATE.**

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

 Passed the Senate October 6 (legislative day, Octo-
ber 2), 1998.

Attest:

Secretary.

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