

Bill as  
Introduced

HB 357 - AS INTRODUCED

2013 SESSION

13-0595  
06/01

HOUSE BILL

**357**

AN ACT prohibiting an employer from using credit history in employment decisions.

SPONSORS: Rep. Cushing, Rock 21

COMMITTEE: Labor, Industrial and Rehabilitative Services

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ANALYSIS

This bill prohibits employers from using credit history in employment decisions.

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Explanation: Matter added to current law appears in ***bold italics***.  
Matter removed from current law appears ~~[in brackets and struck through]~~  
Matter which is either (a) all new or (b) repealed and reenacted appears in regular type.

STATE OF NEW HAMPSHIRE

*In the Year of Our Lord Two Thousand Thirteen*

AN ACT prohibiting an employer from using credit history in employment decisions.

*Be it Enacted by the Senate and House of Representatives in General Court convened:*

1 1 New Subdivision; Credit Privacy. Amend RSA 275 by inserting after section 70 the following  
2 new subdivision:

3 Credit Privacy

4 275:71 Definition. In this subdivision, "Credit history" means any written or other  
5 communication of any information by a consumer reporting agency as defined in RSA 359-B:3, VI.

6 275:72 Unlawful Discriminatory Practice.

7 I. It shall be an unlawful discriminatory practice for any employer, labor organization, or  
8 employment agency to use or request information in the credit history of a job applicant or employee  
9 in connection with or as a criterion for employment decisions related to hiring, termination,  
10 promotion, demotion, discipline, compensation, or the terms, conditions, or privileges of employment  
11 unless the employer is required by state or federal law to use individual credit history for  
12 employment purposes.

13 II. Before an employer may request or use a required credit history, the job applicant or  
14 employee shall sign an authorization and consent form which explicitly states the specific purpose,  
15 use, and limitation of use of such credit history as it pertains to such employment decision.

16 III. Before using a consumer report to which the employer is entitled, the employer shall  
17 provide to the job applicant or employee:

18 (a) The name, address, and telephone number of the consumer reporting agency  
19 providing the report.

20 (b) A description of the consumer's rights under RSA 359-B.

21 (c) A reasonable opportunity to respond to any information in the report that is disputed  
22 by the job applicant or employee.

23 2 Consumer Credit Reporting; Permissible Purposes of Reports. Amend RSA 359-B:4, I(c)(2) to  
24 read as follows:

25 (2) Intends to use the information for employment purposes *when required to do*  
26 *so by state or federal law*; or

27 3 Effective Date. This act shall take effect 60 days after its passage.

# Amendments



"Not Adopted"

Amendment to HB 357

1 Amend the bill by replacing all after the enacting clause with the following:

2  
3 1 New Subdivision; Employee Credit Privacy Protection. Amend RSA 275 by inserting after  
4 section 70 the following new subdivision:

5 Employee Credit Privacy Protection

6 275:71 Definitions. In this subdivision,

7 I. "Credit history" means any written or other communication of any information by a  
8 consumer reporting agency as defined in RSA 359-B:3, VI.

9 II. "Employer" means an individual or entity that permits one or more individuals to work,  
10 or that accepts applications for employment, or is an agent of an employer. "Employer" shall not  
11 include:

12 (a) Any bank holding company, financial holding company, bank, savings bank, savings  
13 and loan association, credit union, or trust company, or any subsidiary or affiliate thereof, that is  
14 authorized to do business under the laws of this state or of the United States.

15 (b) Any state, county, or municipal law enforcement or investigative unit.

16 (c) Any state or local government agency which otherwise requires use of the employee's  
17 or applicant's credit history or credit report.

18 III. "Substantially related to the employee's current or potential job" means that the  
19 information contained in the credit report is related to the position for which the employee or  
20 prospective employee is being evaluated because the position:

21 (a) Is a managerial position which involves setting the direction or control of a business,  
22 division, unit, or agency of a business.

23 (b) Involves access to customers', employees', or the employer's, personal or financial  
24 information, other than information customarily provided in a retail transaction.

25 (c) Involves a fiduciary responsibility to the employer, including, but not limited to, the  
26 authority to issue payments, collect debts, transfer money, or enter into contracts.

27 (d) Provides an expense account or corporate debit or credit card.

28 (e) Involves regular access to cash totaling \$10,000 or more.

29 275:72 Unlawful Discriminatory Practice.

30 I. It shall be an unlawful discriminatory practice for any employer, labor organization, or  
31 employment agency to use or request information in the credit history of a job applicant or employee  
32 in connection with, or as a criterion for, employment decisions related to hiring, termination,



1 promotion, demotion, discipline, compensation, or the terms, conditions, or privileges of employment  
2 unless the employer is required by state or federal law to use individual credit history for  
3 employment purposes, or the employer has a bona fide purpose for requesting or using information  
4 in the credit report that is substantially job-related and is disclosed in writing to the employee or  
5 applicant.

6 II. Before an employer may request or use a required credit history, the job applicant or  
7 employee shall sign an authorization and consent form which explicitly states the specific purpose,  
8 use, and limitation of use of such credit history as it pertains to such employment decision.

9 III. Before using a consumer report to which the employer is entitled, the employer shall  
10 provide to the job applicant or employee:

11 (a) The name, address, and telephone number of the consumer reporting agency  
12 providing the report.

13 (b) A description of the consumer's rights under RSA 359-B.

14 (c) A reasonable opportunity to respond to any information in the report that is disputed  
15 by the job applicant or employee.

16 275:73 Enforcement. The attorney general shall enforce this subdivision.

17 2 Consumer Credit Reporting; Permissible Purposes of Reports. Amend RSA 359-B:4, I(c)(2) to  
18 read as follows:

19 (2) intends to use the information for employment purposes when required by state  
20 or federal law as permitted under RSA 275:72; or

21 3 Effective Date. This act shall take effect 60 days after its passage.

Rep. A. White, Graf. 13  
Rep. Andrews, Merr. 23  
March 4, 2013  
2013-673h  
06/03

Amendment to HB 357

1 Amend the bill by replacing all after the enacting clause with the following:

2  
3 1 New Subdivision; Employers' Use of Credit History in Hiring Decisions. Amend RSA 275 by  
4 inserting after section 70 the following new subdivision:

5 Credit Privacy

6 275:71 Definitions. In this subdivision:

7 I. "Credit history" means any written or other communication of any information about the  
8 employee's or prospective employee's credit score, credit account balances, payment history, savings  
9 or checking account balances, or savings or checking account numbers by a consumer reporting  
10 agency as defined in RSA 359-B:3, VI.

11 II. "Employer" means an individual or entity that permits one or more individuals to work or  
12 that accepts applications for employment or is an agent of such individual or entity. "Employer" does  
13 not, however, include:

14 (a) Any bank holding company, financial holding company, bank, savings bank, savings  
15 and loan association, credit union, or trust company, or any subsidiary or affiliate thereof, that is  
16 chartered by any state or the United States.

17 (b) Any state or local government agency which requires use of the employee's or  
18 applicant's credit history or credit report.

19 III. "Substantially related to the employee's current or potential job" means the information  
20 contained in the credit history is related to the position for which the employee or prospective  
21 employee who is the subject of the report is being evaluated because the position:

22 (a) Is a managerial position which involves setting the direction or control of a business,  
23 division, unit, or agency of a business;

24 (b) Involves access to customers', employees', or the employer's personal or financial  
25 information other than information customarily provided in a retail transaction;

26 (c) Involves a fiduciary responsibility to the employer, including, but not limited to, the  
27 authority to issue payments, collect debts, transfer money, or enter into contracts; or

28 (d) Provides an expense account or corporate debit or credit card.

29 275:72 Unlawful Discriminatory Practice. It shall be an unlawful discriminatory practice for  
30 any employer, labor organization, or employment agency to use or request information in the credit  
31 history of a job applicant or employee in connection with or as a criterion for employment decisions

**Amendment to HB 357**

**- Page 2 -**

1 related to hiring, termination, promotion, demotion, discipline, compensation, or the terms,  
2 conditions, or privileges of employment unless the employer is required by state or federal law to use  
3 individual credit history for employment purposes, or the employer has a bona fide purpose for  
4 requesting or using information in the credit history report that is substantially related to the  
5 employee's current or potential job and the employer complies with the notice and consent  
6 requirements of the Federal Fair Credit Reporting Act, 15 U.S.C. section 1681 et seq.

7       2 Effective Date. This act shall take effect 60 days after its passage.





Not Adopted

Amendment to HB 357

1 Amend the bill by replacing all after the enacting clause with the following:

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14 (a) Any bank holding company, financial holding company, bank, savings bank, savings  
15 and loan association, credit union, or trust company, or any subsidiary or affiliate thereof, that is  
16 chartered by any state or the United States.

17 (b) Any state or local government agency which requires use of the employee's or  
18 applicant's credit history or credit report.

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20 contained in the credit history is related to the position for which the employee or prospective  
21 employee who is the subject of the report is being evaluated because the position:

22 (a) Is a managerial position which involves setting the direction or control of a business,  
23 division, unit, or agency of a business;

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27 authority to issue payments, collect debts, transfer money, or enter into contracts; or

28 (d) Provides an expense account or corporate debit or credit card.

29 275:72 Unlawful Discriminatory Practice. It shall be an unlawful discriminatory practice for  
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31 history of a job applicant or employee in connection with or as a criterion for employment decisions  
32 related to hiring, termination, promotion, demotion, discipline, compensation, or the terms,

Amendment to HB 357

- Page 2 -



1 conditions, or privileges of employment unless the employer is required by state or federal law to use  
2 individual credit history for employment purposes, or the employer has a bona fide purpose for  
3 requesting or using information in the credit history report that is substantially related to the  
4 employee's current or potential job and the employer complies with the notice and consent  
5 requirements of the Federal Fair Credit Reporting Act, 15 U.S.C. section 1681 et seq.

6 2 Effective Date. This act shall take effect 60 days after its passage.

# Speakers



# Hearing Minutes

HOUSE COMMITTEE ON LABOR, INDUSTRIAL AND REHABILITATIVE SERVICES

PUBLIC HEARING ON HB 357

**BILL TITLE:** prohibiting an employer from using credit history in employment decisions.

**DATE:** 2/12/13

**LOB ROOM:** 307      **Time Public Hearing Called to Order:** 11:00 am  
**Time Adjourned:** 12:10 pm

(please circle if present)

**Committee Members:** Reps. A. White, S. Kelly, Coulombe, C. Rice, Weed, J. Schmidt, DiSilvestro, Andrews, Cahill, Ley, Tanner, Daniels, Burchell, H. Richardson, Infantine, Pellegrino, Flanagan, Emerick, Sedensky and St. James.

**Bill Sponsors:** Rep. Cushing, Rock 21

TESTIMONY

\* Use asterisk if written testimony and/or amendments are submitted.

**Rep. Robert Cushing** – supports

About "Privacy"- the right to be left alone. Seeks to stop an employer from asking for information on our private personal information. Protect people from having to surrender their credit report so an employer can "go fishing" to see how this applicant does. Are there any bonified employers that would need a credit report? Yes, there could be.

\***Christiana Thornton, NH bankers assoc** – Opposes – written testimony

\***Kevin O'Brien, Dept. of safety** – Opposes – Written testimony  
Feels in the Nursing & Public Safety a credit report is a necessity of the job.

\***Mark MacKenzie** – Supports – Written testimony

Around the country thousands of people have been affected by the economy and are now upside down and they are hard working people who are trying to stay above water.

**Julie Long, equifax** – opposes – Consumer reporting agency – written testimony – suggests ITL.


**Cordell Johnson**, NH Municipal assoc – Opposes

City & town have some of their same issues when hiring potential candidate. Could be dealing with money. There can be inaccuracies in credit reports. Feels the cities and towns should be able to clear up issues on a report. Feels reports are important to hiring.

**Dave Juvet** , BIA – opposes

Company wouldn't use a credit check if it doesn't relate to helping their decision making as there is a cost associated with requesting a credit report. Once an exemption list were stated, where does it end and would there be legislation needed to add people who ask for an exemption.

Respectfully submitted,

A handwritten signature in cursive script that reads "Linda DiSilvestro". The signature is written in black ink and has a long, sweeping horizontal line extending from the end of the name.

Rep. Linda DiSilvestro, Clerk

HOUSE COMMITTEE ON LABOR, INDUSTRIAL AND REHABILITATIVE SERVICES

PUBLIC HEARING ON HB 357

BILL TITLE: prohibiting an employer from using credit history in employment decisions.

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Bill Sponsors: Rep. Cushing, Rock 21

TESTIMONY

\* Use asterisk if written testimony and/or amendments are submitted.

1. Rep Robert Cushing - Support - about "Privacy" - the right to be left alone. Seek to stop an employer from asking for information on our private personal information. Protect people from having to surrender their credit report - so an employer can "go fishing" to see how the applicant does.

Are there any bonded employees that would need a credit report?  
Yes, there could be.

2. Christiana Thornton - oppose - written testimony

3. Kevin O'Brien - oppose - written testimony - Seels on the Nursing & Public Safety - a credit report is a necessity of the job.



4. Mark Markenya - Support - written testimony  
Around the county thousands of people have been affected by  
the economy - and are now up-side-down. and they are  
hard working people - who are trying to stay above water.

5. Julie Long - oppose - Consumer Reporting Agency - written  
testimony - suggests ITL

6. Condell Johnston - oppose -  
City & town have some of the same issues when hiring -  
potential - candidate - ~~whose~~ could be dealing with money -  
there can be inaccuracies in credit reports - Feels the Cities &  
Town should be able to clear up issues on a report. Feels  
reports are important to hiring.

7. Dave Jurek - oppose - BIA  
Company wouldn't use a credit check if it doesn't  
relate to helping their decision making - as there is a cost  
associated with requesting a credit report. Once an  
Exemption list were started - where does it end and  
would there be legislative needed to add people who ask  
for an exemption.

# Sub-Committee Minutes

HOUSE COMMITTEE ON LABOR, INDUSTRIAL AND REHABILITATIVE SERVICES

SUBCOMMITTEE WORK SESSION ON HB 357

**BILL TITLE:** prohibiting an employer from using credit history in employment decisions.

**DATE:** February 28, 2013

**Subcommittee Members:** Reps. White, Kelly, Weed, Rice, Coulombe, Andrews, Cahill, DiSilvestro, Ley, Schmidt, Tanner, Daniels, Infantine, Richardson, Pellegrino, Sedensky, Flanagan, Burchell, Emerick, and St. James

**Comments and Recommendations:**

**Amendments:**

Sponsor: Rep. OLS Document #:

Sponsor: Rep. OLS Document #:

Sponsor: Rep. OLS Document #:

**Motions:** OTP, OTP/A, ITL, Retained (Please circle one.)

Moved by Rep.

Seconded by Rep.

Vote:

**Motions:** OTP, OTP/A, ITL, Retained (Please circle one.)

Moved by Rep.

Seconded by Rep.

Vote:

Respectfully submitted,

Rep.  
Subcommittee Chairman/Clerk

# Testimony



# CDIA

CONSUMER DATA INDUSTRY ASSOCIATION  
*Empowering Economic Opportunity*

Writer's Direct Dial: 202-408-7404

Writer's Email: [rllooby@cdiaonline.org](mailto:rllooby@cdiaonline.org)

February 12, 2013

The Honorable Andrew White  
Chair, Labor, Industrial and Rehabilitative Services  
Concord, New Hampshire, 03301

Re: NH H.B. 357, the prohibition of employers' use of applicant credit history.

Dear Chairman White:

I write on behalf of the Consumer Data Industry Association (CDIA) to oppose HB 357, a prohibition on employers' use of applicants' credit information for employment purposes.

By way of background, CDIA was founded in 1906 and is the international trade association that represents some 200 consumer data companies. CDIA members represent the nation's leading institutions in credit reporting, mortgage reporting, check verification, fraud prevention, risk management, employment reporting, tenant screening and collection services.

House Bill 357 could make workplaces in New Hampshire more susceptible to crime, violence and fraud. The bill prohibits employers from making informed decisions when hiring, retaining and/or promoting employees. Employers would not just be barred from looking at an applicant's financial and credit history, but employers would also be unable to view the applicant's criminal history. The bill prohibits employers' ability to determine if an applicant possesses a potential risk to customers and employees alike.

CDIA shares a core value with most Americans: employers want to hire the best people they can for the jobs available, and job applicants should not fear unlawful discrimination. CDIA also understands that residents of the Granite State demand to work in and visit work environments that are safe and secure. However, in a climate of economic uncertainty, where employers are likely choosing from a large employment pool, they need to be critically careful about protecting their businesses and their customers.

As long as there is workplace violence, workplace fraud, and workplace theft, there will always be a need to review the credit and criminal histories of certain job applicants. We understand the frustration some have in finding employment, especially in a time of national economic stress, but attempts to ease that frustration cannot come at the expense of keeping people and businesses safe from physical or financial harm. CDIA hopes that this information is helpful to your committee as continues the discussion of credit history use as an employment screening tool. We remain willing to serve as a resource about the industry in an effort to work together to craft sound public policy.

Respectfully submitted,

Ramon O. Looby  
Senior Manager, State Government Affairs

**New Hampshire HB 357**  
**Equifax Position: OPPOSE**

**Legislative Proposal:** This bill amends existing New Hampshire labor law to prohibit employers from reviewing a potential employee's consumer report in the hiring process unless the employer is required by state or federal law.

**Current Law:** Consumer reports for employment purposes are legally protected. Consumer reporting agencies are governed by the federal Fair Credit Reporting Act (FCRA), 15 U.S.C. § 1681 *et seq.* and the New Hampshire Consumer Credit Reporting Law, RSA 359-B:1 *et seq.* Both laws specifically allow consumer reports to be used for employment purposes. Both laws stipulate certain consumer protections and require that an employer obtain written consent before a consumer report is requested and used for employment purposes.

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**Consumer Reports:** The information on a consumer report contains not only a person's credit history, which is important for certain employers, but also may include records of liens, judgments, bankruptcies, arrests, and convictions. Different pieces of this data are important to different employers based on the qualifications of the job description.

**Employers rely on consumer reports:** Approximately, 16% (42 million) of all Americans change addresses each year. Employers use consumer reports because such reports contain the most complete address history and a full public records picture of the applicant from all states of former residence. While an employer may be able to easily gather public records information in New Hampshire, it is a real possibility that an applicant has records of liens, judgments, bankruptcies, arrests, or convictions in a former state of residence. Employment reporting companies make it possible for employers to have the data necessary to make informed hiring decisions.

**Reasons for Opposition:** The bill is very restrictive on New Hampshire employers and jeopardizes the safety and well-being of the people of New Hampshire by potentially eliminating the use of a critical applicant screening tool. It ignores the obvious fact that there is much in a consumer report (such as indication of severe over-indebtedness or a history of criminal convictions that may be very important depending upon the job and the type of business making the hiring decision. Below are some examples of how credit reports (also known as consumer reports) are used in employment situations.

- Banks want to know whether an applicant has a history of embezzlement or forgery.
- Day care centers screen employees to ensure there is not a charge of child abuse.
- Security firms screen employees to ensure no charges of breaking and entering.
- Bus companies and hazardous waste haulers screen their drivers to ensure there is no driving-related criminal record or DWI on the applicant's record.
- Airlines and airports want to know whether a pilot or ramp worker has a history of arrests for forging government documents or other criminal arrests.
- Hotels and restaurants screen employees to ensure applicants do not have a history of theft.

**Conclusion:** The use of consumer reports for employment purposes provides safety and security to employers, airline passengers, school children, nursing home residents, and the general public. Limiting what information can be used to determine employment eligibility will create undue burden on employers, by leaving them to determine what information is permissible. Such an act could jeopardize the welfare of the people and employers of New Hampshire.

Equifax is a global leader in consumer, commercial and workforce information solutions, providing businesses of all sizes and consumers with information they can trust. We organize and assimilate data on more than 500 million consumers and 81 million businesses worldwide, and use advanced analytics and proprietary technology to create and deliver customized insights that enrich both the performance of businesses and the lives of consumers.

For questions, please contact:

Julie Long, Vice President of State Government Relations - 404-885-8674; [julie.long@equifax.com](mailto:julie.long@equifax.com)



# State of New Hampshire

DEPARTMENT OF SAFETY  
OFFICE OF THE COMMISSIONER

33 HAZEN DR. CONCORD, NH 03305

603/271-2791

JOHN J. BARTHELMES  
COMMISSIONER

NH DEPARTMENT OF SAFETY

LEGISLATIVE POSITION PAPER

HB\_357\_\_ SB\_\_ AS INTRODUCED (x ) AMENDMENT NO. \_\_\_\_

This bill labels it as an "unlawful discriminatory practice" for any employer, public or private, to use or request information from a job applicant's credit history as a criterion for hiring, termination, promotion, demotion, discipline, compensation, or the terms, conditions, or privileges of employment unless the employer is required by state or law use credit history for employment purposes.

The Department of Safety does not use credit history for any of these purposes currently, except for hiring law enforcement officers or someone whose job requires them to have a special security clearance. The Police Standards and Training Council has for more than 20 years, required that credit history be part of the background investigation process for hiring police officers .

We believe that a reasonable credit history is very important for a police applicant to have. If a police officer is overburdened with debt, there are many temptations to take part in serious misconduct. Police officers could be more susceptible to bribery, or to attempting to manipulate their hours or their overtime. Police officers frequently take money and valuables into their custody during an arrest and booking of prisoners. They investigate unsecured or open doors and windows in homes and businesses. They conduct crime scene searches at house and businesses, and they deal with elderly persons who are easy targets for swindles.

We believe that New Hampshire has the most honest police community in the nation, but it is still not uncommon to hear of the occasional police officer who is arrested or fired for taking a bribe, or committing a theft. In addition, particularly in a small community, if the local Police Officer or Trooper owes everyone in town, he or she is not likely to have the respect they need from the public in order to be effective in their jobs.

Although our primary interest is in our sworn police officers, certainly firefighters and EMT's often have access to people's homes, businesses and valuables where someone who was saddled with a heavy debt load could be more susceptible to temptation than others. We also have counter clerks at DMV who handle large amounts of cash and just last year we arrested and charged two of our employees who were involved in an illegal scheme involving the issuance of driver licenses to illegal immigrants. We also all know of cases where Tillie, the Town Clerk, is suddenly caught in an audit and has embezzled money from the town over a period of years.

We also feel that when the Governor is considering the appointment of someone to certain high level unclassified positions, their credit history should be taken into consideration. Examples would be Liquor Commissioners, the Commissioner of Safety, the Gaming Commission and similar posts.

We will leave you with the text of two suggested amendments to this bill. The first is one we believe is absolutely necessary to maintain the integrity of law enforcement, and the second is somewhat broader because it takes into consideration certain non- law enforcement jobs that we would recommend remain subject to looking at their credit history before hiring.

We can also envision cases where in addition to initial hiring, credit history would be important to look at when considering promoting or reassigning an individual. Examples might be when a police officer was under consideration for a promotion that would place him or her in, or in charge of, an undercover drug or organized crime or terrorism intelligence assignment.

Beyond those types of jobs and perhaps private sector jobs in banking and similar occupations, we certainly recognize that circumstances such as illness, unemployment and under-employment can cause anyone to fall short of meeting their financial obligations these days, and to bar them from employment in the average job because of their credit history would be very unfair.

APPROVED:

*Earl M. Sweeney*

**Assistant Commissioner**



**HB 357, prohibiting an employer from using credit history in employment decisions.**

**Testimony of Christiana Thornton, President  
New Hampshire Bankers Association  
(In Opposition)**

**Before the House Labor, Industrial and Rehabilitative Services Committee  
Tuesday, February 12, 2013**

Chairman and members of the Committee, my name is Christiana Thornton. I am President of the New Hampshire Bankers Association, a statewide, not-for-profit trade association representing the FDIC-insured banking industry in our state. Today I come before you in opposition to HB 357.

HB 357 proposes to prohibit employers from using credit history when making employment decisions. This legislation is particularly problematic to New Hampshire's banking industry, and the depositors which they serve throughout the State.

Given employees at banks handle significant amounts of money on a daily basis, it is extremely important that banks have the ability to evaluate credit history during the hiring process. Failure to run these types of checks could place our depositors' funds at significant risk. Banks have a fiduciary responsibility to protect funds which have been entrusted to them by their customers. We are charged with providing a secure and safe environment for our customers, and a credit check is one mechanism used to ensure we meet those obligations. By removing a bank's ability to conduct a credit check, we believe we will be unable to ensure we are truly meeting our fiduciary responsibilities.

Based on feedback we have received from our members, credit checks are a customary and essential tool used during the hiring process. Banks currently use credit checks in the course of determining employment eligibility. To avoid discrimination, banks require that all employees of the bank be subject to a credit check. Such a check may alert a bank to potential causes for concern when going through the hiring process. Individuals hired by banks are in a unique situation, whereby there is constant exposure and in some cases easy access to monies. Failure to identify potential issues early on could prove very problematic in the case of a bank employee.

We believe an exception for the banking industry is needed in order to properly protect our institutions and depositors' funds. We would be pleased to work with the bill's sponsor and members of the Committee to address this concern should the Committee choose to move forward with the bill.

LABOR

HB 357

**TITLE XXXI**  
**TRADE AND COMMERCE**  
**CHAPTER 359-B**  
**CONSUMER CREDIT REPORTING**

**Section 359-B:3**

**359-B:3 Definitions and Rules of Construction. –**

I. Definitions and rules of construction set forth in this section are applicable for the purposes of this chapter.

II. The term "person" means any individual, partnership, corporation, trust, estate, cooperative, association, government or governmental subdivision or agency, or other entity.

III. The term "consumer" means an individual.

IV. The term "consumer report" means any written, oral, or other communication of any information by a consumer reporting agency bearing on a consumer's credit worthiness, credit standing, credit capacity, character, general reputation, personal characteristics, or mode of living which is used or expected to be used or collected in whole or in part for the purpose of serving as a factor in establishing the consumer's eligibility for (1) credit or insurance to be used primarily for personal, family, or household purposes, or (2) employment purposes, or (3) other purposes authorized under RSA 359-B:4. The term does not include (1) any report containing information solely as to transactions or experiences between the consumer and the person making the report; (2) any authorization or approval of a specific extension of credit directly or indirectly by the issuer of a credit card or similar device; or (3) any report in which a person who has been requested by a third party to make a specific extension of credit directly or indirectly to a consumer conveys his decision with respect to such request, if the third party advises the consumer of the name and address of the person to whom the request was made and such person makes the disclosures to the consumer required under RSA 359-B:15.

V. The term "investigative consumer report" means a consumer report or portion thereof in which information on a consumer's character, general reputation, personal characteristics, or mode of living is obtained through personal interviews with neighbors, friends, or associates of the consumer reported on or with others with whom he is acquainted or who may have knowledge concerning any such items of information. However, such information shall not include specific factual information on a consumer's credit record obtained directly from a creditor of the consumer or from a consumer reporting agency when such information was obtained directly from a creditor of the consumer or from the consumer.

VI. The term "consumer reporting agency" means any person which, for monetary fees, dues, or on a cooperative nonprofit basis, regularly engages in whole or in part in the practice of assembling or evaluating consumer credit information or other information on consumers for the purpose of furnishing consumer reports to third parties, and which uses any means or facility of interstate commerce for the purpose of preparing or furnishing consumer reports.

VII. The term "file", when used in connection with information on any consumer, means all of the information on that consumer recorded, and retained by a consumer reporting agency regardless of how the information is stored.

VIII. The term "employment purposes", when used in connection with a consumer report, means a report used for the purpose of evaluating a consumer for employment, promotion, reassignment or retention as an employee.

IX. The term "medical information" means information or records obtained, with the consent of the individual to whom it relates, from licensed physicians or medical practitioners, hospitals, clinics, or other medical or medically related facilities.

X. "Firm offer of credit" means any offer of credit to a consumer which will be honored if, based on information in a consumer report on the consumer and other information bearing on the creditworthiness of the consumer, the consumer is determined to meet the criteria used to select the consumer for the offer.

XI. "Pre-screening" means a process by which a consumer reporting agency compiles or edits for a client a list of consumers who meet specific criteria and provides this list to the client or third party on behalf of the client for the purpose of making a firm offer of credit.

XII. "Direct solicitation" means the process by which the consumer reporting agency compiles or edits for a client a list of consumers who meet specific criteria and provides the list to the client or a third party on behalf of the client for use in soliciting those consumers for an offer of a product or service.

**Source.** 1971, 430:1. 1994, 271:1, eff. Jan. 1, 1995.

# TITLE XXXI

## TRADE AND COMMERCE

### CHAPTER 359-B

### CONSUMER CREDIT REPORTING

#### Section 359-B:4

##### **359-B:4 Permissible Purposes of Reports. –**

I. A consumer reporting agency may furnish a consumer report under the following circumstances and no other:

- (a) In response to the order of a court having jurisdiction to issue such an order.
- (b) In accordance with the written instructions of the consumer to whom it relates.
- (c) To a person which it has reason to believe--

(1) intends to use the information in connection with a credit transaction involving the consumer on whom the information is to be furnished and involving the extension of credit to, or review or collection of an account of, the consumer; or

→ (2) intends to use the information for employment purposes; or

(3) intends to use the information in connection with the underwriting of insurance involving the consumer; or

(4) intends to use the information in connection with a determination of the consumer's eligibility for a license or other benefit granted by a governmental instrumentality required by law to consider an applicant's financial responsibility or status; or

(5) otherwise has a legitimate business need for the information in connection with a business transaction involving the consumer.

II. (a) A consumer reporting agency may furnish information for the purposes of a transaction under subparagraph I(c)(1) and (5) of this section when the transaction is not initiated by the consumer, only if:

(1) The consumer authorized the consumer reporting agency to furnish the information; or

(2) The transaction involves a firm offer of credit to the consumer or is a pre-screening or direct solicitation transaction; and

(A) The consumer reporting agency has complied with RSA 359-B:4-a; and

(B) The consumer has not elected in accordance with RSA 359-B:4-a to have information about himself excluded from such transactions.

(b) Notwithstanding subparagraph (a), a consumer reporting agency may, in the case of a credit transaction initiated by the consumer, use such information in reviewing or collecting an account of the consumer or in other circumstances under which a consumer report may be provided under subparagraph I(c)(5), provided there is an ongoing relationship between the user of the consumer report and the consumer.

(c) An election of a consumer under RSA 359-B:4-a shall terminate and be of no force or effect following notice from the consumer to the consumer reporting agency, through the system established pursuant to RSA 359-B:4-a, that the election is no longer effective.

III. Notwithstanding the provisions of paragraphs I and II, a consumer reporting agency may furnish an investigative consumer report to the consumer as provided in RSA 359-B:9, III.

**Source.** 1971, 430:1. 1973, 583:2. 1994, 271:2, eff. Jan. 1, 1995.

<http://www.ftc.gov/os/statutes/031224fcra.pdf>

This is a link to the FCRA from the FTC website – just print Section 604 (be careful the entire document is 84 pages).

Also – here is verbiage from the FTC website about employment reports and the requirements.

## **From the Federal Trade Commission Website:**

### **Key Employment Provisions**

The big picture is this: An employer must get your permission before asking for a report about you from a credit reporting company or any other company that provides background information. If you don't give your okay, your application for employment may not get a second look. That's up to you. But if you don't get the job because of information in your report, the employer has some legal obligations: First, the employer must show you the report; second, the employer must tell you how to get your own copy. The report is free if you ask for it within 60 days of learning the bad news. Here are more details about these provisions:

#### **Notice and Authorization**

Before an employer can ask for reports about you from any companies that provide them, it must tell you that it might use the information to make a decision. This notice is separate from other documents you get — like an application. An employer may not get a report about you for employment purposes without getting your permission or authorization first, usually in writing.

#### **Pre-Adverse Action Procedures**

If an employer might use information from a credit or other background report to take an "adverse action" — say, to deny your application for employment or a promotion, to terminate your employment or to reassign you — he must give you a copy of the report and a document called *A Summary of Your Rights Under the Fair Credit Reporting Act* before taking the adverse action. Read your report, and contact the company that issued it if you find inaccurate or incomplete information.

You also can explain any inaccurate or incomplete information to an employer, but that won't fix errors in your report. To do that, you have to contact the company that issued the report and dispute the information. If an investigation reveals that a correction is warranted, the credit reporting company or other company providing background information must send an updated report to the employer if you ask them to. Even if the information is not corrected in time to benefit you with that particular employer, it's a good idea to dispute inaccurate information so it can be corrected before your next job interview or assignment comes along.

## Adverse Action Procedures

If an employer takes an adverse action against you based on information in a report, it must tell you — orally, in writing, or electronically. The notice to you must include:

- the name, address, and phone number of the company that supplied the credit report or background information;
- a statement that the company that supplied the information didn't make the decision to take the adverse action and can't give you any specific reasons for it; and
- a notice of your right to dispute the accuracy or completeness of any information in your report and to get an additional free report from the company that supplied the credit or other background information if you ask for it within 60 days.

## Notice of Negative Public Records

If a company provides an employer with a report that has negative information about you gathered from public records — for example, tax liens, outstanding judgments, or criminal convictions — that company either has to tell you that it provided the information to the employer or it has to take special steps to make sure the information is accurate.

If you get a notice that a company has provided negative public record information to an employer, you may have a chance to correct or clarify it, which, in turn, may help you get or keep a job.

Some employers might say not to apply if you have a criminal record. That could be discrimination. If this happens to you, contact the Equal Employment Opportunity Commission (EEOC) at 1-800-669-4000.

## If Employers Don't Comply with the FCRA

There are legal consequences for employers who don't comply with the FCRA, whether they fail to get an applicant's okay before getting a copy of their credit or other background report, fail to provide the appropriate disclosures in a timely way, or fail to provide adverse action notices to unsuccessful job applicants. If you think an employer has violated the FCRA, report it to the FTC, because the law allows the FTC, other federal agencies, and states to sue employers who don't comply with the law's provisions. The FCRA also allows people to sue employers in state or federal court for certain violations.

**§ 604. Permissible purposes of consumer reports [15 U.S.C. § 1681b]**

- (a) *In general.* Subject to subsection (c), any consumer reporting agency may furnish a consumer report under the following circumstances and no other:
- (1) In response to the order of a court having jurisdiction to issue such an order, or a subpoena issued in connection with proceedings before a Federal grand jury.
  - (2) In accordance with the written instructions of the consumer to whom it relates.
  - (3) To a person which it has reason to believe
    - (A) intends to use the information in connection with a credit transaction involving the consumer on whom the information is to be furnished and involving the extension of credit to, or review or collection of an account of, the consumer; or
    - (B) intends to use the information for employment purposes; or
    - (C) intends to use the information in connection with the underwriting of insurance involving the consumer; or
    - (D) intends to use the information in connection with a determination of the consumer's eligibility for a license or other benefit granted by a governmental instrumentality required by law to consider an applicant's financial responsibility or status; or
    - (E) intends to use the information, as a potential investor or servicer, or current insurer, in connection with a valuation of, or an assessment of the credit or prepayment risks associated with, an existing credit obligation; or
    - (F) otherwise has a legitimate business need for the information
      - (i) in connection with a business transaction that is initiated by the consumer; or
      - (ii) to review an account to determine whether the consumer continues to meet the terms of the account.<sup>2</sup>
    - (G) executive departments and agencies in connection with the issuance of government-sponsored individually-billed travel charge cards.<sup>1</sup>

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<sup>2</sup> As written in the poorly drafted 2007 amendment that added section 604(a)(3)(G). Subsection (F)(ii) should end with “; or” instead of a period, and the text of subsection (G) should conform to the style of the rest of section 604(a)(3). An alternative would have been to add a new section 604(a)(7) allowing a permissible purpose for a consumer report “To executive departments and agencies ...”

- (4) In response to a request by the head of a State or local child support enforcement agency (or a State or local government official authorized by the head of such an agency), if the person making the request certifies to the consumer reporting agency that
  - (A) the consumer report is needed for the purpose of establishing an individual's capacity to make child support payments or determining the appropriate level of such payments;
  - (B) the paternity of the consumer for the child to which the obligation relates has been established or acknowledged by the consumer in accordance with State laws under which the obligation arises (if required by those laws);
  - (C) the person has provided at least 10 days' prior notice to the consumer whose report is requested, by certified or registered mail to the last known address of the consumer, that the report will be requested; and
  - (D) the consumer report will be kept confidential, will be used solely for a purpose described in subparagraph (A), and will not be used in connection with any other civil, administrative, or criminal proceeding, or for any other purpose.
- (5) To an agency administering a State plan under Section 454 of the Social Security Act (42 U.S.C. § 654) for use to set an initial or modified child support award.
- (6) To the Federal Deposit Insurance Corporation or the National Credit Union Administration as part of its preparation for its appointment or as part of its exercise of powers; as conservator, receiver, or liquidating agent for an insured depository institution or insured credit union under the Federal Deposit Insurance Act or the Federal Credit Union Act, or other applicable Federal or State law, or in connection with the resolution or liquidation of a failed or failing insured depository institution or insured credit union, as applicable.

(b) Conditions for Furnishing and Using Consumer Reports for Employment Purposes.

- (1) *Certification from user.* A consumer reporting agency may furnish a consumer report for employment purposes only if
  - (A) the person who obtains such report from the agency certifies to the agency that
    - (i) the person has complied with paragraph (2) with respect to the consumer report, and the person will comply with paragraph (3) with respect to the consumer report if paragraph (3) becomes applicable; and
    - (ii) information from the consumer report will not be used in violation of any applicable Federal or State equal employment opportunity law or regulation; and
  - (B) the consumer reporting agency provides with the report, or has previously provided, a summary of the consumer's rights under this title, as prescribed by the Bureau under section 609(c)(3) [§ 1681g].



(2) Disclosure to Consumer.

- (A) *In general.* Except as provided in subparagraph (B), a person may not procure a consumer report, or cause a consumer report to be procured, for employment purposes with respect to any consumer, unless –
- (i) a clear and conspicuous disclosure has been made in writing to the consumer at any time before the report is procured or caused to be procured, in a document that consists solely of the disclosure, that a consumer report may be obtained for employment purposes; and
  - (ii) the consumer has authorized in writing (which authorization may be made on the document referred to in clause (i)) the procurement of the report by that person.
- (B) *Application by mail, telephone, computer, or other similar means.* If a consumer described in subparagraph (C) applies for employment by mail, telephone, computer, or other similar means, at any time before a consumer report is procured or caused to be procured in connection with that application –
- (i) the person who procures the consumer report on the consumer for employment purposes shall provide to the consumer, by oral, written, or electronic means, notice that a consumer report may be obtained for employment purposes, and a summary of the consumer's rights under section 615(a)(3); and
  - (ii) the consumer shall have consented, orally, in writing, or electronically to the procurement of the report by that person.
- (C) *Scope.* Subparagraph (B) shall apply to a person procuring a consumer report on a consumer in connection with the consumer's application for employment only if –
- (i) the consumer is applying for a position over which the Secretary of Transportation has the power to establish qualifications and maximum hours of service pursuant to the provisions of section 31502 of title 49, or a position subject to safety regulation by a State transportation agency; and
  - (ii) as of the time at which the person procures the report or causes the report to be procured the only interaction between the consumer and the person in connection with that employment application has been by mail, telephone, computer, or other similar means.

(3) Conditions on use for adverse actions.

- (A) *In general.* Except as provided in subparagraph (B), in using a consumer report for employment purposes, before taking any adverse action based in whole or in part on the report, the person intending to take such adverse action shall provide to the consumer to whom the report relates –

- (i) a copy of the report; and
  - (ii) a description in writing of the rights of the consumer under this title, as prescribed by the Bureau under section 609(c)(3).<sup>3</sup>
- (B) Application by mail, telephone, computer, or other similar means.
- (i) If a consumer described in subparagraph (C) applies for employment by mail, telephone, computer, or other similar means, and if a person who has procured a consumer report on the consumer for employment purposes takes adverse action on the employment application based in whole or in part on the report, then the person must provide to the consumer to whom the report relates, in lieu of the notices required under subparagraph (A) of this section and under section 615(a), within 3 business days of taking such action, an oral, written or electronic notification—
    - (I) that adverse action has been taken based in whole or in part on a consumer report received from a consumer reporting agency;
    - (II) of the name, address and telephone number of the consumer reporting agency that furnished the consumer report (including a toll-free telephone number established by the agency if the agency compiles and maintains files on consumers on a nationwide basis);
    - (III) that the consumer reporting agency did not make the decision to take the adverse action and is unable to provide to the consumer the specific reasons why the adverse action was taken; and
    - (IV) that the consumer may, upon providing proper identification, request a free copy of a report and may dispute with the consumer reporting agency the accuracy or completeness of any information in a report.
  - (ii) If, under clause (B)(i)(IV), the consumer requests a copy of a consumer report from the person who procured the report, then, within 3 business days of receiving the consumer's request, together with proper identification, the person must send or provide to the consumer a copy of a report and a copy of the consumer's rights as prescribed by the Bureau under section 609(c)(3).<sup>3</sup>
- (C) *Scope.* Subparagraph (B) shall apply to a person procuring a consumer report on a consumer in connection with the consumer's application for employment only if—
- (i) the consumer is applying for a position over which the Secretary of Transportation has the power to establish qualifications and maximum hours of service pursuant to the provisions of section 31502 of title 49, or a position subject to safety regulation by a State transportation agency; and

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<sup>3</sup> The references in Sections 604(b)(3)(A) and 604(b)(3)(B) should be to Section 609(c)(1), not (c)(3) that no longer exists as the result of Congress' re-organization of Section 609(c) in 2003 (FACT Act).

- (ii) as of the time at which the person procures the report or causes the report to be procured the only interaction between the consumer and the person in connection with that employment application has been by mail, telephone, computer, or other similar means.

(4) Exception for national security investigations.

(A) *In general.* In the case of an agency or department of the United States Government which seeks to obtain and use a consumer report for employment purposes, paragraph (3) shall not apply to any adverse action by such agency or department which is based in part on such consumer report, if the head of such agency or department makes a written finding that—

- (i) the consumer report is relevant to a national security investigation of such agency or department;
- (ii) the investigation is within the jurisdiction of such agency or department;
- (iii) there is reason to believe that compliance with paragraph (3) will —
  - (I) endanger the life or physical safety of any person;
  - (II) result in flight from prosecution;
  - (III) result in the destruction of, or tampering with, evidence relevant to the investigation;
  - (IV) result in the intimidation of a potential witness relevant to the investigation;
  - (V) result in the compromise of classified information; or
  - (VI) otherwise seriously jeopardize or unduly delay the investigation or another official proceeding.

(B) *Notification of consumer upon conclusion of investigation.* Upon the conclusion of a national security investigation described in subparagraph (A), or upon the determination that the exception under subparagraph (A) is no longer required for the reasons set forth in such subparagraph, the official exercising the authority in such subparagraph shall provide to the consumer who is the subject of the consumer report with regard to which such finding was made —

- (i) a copy of such consumer report with any classified information redacted as necessary;
- (ii) notice of any adverse action which is based, in part, on the consumer report; and
- (iii) the identification with reasonable specificity of the nature of the investigation for which the consumer report was sought.

- (C) *Delegation by head of agency or department.* For purposes of subparagraphs (A) and (B), the head of any agency or department of the United States Government may delegate his or her authorities under this paragraph to an official of such agency or department who has personnel security responsibilities and is a member of the Senior Executive Service or equivalent civilian or military rank.
  - (D) *Report to the Congress.* Not later than January 31 of each year, the head of each agency and department of the United States Government that exercised authority under this paragraph during the preceding year shall submit a report to the Congress on the number of times the department or agency exercised such authority during the year.
  - (E) *Definitions.* For purposes of this paragraph, the following definitions shall apply:
    - (i) The term "classified information" means information that is protected from unauthorized disclosure under Executive Order No. 12958 or successor orders.
    - (ii) The term "national security investigation" means any official inquiry by an agency or department of the United States Government to determine the eligibility of a consumer to receive access or continued access to classified information or to determine whether classified information has been lost or compromised.
- (c) Furnishing reports in connection with credit or insurance transactions that are not initiated by the consumer.
- (1) *In general.* A consumer reporting agency may furnish a consumer report relating to any consumer pursuant to subparagraph (A) or (C) of subsection (a)(3) in connection with any credit or insurance transaction that is not initiated by the consumer only if
    - (A) the consumer authorizes the agency to provide such report to such person; or
    - (B)
      - (i) the transaction consists of a firm offer of credit or insurance;
      - (ii) the consumer reporting agency has complied with subsection (e);
      - (iii) there is not in effect an election by the consumer, made in accordance with subsection (e), to have the consumer's name and address excluded from lists of names provided by the agency pursuant to this paragraph; and
      - (iv) the consumer report does not contain a date of birth that shows that the consumer has not attained the age of 21, or, if the date of birth on the consumer report shows that the consumer has not attained the age of 21, such consumer consents to the consumer reporting agency to such furnishing.
  - (2) *Limits on information received under paragraph (1)(B).* A person may receive pursuant to paragraph (1)(B) only

- (A) the name and address of a consumer;
  - (B) an identifier that is not unique to the consumer and that is used by the person solely for the purpose of verifying the identity of the consumer; and
  - (C) other information pertaining to a consumer that does not identify the relationship or experience of the consumer with respect to a particular creditor or other entity.
- (3) *Information regarding inquiries.* Except as provided in section 609(a)(5) [§1681g], a consumer reporting agency shall not furnish to any person a record of inquiries in connection with a credit or insurance transaction that is not initiated by a consumer.
- (d) Reserved.
- (e) Election of consumer to be excluded from lists.
- (1) *In general.* A consumer may elect to have the consumer's name and address excluded from any list provided by a consumer reporting agency under subsection (c)(1)(B) in connection with a credit or insurance transaction that is not initiated by the consumer, by notifying the agency in accordance with paragraph (2) that the consumer does not consent to any use of a consumer report relating to the consumer in connection with any credit or insurance transaction that is not initiated by the consumer.
  - (2) *Manner of notification.* A consumer shall notify a consumer reporting agency under paragraph (1)
    - (A) through the notification system maintained by the agency under paragraph (5); or
    - (B) by submitting to the agency a signed notice of election form issued by the agency for purposes of this subparagraph.
  - (3) *Response of agency after notification through system.* Upon receipt of notification of the election of a consumer under paragraph (1) through the notification system maintained by the agency under paragraph (5), a consumer reporting agency shall
    - (A) inform the consumer that the election is effective only for the 5-year period following the election if the consumer does not submit to the agency a signed notice of election form issued by the agency for purposes of paragraph (2)(B); and
    - (B) provide to the consumer a notice of election form, if requested by the consumer, not later than 5 business days after receipt of the notification of the election through the system established under paragraph (5), in the case of a request made at the time the consumer provides notification through the system.
  - (4) *Effectiveness of election.* An election of a consumer under paragraph (1)
    - (A) shall be effective with respect to a consumer reporting agency beginning 5 business days after the date on which the consumer notifies the agency in accordance with paragraph (2);

- (B) shall be effective with respect to a consumer reporting agency
  - (i) subject to subparagraph (C), during the 5-year period beginning 5 business days after the date on which the consumer notifies the agency of the election, in the case of an election for which a consumer notifies the agency only in accordance with paragraph (2)(A); or
  - (ii) until the consumer notifies the agency under subparagraph (C), in the case of an election for which a consumer notifies the agency in accordance with paragraph (2)(B);
- (C) shall not be effective after the date on which the consumer notifies the agency, through the notification system established by the agency under paragraph (5), that the election is no longer effective; and
- (D) shall be effective with respect to each affiliate of the agency.

(5) Notification System

- (A) *In general.* Each consumer reporting agency that, under subsection (c)(1)(B), furnishes a consumer report in connection with a credit or insurance transaction that is not initiated by a consumer, shall
  - (i) establish and maintain a notification system, including a toll-free telephone number, which permits any consumer whose consumer report is maintained by the agency to notify the agency, with appropriate identification, of the consumer's election to have the consumer's name and address excluded from any such list of names and addresses provided by the agency for such a transaction; and
  - (ii) publish by not later than 365 days after the date of enactment of the Consumer Credit Reporting Reform Act of 1996, and not less than annually thereafter, in a publication of general circulation in the area served by the agency
    - (I) a notification that information in consumer files maintained by the agency may be used in connection with such transactions; and
    - (II) the address and toll-free telephone number for consumers to use to notify the agency of the consumer's election under clause (I).
- (B) *Establishment and maintenance as compliance.* Establishment and maintenance of a notification system (including a toll-free telephone number) and publication by a consumer reporting agency on the agency's own behalf and on behalf of any of its affiliates in accordance with this paragraph is deemed to be compliance with this paragraph by each of those affiliates.

- (6) *Notification system by agencies that operate nationwide.* Each consumer reporting agency that compiles and maintains files on consumers on a nationwide basis shall

establish and maintain a notification system for purposes of paragraph (5) jointly with other such consumer reporting agencies.

(f) *Certain use or obtaining of information prohibited.* A person shall not use or obtain a consumer report for any purpose unless

- (1) the consumer report is obtained for a purpose for which the consumer report is authorized to be furnished under this section; and
- (2) the purpose is certified in accordance with section 607 [§ 1681e] by a prospective user of the report through a general or specific certification.

(g) *Protection of Medical Information*

(1) *Limitation on consumer reporting agencies.* A consumer reporting agency shall not furnish for employment purposes, or in connection with a credit or insurance transaction, a consumer report that contains medical information (other than medical contact information treated in the manner required under section 605(a)(6)) about a consumer, unless –

(A) if furnished in connection with an insurance transaction, the consumer affirmatively consents to the furnishing of the report;

(B) if furnished for employment purposes or in connection with a credit transaction –

(i) the information to be furnished is relevant to process or effect the employment or credit transaction; and

(ii) the consumer provides specific written consent for the furnishing of the report that describes in clear and conspicuous language the use for which the information will be furnished; or

(C) the information to be furnished pertains solely to transactions, accounts, or balances relating to debts arising from the receipt of medical services, products, or devices, where such information, other than account status or amounts, is restricted or reported using codes that do not identify, or do not provide information sufficient to infer, the specific provider or the nature of such services, products, or devices, as provided in section 605(a)(6).

(2) *Limitation on creditors.* Except as permitted pursuant to paragraph (3)(C) or regulations prescribed under paragraph (5)(A), a creditor shall not obtain or use medical information (other than medical contact information treated in the manner required under section 605(a)(6)) pertaining to a consumer in connection with any determination of the consumer's eligibility, or continued eligibility, for credit.

(3) *Actions authorized by federal law, insurance activities and regulatory determinations.* Section 603(d)(3) shall not be construed so as to treat information or any communication of information as a consumer report if the information or communication is disclosed –

- (A) in connection with the business of insurance or annuities, including the activities described in section 18B of the model Privacy of Consumer Financial and Health Information Regulation issued by the National Association of Insurance Commissioners (as in effect on January 1, 2003);
- (B) for any purpose permitted without authorization under the Standards for Individually Identifiable Health Information promulgated by the Department of Health and Human Services pursuant to the Health Insurance Portability and Accountability Act of 1996, or referred to under section 1179 of such Act, or described in section 502(e) of Public Law 106-102; or
- (C) as otherwise determined to be necessary and appropriate, by regulation or order, by the Bureau or the applicable State insurance authority (with respect to any person engaged in providing insurance or annuities).

(4) *Limitation on redisclosure of medical information.* Any person that receives medical information pursuant to paragraph (1) or (3) shall not disclose such information to any other person, except as necessary to carry out the purpose for which the information was initially disclosed, or as otherwise permitted by statute, regulation, or order.

(5) Regulations and Effective Date for Paragraph (2)

- (A)<sup>4</sup> *Regulations required.* The Bureau may, after notice and opportunity for comment, prescribe regulations that permit transactions under paragraph (2) that are determined to be necessary and appropriate to protect legitimate operational, transactional, risk, consumer, and other needs (and which shall include permitting actions necessary for administrative verification purposes), consistent with the intent of paragraph (2) to restrict the use of medical information for inappropriate purposes.

*See also 12 CFR Parts 41/222/232/334/571/717  
70 Fed. Reg. 70664 (11/22/05)*

(6) *Coordination with other laws.* No provision of this subsection shall be construed as altering, affecting, or superseding the applicability of any other provision of Federal law relating to medical confidentiality.

**§ 605. Requirements relating to information contained in consumer reports [15 U.S.C. §1681c]**

- (a) *Information excluded from consumer reports.* Except as authorized under subsection (b) of this section, no consumer reporting agency may make any consumer report containing any of the following items of information:

- (1) Cases under title 11 [United States Code] or under the Bankruptcy Act that, from the date of entry of the order for relief or the date of adjudication, as the case may be, antedate the report by more than 10 years.

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<sup>4</sup> As written in section 1088(a)(4)(B) of the CFPA in 2010. The previous version of section 604(b)(5), added in 2003 by the FACT Act, contained two subsections (A) and (B). The latter stated that the rules required to be prescribed by the Federal financial agencies (not including the Commission) be finalized by June 4, 2004.



STATE OF NEW HAMPSHIRE

In the Year of Our Lord Two Thousand Thirteen

AN ACT relative to privacy in the workplace.

Be it Enacted by the Senate and House of Representatives in General Court convened:

1 New Subdivision; Use of Social Media. Amend RSA 275 by inserting after section 70 the following new subdivision:

Use of Social Media

275:71 Use of Social Media.

Definition. In this subdivision, "social media" means an electronic medium where users may create and view user-generated content, including but not limited to uploading or downloading videos or still photographs, blogs, video blogs, podcasts, or instant messages.

"Personal account" means an account, service or profile on a social networking website that is used by a current or prospective employee primarily for personal communications unrelated to any business purposes of the employer. This definition shall not apply to any account, service or profile created, maintained, used or accessed by a current or prospective employee for business purposes of the employer or to engage in business related communications.

I. No employer shall request or require that an employee or prospective employee disclose a user name or password for accessing any personal account or service through an electronic communication device.

II. No employer shall compel an employee or applicant to add anyone, including the employer or their agent, to their list of contacts associated with a personal account or require, request, suggest, or cause an employee or applicant to change the privacy settings associated with any personal account.

III. No employer shall take or threaten to take disciplinary action against any employee for such employee's refusal to provide access or information described above.

III. Nothing in this section shall limit an employer's right to:

(a) Adopt and enforce lawful workplace policies governing the use of the employer's electronic equipment, including policies regarding Internet use, social networking site use, and electronic mail use.

(b) Monitor usage of the employer's electronic equipment and electronic mail.

IV. Nothing in this subdivision shall prohibit an employer from obtaining information about an employee or prospective employee that is in the public domain or to prevent an employer from conducting an investigation to ensure compliance with securities or financial laws or other regulatory requirements based on information individuating an employee's use of a personal website, internet website, web-based account or a similar account for business purposes, except as proscribed in subsection I of this section.

275:72 Penalty. Any employer violating RSA 275:71 shall be subject to a civil penalty, to be imposed by the Labor commissioner in accordance with the procedures established in RSA 273:11-a. An employer aggrieved by the commissioner's assessment of such penalty may appeal in accordance with RSA 273:11-c.

2 Effective Date. This act shall take effect 60 days after its passage.



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**TO:** House Labor Committee Members  
**FROM:** Curtis J. Barry, on behalf of the  
Retail Merchants Association of NH  
**RE:** *HB 357, prohibiting an employer from using credit history in employment decisions*  
**DATE:** February 28, 2013

---

Due to a schedule conflict I was not able to stay for the entire hearing on *HB 357, prohibiting an employer from using credit history in employment decisions*.

The Retail Merchants Association of New Hampshire did hear feedback from members questioning the necessity of the bill, but most particularly from a jewelry store that uses credit history as one element of hiring process, as persons in the retail jewelry business routinely handle items of very high value.

High-end electronics is another example of, like a jewelry store, employees have access to exceptionally valuable merchandise.

Much like the testimony the committee heard from the New Hampshire Bankers Association, if the bill is to pass it should recognize the need to create an exemption for circumstances such as these.

However it seems that the list of exemptions could be quite long, and therefore the necessity of the bill come back into question - is the problem so wide-spread as to call for a new law?

I thank you for taking into consideration the viewpoint of the members of the RMANH.

# Voting Sheets

HOUSE COMMITTEE ON LABOR, INDUSTRIAL AND REHABILITATIVE SERVICES

EXECUTIVE SESSION on HB 357

**BILL TITLE:** prohibiting an employer from using credit history in employment decisions.

**DATE:** March 5, 2013

**LOB ROOM:** 307

**Amendments:**

Sponsor: Rep. A. White & Andrews OLS Document #: 2013 0673h

Sponsor: Rep. OLS Document #:

Sponsor: Rep. OLS Document #:

**Motions:** OTP, OTP/A, ITL, Retained (Please circle one.)

Moved by Rep. Coulombe

Seconded by Rep. Schmidt

Vote: 18-2 (Please attach record of roll call vote.)

**Motions:** OTP, OTP/A, ITL, Retained (Please circle one.)

Moved by Rep. Coulombe

Seconded by Rep. Weed

Vote: 10-10 (Please attach record of roll call vote.)

**CONSENT CALENDAR VOTE:**

(Vote to place on Consent Calendar must be unanimous.)

**Statement of Intent:** Refer to Committee Report

Respectfully submitted,

Rep. Linda A. DiSilvestro, Clerk

HOUSE COMMITTEE ON LABOR, INDUSTRIAL AND REHABILITATIVE SERVICES

EXECUTIVE SESSION on HB 357

BILL TITLE: prohibiting an employer from using credit history in employment decisions.

DATE: 3/5/13

LOB ROOM: 307

Amendments:

Sponsor: Rep.

OLS Document #:

*White/Andrews  
3/4/13*

Sponsor: Rep.

OLS Document #:

Sponsor: Rep.

OLS Document #:

Motions: OTP, OTP/A, ITL, Retained (Please circle one.)

Moved by Rep. *Coulombe*

Seconded by Rep. *Schmidt*

Vote: *18-2* (Please attach record of roll call vote.)

Motions: OTP, OTP/A, ITL, Retained (Please circle one.)

Moved by Rep. *Coulombe*

Seconded by Rep. *Weed*

Vote: *10-10* (Please attach record of roll call vote.)

CONSENT CALENDAR VOTE:

(Vote to place on Consent Calendar must be unanimous.)

Statement of Intent: Refer to Committee Report

Respectfully submitted,

Rep. Linda A. DiSilvestro, Clerk



2013 SESSION

LABOR, INDUSTRIAL AND REHABILITATIVE SERVICES

Bill #: 357 Title: employer from using credit history in employment  
PH Date: 2/12/13 decision Exec Session Date: 3/15/13  
Motion: OTP Amendment #: white/Andrew 3/4/13

MEMBER	YEAS	NAYS
White, Andrew A, Chairman	Y	
Kelly, Sally H, V Chairman	Y	
Weed, Charles F	Y	
Rice, Chip L		N
Coulombe, Gary M	Y	
Andrews, Christopher R	Y	
Cahill, Michael D	Y	
DiSilvestro, Linda A, Clerk	Y	
Ley, Douglas A	Y	
Schmidt, Janice E	Y	
Tanner, Linda L	Y	
Daniels, Gary L,	Y	
Infantine, William J,	Y	
Richardson, Herbert D	Y	
Pellegrino, Tony J	Y	
Sedensky, John B,	Y	
Flanagan, Jack B	Y	
Burchell, Richard B	Y	
Emerick, J. Tracy	Y	
St. James, Kevin P		N
<b>TOTAL VOTE:</b>		

18

2



STATE OF NEW HAMPSHIRE  
OFFICE OF THE HOUSE CLERK

1/10/2013 9:29:31 AM  
Roll Call Committee Registers  
Report

2013 SESSION

LABOR, INDUSTRIAL AND REHABILITATIVE SERVICES

Bill #: 357 Title: employer from credit history in employment decision  
 PH Date: 2/12/13 Exec Session Date: 3/15/13  
 Motion: OTP/A Amendment #: White/Andrew 3/4/13

MEMBER	YEAS	NAYS
White, Andrew A, Chairman	Y	
Kelly, Sally H, V Chairman	Y	
Weed, Charles F	Y	
Rice, Chip L		N
Coulombe, Gary M	Y	
Andrews, Christopher R	Y	
Cahill, Michael D	Y	
DiSilvestro, Linda A, Clerk	Y	
Ley, Douglas A	Y	
Schmidt, Janice E	Y	
Tanner, Linda L	Y	
Daniels, Gary L,		N
Infantine, William J,		N
Richardson, Herbert D		N
Pellegrino, Tony J		N
Sedensky, John B,		N
Flanagan, Jack B		N
Burchell, Richard B		N
Emerick, J. Tracy		N
St.James, Kevin P		N
<b>TOTAL VOTE:</b>	<b>10</b>	<b>10</b>



# Committee Report



Andrew A. White supporting OTP

This bill is intended to remove a significant barrier to employment by limiting an employers ability to use credit history as a criteria for employment decisions. The bill attempts to balance the needs of industry with the need to put New Hampshire citizens to work without the barrier of an unnecessary, intrusive credit history investigation. Those in favor of the bill know that debt or poor credit ratings accrued in divorce and medical cases are not reflective of an employees trustworthiness or honesty and should not be used against them; it is also commonly known that not all credit reports are accurate and disputed credit reports can take extensive time to resolve, leaving an applicant without a potential job for something he or she cannot control and is not responsible for. Those supporting OTP believe that workers should be hired based on their qualifications to do the job, not their credit history, and that people who want to work should no be excluded on the basis of their credit history.

# MINORITY REPORT

COMMITTEE: Labor

BILL NUMBER: 357

TITLE: Prohibiting an employer from using credit history in employment decisions

DATE: 3/5/13 CONSENT CALENDAR: YES  NO

- OUGHT TO PASS
- OUGHT TO PASS W/ AMENDMENT
- INEXPEDIENT TO LEGISLATE
- INTERIM STUDY (Available only 2<sup>nd</sup> year of biennium)

Amendment No. \_\_\_\_\_

*white*

### STATEMENT OF INTENT:

The bill prohibits employers from using credit history when hiring, terminating, promoting etc however allows this procedure if an employer has a bona fide purpose for requesting the information. The minority felt this was in effect closing the back door <sup>into the front</sup> and opening the back ~~door~~ door. There is no penalty for violating this law. Since consent is required by the applicant or employer in order for the employer to get a credit history the applicant or employer has the ability to deny the request or explain issues that may exist

COMMITTEE VOTE: \_\_\_\_\_

RESPECTFULLY SUBMITTED,

• Copy to Committee Bill File

Rep. *[Signature]*  
For the Minority

HB 357

~~Minority~~ In Support of ITL

The bill prohibits employers from using credit history when hiring, terminating, promoting, etc. however, allows this procedure if an employer has a bona fide purpose for requesting the information. The minority felt this was in effect opening the barn door in the front and opening the back door. There is no penalty for violating this law. Since consent is required by the applicant or employee in order for the employer to get a credit history, the applicant or employee has the ability to deny the request or explain issues that may exist.

William Infantine