

108TH CONGRESS
1ST SESSION

H. R. 1543

To amend the Fair Credit Reporting Act to exempt certain communications from the definition of consumer report, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

APRIL 1, 2003

Mr. SESSIONS (for himself, Mr. BAKER, Mr. PAUL, Mr. MOORE, Mr. SHAYS, Ms. JACKSON-LEE of Texas, Mr. FRANK of Massachusetts, and Mr. ROYCE) introduced the following bill; which was referred to the Committee on Financial Services

A BILL

To amend the Fair Credit Reporting Act to exempt certain communications from the definition of consumer report, and for other 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; FINDINGS.**

4 (a) SHORT TITLE.—This Act may be cited as the
5 “Civil Rights and Employee Investigation Clarification
6 Act”.

7 (b) FINDINGS.—The Congress finds as follows:

1 (1) The Fair Credit Reporting Act, as inter-
2 preted by the Federal Trade Commission, impedes
3 investigations of workplace misconduct.

4 (2) The Fair Credit Reporting Act undermines
5 the ability of employers to use experienced outside
6 organizations or individuals to investigate allegations
7 of drug use or sales, violence, sexual harassment,
8 other types of harassment, employment discrimina-
9 tion, job safety and health violations, as well as
10 criminal activity, including theft, fraud, embezzle-
11 ment, sabotage or arson, patient or elder abuse,
12 child abuse, and other types of misconduct related to
13 employment.

14 (3) Employers have been advised by agencies
15 and the courts to utilize such experienced outside or-
16 ganizations and individuals in many cases to assure
17 compliance with civil rights laws and other laws, as
18 well as written workplace policies.

19 (4) Employees and consumers are put at risk
20 because the Fair Credit Reporting Act frustrates or
21 impedes employers in their efforts to maintain a safe
22 and productive workforce.

23 (5) The Fair Credit Reporting Act should not
24 chill the use of experienced outside organizations or
25 individuals to assist employers in their investigations

1 of workplace misconduct or misbehavior by poten-
2 tially subjecting those employers to additional liabil-
3 ities or damages.

4 **SEC. 2. CERTAIN COMMUNICATIONS EXCLUDED FROM DEF-**
5 **INITION OF CONSUMER REPORT.**

6 (a) AMENDMENT TO DEFINITION OF CONSUMER RE-
7 PORT.—Section 603(d)(2)(D) of the Fair Credit Report-
8 ing Act (15 U.S.C. 1681a(d)(2)(D)) is amended by insert-
9 ing “or (q)” after “subsection (o)”.

10 (b) AMENDMENT RELATING TO EMPLOYMENT IN-
11 VESTIGATION REPORTS.—Section 603 of the Fair Credit
12 Reporting Act (15 U.S.C. 1681a) is amended by adding
13 at the end the following new subsection:

14 “(q) EXCLUSION OF CERTAIN COMMUNICATIONS.—

15 “(1) SELF-REGULATORY ORGANIZATION DE-
16 FINED.—For purposes of this subsection, the term
17 ‘self-regulatory organization’ includes any self-regu-
18 latory organization (as defined in section 3(a)(26) of
19 the Securities Exchange Act of 1934), any entity es-
20 tablished under Title I of the Sarbanes-Oxley Act of
21 2002, any board of trade designated by the Com-
22 modity Futures Trading Commission, and any fu-
23 tures association registered with such Commission.

1 “(2) COMMUNICATIONS DESCRIBED IN THIS
2 SUBSECTION.—A communication is described in this
3 subsection if—

4 “(A) but for subsection (d)(2)(D), the
5 communication would be a consumer report;

6 “(B) the communication is made to an em-
7 ployer in connection with an investigation of—

8 “(i) suspected misconduct relating to
9 employment; or

10 “(ii) compliance with Federal, State,
11 or local laws and regulations, the rules of
12 a self-regulatory organization, or any pre-
13 existing written policies of the employer;

14 “(C) the communication is not made for
15 the purpose of investigating a consumer’s credit
16 worthiness, credit standing, or credit capacity;
17 and

18 “(D) the communication is not provided to
19 any person except—

20 “(i) to the employer or an agent of
21 the employer;

22 “(ii) to any Federal or State officer,
23 agency, or department, or any officer,
24 agency, or department of a unit of general
25 local government;

1 “(iii) to any self-regulatory organiza-
2 tion with regulatory authority over the ac-
3 tivities of the employer or employee;

4 “(iv) as otherwise required by law; or

5 “(v) pursuant to section 608.

6 “(3) SUBSEQUENT DISCLOSURE.—After taking
7 any adverse action based in whole or in part on a
8 communication described in paragraph (2), the em-
9 ployer shall disclose to the consumer a summary
10 containing the nature and substance of the commu-
11 nication upon which the adverse action is based, ex-
12 cept that the sources of information acquired solely
13 for use in preparing what would be but for sub-
14 section (d)(2)(D) an investigative consumer report
15 need not be disclosed.”.

○