

PUBLIC LAW 105-347—NOV. 2, 1998

CONSUMER REPORTING EMPLOYMENT
CLARIFICATION ACT OF 1998

Public Law 105-347
105th Congress

An Act

Nov. 2, 1998

[S. 2561]

Consumer
Reporting
Employment
Clarification Act
of 1998.
15 USC 1601
note.

To amend the Fair Credit Reporting Act with respect to furnishing and using consumer reports for employment purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the “Consumer Reporting Employment Clarification Act of 1998”.

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

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

“(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.”.

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

“(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 Federal Trade Commission under section 609(c)(3).

“(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 Federal Trade Commission under section 609(c)(3).

“(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.”.

SEC. 3. PROVISION OF SUMMARY OF RIGHTS.

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

SEC. 4. NATIONAL SECURITY INVESTIGATION CONFORMING AMENDMENTS.

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

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

“(i) the end user is an agency or department of the United States Government that procures the report from the person for purposes of determining the eligibility of the consumer to whom the report relates to receive access or continued access to classified information (as defined in section 604(b)(4)(E)(i)); and

“(ii) the head of the agency or department makes a written finding as prescribed under section 604(b)(4)(A).”.

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

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

(2) by adding at the end the following:

“(b) EXEMPTION FOR NATIONAL SECURITY INVESTIGATIONS.—

Subsection (a) does not apply in the case of an agency or department of the United States Government that seeks to obtain and use a consumer report for employment purposes, if the head of the

agency or department makes a written finding as prescribed under section 604(b)(4)(A).".

SEC. 5. CIVIL SUITS AND JUDGMENTS.

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

- (1) in paragraph (2), by striking “Suits and Judgments which” and inserting “Civil suits, civil judgments, and records of arrest that”;
- (2) by striking paragraph (5);
- (3) in paragraph (6), by inserting “, other than records of convictions of crimes” after “of information”; and
- (4) by redesignating paragraph (6) as paragraph (5).

SEC. 6. TECHNICAL AMENDMENTS.

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

- (1) in section 603(d)(2)(A)(iii), by striking “any communication” and inserting “communication”; 15 USC 1681a.
- (2) in section 603(o)(1), by striking “(d)(2)(E)” and inserting “(d)(2)(D)”;
- (3) in section 603(o)(4), by striking “or” at the end and inserting “and”;
- (4) in section 604(g), by striking “or a direct marketing transaction”; 15 USC 1681b.
- (5) in section 611(a)(7), by striking “(6)(B)(iv)” and inserting “(6)(B)(iii)”; and 15 USC 1681i.
- (6) in section 621(b), by striking “or (e)”. 15 USC 1681s.

SEC. 7. EFFECTIVE DATE.

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

Approved November 2, 1998.

LEGISLATIVE HISTORY—S. 2561:

CONGRESSIONAL RECORD, Vol. 144 (1998):
Oct. 6, considered and passed Senate.
Oct. 8, considered and passed House.

