

112TH CONGRESS  
1ST SESSION

# H. R. 321

To amend the Fair Credit Reporting Act to prohibit the use of consumer credit checks against prospective and current employees for the purposes of making adverse employment decisions.

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## IN THE HOUSE OF REPRESENTATIVES

JANUARY 19, 2011

Mr. COHEN (for himself, Mr. NADLER, Ms. NORTON, Mr. JACKSON of Illinois, Mr. HASTINGS of Florida, Mr. MEEKS, Ms. BALDWIN, Mr. GRIJALVA, Ms. JACKSON LEE of Texas, Ms. SUTTON, Mr. SERRANO, Ms. FUDGE, Mr. HONDA, Ms. CLARKE of New York, Ms. SCHAKOWSKY, Mr. HINCHEY, Mr. DAVIS of Illinois, Mr. FILNER, Mr. AL GREEN of Texas, Ms. EDWARDS, Ms. WOOLSEY, and Mr. ELLISON) introduced the following bill; which was referred to the Committee on Financial Services

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## A BILL

To amend the Fair Credit Reporting Act to prohibit the use of consumer credit checks against prospective and current employees for the purposes of making adverse employment decisions.

1 *Be it enacted by the Senate and House of Representa-*  
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Equal Employment  
5 for All Act”.

1 **SEC. 2. USE OF CREDIT CHECKS PROHIBITED FOR EMPLOY-**  
2 **MENT PURPOSES.**

3 (a) PROHIBITION FOR EMPLOYMENT AND ADVERSE  
4 ACTION.—Section 604 of the Fair Credit Reporting Act  
5 (15 U.S.C. 1681b) is amended—

6 (1) in subsection (a)(3)(B), by inserting “within  
7 the restrictions set forth in subsection (b)” after  
8 “purposes”;

9 (2) by redesignating subsections (b) through (g)  
10 as subsections (c) through (h), respectively; and

11 (3) by inserting after subsection (a) the fol-  
12 lowing new subsection:

13 “(b) USE OF CERTAIN CONSUMER REPORT PROHIB-  
14 ITED FOR EMPLOYMENT PURPOSES OR ADVERSE AC-  
15 TION.—

16 “(1) GENERAL PROHIBITION.—Except as pro-  
17 vided in paragraph (3), a person, including a pro-  
18 spective employer or current employer, may not use  
19 a consumer report or investigative consumer report,  
20 or cause a consumer report or investigative con-  
21 sumer report to be procured, with respect to any  
22 consumer where any information contained in the re-  
23 port bears on the consumer’s creditworthiness, credit  
24 standing, or credit capacity—

25 “(A) for employment purposes; or

1           “(B) for making an adverse action, as de-  
2           scribed in section 603(k)(1)(B)(ii).

3           “(2) SOURCE OF CONSUMER REPORT IRRELE-  
4           VANT.—The prohibition described in paragraph (1)  
5           shall apply even if the consumer consents or other-  
6           wise authorizes the procurement or use of a con-  
7           sumer report for employment purposes or in connec-  
8           tion with an adverse action with respect to such con-  
9           sumer.

10          “(3) EXCEPTIONS.—Notwithstanding the prohi-  
11          bitions set forth in this subsection, and consistent  
12          with the other sections of this Act, an employer may  
13          use a consumer report with respect to a consumer  
14          in the following situations:

15               “(A) When the consumer applies for, or  
16               currently holds, employment that requires na-  
17               tional security or FDIC clearance.

18               “(B) When the consumer applies for, or  
19               currently holds, employment with a State or  
20               local government agency which otherwise re-  
21               quires use of a consumer report.

22               “(C) When the consumer applies for, or  
23               currently holds, a supervisory, managerial, pro-  
24               fessional, or executive position at a financial in-  
25               stitution.

1 “(D) When otherwise required by law.

2 “(4) EFFECT ON DISCLOSURE AND NOTIFICA-  
3 TION REQUIREMENTS.—The exceptions described in  
4 paragraph (3) shall have no effect upon the other re-  
5 quirements of this Act, including requirements in re-  
6 gards to disclosure and notification to a consumer  
7 when permissibly using a consumer report for em-  
8 ployment purposes or for making an adverse action  
9 against such consumer.”.

10 (b) CONFORMING AMENDMENTS AND CROSS REF-  
11 ERENCES.—Such Act is further amended as follows:

12 (1) In section 603 (15 U.S.C. 1681a)—

13 (A) in subsection (d)(3), by striking  
14 “604(g)(3)” and inserting “604(h)(3)”; and

15 (B) in subsection (o), by striking “A” and  
16 inserting “Subject to the restrictions set forth  
17 in section 604(b), a”.

18 (2) In section 604 (15 U.S.C. 1681b)—

19 (A) in subsection (a), by striking “sub-  
20 section (c)” and inserting “subsection (d)”; and

21 (B) in subsection (c), as redesignated by  
22 subsection (a)(2) of this section—

23 (i) in paragraph (2)(A), by inserting  
24 “and subject to the restrictions set forth in

1 subsection (b)” after “subparagraph (B)”;

2 and

3 (ii) in paragraph (3)(A), by inserting

4 “and subject to the restrictions set forth in

5 subsection (b)” after “subparagraph (B)”;

6 (C) in subsection (d)(1), as redesignated

7 by subsection (a)(2) of this section, by striking

8 “subsection (e)” in both places it appears and

9 inserting “subsection (f)”;

10 (D) in subsection (f), as redesignated by

11 subsection (a)(2) of this section—

12 (i) in paragraph (1), by striking “sub-

13 section (c)(1)(B)” and inserting “sub-

14 section (d)(1)(B)”;

15 (ii) in paragraph (5), by striking

16 “subsection (c)(1)(B)” and inserting “sub-

17 section (d)(1)(B)”.

18 (3) In section 607(e)(3)(A) (15 U.S.C.

19 1681e(e)(3)(A)), by striking “604(b)(4)(E)(i)” and

20 inserting “604(c)(4)(E)(i)”.

21 (4) In section 609 (15 U.S.C. 1681g)—

22 (A) in subsection (a)(3)(C)(i), by striking

23 “604(b)(4)(E)(i)” and inserting

24 “604(c)(4)(E)(i)”;

1 (B) in subsection (a)(3)(C)(ii), by striking  
2 “604(b)(4)(A)” and inserting “604(c)(4)(A)”.

3 (5) In section 613(a) (15 U.S.C. 1681k(a)) by  
4 striking “section 604(b)(4)(A)” and inserting “sec-  
5 tion 604(c)(4)(A)”.

6 (6) In section 615 (15 U.S.C. 1681m)—

7 (A) in subsection (d)(1), by striking “sec-  
8 tion 604(c)(1)(B)” and inserting “section  
9 604(d)(1)(B)”;

10 (B) in subsection (d)(1)(E), by striking  
11 “section 604(e)” and inserting “section  
12 604(f)”;

13 (C) in subsection (d)(2)(A), by striking  
14 “section 604(e)” and inserting “section  
15 604(f)”.

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