

**AMENDMENT IN THE NATURE OF A SUBSTITUTE
TO H.R. 3614
OFFERED BY MR. LAWSON OF FLORIDA**

Strike all after the enacting clause and insert the following:

1 SECTION 1. SHORT TITLE.

2 This Act may be cited as the “Restricting Credit
3 Checks for Employment Decisions Act”.

4 SEC. 2. FINDINGS.

5 Congress finds the following:

6 (1) The use of credit reports as a factor in
7 making hiring decisions has been found to be preva-
8 lent in a diverse array of occupations, and is not
9 limited to certain high-level management or execu-
10 tive positions.

11 (2) According to the California Labor Federa-
12 tion, only 25 percent of employers researched the
13 credit history of job applicants in 1998. However,
14 this practice had increased to 43 percent by 2006
15 and to 60 percent by 2011.

16 (3) A study titled “Do Job Applicant Credit
17 Histories Predict Job Performance Appraisal Rat-
18 ings or Termination Decisions?”, published in 2012,

1 found that, while credit history might conceptually
2 measure a person's level of responsibility, ability to
3 meet deadlines, dependability, or integrity, it does
4 not, in practice, actually predict an employee's per-
5 formance or likelihood to quit. Credit reports contain
6 many inaccuracies and credit history can be con-
7 taminated by events that are sometimes outside a
8 person's control, such as a sudden medical expense
9 after an accident or the loss of a job during an eco-
10 nomic downturn. The study found that there is no
11 benefit from using credit history to predict job per-
12 formance or turnover.

13 (4) Despite the absence of data showing a cor-
14 relation between job performance and credit-worthi-
15 ness, employers continue to use credit checks as a
16 proxy for assessing character and integrity. Accord-
17 ing to a 2012 Society for Human Resource Manage-
18 ment survey, organizations indicated that they used
19 credit checks on job candidates primarily to reduce
20 or prevent theft and embezzlement and to minimize
21 legal liability for negligent hiring.

22 (5) The use of credit checks for employment
23 purposes creates a true "catch-22" for unemployed
24 people with impaired credit. For example, the finan-
25 cial hardship caused by losing a job may cause some

1 unemployed individuals to make late or partial pay-
2 ments on their bills, but their poor credit standing
3 caused by this negative information on their con-
4 sumer report can also impede their chances of ob-
5 taining a new job to end their financial distress.

6 (6) A September 2014 report by the New York
7 City Council's Committee on Civil Rights noted that,
8 for those who have been unemployed for an extended
9 period of time and whose credit has suffered as they
10 fell behind on bills, the use of credit reports in the
11 hiring process can exacerbate and perpetuate an al-
12 ready precarious situation.

13 (7) In a March 2013 Demos report titled "Dis-
14 credited: How Employment Credit Checks Keep Out
15 Qualified Workers Out of a Job", one in four survey
16 participants who were unemployed said that a poten-
17 tial employer had requested to check their credit re-
18 port as part of a job application. Among job appli-
19 cants with blemished credit histories in the survey,
20 one in seven had been told that they were not being
21 hired because of their credit history.

22 (8) While job applicants must give prior ap-
23 proval for a prospective employer to pull their credit
24 reports under the FCRA, this authorization, as a
25 practical matter, does not constitute an effective

1 consumer protection because an employer may reject
2 any job applicant who refuses a credit check.

3 (9) Some negative information on a report may
4 stem from uncontrollable circumstances, or signifi-
5 cant life events in a consumer's life, such as a med-
6 ical crisis or a divorce. Demos found that poor credit
7 is associated with household unemployment, lack of
8 health coverage, and medical debt, which are factors
9 that reflect economic conditions in the country and
10 personal misfortune that have little relationship with
11 how well a job applicant would perform at work.

12 (10) In October 2011, FICO noted that from
13 2008 to 2009 approximately 50 million people expe-
14 rienced a 20-point drop in their credit scores and
15 about 21 million saw their scores decline by more
16 than 50 points. While the Great Recession reduced
17 many consumers' credit scores due to foreclosures
18 and other financial hardships, the financial crisis
19 had a particularly harsh impact on African Ameri-
20 cans and Latinos, as racial and ethnic minorities
21 and communities of color were frequently targeted
22 by predatory mortgage lenders who steered bor-
23 rowers into high-cost subprime loans, even when
24 these borrowers would have qualified for less costly
25 prime credit.

1 (11) A May 2006 Brookings Institution report
2 titled “Credit Scores, Reports, and Getting Ahead in
3 America” found that counties with a relatively high-
4 er proportion of racial and ethnic minorities in the
5 United States tended to have lower credit scores
6 compared with counties that had a lower concentra-
7 tion of communities of color.

8 (12) Studies have consistently found that Afri-
9 can American and Latino households tend, on aver-
10 age, to have lower credit scores than White house-
11 holds. The growing use of credit checks, therefore,
12 may disproportionately screen otherwise qualified ra-
13 cial and ethnic minorities out of jobs, leading to dis-
14 criminatory hiring practices, and further exacer-
15 bating the trend where unemployment for African
16 American and Latino communities is elevated well
17 above the rate of Whites.

18 (13) A 2012 Demos survey found that 65 per-
19 cent of White respondents reported having good or
20 excellent credit scores while over half of African
21 American households reported only having fair or
22 bad credit.

1 **SEC. 3. PROHIBITION ON THE USE OF CREDIT INFORMA-**
2 **TION FOR MOST EMPLOYMENT DECISIONS.**

3 (a) IN GENERAL.—Section 604 of the Fair Credit
4 Reporting Act (15 U.S.C. 1681b) is amended—

5 (1) in subsection (a)(3)(B), by inserting “, sub-
6 ject to the requirements of subsection (b)” after
7 “purposes”; and

8 (2) in subsection (b)—

9 (A) in paragraph (1)—

10 (i) by amending the paragraph head-
11 ing to read as follows: “USE OF CON-
12 SUMER REPORTS FOR EMPLOYMENT PUR-
13 POSES”;

14 (ii) in subparagraph (A), by redesignig-
15 nating clauses (i) and (ii) as subclauses (I)
16 and (II), respectively (and conforming the
17 margins accordingly);

18 (iii) by redesignating subparagraphs
19 (A) and (B) as clauses (i) and (ii), respec-
20 tively (and conforming the margins accord-
21 ingly);

22 (iv) by striking the period at the end
23 of clause (ii) (as so redesignated) and in-
24 serting “; and”;

25 (v) by striking “agency may furnish”
26 and inserting “agency—

1 “(A) may furnish”; and

2 (vi) by adding at the end the following
3 new subparagraph:

4 “(B) except as provided in paragraph (5),
5 may not furnish a consumer report with respect
6 to any consumer in which any information con-
7 tained in the report bears on the consumer’s
8 creditworthiness, credit standing, or credit ca-
9 pacity.”; and

10 (B) by adding at the end the following new
11 paragraphs:

12 “(5) REQUIREMENTS FOR CONSUMER REPORTS
13 BEARING ON THE CONSUMER’S CREDITWORTHINESS,
14 CREDIT STANDING, OR CREDIT CAPACITY.—

15 “(A) IN GENERAL.—A person may use a
16 consumer report with respect to any consumer
17 in which any information contained in the re-
18 port bears on the consumer’s creditworthiness,
19 credit standing, or credit capacity only if—

20 “(i) either—

21 “(I) the person is required to ob-
22 tain the report by a Federal, State, or
23 local law or regulation; or

24 “(II) the information contained
25 in the report is being used with re-

1 spect to a national security investiga-
2 tion (as defined in paragraph (4)(D));

3 “(ii) none of the cost associated with
4 obtaining the consumer report will be
5 passed on to the consumer to whom the re-
6 port relates; and

7 “(iii) the information contained in the
8 consumer report will not be disclosed to
9 any other person other than—

10 “(I) in an aggregate format that
11 protects a consumer’s personally iden-
12 tifiable information; or

13 “(II) as may be necessary to
14 comply with any applicable Federal,
15 State, or local equal employment op-
16 portunity law or regulation.

17 “(B) DISCLOSURES.—A person who pro-
18 cures, or causes to be procured, a consumer re-
19 port described in subparagraph (A) for employ-
20 ment purposes shall, in the disclosure made
21 pursuant to paragraph (2), include—

22 “(i) an explanation that a consumer
23 report is being obtained for employment
24 purposes;

1 “(ii) the reasons for obtaining such a
2 report; and

3 “(iii) the citation to the applicable
4 Federal, State, or local law or regulation
5 described in subparagraph (A)(i)(I).

6 “(C) ADVERSE ACTIONS.—In using a con-
7 sumer report described in subparagraph (A) for
8 employment purposes and before taking an ad-
9 verse action based in whole or in part on the re-
10 port, the person intending to take such adverse
11 action shall, in addition to the information de-
12 scribed in paragraph (3), provide to the con-
13 sumer to whom the report relates—

14 “(i) the name, address, and telephone
15 number of the consumer reporting agency
16 that furnished the report (including, for a
17 consumer reporting agency that compiles
18 and maintains files on consumers on a na-
19 tionwide basis, a toll-free telephone number
20 established by such agency);

21 “(ii) the date on which the report was
22 furnished; and

23 “(iii) the specific factors from the re-
24 port upon which the adverse action (as de-

1 fined in section 603(k)(1)(B)(ii) was
2 based.

3 “(D) NATIONAL SECURITY INVESTIGA-
4 TIONS.—The requirements of paragraph (4)
5 shall apply to a consumer report described
6 under subparagraph (A).

7 “(E) NON-CIRCUMVENTION.—With respect
8 to a consumer report in which any information
9 contained in the report bears on the consumer’s
10 creditworthiness, credit standing, or credit ca-
11 pacity, if a person is prohibited from using the
12 consumer report pursuant to subparagraph (A),
13 such person may not, directly or indirectly, ei-
14 ther orally or in writing, require, request, sug-
15 gest, or cause any employee or prospective em-
16 ployee to submit such information to the person
17 as a condition of employment.

18 “(F) NON-WAIVER.—A consumer may not
19 waive the requirements of this paragraph with
20 respect to a consumer report.

21 “(6) RULE OF CONSTRUCTION.—Nothing in
22 this subsection shall be construed to require a con-
23 sumer reporting agency to prevent a Federal, State,
24 or local law enforcement agency from accessing in-

1 formation in a consumer report to which the law en-
2 forcement agency could otherwise obtain access.”.

3 (b) TECHNICAL AMENDMENT.—The Fair Credit Re-
4 porting Act (15 U.S.C. 1681 et seq.) is amended by strik-
5 ing “section 604(b)(4)(E)(i)” each place such term ap-
6 pears and inserting “section 604(b)(4)(D)(i)”.

7 (c) RULE OF CONSTRUCTION.—The amendments
8 made by this Act may not be construed as limiting the
9 ability of a person to use non-financial or non-credit re-
10 lated consumer report information.

11 (d) RULEMAKING.—Not later than the end of the 2-
12 year period beginning on the date of the enactment of this
13 Act, the Bureau of Consumer Financial Protection shall
14 issue final rules to implement the amendments made by
15 this Act.

16 (e) EFFECTIVE DATE.—The amendments made by
17 this section shall take effect 2 years after the date of the
18 enactment of this Act.

