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105TH CONGRESS; 2ND SESSION
IN THE SENATE OF THE UNITED STATES
AS ENROLLED

S. 2561

1998 S. 2561; 105 S. 2561

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SYNOPSIS:

Synopsis not included in this printed version.

DATE OF INTRODUCTION: OCTOBER 6, 1998

DATE OF VERSION: OCTOBER 20, 1998 -- **VERSION:** 4

SPONSOR(S):

Sponsor not included in this printed version.

TEXT:

One Hundred Fifth Congress
of the
United States of America
AT THE SECOND SESSION

*Begun and held at the City of Washington on Tuesday, *
*the twenty-seventh day of January, one thousand nine hundred and *
*ninety-eight *
An Act

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";

(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";

(5) in section 611(a)(7), by striking "(6)(B)(iv)" and inserting "(6)(B)(iii)"; and

(6) in section 621(b), by striking "or (e)".

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).

Speaker of the House of Representatives.

Vice President of the United States and
President of the Senate.

SUBJECT: CONSUMER CREDIT REPORTING (79%); CREDIT
REGULATION (79%); INVESTIGATIONS (59%);

LOAD-DATE: October 23, 1998