

## House Passes Bill Restricting Employer Credit Checks

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On January 29, 2020, the House of Representatives passed [the Comprehensive CREDIT Act of 2020](#) (the “Act”), which would change federal laws pertaining to consumer reporting agencies and credit checks in a number of ways. Significantly for employers, the Act includes an amendment (originally [H.R. 3614 – “Restricting Credit Checks for Employment Decisions Act”](#)) to the Fair Credit Reporting Act (“FCRA”), which would restrict the use of credit information for most employment decisions.

Currently, the FCRA does not expressly prohibit employers from using credit checks when making employment decisions. The Act would amend Section 604 of the FCRA by precluding employers from requesting a consumer report bearing on the creditworthiness, credit standing, or credit capacity of an individual for employment purposes, except in limited circumstances where:

- the employer is required to obtain the report by federal, state, or local law or regulation;
- the information contained in the report is being used with respect to a national security investigation; or
- the report is necessary for a background check or related investigation of financial information that is required by federal, state, or local law or regulation.

Under the Act, if an employer intends to invoke one of these exceptions, the employer must disclose to the candidate the reason as well as a citation to the applicable law.

Note that this amendment of the FCRA would not impact *other* aspects of obtaining consumer reports for employment purposes, so employers would still be able to conduct background checks (subject to state and local restrictions).

The final vote of 221-189 on the Act largely split along party lines. [Republican House members](#) expressed concern about H.R. 3614 in committee review of the original bill, noting that the legislation could have unintended and undesirable consequences—particularly in the financial services industry. Members observed that an employee’s “financial history is particularly important in the financial

services industry, where employees routinely have access to vast amounts of personal and financial information.”

As of last year, 11 states – including California, Colorado, Connecticut, Delaware, Hawaii, Illinois, Maryland, Nevada, Oregon, Vermont and Washington – and the [District of Columbia](#) have enacted laws that restrict the use of credit reports in employment decisions. Cities such as Philadelphia, [New York City](#) and Chicago have also passed laws regarding the use of credit checks in employment settings. While state and local laws differ in some respects, many do include narrow exceptions allowing credit checks for banks and financial institutions, positions with access to specified personal information, and positions that involve access to assets above a certain threshold, or that have signatory authority.

The Act now heads to the Senate, where it seems unlikely to pass in its current form, given the partisan divide regarding various provisions contained within the 197-page bill. We will continue to monitor the legislation.

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