



Consumer Reporting Laws, Credit Checks, and Discrimination

A review by state and territory of major local requirements in the use of credit information to make employment decisions



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Foreword

Over the past several years there has been a growing trend to limit employers' ability to see and use credit information to make hiring and other employment decisions. At the federal level, the Equal Employment Opportunity Commission has scrutinized the use of credit information and identified potential violations of federal discrimination laws that could arise from the use of credit checks. At the state and local levels, numerous jurisdictions have passed laws restricting inquiries into and the use of credit information by employers.

Given this trend, it is critical for employers, particularly multi-state employers, to fortify their compliance with the range of laws that govern inquiries into and the use of credit information for employment purposes. To assist with that effort, we provide below an overview of: (1) the EEOC's position on the use of credit information by employers; and (2) state and local laws restricting inquiries into and the use of credit information by employers. We also provide a survey discussing relevant state and local laws that have been enacted as of the date of this publication.

Overview of the EEOC's Position on the Use of Credit Checks

Federal law does not outright prevent employers from asking about credit or other financial information. However, federal laws prohibit employers from using credit information to discriminate against applicants and employees.

The EEOC has identified three primary areas where federal discrimination laws could impact an employer's use of credit information to make employment decisions. First, employers must not apply credit or financial requirements differently to different people based on any protected characteristics (e.g., race, national origin, religion, sex, disability, or age). Second, the EEOC has indicated that an employer's use of credit information should help accurately identify responsible and reliable employees for the position at issue and cannot disadvantage people of a particular race, national origin, religion, or sex. Third, according to the EEOC, employers may have to make exceptions to financial requirements for persons who cannot meet the requirement because of a disability.

Using credit information in a manner that violates federal discrimination laws could result in a lawsuit by the EEOC or an aggrieved applicant or employee. An employer could be liable for damages, including lost wages, attorney's fees and punitive damages. The EEOC could also seek to impose additional training, reporting, and other requirements on employers who violate such laws.

Overview of State and Local Laws

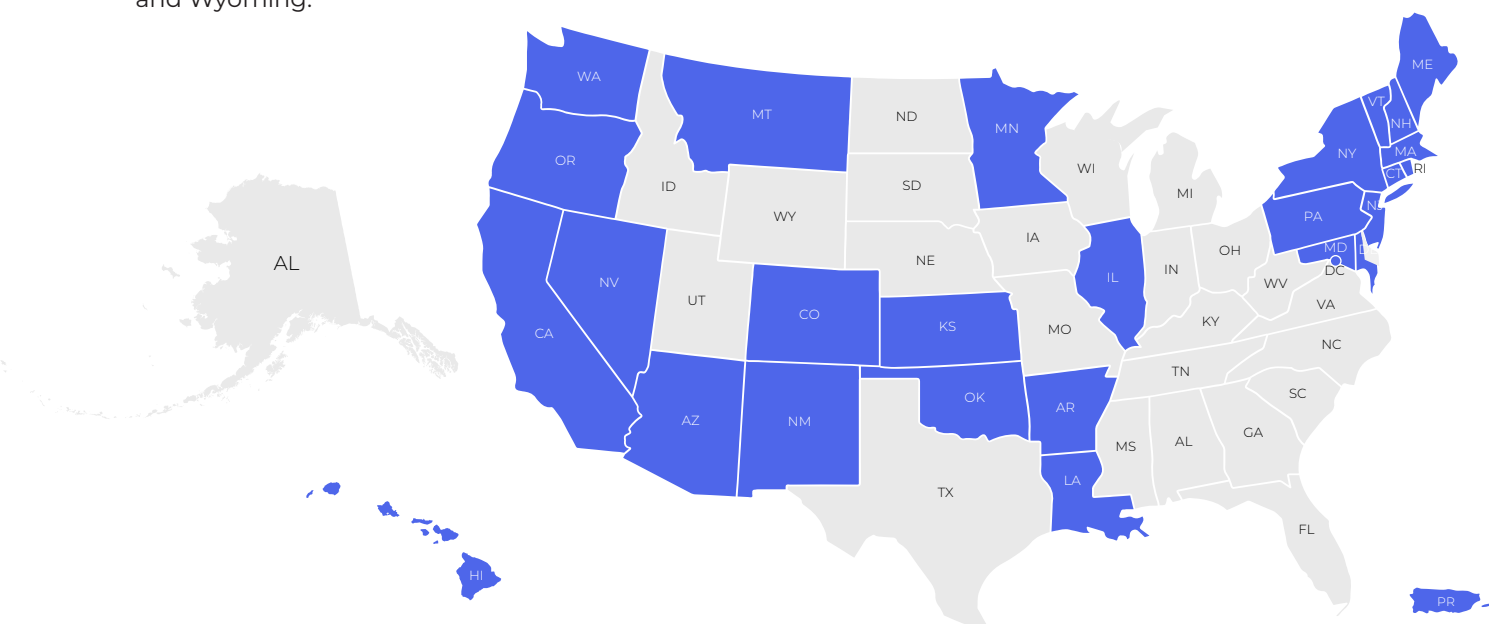
In October 2019, Puerto Rico became the latest jurisdiction to pass legislation prohibiting, with limited exceptions, employers' use of or obtaining credit information for employment purposes. Puerto Rico joins the growing list of jurisdictions that have enacted similar laws, including: California; Colorado; Connecticut; Hawaii; Illinois (and separately the City of Chicago); Maryland; Nevada; New York City, New York; Oregon; Philadelphia, Pennsylvania; Vermont; Washington; and Washington, D.C.

The various differences among these laws can create compliance challenges for nationwide employers. For instance, although some of the laws specifically list the types of positions for which credit reports and information may be used, other states, like Washington, simply state that credit history only may be considered if the information is "substantially job related." Moreover, some states, like California, Colorado, Connecticut, Maryland, Oregon, and Vermont, require the employer to provide a written notice advising the candidate of the basis for the employer's use of credit information for employment purposes.

Penalties for violating these state and local laws also vary. For instance, the D.C. law provides for escalating penalties starting at \$1,000 for the first violation, \$2,500 for the second violation, and \$5,000 for each subsequent violation. Several of the laws also provide for a private cause of action, allowing aggrieved applicants and employees to sue employers for compensatory damages and to possibly recover attorney's fees and punitive damages.

The list of state and local laws affording new or expanded employment-related protections to individuals with tarnished credit continues to grow. Accordingly, a crucial best practice recommendation is for employers to take reasonable measures to keep current on, and periodically assess, pertinent changes in the legal landscape.

At the time of writing (June 2021), the following States have no applicable provisions; Alabama, Alaska, Delaware, Florida, Georgia, Idaho, Indiana, Iowa, Kentucky, Michigan, Mississippi, Missouri, Nebraska, North Carolina, North Dakota, Ohio, South Carolina, South Dakota, Tennessee, Texas, Utah, Virginia, West Virginia, Wisconsin, and Wyoming.





Jurisdiction: Federal

Definitions

FCRA

Consumer report means any written, oral, or other communication of any information by a consumer reporting agency bearing on an individual's credit worthiness, credit standing, credit capacity, character, general reputation, personal characteristics, or mode of living which is used or expected to be used or collected in whole or in part for the purpose of serving as a factor in establishing the individual's eligibility for employment purposes.

Investigative consumer report means a consumer report or portion thereof in which information on an individual's character, general reputation, personal characteristics, or mode of living is obtained through personal interviews with neighbors, friends, or associates of the individual reported on or with others with whom he or she is acquainted or who may have knowledge concerning any such items of information.

However, such information cannot include specific factual information on an individual's credit record obtained directly from a creditor of the individual or from a consumer reporting agency when such information was obtained directly from a creditor of the individual or from the individual.

Employment purposes, when used in connection with a consumer report, means a report used for the purpose of evaluating an individual for employment, promotion, reassignment or retention as an employee.

Adverse action means a denial of employment or any other decision for employment purposes that adversely affects any current or prospective employee.

15 U.S.C. § 1681a.

FCRA/Mini-FCRA Consumer Report

Disclosure & Authorization

An employer cannot procure, or cause to be procured, a consumer report for employment purposes unless:

- A clear and conspicuous disclosure has been made in writing to the individual 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
- The individual consents in writing.

15 U.S.C. § 1681b(b)(2)(A)

Motor Carriers

If an individual 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:

- The employer must provide to the individual, by oral, written, or electronic means, notice that a consumer report may be obtained for employment purposes, and a summary of the individual's rights; and
- The individual must consent orally, in writing, or electronically.

15 U.S.C. § 1681b.

FCRA/Mini-FCRA Investigative Consumer Report

Disclosure & Authorization

An employer cannot procure or cause to be prepared an investigative consumer report unless:

- It is clearly and accurately disclosed to the individual that an investigative consumer report including information as to character, general reputation, personal characteristics and mode of living, whichever are applicable, may be made, and the disclosure:
- Is written, mailed or otherwise delivered not later than 3 days after the date on which the report was first requested; and
- The employer has made the above-referenced required disclosures to the individual; and
- The employer will comply with disclosure requirements concerning the nature and scope of the investigation.

Additionally, upon an individual's written request made within a reasonable period of time after he or she receives the disclosure required, an employer must make a complete and accurate disclosure of the nature and scope of the investigation requested.

This disclosure must be written, mailed, or otherwise delivered not later than 5 days after the date on which the request for such disclosure was received or such report was first requested, whichever is later.

15 U.S.C. § 1681d.

FCRA/Mini-FCRA Adverse Action

Pre-Adverse Action

Before taking any adverse action based wholly or partly on the report, an employer must provide the individual:

- A copy of the report; and
- A description, in writing, of the individual's rights.

15 U.S.C. § 1681b(b)(3).

Moreover, the Federal Trade Commission has opined that an employer must wait a “reasonable” amount of time before taking final adverse action so applicants or employees can discuss the report with an employer before adverse action is taken.

In one letter the FTC stated a 5-day waiting period appeared “reasonable,” but also stated that “the facts of any particular employment situation may require a different time.”

Brinckerhoff-Weisberg, Federal Trade Commission Staff Op. Letter, June 27, 1997; Hawkey, Federal Trade Commission Staff Op. Letter, Dec. 18, 1997; Coffey, Federal Trade Commission Staff Op. Letter, Feb. 11, 1998. Copies of these FTC letters are available [here](#).

Adverse Action

If adverse action is taken, based wholly or partly on any information contained in a consumer report, an employer must:

- Provide the individual oral, written, or electronic notice of the adverse action;
- Provide the individual written or electronic disclosure:
- Of a numerical credit score used by the employer when taking any adverse action based wholly or partly on any information in a consumer report; and
- Of the information concerning the credit scores (possible range of scores; key factors associated in determining the score; the date the score was created; name of entity creating the score);
- Provide to the individual orally, in writing, or electronically
- The name, address, and telephone number of the consumer reporting agency that furnished the report (including a toll-free telephone number established by the agency if the agency compiles and maintains files on consumers on a nationwide basis); and
- A statement that the consumer reporting agency did not make the decision to take the adverse action and is unable to provide the specific reasons why adverse action was taken; and
- Provide the individual oral, written, or electronic notice of his or her right:
- To obtain a free copy of a consumer report from the consumer reporting agency - notice must include an indication of the 60-day period for obtaining a copy; and
- To dispute with a consumer reporting agency the accuracy or completeness of any information in a consumer report furnished by the agency.

15 U.S.C. § 1681m(a).

Motor Carriers

If an individual applies for employment by mail, telephone, computer, or other similar means, and an employer takes adverse action based on the report, the employer must, in lieu of the general notices required, provide the individual, within 3 business days of taking such action, an oral, written or electronic notification stating:

- Adverse action has been taken based wholly or partly on a consumer report;
- 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);

- The consumer reporting agency did not make the decision to take the adverse action and is unable to provide to the individual the specific reasons why adverse action was taken; and
- The individual 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.

15 U.S.C. § 1681b(b)(3).

Credit Information & History Usage Restrictions

No applicable provisions.

However, the U.S. Equal Employment Opportunity Commission contends:

- “Financial information’ includes current or past assets, liabilities, or credit rating, bankruptcy or garnishment, refusal or cancellation of bonding, car ownership, rental or ownership of a house, length of residence at an address, charge accounts, furniture ownership, or bank accounts.
- Federal law does not prevent employers from asking about your financial information. But, the federal EEO laws do prohibit employers from illegally discriminating when using financial information to make employment decisions.
- First, employers must not apply a financial requirement differently to different people based on their race, color, national origin, religion, sex, disability, age, or genetic information.
- Second, an employer must not have a financial requirement if it does not help the employer to accurately identify responsible and reliable employees, and if, at the same time, the requirement significantly disadvantages people of a particular race, color, national origin, religion, or sex.
- Third, an employer might have to make an exception to a financial requirement for a person who cannot meet the requirement because of a disability.”

EEOC, Pre-Employment Inquiries and Financial Information.

Updated 08/18/2016



Jurisdiction: Arizona

Definitions

Mini-FCRA

Consumer report means any written, oral, or other communication of any information by a consumer reporting agency bearing on an individual's credit worthiness, credit standing, credit capacity, character, general reputation, personal characteristics, or mode of living which is used or expected to be used or collected in whole or in part for the purpose of serving as a factor in establishing the individual's eligibility for employment purposes.

Employment purposes, when used in connection with a consumer report, means a report used for the purpose of evaluating an individual for employment, promotion, reassignment or retention as an employee.

Ariz. Rev. Stat. § 44-1691.

FCRA/Mini-FCRA Consumer Report

No applicable provisions.

FCRA/Mini-FCRA Investigative Consumer Report

No applicable provisions.

FCRA/Mini-FCRA Adverse Action

Adverse Action

An employer who denies an individual employment, promotion, retention as an employee or reassignment or does reassign, if disadvantageous to the individual, must disclose the name and address of any consumer reporting agency that furnished the report to the employer which formed the basis of the adverse action.

Ariz. Rev. Stat. § 44-1693.

Waiving Rights Prohibited

An employer cannot request or require an individual to waive his or her rights.

Ariz. Rev. Stat. § 44-1693.

Employee Requests

An employer cannot charge a fee for the individual to see his or her file if a request is made within 30 days of an employment denial or adverse action caused by the report.

Ariz. Rev. Stat. § 44-1693.

Credit Information & History Usage Restrictions

No applicable provisions.



Jurisdiction: Arkansas

Definitions

No applicable provisions.

FCRA/Mini-FCRA Consumer Report

No applicable provisions.

FCRA/Mini-FCRA Investigative Consumer Report

No applicable provisions.

FCRA/Mini-FCRA Adverse Action

No applicable provisions.

Credit Information & History Usage Restrictions

Arkansas law does not restrict an employer's ability to conduct background checks using an applicant's consumer credit report.

However, employers that perform such background checks must, upon an applicant's or an employee's request, provide a copy of any background check information received to the individual.

Ark. Code Ann. § 11-3-206.

Updated 08/04/2017



Jurisdiction: California

Definitions

Mini-FCRA

Adverse action includes any denial of employment or any other decision made for employment purposes which adversely affects any current or prospective employee.

Consumer credit report means any written, oral, or other communication of any information by a consumer credit reporting agency bearing on an individual's credit worthiness, credit standing, or credit capacity, which is used or is expected to be used, or collected in whole or in part, for the purpose of serving as a factor in establishing the individual's eligibility for employment purposes.

Cal. Civ. Code § 1785.3.

Investigative consumer report means a consumer report in which information on an individual's character, general reputation, personal characteristics, or mode of living is obtained through any means.

Employment purposes, when used in connection with an investigative consumer report, means a report used for the purpose of evaluating an individual for employment, promotion, reassignment, or retention as an employee.

Cal. Civ. Code § 1786.2.

Credit Information & History Usage Restrictions

Consumer credit report has the same meaning as defined in Cal. Civ. Code § 1785.3(c) (see above).

However, the definition does not include a report that verifies income or employment, and does not include credit-related information, such as credit history, credit score, or credit record.

Managerial position means an employee covered by the executive exemption in Wage Order 4, which is an employee:

- Whose duties and responsibilities in management of the enterprise where he or she is employed, or of a customarily recognized department or subdivision thereof;
- Who customarily and regularly directs the work of 2 or more other employees; and
- Who has the authority to hire or fire other employees, or whose suggestions and recommendations concerning hiring or firing, advancement and promotion, or any other change of status of other employees will be given particular weight; and
- Who is primarily engaged in the above duties.
- Earns a month salary equivalent of not less than 2 times the state minimum wage for full-time employment.

Cal. Lab. Code § 1024.5.

FCRA/Mini-FCRA Consumer Report

Disclosure & Authorization

Employers must provide written notice prior to requesting a report which states that a report will be used and the source of the report.

The notice must contain a box that the individual may check to receive a copy of the report.

Cal. Civ. Code § 1785.20.5.

Employee Requests

If the individual indicates he or she wants to receive a copy, the employer must request that the credit reporting agency provide the report.

The report must be provided contemporaneously, and at no charge.

Cal. Civ. Code § 1785.20.5.

An employer, in its discretion, may notify the individual that upon request he or she may contact the consumer reporting agency and request that the consumer reporting agency investigate the current status of an item or items of information contained in the report if the individual disputes the report's completeness or accuracy.

Cal. Civ. Code § 1785.21.

Waiving Rights Prohibited

Waiver of the credit report provisions is prohibited.

Cal. Civ. Code § 1785.36.

FCRA/Mini-FCRA Investigative Consumer Report

Disclosure & Authorization

Employers can only obtain investigative reports for employment purposes other than suspicion of wrongdoing or misconduct if:

- Procured for a permissible purpose.
- Written notice is provided to the individual before the report is procured or caused to be made, which states that:
 - An investigative consumer report may be obtained.
 - The permissible purpose of the report is identified.
 - The disclosure may include information on the individual's character, general reputation, personal characteristics, and mode of living.

- Identifies the name, address, and telephone number of the investigative consumer reporting agency conducting the investigation.
 - Notifies the individual in writing of the nature and scope of the investigation requested, including a summary of the investigative consumer reporting provisions.
 - Notifies the individual of the website of the investigative consumer reporting agency, or, if the agency has no website, the telephone number of the agency, where the individual may find information about the agency's privacy practices, including whether the individual's personal information will be sent outside the U.S. or its territories and information that complies with Cal. Civ. Code § 1786.20(d) (i.e., the name, mailing address, e-mail address, and telephone number of the agency representatives who can assist with additional information regarding the agency's privacy practices or policies in the event of a compromise the individual's information.)
- The individual has consented in writing.

Cal. Civ. Code § 1786.16.

- Moreover, any employer who requests an investigative consumer report must do the following:
- Provide the individual a form which includes a box that can be ticked to indicate that the individual wants to receive a copy of the report and, if so requested, provide within 3 business days of the report's generation along with the name, address, and telephone number of the person who issued the report and how to contact them.
- Comply with separate provisions addressing actions employers must take if adverse action is taken based on information contained in the report.

Cal. Civ. Code § 1786.16(b)

Exception

The section 1786.16 requirements do not apply to an investigative consumer report procured or caused to be prepared by an employer if the report is sought for employment purposes due to suspicion held by an employer of wrongdoing or misconduct by the subject of the investigation.

Cal. Civ. Code § 1786.16.

FCRA/Mini-FCRA Adverse Action

Adverse Action

- If adverse action is taken, wholly or partly because of information in the report, an employer must:
- Provide written notice of the adverse action to the individual.
- Provide the individual the name, address, and telephone number of the consumer credit reporting agency that furnished the report.
- Provide a statement that the decision to take adverse action was based in whole or in part upon information contained in a consumer credit report.

Provide written notice of the following rights:

- The right to obtain a free copy of the report within 60 days.
- The right to dispute the report's accuracy or completeness.

However, an employer will not be liable for a violation if it shows by a preponderance of the evidence that at the time of the alleged violation it maintained reasonable procedures to assure compliance with the above requirements.

Cal. Civ. Code § 1785.20.

Credit Information & History Usage Restrictions

An employer or prospective employer cannot use a consumer credit report for employment purposes unless the position of the person for whom the report is sought is any of the following:

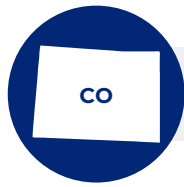
- A managerial position.
- A position in the state Department of Justice.
- A sworn peace officer or other law enforcement position.
- A position for which the information contained in the report is required by law to be disclosed or obtained.
- A position that involves regular access, for any purpose other than the routine solicitation and processing of credit card applications in a retail establishment, to all of the following types of information of any one person:
 - Bank or credit card account information.
 - Social Security number.
 - Date of birth.
- A position in which the person is, or would be, any of the following:
 - A named signatory on the employer's bank or credit card account.
 - Authorized to transfer money on the employer's behalf.
 - Authorized to enter into financial contracts on the employer's behalf.
- A position that involves access to confidential or proprietary information, including a formula, pattern, compilation, program, device, method, technique, process or trade secret that:
 - Derives independent economic value, actual or potential, from not being generally known to, and not being readily ascertainable by proper means by, other persons who may obtain economic value from the disclosure or use of the information; and
 - Is the subject of an effort that is reasonable under the circumstances to maintain secrecy of the information.
- A position that involves regular access to cash totaling \$10,000 or more of the employer, a customer, or client, during the workday.

Cal. Lab. Code § 1024.5.

Exceptions

The above requirements do not apply to a person or business subject to 15 U.S.C. §§ 6801 - 6809 (Federal law concerning disclosure of nonpublic personal information) and state and federal statutes or regulations implementing those sections if the person or business is subject to compliance oversight by a state or federal regulatory agency with respect to those laws.

Cal. Lab. Code § 1024.5.



Jurisdiction: Colorado

Definitions

Mini-FCRA

No relevant definitions.

Credit Information & History Usage Restrictions

Adverse action means:

For an applicant, denial of employment;

For an employee, demotion, reassignment to a lower-ranked position or to a position with a lower level of compensation, decrease in compensation level, denial of promotion, or termination of employment; or

Any other decision for employment purposes that adversely affected an employee or applicant.

Consumer credit information means written, oral, or other communication of information bearing on an individual's creditworthiness, standing, capacity, or CO history, and includes a credit score, but does not include address, name, or date of birth of an employee associated with a Social Security number, or income or work history verification.

Employment purposes means evaluating a person for employment, hiring, promotion, demotion, reassignment, adjustment in compensation level, or retention as an employee.

Substantially related to the employee's current or potential job means the information contained in a credit report is related to the position for which the employee who is the subject of a report is being evaluated because the position:

- Constitutes executive or management personnel or officers or employees who constitute professional staff to executive and management personnel, and the position involves one or more of the following:
 - Setting the direction or control of a business, division, unit, or an agency of a business;
 - A fiduciary responsibility to the employer;
 - Access to personal or financial information other than information customarily provided in a retail transaction of customers, employees, or the employer;
 - The authority to issue payments, collect debts, or enter into contracts.
- Involves contracts with defense, intelligence, national security, or space agencies of the federal government.
- Is with a bank or financial institution

Colo. Rev. Stat. § 8-2-126; 7 Colo. Code Regs. 1103-4:2 (definitions).

Updated 06/26/2014

FCRA/Mini-FCRA Consumer Report

Disclosure & Authorization

Prior to requesting a report, an employer must:

- Inform the applicant or employee that a credit report may be requested in connection with his or her application for employment; and
- Obtain the individual's written consent.

Colo. Rev. Stat. § 5-18-104.

Updated 08/09/2017

FCRA/Mini-FCRA Investigative Consumer Report

No applicable provisions.

FCRA/Mini-FCRA Adverse Action

No applicable provisions.

Credit Information & History Usage Restrictions

Restrictions

An employer cannot use consumer credit information for employment purposes unless it is substantially related to the employee's current or potential job.

An employer or its agent, representative, or designee cannot require, as a condition of employment, that an employee consent to a request for a report that contains information about the employee's credit score, credit account balances, payment history, savings or checking account balances, or savings or checking account numbers unless:

- The employer is a bank or financial institution;
- The report is required by law; or
- The report is substantially related to the employee's current or potential job and the employer has a bona fide purpose for requesting or using the information that is substantially related to the employee's current or potential job as is disclosed in writing to the employee.

Colo. Rev. Stat. § 8-2-126; 7 Colo. Code Regs. 1103-4:3.

Information Substantially Related to Job

When consumer credit information is substantially related to the employee's current or potential job, an employer can (but is not required to) inquire further of the employee to give him or her an opportunity to explain any unusual or mitigating circumstances where the information may not reflect money management skills but is rather attributable to some other factor, including a layoff, error in credit information, act of identity theft, medical expense, military separation, death, divorce, or separation in the employee's family, student debt, or a lack of credit history.

Colo. Rev. Stat. § 8-2-126; 7 Colo. Code Regs. 1103-4:2 (definitions).

Adverse Action

If an employer wholly or partly relied on credit information to take adverse action against an employee whose information was obtained, it must disclose to the employee that fact, and the particular information relied upon.

For employees, the disclosure must be in writing.

For applicants, the disclosure can be in the same medium by which the individual applied.

Colo. Rev. Stat. § 8-2-126.

Remedies

An aggrieved person can file a complaint with the state labor department, which, after a hearing, may award civil penalties up to \$2,500.

Colo. Rev. Stat. § 8-2-126; 7 Colo. Code Regs. 1103-4:6.



Jurisdiction: Connecticut

Definitions

Credit Information & History Usage Restrictions

Financial Institution means any entity or affiliate of a state bank and trust company, national banking association, state or federally chartered savings bank, state or federally chartered savings and loan association, state or federally chartered credit union, insurance company, investment advisor, broker-dealer or an entity registered with the securities and exchange commission.

Substantially related to the employee's current or potential job means the information contained in the credit report is related to the position for which the prospective or current employee who is the subject of the report is being evaluated because the position:

- Is a managerial position which involves setting the direction or control of a business, division, unit or an agency of a business;
- Involves access to customers', employees' or the employer's personal or financial information other than information customarily provided in a retail transaction;
- Involves a fiduciary responsibility to the employer, including, but not limited to, the authority to issue payments, collect debts, transfer money or enter into contracts;
- Provides an expense account or corporate debit or credit card;
- Provides access to confidential or proprietary business information, or information, including a formula, pattern, compilation, program, device, method, technique, process or trade secret that:
 - Derives independent economic value, actual or potential, from not being generally known to, and not being readily ascertainable by proper means by, other persons who can obtain economic value from the disclosure or use of the information; and
 - Is the subject of efforts that are reasonable under the circumstances to maintain its secrecy; or
- Involves access to the employer's nonfinancial assets valued at \$2,500 or more, including, but not limited to, museum and library collections and to prescription drugs and other pharmaceuticals.

Conn. Gen. Stat. § 31-51tt.

FCRA/Mini-FCRA Consumer Report

No applicable provisions.

FCRA/Mini-FCRA Investigative Consumer Report

No applicable provisions.

FCRA/Mini-FCRA Adverse Action

No applicable provisions.

Credit Information & History Usage Restrictions

Restrictions

An employer or its agent, representative or designee cannot require an employee or prospective employee to consent to a credit report request that contains the information about the individual's credit score, credit account balances, payment history, savings or checking account balances or savings or checking account numbers unless:

- The employer is a financial institution;
- The report is required by law;
- The employer reasonably believes the employee has engaged in specific activity constituting a violation of law related to the employee's employment; or
- The report is substantially related to the employee's current or potential job, or the employer has a bona fide purpose for requesting or using information in the credit report that is substantially job-related and is disclosed, in writing, to the employee or applicant.

Conn. Gen. Stat. § 31-51tt.

Remedies

An aggrieved individual can file a complaint with the state labor department, which, after an investigation and hearing, can impose a civil penalty of \$300 for each prohibited inquiry.

Conn. Gen. Stat. § 31-51tt.



Jurisdiction: District of Columbia

Definitions

Credit information means any written, oral, or other communication of information bearing on an employee's creditworthiness, credit standing, credit capacity, or credit history.

Inquire means any direct or indirect conduct intended to gather credit information using any method, including application forms, interviews, and credit history checks.

Note: Under the Human Rights law, the statutory definition of employee includes any individual employed by or seeking employment from an employer, including unpaid interns. D.C. Code § 2-1401.02(9).

Bill 21-0244, Act 21-0673

Updated 04/13/2017

FCRA/Mini-FCRA Consumer Report

No applicable provisions.

FCRA/Mini-FCRA Investigative Consumer Report

No applicable provisions.

FCRA/Mini-FCRA Adverse Action

No applicable provisions.

Credit Information & History Usage Restrictions

Prohibited Requests and Uses

An employer may not directly or indirectly require, request, suggest, or cause any employee to submit credit information, or use, accept, refer to, or inquire into an employee's credit information.

Adverse Actions

Employers, employment agencies, and labor organizations are prohibited from taking discriminatory action against prospective and current employees based on that prospective or current employee's credit information.

Exceptions

The following exceptions apply under the Act.

- where District law otherwise requires an employer to require, request, suggest, or cause an employee to submit credit information, or use, accept, refer to, or inquire into an applicant's or employee's credit information;
- where the individual is applying for or is employed in certain police officer positions;
- to employees within the Office of the Chief Financial Officer of the District;
- where the individual will work in a position that requires possession of a security clearance under District law;
- to disclosures by District government employees of their credit information to the Board of Ethics and Government Accountability or the Office of the Inspector General, or to the use of such disclosures by those agencies;
- to financial institutions where the position will involve access to personal financial information; and,
- where an employer requests or receives credit information pursuant to a lawful subpoena, court order, or law enforcement investigation.

Penalties, Remedies & Enforcement

An aggrieved applicant or employee who elects to file an administrative complaint with the Office of Human Rights will have his or her complaint investigated and, if the Commission on Human Rights ultimately finds that a covered employer violated the law, the Commission order the employer to cease and desist, and may impose the following fines:

- \$1,000 for the first violation;
- \$2,500 for the second violation; and,
- \$5,000 for each subsequent violation.

Bill 21-0244, Act 21-0673

Updated 04/13/2017



Jurisdiction: Hawaii

Definitions

Credit Information & History Usage Restrictions

Managerial employee means an individual who formulates and effectuates management policies by expressing and making operative the decisions of the individual's employer.

Supervisory employee means an individual having authority, in the interest of the employer, to hire, transfer, suspend, lay off, recall, promote, discharge, assign, reward, or discipline other employees, or responsibility to direct them, or to adjust their grievances, or effectively to recommend such action, if in connection with the foregoing the exercise of such authority is not of a merely routine or clerical nature, but requires the use of independent judgment

Haw. Rev. Stat. § 378-2.7.

FCRA/Mini-FCRA Consumer Report

No applicable provisions.

FCRA/Mini-FCRA Investigative Consumer Report

No applicable provisions.

FCRA/Mini-FCRA Adverse Action

No applicable provisions.

Credit Information & History Usage Restrictions

Anti-Discrimination

An employer cannot refuse to hire or employ, bar or terminate from employment, or otherwise discriminate against an individual on the basis of credit history.

Haw. Rev. Stat. § 378-2.

Restrictions

Inquiry into and consideration of a prospective employee's credit history or credit report can take place only after the prospective employee has received a conditional offer of employment, which may be withdrawn if information in the credit history or credit report is directly related to a bona fide occupational qualification.

Haw. Rev. Stat. § 378-2.7.

Exceptions

The anti-discrimination provisions do not apply to:

- Employers who are expressly permitted or required to inquire into an individual's credit history for employment purposes pursuant to any federal or state law.
- Managerial or supervisory employees.
- Financial institutions in which deposits are insured by a federal agency having jurisdiction over the financial institution.

Additionally, the above provisions do not prohibit or prevent the establishment and maintenance of bona fide occupational qualifications reasonably necessary to the normal operation of a particular business or enterprise that have a substantial relationship to the functions and responsibilities of prospective or continued employment.

Haw. Rev. Stat. § 378-3.



Jurisdiction: Illinois

Definitions

Credit Information & History Usage Restrictions

Credit history means an individual's past borrowing and repaying behavior, including paying bills on time and managing debt and other financial obligations.

Credit report means any written or oral communication of any information by a consumer reporting agency that bears on an individual's creditworthiness, credit standing, credit capacity, or credit history.

The term employer does not include:

- Any bank or financial holding company, bank, savings bank, savings and loan association, credit union, trust company, or any subsidiary or affiliate of same;
- Any authorized insurance or surety business, and those who act on behalf of a company engaged in the insurance or surety business;
- Any state law enforcement or investigative units, such as the executive inspector general, state police, and departments of corrections, juvenile justice, and natural resources;
- Any state or local government agency that requires use of an employee or applicant credit history or credit report; and
- Any entity defined as a "debt collector" by federal or state statute.

820 Ill. Comp. Stat. 70/5.

FCRA/Mini-FCRA Consumer Report

No applicable provisions.

FCRA/Mini-FCRA Investigative Consumer Report

No applicable provisions.

FCRA/Mini-FCRA Adverse Action

No applicable provisions.

Credit Information & History Usage Restrictions

Anti-Discrimination

An employer cannot fail or refuse to hire or recruit, discharge, or otherwise discriminate against an individual with respect to employment, compensation, or a term, condition, or privilege of employment because of the individual's history or credit report.

820 Ill. Comp. Stat. 70/10.

Anti-Retaliation

An employer cannot retaliate or discriminate against an individual because he or she has done or was about to do any of the following:

- File a complaint under the law;
- Testify, assist, or participate in an investigation, proceeding, or action concerning violation of the law;
- Oppose a violation of the law.

820 Ill. Comp. Stat. 70/15.

Restrictions

An employer cannot:

- Inquire about an applicant's or employee's credit history;
- Order or obtain an applicant's or employee's credit report from a consumer reporting agency.

820 Ill. Comp. Stat. 70/10.

Additionally, an employer cannot require an applicant or employee to waive any right under the Act, and an agreement to waive such a right is invalid and unenforceable.

820 Ill. Comp. Stat. 70/20

Exceptions

Bona Fide Occupational Requirement

The anti-discrimination and restrictions provisions do not prevent an inquiry or employment action if a satisfactory credit history is an established bona fide occupational requirement of a particular position or a particular group of an employer's employees.

A satisfactory credit history is not a bona fide occupational requirement unless at least one of the following circumstances is present:

- State or federal law requires bonding or other security covering an individual holding the position;
- The duties of the position include custody of or unsupervised access to cash or marketable assets valued at \$2,500 or more;

- The duties of the position include signatory power over business assets of \$100 or more per transaction;
- The position is a managerial position which involves setting the direction or control of the business;
- The position involves access to personal or confidential information, financial information, trade secrets, or state or national security information;
- The position meets criteria in administrative rules, if any, that the U.S. Department of Labor or the Illinois Department of Labor has promulgated to establish the circumstances in which a credit history is a bona fide occupational requirement;
- The employee's or applicant's credit history is otherwise required by or exempt under federal or state law.

820 Ill. Comp. Stat. 70/10.

Investigations

The law does not prevent employers from conducting a thorough background investigation, which may include obtaining a report without information on credit history or an investigative report without information on credit history, or both, as permitted under the FCRA, if this is used for employment purposes only.

820 Ill. Comp. Stat. 70/30.

Updated 01/05/2017



Jurisdiction: Illinois (Chicago)

Chicago

Chicago employers may not:

- (1) Fire or refuse to hire or recruit, discharge, or otherwise discriminate against an individual with respect to employment, compensation, or a term, condition, or privilege of employment because of the individual's credit history or credit report;
- (2) Inquire about an applicant's or employee's credit history; and,
- (3) Order or obtain an applicant's or employee's credit report from a consumer reporting agency.

Chicago, Ill., Mun. Code § 2-160-053.

Credit history means a record of an individual's past borrowing and repaying, including information about late payments and bankruptcy.

Credit report means any written or other communication of any information by a consumer reporting agency that bears on a consumer's creditworthiness, credit standing, credit capacity, or credit history.

Chicago, Ill., Mun. Code § 2-160-020.

Additionally, it is unlawful for Chicago employers to directly or indirectly discriminate against any individual in hiring, classification, grading, discharge, discipline, compensation or other term or condition of employment because of the individual's credit history. There is an exception for bona fide occupational qualification.

Chicago, Ill., Mun. Code § 2-160-030.

Exemptions

The prohibitions on credit checks do not apply to:

- (1) Certain financial entities, including banks and financial holding companies;
- (2) Companies authorized to engage in any kind of insurance or surety businesses authorized under Illinois Insurance Code;
- (3) Certain law enforcement; and,
- (4) Debt collectors recognized under federal or state law.

Exceptions

Employers may consider credit history when it is a bona fide occupational requirement, meaning that one of the following circumstances is present:

- (1) State or federal law requires bonding or other security covering an individual holding the position;
- (2) The duties of the position include custody of or unsupervised access to cash or marketable assets valued at \$2,500 or more;
- (3) The duties of the position include signatory power over business assets of \$100 or more per transaction;
- (4) The position is a managerial position which involves setting the direction or control of the business;
- (5) The position involves access to personal or confidential information, financial information, trade secrets, or state or national security information;
- (6) The position meets criteria in administrative rules, if any, that the U.S. Department of Labor or the Illinois Department of Labor has promulgated to establish the circumstances in which a satisfactory credit history is a bona fide occupational requirement;
- (7) The employee's or applicant's credit history is otherwise required by or exempt under other applicable law.

Chicago, Ill., Code § 2-160-053.

Enforcement

The Chicago Commission on Human Relations receives and investigates complaints.

Chicago, Ill., Mun. Code § 2-160-090.

There is no private right of action under the Chicago ordinance.

Penalties

Employers that violate the credit provisions will be fined between \$100 and \$1000 for each offense. In addition, any City licensee who violates may be subject to license discipline. Every day that a violation shall continue shall constitute a separate and distinct offense.

Chicago, Ill., Mun. Code § 2-160-120.

Updated 10/18/2017



Jurisdiction: Illinois (Cook County)

Cook County

Employers employing 1 or more employees with a principal place of business in Cook County or doing business in Cook County may not:

- (1) Fire or refuse to hire or recruit, discharge, or otherwise discriminate against an individual with respect to employment, classification, grading, discipline, selection for training and apprenticeship, compensation, or other terms, conditions, or privileges of employment because of the individual's credit history or credit report;
- (2) Inquire about an employee's credit history; or,
- (3) Order or obtain an employee's credit report from a consumer reporting agency.

The ordinance specifically states that employers are not prohibited from conducting a thorough background investigation, which may include obtaining a report without credit history information, or any investigative report without credit history information, or both, as permitted under the Fair Credit Reporting Act.

Cook Cty., Ill., Code §§ 42-31, 42-35(g).

Credit history means a record of an individual's past borrowing and repaying, including information about late payments and bankruptcy.

Credit report means any written or other communication of any information by a consumer reporting agency that bears on a consumer's credit worthiness, credit standing, credit capacity, or credit history.

Employee means any individual whether paid or unpaid, engaged in employment for an employer; or, an applicant for employment.

Cook Cty., Ill., Code § 42-31.

Exemptions

The prohibitions on credit checks do not apply to:

- (1) Certain financial entities, including banks and financial holding companies;
- (2) Companies authorized to engage in any kind of insurance or surety businesses authorized under Illinois Insurance Code;
- (3) Certain law enforcement; and,
- (4) Debt collectors recognized under federal or state law, or under county ordinance.

Exceptions

Employers may consider credit history when it is a bona fide occupational requirement, meaning that one of the following circumstances is present:

- (1) State or federal law requires bonding or other security for the position;
- (2) The duties of the position include power custody of or unsupervised access to cash or marketable assets valued at \$2500 or more;
- (3) Job duties include signatory power over business assets of \$100 or more per transaction;
- (4) The position is managerial and involves setting the direction or control of the business;
- (5) The position involves access to certain personal or confidential information, financial information, trade secrets, or state or national security information;
- (6) The position meets criteria in federal or state administrative rules regarding when credit history is a bona fide occupational requirement; or,
- (7) The employee's or applicant's credit history is required by or exempt under other applicable law.

Cook Cty., Ill., Code §§ 42-31, 42-35(g).

Enforcement

An aggrieved person may file a complaint with the Cook County Commission on Human Rights. Additionally, any individual injured by a violation of this article has a cause of action against the violator.

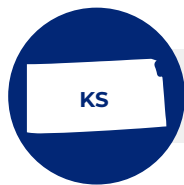
Cook Cty., Ill., Code § 42-34.

Penalties & Remedies

Remedies include damages, backpay, hiring or reinstatement. The Commission may also issue fines of between \$100 and \$500 for each offense.

Cook Cty., Ill., Code § 42-34.

Updated 10/18/2017



Jurisdiction: Kansas

Definitions

Mini-FCRA

Consumer report means any written, oral, or other communication of any information by a consumer reporting agency bearing on an individual's credit worthiness, credit standing, credit capacity, character, general reputation, personal characteristics, or mode of living which is used or expected to be used or collected in whole or in part for the purpose of serving as a factor in establishing the individual's eligibility for employment purposes.

Investigative consumer report means a consumer report or portion thereof in which information on an individual's character, general reputation, personal characteristics, or mode of living is obtained through personal interviews with neighbors, friends, or associates of the individual reported on or with others with whom the individual is acquainted or who may have knowledge concerning any such items of information.

However, such information does not include specific factual information on an individual's credit record obtained directly from a creditor of the individual or from a consumer reporting agency when such information was obtained directly from a creditor of the individual or from the individual.

Employment purposes, when used in connection with a consumer report, means a report used for the purpose of evaluating an individual for employment, promotion, reassignment or retention as an employee.

Kan. Stat. Ann. § 50-702.

FCRA/Mini-FCRA Consumer Report

No applicable provisions.

FCRA/Mini-FCRA Investigative Consumer Report

Disclosure & Authorization

An employer cannot procure or cause to be prepared an investigative consumer report unless:

- It clearly and accurately discloses that an investigative consumer report, including information as to character, general reputation, personal characteristics, and mode of living, whichever are applicable,

may be made, and such disclosure:

- Is in writing, mailed or otherwise delivered, not later than 3 days after the date on which the report was first requested; and
- Includes a statement informing the individual of the right to request the additional disclosures; or
- The report is to be used for employment purposes for which the individual has not specifically applied.

Additionally, upon written request made by the report's subject within a reasonable period of time after the receipt of the disclosure required, an employer must make a complete and accurate disclosure of the nature and scope of the investigation requested.

This disclosure must be written, mailed or otherwise delivered, not later than 5 days after the date on which the request for such disclosure was received or such report was first requested, whichever is later.

Kan. Stat. Ann. § 50-705.

FCRA/Mini-FCRA Adverse Action

Whenever employment is denied either wholly or partly because of a report, an employer must so advise the individual and supply the name and address of the consumer reporting agency that made the report.

Kan. Stat. Ann. § 50-714.

Credit Information & History Usage Restrictions

No applicable provisions.



Jurisdiction: Louisiana

Definitions

No applicable provisions.

FCRA/Mini-FCRA Consumer Report

No applicable provisions.

FCRA/Mini-FCRA Investigative Consumer Report

No applicable provisions.

FCRA/Mini-FCRA Adverse Action

Adverse Action

If an individual is denied employment wholly or partly based on the report, he or she is entitled to a copy of the credit report without charge, provided that a request is made in writing from the agency within 60 days of adverse action.

An employer must provide the name of the credit reporting agency which provided the information used when taking adverse action.

La. Rev. Stat. Ann. § 9:3571.1.

Credit Information & History Usage Restrictions

No applicable provisions.

However, in June 2010, the Louisiana State Senate passed Senate Resolution 120, which urged the Louisiana Workforce Commission to regulate the use of credit reports as criteria for employment.

The resolution states that “it should be clear that to use a person’s credit rating, credit score, credit capacity, credit history, or other similar information for employment other than that in the financial industry or in law enforcement should be considered a discriminatory practice and deemed such by the Louisiana Workforce Commission.”

However, to date, no regulation has been promulgated.



Jurisdiction: Maine

Definitions

Maine's mini-FCRA, as it relates to all relevant purposes of this survey concerning employment-related requirements, expressly incorporates the federal standards, and simply requires compliance with the FCRA. However, although the FCRA standards are adopted, additional penalties and remedies exist under state law.

Me. Stat. tit. 10, §§ 1306 et seq.

Updated 04/27/2015

FCRA/Mini-FCRA Consumer Report

Maine's mini-FCRA, as it relates to all relevant purposes of this survey concerning employment-related requirements, expressly incorporates the federal standards, and simply requires compliance with the FCRA. However, although the FCRA standards are adopted, additional penalties and remedies exist under state law.

Me. Stat. tit. 10, §§ 1306 et seq.

Updated 04/27/2015

FCRA/Mini-FCRA Investigative Consumer Report

Maine's mini-FCRA, as it relates to all relevant purposes of this survey concerning employment-related requirements, expressly incorporates the federal standards, and simply requires compliance with the FCRA. However, although the FCRA standards are adopted, additional penalties and remedies exist under state law.

Me. Stat. tit. 10, §§ 1306 et seq.

Updated 04/27/2015

FCRA/Mini-FCRA Adverse Action

Maine's mini-FCRA, as it relates to all relevant purposes of this survey concerning employment-related requirements, expressly incorporates the federal standards, and simply requires compliance with the FCRA. However, although the FCRA standards are adopted, additional penalties and remedies exist under state law.

Me. Stat. tit. 10, §§ 1306 et seq.

Updated 04/27/2015

Credit Information & History Usage Restrictions

No applicable provisions.



Jurisdiction: Maryland

Definitions

Mini-FCRA

Consumer report means any written, oral, or other communication of any information by a consumer reporting agency bearing on an individual's credit worthiness, credit standing, credit capacity, character, general reputation, personal characteristics, or mode of living which is used or expected to be used or collected in whole or in part for the purpose of serving as a factor in establishing the individual's eligibility for employment purposes.

Investigative consumer report means a consumer report or portion of it in which information on an individual's character, general reputation, personal characteristics, or mode of living is obtained through personal interviews with neighbors, friends, or associates of the individual reported on or with others with whom he is acquainted or who may have knowledge concerning any items of information.

However, the information does not include specific factual information on an individual's credit record obtained directly from a creditor of the individual or from a consumer reporting agency when the information was obtained directly from a creditor of the individual or from the individual.

Employment purposes, when used in connection with a consumer report, means a report used for the purpose of evaluating an individual for employment, promotion, reassignment or retention as an employee.

Md. Code Ann., Com. Law § 14-1201.

FCRA/Mini-FCRA Consumer Report

No applicable provisions.

FCRA/Mini-FCRA Investigative Consumer Report

Disclosure & Authorization

An employer cannot procure or cause to be prepared an investigative consumer report unless:

- It clearly and accurately discloses that a report, including information as to character, general reputation, personal characteristics, and mode of living, whichever are applicable, may be made, and the disclosure:
 - Is in writing, mailed, or otherwise delivered, not later than 3 days after the report request date; and
 - Includes a statement concerning the individual's right to request the additional disclosures provided; or

- The report is to be used for employment purposes for which the individual has not specifically applied.

Upon an individual's written request made within a reasonable period of time after receiving the disclosure, an employer must provide a complete and accurate disclosure of the nature and scope of the investigation requested.

This disclosure must be written and mailed, or otherwise delivered, not later than 5 days after the disclosure request receipt date or the date the report was first requested, whichever is later.

Md. Code Ann., Com. Law § 14-1204.

FCRA/Mini-FCRA Adverse Action

Adverse Action

Whenever employment is denied because of a report, an employer must so advise the individual and supply the name and address of the consumer reporting agency that made the report.

Md. Code Ann., Com. Law § 14-1212.

Credit Information & History Usage Restrictions

Restrictions

An employer cannot use an applicant's or employee's credit report or credit history in determining whether to:

- Deny an applicant employment;
- Discharge an employee; or
- Determine compensation or the terms, conditions or privileges of employment.

Md. Code Ann., Lab. & Empl. § 3-711.

Exceptions

The prohibition on using credit report and history information does not apply to an employer that is:

- Required to inquire into an applicant's or employee's credit report or credit history under federal law or any provision of state law for the purposes of employment;
- A financial institution that accepts deposits that are insured by a federal agency, or an affiliate or subsidiary of the financial institution;
- A credit union share guaranty corporation that is approved by the Maryland Commissioner of Financial Regulation; or
- An entity or its affiliate that is registered as an investment advisor with the U.S. Securities and Exchange Commission.

Md. Code Ann., Lab. & Empl. § 3-711.

Permitted Use

An employer can request or use an applicant's or employee's credit report or credit history if:

- The applicant has received an offer of employment; and
- The credit report or credit history will be used for a non-prohibited purpose; or
- The employer has a bona fide purpose for requesting or using information in the credit report or credit history that is:
 - Substantially job-related; and
 - Disclosed, in writing, to the employee or applicant.

Md. Code Ann., Lab. & Empl. § 3-711.

Bona Fide Purpose

A position for which an employer has a bona fide purpose that is substantially job-related for requesting or using information in a credit report or credit history includes a position that:

- Is managerial and involves setting the direction or control of a business, or a department, division, unit, or agency of a business;
- Involves access to personal information, as defined in section 14-3501 of the Commercial Law Article, of a customer, employee, or employer, except for personal information customarily provided in a retail transaction;
- Involves a fiduciary responsibility to the employer, including the authority to issue payment, collect debts, transfer money, or enter into contracts;
- Is provided an expense account or a corporate debit or credit card; or
- Has access to:
 - Information, including a formula, pattern, compilation, program, device, method, technique or process, that:
 - Derives independent economic value, actual or potential, from not being generally known to, and not being readily ascertainable by proper means by, other persons who can obtain economic value from the information's disclosure; and
 - Is the subject of efforts that are reasonable under the circumstances to maintain its secrecy; or
 - Other confidential business information;

Md. Code Ann., Lab. & Empl. § 3-711.

Investigations

Employers are not prohibited from performing an employment-related background investigation that:

- Includes use of a consumer report or investigative consumer report;
- Is authorized under the FCRA; and
- Does not involve investigation of credit information.

Md. Code Ann., Lab. & Empl. § 3-711.



Jurisdiction: Massachusetts

Definitions

Mini-FCRA

Consumer report means any written, oral or other communication of any information by a consumer reporting agency bearing on an individual's credit worthiness, credit standing or credit capacity which is used or expected to be used or collected in whole or in part for the purpose of serving as a factor in establishing the individual's eligibility for employment purposes.

Investigative consumer report means a consumer report or portion thereof in which information on an individual's character, general reputation, personal characteristics, or mode of living is obtained through personal interviews with neighbors, friends, or associates of the individual reported on or with others with whom he is acquainted or who may have knowledge concerning any such items of information.

However, such information does not include specific factual information on an individual's credit record obtained directly from a creditor of the individual or from a consumer reporting agency when such information was obtained directly from a creditor of the individual or from the individual.

Employment purposes, when used in connection with a consumer report, means a report used for the purpose of evaluating an individual for employment, promotion, reassignment or retention as an employee.

Mass. Gen. Laws ch. 93, § 50.

FCRA/Mini-FCRA Consumer Report

No applicable provisions.

FCRA/Mini-FCRA Investigative Consumer Report

Disclosure & Authorization

An employer cannot procure or cause to be prepared an investigative consumer report unless:

- It clearly and accurately discloses in writing, prior to requesting the report, that an investigative consumer report commonly includes information as to the individual's character, general reputation, personal characteristics, and mode of living, and the disclosure includes the precise nature and scope of the investigation requested and the right to have a copy of the report upon request; and
- The individual provides written permission prior to a report request.

Mass. Gen. Laws ch. 93, § 53.

FCRA/Mini-FCRA Adverse Action

Adverse Action

Whenever employment is denied or terminated based on a report, an employer must, within 10 business days of its decision to deny or terminate employment, notify the individual in writing.

The notice must be in a clear and conspicuous format, no smaller than 10- point type, and must contain the name, address, and toll-free telephone number of any consumer reporting agency that provided any report which was reviewed or otherwise taken into account when effectuating the adverse action, and must inform the individual of his or her rights in substantially the following manner:

“You have the right to obtain a free copy of your credit report within sixty days from the consumer credit reporting agency which has been identified on this notice. The consumer credit reporting agency must provide someone to help you interpret the information on your credit report. Each calendar year you are entitled to receive, upon request, one free consumer report.

You have the right to dispute inaccurate information by contacting the consumer credit reporting agency directly. If you have notified a consumer credit reporting agency in writing that you dispute the accuracy of information in your file, the agency must then, within thirty business days, reinvestigate and modify or remove inaccurate information. The consumer credit reporting agency may not charge a fee for this service.

If reinvestigation does not resolve the dispute to your satisfaction, you may send a statement to the consumer credit reporting agency, to be kept in your file, explaining why you think the record is inaccurate. The consumer credit reporting agency must include your statement about the disputed information in a report it issues about you.”

Mass. Gen. Laws ch. 93, § 62.

Credit Information & History Usage Restrictions

No applicable provisions.



Jurisdiction: Minnesota

Definitions

Mini-FCRA

Consumer report means a written, oral, or other communication of information by a consumer reporting agency bearing on an individual's credit worthiness, credit standing, credit capacity, character, general reputation, personal characteristics, or mode of living that is used or expected to be used or collected in whole or in part for employment purposes.

Investigative consumer report means a consumer report in which information on an individual's character, general reputation, personal characteristics, or mode of living is obtained through personal interviews with neighbors, friends, or associates of the individual or with others with whom the individual is acquainted or who may have knowledge concerning the information.

However, it does not include specific factual information on an individual's credit record obtained directly from a creditor of the individual or from a consumer reporting agency when the information was obtained directly from a creditor of the individual or from the individual.

Employment purposes means evaluating an individual for hiring, compensation, promotion, reassignment, retention, or with respect to other terms and conditions of employment.

Minn. Stat. § 13C.001.

FCRA/Mini-FCRA Consumer Report

Disclosure & Authorization

An employer cannot obtain or cause to be prepared a consumer report on an individual for employment purposes unless it clearly and accurately discloses that a consumer report may be obtained or caused to be prepared.

The disclosure must:

- Inform the individual of his or her right to request additional information on the nature of the report.
- Be in writing and provided before the consumer report is obtained or caused to be prepared.

If a written application is provided for employment purposes by an employer or prospective employer, the disclosure must be included in or accompany the application. The disclosure must include a box that the person may check off and return to receive a copy of the consumer report.

If an individual requests a copy of the report, the employer must request that the reporting agency provide a copy to the individual; the report must be sent within 24 hours after the employer receives the same, and must include a statement of the individual's right to dispute and correct any errors and of the procedures under 15 U.S.C. §§ 1681 to 1681t. The report must be provided free of charge.

Minn. Stat. § 13C.02.

Exceptions

The above requirements do not apply to:

- A consumer report to be used for employment purposes for which the individual has not specifically applied.
- A consumer report used for an investigation of a current violation of a criminal or civil statute by a current employee or an investigation of employee conduct for which the employer may be liable, until the investigation is completed.

Minn. Stat. § 13C.02.

FCRA/Mini-FCRA Investigative Consumer Report

Disclosure & Authorization

An employer cannot obtain or cause to be prepared an investigative consumer report on an individual for employment purposes unless it clearly and accurately discloses that a consumer report may be obtained or caused to be prepared.

The disclosure must inform the individual that the report may include information obtained through personal interviews regarding the individual's character, general reputation, personal characteristics, or mode of living.

The disclosure must:

- Inform the individual of his or her right to request additional information on the nature of the report.
- Be in writing and provided before the consumer report is obtained or caused to be prepared.

If a written application is provided for employment purposes by an employer or prospective employer, the disclosure must be included in or accompany the application. The disclosure must include a box that the person may check off and return to receive a copy of the consumer report.

If an individual requests a copy of the report, the employer must request that the reporting agency provide a copy to the individual; the report must be sent within 24 hours after the employer receives the same, and must include a statement of the individual's right to dispute and correct any errors and of the procedures under 15 U.S.C. §§ 1681 to 1681t. The report must be provided free of charge. Minn. Stat. § 13C.02.

Exceptions

The above requirements do not apply to:

- A consumer report to be used for employment purposes for which the individual has not specifically applied.
- A consumer report used for an investigation of a current violation of a criminal or civil statute by a current employee or an investigation of employee conduct for which the employer may be liable, until the investigation is completed.

Minn. Stat. § 13C.02.

FCRA/Mini-FCRA Adverse Action

Adverse Action

If employment is denied or other adverse action for employment purposes is taken wholly or partly because of the report, the employer must so advise the individual and notify him or her of the right to receive a copy of the report if a copy was not received.

An employer must also give the individual the name and address of the consumer reporting agency that made the report and notice of the right to dispute and correct any errors and of the procedures under 15 U.S.C. §§ 1681 to 1681t.

The report must be provided free of charge.

Minn. Stat. § 13C.03.

Credit Information & History Usage Restrictions

No applicable provisions.



Jurisdiction: Montana

Definitions

Mini-FCRA

Consumer report means any written, oral, or other communication of any information by a consumer reporting agency bearing on an individual's credit worthiness, credit standing, credit capacity, character, general reputation, personal characteristics, or mode of living that is used or expected to be used or collected in whole or in part for the purpose of serving as a factor in establishing the individual's eligibility for employment purposes.

Investigative consumer report means a consumer report or portion of a consumer report in which information on an individual's character, general reputation, personal characteristics, or mode of living is obtained through personal interviews with neighbors, friends, or associates of the individual reported on or with others with whom the individual is acquainted or who may have knowledge concerning any items of information.

However, the information does not include specific factual information on an individual's credit record obtained directly from a creditor of the individual or from a consumer reporting agency when the information was obtained directly from a creditor of the individual or from the individual.

Employment purposes, when used in connection with a consumer report, means a report used for the purpose of evaluating an individual for employment, promotion, reassignment, or retention as an employee

Mont. Code Ann. § 31-3-102.

FCRA/Mini-FCRA Consumer Report

No applicable provisions.

FCRA/Mini-FCRA Investigative Consumer Report

Disclosure & Authorization

An employer cannot procure or cause to be prepared or distribute an investigative consumer report unless:

- It clearly and accurately discloses, in writing no later than 3 days after the report is requested, that a report, including information as to the individual's character, general reputation, personal characteristics, and mode of living, whichever are applicable, may be made;
 - The notice must include a statement informing the individual of his or her right to request the additional disclosures; or

- The report will be used for employment purposes for which the individual applied.

Mont. Code Ann. § 31-3-113(1)

If an individual makes a request within a reasonable period of time, an employer must make a complete and accurate disclosure of the nature, scope, and substance of the investigation requested.

This disclosure must be in writing and mailed or otherwise delivered not later than 5 days after the disclosure request was received, or the date the report was first requested, whichever is later.

Mont. Code Ann. § 31-3-113.

FCRA/Mini-FCRA Adverse Action

Adverse Action

If employment is denied either wholly or partly because of the report, the employer must advise the individual of this fact and supply the name and address of the consumer reporting agency that made the report.

Mont. Code Ann. § 31-3-131.

Credit Information & History Usage Restrictions

No applicable provisions.



Jurisdiction: Nevada

Definitions

Mini-FCRA

Adverse action includes the denial of employment or any other decision for employment purposes that adversely affects a current or prospective employee.

Nev. Rev. Stat. § 598C.020.

Consumer report means any communication, written or oral, by a reporting agency regarding the payment history of a particular individual, including information regarding his or her credit worthiness, credit standing or credit capacity, which is intended for present or future use in whole or in part to serve as a factor in determining the individual's eligibility for purposes relating to employment.

Nev. Rev. Stat. § 598C.060.

Credit Information & History Usage Restrictions

Consumer credit report means any written, oral or other communication of information by a consumer reporting agency bearing on the credit worthiness, credit standing or credit capacity of a person.

Nev. Rev. Stat. § 613.530

Credit information means any information that is related to credit and derived from a consumer credit report or found on a consumer credit report.

The term does not include information that is not related to credit, regardless of whether it is contained in a consumer credit report.

Nev. Rev. Stat. § 613.550

FCRA/Mini-FCRA Consumer Report

No applicable provisions.

FCRA/Mini-FCRA Investigative Consumer Report

No applicable provisions.

FCRA/Mini-FCRA Adverse Action

Adverse Action

If an employer takes adverse action against an individual, it must:

- Provide notice of the action taken;
- Furnish the name and address of the reporting agency; and
- Inform the individual of his or her right to obtain a copy of the report from the agency.

Nev. Rev. Stat. § 598C.170.

Credit Information & History Usage Restrictions

Anti-Discrimination

An employer cannot discharge, discipline, discriminate against in any manner or deny employment or promotion to, or threaten to take any such action against any employee or prospective employee:

- Who refuses, declines or fails to submit a consumer credit report or other credit information; or
- On the basis of the results of a consumer credit report or other credit information.

Nev. Rev. Stat. § 613.570.

Anti-Retaliation

An employer cannot discharge, discipline, discriminate against in any manner or deny employment or promotion to, or threaten to take any such action against any employee or prospective employee who has:

- Filed any complaint or instituted or caused to be instituted any legal proceeding pursuant to the law;
- Testified or may testify in any legal proceeding instituted under the law; or
- Exercised his or her rights, or has exercised on behalf of another person the rights afforded to him or her pursuant to the law.

Nev. Rev. Stat. § 613.570.

Restrictions

An employer cannot:

- Directly or indirectly, require, request, suggest or cause any employee or prospective employee to submit a consumer credit report or other credit information as a condition of employment;
- Use, accept, refer to or inquire concerning a consumer credit report or other credit information.

Nev. Rev. Stat. § 613.570.

Exceptions

An employer can request or consider a consumer credit report or other credit information for the purpose of evaluating an employee or prospective employee for employment, promotion, reassignment or retention as an employee if:

- The employer is required or authorized, pursuant to state or federal law, to use a consumer credit report or other credit information for that purpose;
- The employer reasonably believes that the employee or prospective employee has engaged in specific activity which may constitute a violation of state or federal law; or
- The information contained in the consumer credit report or other credit information is reasonably related to the position for which the employee or prospective employee is being evaluated for employment, promotion, reassignment or retention as an employee.

Nev. Rev. Stat. § 613.580.

Reasonably Related

The information in the consumer credit report or other credit information is deemed reasonably related to such an evaluation if the duties of the position involve:

- The care, custody and handling of, or responsibility for, money, financial accounts, corporate credit or debit cards, or other assets;
- Access to trade secrets or other proprietary or confidential information;
- Managerial or supervisory responsibility;
- The direct exercise of law enforcement authority as an employee of a state or local law enforcement agency;
- The care, custody and handling of, or responsibility for, the personal information of another person;
- Access to the personal financial information of another person;
- Employment with a financial institution that is chartered under state or federal law, including a subsidiary or affiliate of such a financial institution; or
- Employment with a licensed gaming establishment (Nev. Rev. Stat. § 463.0169).

Nev. Rev. Stat. § 613.580.

Remedies

An employer who violates the law is liable to the aggrieved employee or prospective employee for any legal or equitable relief as may be appropriate, including employment of a prospective employee, reinstatement or promotion of an employee and payment of lost wages and benefits.

A private lawsuit can be filed against the employer by an aggrieved employee or applicant individually or on behalf of other similarly situated individuals. The suit must be filed within 3 years of an alleged violation.

If successful, a court, in its discretion, may allow the prevailing party reasonable costs, including attorney's fees.

Nev. Rev. Stat. § 613.590.

Additionally, the state labor department may impose an administrative penalty up to \$9,000 against the employer for each violation. Moreover, it may bring a lawsuit against the employer and a court may issue, without bond, a temporary or permanent restraining order or injunction to require compliance with the law, including any legal or equitable relief incident that may be appropriate, such as employment of a prospective employee, reinstatement or promotion of an employee, and payment of lost wages and benefits.

Nev. Rev. Stat. § 613.600.



Jurisdiction: New Hampshire

Definitions

Mini-FCRA

Consumer report means any written, oral, or other communication of any information by a consumer reporting agency bearing on an individual's credit worthiness, credit standing, credit capacity, character, general reputation, personal characteristics, or mode of living which is used or expected to be used or collected in whole or in part for the purpose of serving as a factor in establishing the individual's eligibility for employment purposes

Investigative consumer report means a consumer report or portion thereof in which information on an individual's character, general reputation, personal characteristics, or mode of living is obtained through personal interviews with neighbors, friends, or associates of the individual reported on or with others with whom he is acquainted or who may have knowledge concerning any such items of information.

However, such information does not include specific factual information on an individual's credit record obtained directly from a creditor of the individual or from a consumer reporting agency when such information was obtained directly from a creditor of the individual or from the individual.

Employment purposes, when used in connection with a consumer report, means a report used for the purpose of evaluating an individual for employment, promotion, reassignment or retention as an employee.

N.H.. Rev. Stat. Ann. § 359-B:3.

FCRA/Mini-FCRA Consumer Report

No applicable provisions.

FCRA/Mini-FCRA Investigative Consumer Report

Disclosure & Authorization

An employer cannot procure or cause to be prepared an investigative consumer report unless:

- It clearly and accurately discloses that an investigative consumer report including information as to character, general reputation, personal characteristics, and mode of living, whichever are applicable, may be made, and such disclosure:
 - Is written, mailed or otherwise delivered not later than 3 days after the date on which the report was first requested, and

- Includes a statement informing the individual of the right to request the additional disclosures, or
- The report is to be used for employment purposes for which the individual has not specifically applied.

N.H. Rev. Stat. Ann. § 359-B:6.

Upon an individual's written request made within a reasonable period of time after the receipt of the above-referenced disclosure, an employer must make a complete and accurate disclosure of the nature and scope of the investigation requested.

This disclosure must be written, mailed or otherwise delivered not later than 5 days after the date on which the request for such disclosure was received or such report was first requested, whichever is later.

N.H. Rev. Stat. Ann. § 359-B:6.

FCRA/Mini-FCRA Adverse Action

Adverse Action

If employment is denied either wholly or partly because of a report, an employer must so advise the individual and supply the name and address of the consumer reporting agency that made the report.

N.H. Rev. Stat. Ann. § 359-B:15.

Credit Information & History Usage Restrictions

No applicable provisions.



Jurisdiction: New Jersey

Definitions

Mini-FCRA

Adverse action has the same meaning as in the FCRA (See Federal section).

Consumer report means any written, oral or other communication of any information by a consumer reporting agency bearing on an individual's credit worthiness, credit standing, credit capacity, character, general reputation, personal characteristics or mode of living which is used or expected to be used or collected in whole or in part for the purpose of serving as a factor in establishing the individual's eligibility for employment purposes.

Investigative consumer report means a consumer report or a portion thereof in which information on an individual's character, general reputation, personal characteristics or mode of living is obtained through personal interviews with neighbors, friends or associates of the individual who is the subject of the report or with others with whom the individual is acquainted or who may have knowledge concerning any of those items of information.

However, this information does not include specific factual information on an individual's credit record obtained directly from a creditor of the individual or from a consumer reporting agency when the information was obtained directly from a creditor of the individual or from the individual.

Employment purposes means, when used in connection with a consumer report, a report used for the purpose of evaluating an individual for employment, promotion, reassignment or retention as an employee.

N.J. Stat. Ann. § 56:11-30.

FCRA/Mini-FCRA Consumer Report

Disclosure & Authorization

An employer cannot procure, or cause to be procured, a consumer report for employment purposes unless:

- A clear and conspicuous disclosure has been made in writing to the individual 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
- The individual has provided written authorization for the report to be obtained.

N.J. Stat. Ann. § 56:11-31.

FCRA/Mini-FCRA Investigative Consumer Report

Disclosure & Authorization

An employer cannot procure, or cause to be prepared, an investigative consumer report unless:

- It is clearly and accurately disclosed in writing to the individual, prior to requesting the report, that an investigative consumer report commonly includes information regarding character, general reputation, personal characteristics, and mode of living, and the disclosure includes the precise nature and scope of the investigation requested and the right of the individual to have a copy of the report upon request; and
- The individual provides written permission prior to report request.

N.J. Stat. Ann. § 56:11-33.

FCRA/Mini-FCRA Adverse Action

Pre-Adverse Action

In using a consumer report for employment purposes, before taking any adverse action based wholly or partly on the report, an employer must provide the individual:

- A copy of the report; and
- A description in writing of the rights of the individual under the law and the FCRA.

N.J. Stat. Ann. § 56:11-31.

Credit Information & History Usage Restrictions

No applicable provisions.



Jurisdiction: New Mexico

Definitions

No applicable provisions.

FCRA/Mini-FCRA Consumer Report

No applicable provisions.

FCRA/Mini-FCRA Investigative Consumer Report

No applicable provisions.

FCRA/Mini-FCRA Adverse Action

No applicable provisions.

Credit Information & History Usage Restrictions

In dealing with businesses, professions and individuals, a credit bureau shall require service contracts to be executed in which the regular subscriber or the occasional user certifies that inquiries shall be made only for the purposes of the granting of credit or other bona fide business transaction, such as evaluation of present or prospective credit risks or evaluation of the qualifications of present or prospective employees.

N.M. Stat. Ann. § 56-3-4.

“Credit bureau” means any business engaged in furnishing credit information about consumers.

N.M. Stat. Ann. § 56-3-1.

Updated 04/12/2017



Jurisdiction: New York

Definitions

Mini-FCRA

Consumer report means any written, oral, or other communication of any information by a consumer reporting agency bearing on an individual's credit worthiness, credit standing, credit capacity, character, general reputation, personal characteristics, or mode of living which is used or expected to be used or collected in whole or part for the purpose of serving as a factor in establishing the individual's eligibility for employment purposes.

Consumer credit report means a consumer report assembled, evaluated or maintained by a consumer credit reporting agency, bearing on an individual's credit worthiness, credit standing, or credit capacity.

Investigative consumer report means a consumer report or portion thereof in which information on an individual's character, general reputation, personal characteristics, or mode of living is obtained through personal interviews with neighbors, friends, or associates of the individual reported on or with others with whom he is acquainted or who may have knowledge concerning any such items of information.

However, such information does not include specific factual information on an individual's credit record obtained directly from a creditor of the individual or from a consumer reporting agency when such information was obtained directly from a creditor of the individual or from the individual.

Employment purposes, when used in connection with a consumer report, means a report used for the purpose of evaluating an individual for employment, promotion, reassignment or retention as an employee.

Adverse information means information that is likely to have a negative effect upon the ability or eligibility of an individual to obtain employment.

N.Y. Gen. Bus. Law § 380-a.

FCRA/Mini-FCRA Consumer Report

Disclosure & Authorization

An employer cannot request a consumer report in connection with an application for employment unless the applicant is first informed in writing or in the same manner in which the application is made that:

- A consumer report may be requested in connection with such application, and

- The applicant upon request will be informed whether or not a consumer report was requested, and if such report was requested, informed of the name and address of the consumer reporting agency that furnished the report.

N.Y. Gen. Bus. Law § 380-b.

Where the notice provided indicates that subsequent consumer reports, other than investigative consumer reports, may be requested or utilized in connection with an update, renewal, or extension of employment, no additional notice to the individual is required at the time the subsequent report is requested.

N.Y. Gen. Bus. Law § 380-b.

FCRA/Mini-FCRA Investigative Consumer Report

Disclosure & Authorization

An employer cannot procure or cause to be prepared an investigative consumer report unless:

- It first provides notice of the procurement or preparation; and
- Receives authorization for preparation or procurement of such investigative consumer report.

N.Y. Gen. Bus. Law § 380-c.

The notice must be in writing if a written application is made by the individual, or may be in writing or oral in all other circumstances.

The notice must inform the individual that:

- An investigative consumer report may be requested, and
- The individual, upon written request, will be informed whether an investigative consumer report was requested, and, if such report was requested, the name and address of the consumer reporting agency to whom the request was made.
- The individual may inspect and receive a copy of the report by contacting the agency.

Additionally, the notice must include a copy of article 23-A of the Correction Law governing the licensure and employment of persons previously convicted of one or more criminal offenses.

The authorization required must be in writing or in the same manner as the notice is required to be given.

If a person applying for employment refuses to authorize the procurement or preparation of an investigative consumer report, the prospective employer may decline to grant employment on the grounds that the applicant refused to execute such authorization.

N.Y. Gen. Bus. Law § 380-c.

FCRA/Mini-FCRA Adverse Action

No applicable provisions.

Credit Information & History Usage Restrictions

No applicable provisions.

New York City Stop Credit Discrimination In Employment Act (SCDEA)

Employers with 4 or more employees may not:

- (1) Request consumer credit history from job applicants or potential or current employees, either orally or in writing;
- (2) Request or obtain consumer credit history of a job applicant or potential or current employee from a consumer reporting agency;
- (3) Use consumer credit history in an employment decision or when considering an employment action; or,
- (4) Request or require an applicant for employment to consent to the disclosure of their consumer credit history to the employer.

All of the above are unlawful discriminatory practices, even if no adverse action is taken against the individual applicant that constitute per se violations of the SCDEA.

Moreover, if an employer posts or circulates any solicitation indicating that the employer will use consumer credit history for employment purposes, it creates a rebuttable presumption that the employer has violated the SCDEA, except where an exemption applies.

According to interpretative guidance issued by the Commission on Human Rights, New York City employers are not prohibited from researching applicants' background and experience through online searching, or from evaluating references and resumes.

Additionally, an employer may not discriminate against an applicant or employee with regard to hiring, compensation, or the terms, conditions or privileges of employment based on the consumer credit history of the applicant or the employee.

[N.Y.C., N.Y., Admin. Code §§ 8-102\(5\), \(29\), 8-107\(9\)\(d\), and 8-107\(24\); see also Rules of the City of New York Commission on Human Rights §§ 2-01, 2-05. Additional information about the SCDEA is available from the New York City Commission on Human Rights online.](#)

Consumer Credit History means an individual's credit worthiness, credit standing, credit capacity, or payment history, as indicated by:

- (a) a consumer credit report;
- (b) credit score; or,
- (c) information an employer obtains directly from the individual regarding
 - (1) details about credit accounts, including the individual's number of credit accounts, late or missed payments, charged-off debts, items in collections, credit limit, prior credit report inquiries, or,
 - (2) bankruptcies, judgments or liens.

A consumer credit report includes any written or other communication of any information by a consumer reporting agency that bears on a consumer's creditworthiness, credit standing, credit capacity or credit history.

N.Y.C., N.Y., Admin. Code § 8-102(29); see also Rules of the City of New York Commission on Human Rights § 2-01.

Exemptions

Employers claiming an exemption from the SCDEA must show that the position falls under an exempted category. There are numerous exempted categories including financial services, police, positions requiring an employee to be bonded under City, state or federal law, and others.

All exemptions are to be construed narrowly and apply only to individual positions. It is an affirmative defense that any action an employer takes is permissible, and the burden is on the employer to prove the exemption's applicability by a preponderance of the evidence.

[N.Y.C., N.Y., Admin. Code §§ 8-102\(5\), \(29\), 8-107\(9\), and 8-107\(24\); see also Rules of the City of New York Commission on Human Rights §§ 2-01, 2-05. Additional information about the SCDEA is available from the New York City Commission on Human Rights online.](#)

Enforcement

Any person aggrieved by an unlawful discriminatory credit practice may file a complaint with the NYC Human Rights Commission.

N.Y.C., N.Y., Admin. Code § 8-109.

Penalties & Remedies

Employers that violate the SCDEA will be civilly fined by the Commission on Human Rights, up to \$125,000 for violations and up to \$250,000 for violations that are the result of willful, wanton, or malicious conduct. These penalties are in addition to the other remedies available to aggrieved parties under the New York City Human Rights Law, including back and front pay, as well as compensatory and punitive damages.

[N.Y.C., N.Y., Admin. Code §§ 8-122, 8-125, 8-126; see also Rules of the City of New York Commission on Human Rights §§ 2-01, 2-05. Additional information about the SCDEA is available from the New York City Commission on Human Rights online.](#)

Updated 12/08/2017



Jurisdiction: Oklahoma

Definitions

Mini-FCRA

Consumer report has the same meaning as in the FCRA (See Federal section).

Okla. Stat. tit. 24, § 148(A)

FCRA/Mini-FCRA Consumer Report

Disclosure & Authorization

Prior to requesting a consumer report for employment purposes, an employer must provide written notice to the person who is the subject of the report.

The notice must inform the individual that a report will be used, and must contain a box that can be checked to indicate that the individual wants a copy of the report.

If a copy is requested, the employer must request that the credit reporting agency provide a copy to the individual.

The report to the individual must be provided free of charge.

Okla. Stat. tit. 24, § 148.

FCRA/Mini-FCRA Investigative Consumer Report

No applicable provisions.

FCRA/Mini-FCRA Adverse Action

No applicable provisions.

Credit Information & History Usage Restrictions

No applicable provisions.



Jurisdiction: Oregon

Definitions

Credit Information & History Usage Restrictions

Credit history means any written or other communication of any information by a consumer reporting agency that bears on an individual's creditworthiness, credit standing or credit capacity.

Or. Rev. Stat. § 659A.320; Or. Admin. R. 839-005-0065.

Applicant means an individual who has submitted information for the purpose of gaining employment.

Or. Admin. R. 839-005-0065.

FCRA/Mini-FCRA Consumer Report

No applicable provisions.

FCRA/Mini-FCRA Investigative Consumer Report

No applicable provisions.

FCRA/Mini-FCRA Adverse Action

No applicable provisions.

Credit Information & History Usage Restrictions

Anti-Discrimination

It is an unlawful employment practice for an employer to discriminate against an applicant or an employee with regard to promotion, compensation or the terms, conditions or privileges of employment based on information in the applicant or employee's credit history.

Or. Rev. Stat. § 659A.320.

Obtaining or using credit history information cannot be conducted in a manner that results in adverse impact discrimination as prohibited by 42 U.S.C. § 2000e-2 (based on race, color, religion, sex, or national origin), Or. Rev. Stat. § 659A.030 (based on race, color, religion, sex, sexual orientation, national origin, marital status or age) and Or. Admin. R. 839-005-0010 (discrimination theories).

A finding of adverse impact discrimination does not require establishment of intentional discrimination.

The burden of proving the employer's disclosure to the employee of its reasons for the use of such information rests with the employer.

Or. Admin. R. 839-005-0070.

Anti-Retaliation

It is an unlawful employment practice for an employer to retaliate against an applicant or an employee with regard to promotion, compensation or the terms, conditions or privileges of employment based on information in the employee or applicant's credit history.

Or. Rev. Stat. § 659A.320.

It is also an unlawful employment practice for an employer to discharge, expel or otherwise discriminate against

any person because the person has filed a complaint, testified or assisted in any proceeding in connection with acts prohibited by the law.

Or. Admin. R. 839-005-0085.

Aiding & Abetting

It is an unlawful employment practice for a person, whether an employer or employee, to aid, abet, incite, compel or coerce the doing any of the acts prohibited by law or an attempt to do so.

Or. Admin. R. 839-005-0085.

Restrictions

It is an unlawful employment practice for an employer to obtain or use for employment purposes information contained in the credit history of an employment applicant or an employee, or to refuse to hire, discharge, demote, suspend an applicant or an employee with regard to promotion, compensation or the terms, conditions or privileges of employment based on information in the applicant or employee's credit history.

Or. Rev. Stat. § 659A.320; Or. Admin. R. 839-005-0070.

Exceptions

The above does not apply to:

- Employers that are federally insured banks or credit unions;
- Employers that are required by state or federal law to use individual credit history for employment purposes;
- The employment of a public safety officer who is a member of a law enforcement unit, who is employed as a peace officer commissioned by a city, port, school district, mass transit district, county, Indian reservation, the Criminal Justice Division of the Department of Justice, the Oregon State Lottery Commission or the Governor and who is responsible for enforcing the criminal laws of this state or laws or ordinances related to airport security; or
- An employer's obtaining or using information in the applicant or employee's credit history because the information is substantially job-related and the employer's reasons for the use of such information are disclosed to the employee or prospective employee in writing.

Or. Rev. Stat. § 659A.320; Or. Admin. R. 839-005-0070.

Substantially Job Related

The determination of whether credit history information is substantially job-related is evaluated based on the position for which the individual is being considered or holds.

Credit history information is substantially job-related if:

- An essential function of the position at issue requires access to financial information not customarily provided in a retail transaction that is not a loan or extension of credit;
- Financial information customarily provided in a retail transaction includes information related to the exchange of cash, checks and credit or debit card numbers; or
- The position at issue is one for which an employer is required to obtain credit history as a condition of obtaining insurance or a surety or fidelity bond.

Or. Admin. R. 839-005-0080.



Jurisdiction: Pennsylvania

Definitions

No applicable provisions.

FCRA/Mini-FCRA Consumer Report

No applicable provisions.

FCRA/Mini-FCRA Investigative Consumer Report

No applicable provisions.

FCRA/Mini-FCRA Adverse Action

No applicable provisions.

Credit Information & History Usage Restrictions

No applicable provisions.

Philadelphia

Employers with 1 or more employees in Philadelphia may not procure or seek a person's cooperation or consent to procure credit information.

Employers also may not use credit information regarding an employee or applicant in connection with hiring, discharge, tenure, promotion, discipline, or consideration of any other term, condition, or privilege of employment.

Phila., Pa., Code § 9-1130.

Credit Information means any written, oral, or other communication of information regarding a person's: debt; credit worthiness, standing, capacity, score or history; payment history; charged-off debts; bank account balances or other information; or bankruptcies, judgments, liens, or items under collection.

Phila., Pa., Code § 9-1102(c.1).

Special Rules

The ordinance contains special rules for when credit information is used for:

- (1) jobs requiring the employee to be bonded under city, state, or federal law;
- (2) jobs that are supervisory or managerial in nature and involve setting the direction or policies of a business or a division, unit or similar part of a business;
- (3) jobs involving significant financial responsibility to the employer, including the authority to make payments, transfer money, collect debts, or enter into contracts, but excluding jobs that involve handling retail transactions;
- (4) jobs requiring access to financial information pertaining to customers, other employees, or the employer, other than information customarily provided in a retail transaction; and,
- (5) jobs requiring access to confidential or proprietary information that derives substantial value from secrecy.

In these circumstances, employers that take an adverse action against an individual (e.g., rejecting an applicant or terminating an employee) who is applying for, or working in, any of the five job categories listed above based in whole or in part on the individual's credit information must notify the individual in writing of the reason the employer considered the individual's credit information, and the specific credit information on which the employer relied. The employer must also provide the individual an opportunity to explain the circumstances surrounding the information at issue before taking adverse action.

Phila., Pa., Code § 9-1130.

Exemptions

The ordinance's prohibitions on using credit information for employment purposes do not apply to: financial institutions, law enforcement agencies, or, any employer that is required by state or federal law to obtain credit information.

Phila., Pa., Code § 9-1130.

Enforcement & Remedies

As these provisions are included in the Philadelphia Fair Practices Ordinance, an aggrieved person may file a complaint with the Philadelphia Commission on Human Relations, or after timely exhausting administrative remedies, may file a private right of action. Remedies available include compensatory damages, attorney's fees, and punitive damages.

Phila., Pa., Code §§ 9-1105, 9-1111, 9-1112, 9-1119, 9-1122.

Penalties

Employers that violate the ordinance may be fined not more than \$2000 for each violation. Employers that violate, on more than one occasion, any order of the Philadelphia Commission on Human Relations may be found guilty of a separate offense of repeat violation, and for each repeat violation, is subject to a fine of not more than \$2000 dollars, imprisonment for not more than 90 days, or both. Each violation, after the first, shall constitute a separate repeat violation offense.

Phila., Pa., Code § 9-1121.



Jurisdiction: Rhode Island

Definitions

Mini-FCRA

Credit report means any written, oral, or other communication of any information by a credit bureau bearing on an individual's credit worthiness, credit standing or credit capacity, which is used or expected to be used or collected in whole or in part for the purpose of serving as a factor in establishing the individual's eligibility for employment purposes.

R.I. Gen. Laws § 6-13.1-20.

FCRA/Mini-FCRA Consumer Report

Disclosure & Authorization

An employer cannot request a credit report in connection with an application for employment unless the applicant is first notified that a report may be requested.

R.I. Gen. Laws § 6-13.1-21.

FCRA/Mini-FCRA Investigative Consumer Report

No applicable provisions.

FCRA/Mini-FCRA Adverse Action

Adverse Action

Whenever employment is denied either wholly or partly because of the report's information, an employer must advise the applicant of this fact and supply the name and address of the credit bureau making the report.

R.I. Gen. Laws § 6-13.1-21.

Credit Information & History Usage Restrictions

No applicable provisions.



Jurisdiction: Vermont

Definitions

Mini-FCRA

Credit report means any written, oral, or other communication of any information by a credit reporting agency bearing on an individual's credit worthiness, credit standing, credit capacity, character, general reputation, personal characteristics, or mode of living, including an investigative credit report.

Investigative credit report means a report in which information on an individual's character, general reputation, personal characteristics, or mode of living is obtained through personal interviews with neighbors, friends, or associates of the individual reported on or with others with whom the individual is acquainted or who may have knowledge concerning any such items of information.

The term does not include reports of specific factual information on an individual's credit record obtained directly from a creditor of the individual or from a credit reporting agency when such information was obtained directly from a creditor of the individual or from the individual.

Vt. Stat. Ann. tit. 9, § 2480a.

Credit Information & History Usage Restrictions

Confidential financial information means sensitive financial information of commercial value that a customer or client of the employer gives explicit authorization for the employer to obtain, process, and store and that the employer entrusts only to managers or employees as a necessary function of their job duties.

Credit history means information obtained from a third party, whether or not contained in a credit report, that reflects or pertains to an individual's prior or current:

- Borrowing or repaying behavior, including the accumulation, payment, or discharge of financial obligations; or
- Financial condition or ability to meet financial obligations, including debts owed, payment history, savings or checking account balances, or savings or checking account numbers.

Credit report has the same meaning as in the mini-FCRA.

Vt. Stat. Ann. tit. 21, § 495i.

FCRA/Mini-FCRA Consumer Report

Disclosure & Authorization

An employer or potential employer cannot obtain a credit report unless the individual consents, and the report is used for purposes consented to.

Vt. Stat. Ann. tit. 9, § 2480e.

FCRA/Mini-FCRA Investigative Consumer Report

No applicable provisions.

FCRA/Mini-FCRA Adverse Action

No applicable provisions.

Credit Information & History Usage Restrictions

Anti-Discrimination

An employer cannot fail or refuse to hire or recruit; discharge; or otherwise discriminate against an individual with respect to employment, compensation, or a term, condition, or privilege of employment because of the individual's credit report or credit history.

Vt. Stat. Ann. tit. 21, § 495i.

Anti-Retaliation

An employer cannot discharge or in any other manner discriminate against an employee or applicant who has filed a complaint of unlawful employment practices in violation of the law or who has cooperated with the state attorney general or a state's attorney in an investigation of such practices or who is about to lodge a complaint or cooperate in an investigation or because the employer believes that the employee or applicant may lodge a complaint or cooperate in an investigation.

Vt. Stat. Ann. tit. 21, § 495i.

Restrictions

An employer cannot inquire about an applicant or employee's credit report or credit history.

Vt. Stat. Ann. tit. 21, § 495i.

Exceptions

An employer is exempt from the above provisions if one or more of the following conditions are met:

- The information is required by state or federal law or regulation.
- The position of employment involves access to confidential financial information.
- The employer is a financial institution (Vt. Stat. Ann. tit. 8, § 11101(32)) or a credit union (Vt. Stat. Ann. tit. 8, § 30101(5)).
- The position is a law enforcement officer (Vt. Stat. Ann. tit. 20, § 2358), emergency medical personnel (Vt. Stat. Ann. tit. 24, § 2651(6)), or a firefighter (Vt. Stat. Ann. tit. 20, § 3151(3)).
- The position requires a financial fiduciary responsibility to the employer or its client, including the authority to issue payments, collect debts, transfer money, or enter into contracts.
- The employer can demonstrate that the information is a valid and reliable predictor of employee performance in the specific position.
- The position involves access to an employer's payroll information.

Vt. Stat. Ann. tit. 21, § 495i.

Exempt Employer Restrictions

However, exempt employers cannot use an employee's or applicant's credit report or history as the sole factor in decisions regarding employment, compensation, or a term, condition, or privilege of employment.

If an exempt employer seeks to obtain or act upon an employee's or applicant's credit report or credit history that contains information about the employee's or applicant's credit score, credit account balances, payment history, savings or checking account balances, or savings or checking account numbers, the employer must:

- Obtain the employee's or applicant's written consent each time the employer seeks to obtain the employee's or applicant's credit report.
- Disclose in writing to the employee or applicant the employer's reasons for accessing the credit report, and if an adverse employment action is taken based upon the credit report, disclose the reasons for the action in writing. The employee or applicant has the right to contest the accuracy of the credit report or credit history.
- Ensure that none of the costs associated with obtaining an employee's or an applicant's credit report or credit history are passed on to the employee or applicant.
- Ensure that the information in the employee's or applicant's credit report or credit history is kept confidential and, if employment is terminated or the applicant is not hired, provide the employee or applicant with the credit report or have the credit report destroyed in a secure manner which ensures the confidentiality of the information in the report.

Vt. Stat. Ann. tit. 21, § 495i.



Jurisdiction: Washington

Definitions

Hybrid Mini-FCRA / Credit Information & History Usage Restrictions

Adverse action includes denial of employment or any other decision for employment purposes that adversely affects a current or prospective employee.

Consumer report means a written, oral, or other communication of information by a consumer reporting agency bearing on an individual's creditworthiness, credit standing, credit capacity, character, general reputation, personal characteristics, or mode of living that is used or expected to be used or collected in whole or in part for employment purposes.

Investigative consumer report means a consumer report or portion of it in which information on an individual's character, general reputation, personal characteristics, or mode of living is obtained through personal interviews with neighbors, friends, or associates of the individual reported on or with others with whom the individual is acquainted or who may have knowledge concerning any items of information.

However, the information does not include specific factual information on an individual's credit record obtained directly from a creditor of the individual or from a consumer reporting agency when the information was obtained directly from a creditor of the individual or from the individual.

Wash. Rev. Code § 19.182.010.

FCRA/Mini-FCRA Consumer Report

Disclosure & Authorization

An employer cannot procure, or cause to be procured, a consumer report for employment purposes unless:

- A clear and conspicuous disclosure has been made in writing before the report is procured or caused to be procured that a consumer report may be obtained for purposes of considering the individual for employment. The disclosure may be contained in a written statement contained in employment application materials; or
- The individual authorizes the procurement of the report.

An employer cannot procure, or cause to be procured, a consumer report. Moreover, an employer cannot procure, or cause to be procured, a consumer report for employment purposes unless the employee has received, at any time after the person became an employee, written notice that consumer reports may be used for employment purposes.

A written statement that consumer reports may be used for employment purposes that is contained in employee guidelines or manuals available to employees or included in written materials provided to employees constitutes written notice.

Wash. Rev. Code § 19.182.020.

Exceptions

The above does not apply concerning a consumer report of an employee the employer has reasonable cause to believe has engaged in specific activity that constitutes a violation of law.

Wash. Rev. Code § 19.182.020.

FCRA/Mini-FCRA Investigative Consumer Report

Disclosure & Authorization

An employer cannot procure or cause to be prepared an investigative consumer report unless:

- It is clearly and accurately disclosed to the individual that an investigative consumer report including information as to character, general reputation, personal characteristics, and mode of living, whichever are applicable, may be made, and the disclosure:
- Is written, mailed or otherwise delivered to the individual not later than 3 days after the date on which the report was first requested; and
- Includes a statement informing the individual of his or her right to request the additional disclosures and the written summary of the individual's rights; or
- The report is to be used for employment purposes for which the individual has not specifically applied.

Wash. Rev. Code § 19.182.050.

Upon the individual's written request made within a reasonable period of time after the receipt of the disclosure, an employer must make a complete and accurate disclosure of the nature and scope of the investigation requested.

This disclosure must be written, mailed or otherwise delivered not later than the later of 5 days after the date on which the request for the disclosure was either received from the individual or the report was first requested.

Wash. Rev. Code § 19.182.050.

FCRA/Mini-FCRA Adverse Action

Pre-Adverse Action

Before taking any adverse action based in whole or part on the report, an employer must provide the individual:

- The name, address, and telephone number of the consumer reporting agency providing the report;
- A description of the individual's rights pertaining to consumer reports obtained for employment purposes; and

- A reasonable opportunity to respond to any information in the report that is disputed by the individual. This applies to job applicants and current employees.

Wash. Rev. Code § 19.182.020.

Adverse Action

If adverse action is taken based on a report, in whole or in part, on information contained in a consumer report, the employer must:

- Provide written notice of the adverse action, except verbal notice may be given in an adverse action involving a business regulated by the Washington utilities and transportation commission if verbal notice does not impair an individual's ability to obtain a credit report without charge under Wash. Rev. Code § 19.182.100(2); and
- Provide the individual with the name, address, and telephone number of the consumer reporting agency that furnished the report.

Wash. Rev. Code § 19.182.110.

Credit Information & History Usage Restrictions

Restrictions

An employer cannot procure a consumer report for employment purposes where any information contained in the report bears on the individual's creditworthiness, credit standing, or credit capacity, unless the information is either:

- Substantially job related and the employer's reasons for the use of such information are disclosed to the individual in writing; or
- Required by law.

Wash. Rev. Code § 19.182.020.

Obtaining Reports & Adverse Action

See Consumer Report, Investigative Consumer Report, and Adverse Action columns.



Jurisdiction: Puerto Rico

Definitions

- a) **"Credit History"** - historical behavior of repayment and assumption of debt of an individual, including payment of bills on time, debt management, as well as all financial obligations.
- b) **"Credit Report"** - written communication containing information on an individual provided by a credit agency, which establishes his credit capacity, credit history or financial solvency.
- c) **"Employee"** - any person who receives financial compensation for performing a task or providing a service for an employer through an express or implicit contract.
- d) **"Employer or Employer"** - natural or legal person who provides economic compensation or salary to an employee in exchange for a designated service or task.

FCRA/Mini-FCRA Consumer Report

No applicable provisions.

FCRA/Mini-FCRA Investigative Consumer Report

No applicable provisions.

FCRA/Mini-FCRA Adverse Action

No applicable provisions.

Credit Information & History Usage Restrictions

The employer who is going to request the report or credit history of an employee, or applicant for employment, must obtain the prior written consent of the latter. Provided that the consent given by an employee or applicant for employment shall be null and void and shall not have legal effect, in those cases in which an employer, or potential employer, requires the credit history of a person in contravention of the provisions of this Act.

An employer, or potential employer, may not perform any of the following actions:

- a) Lay off, deny benefits or compensation, refuse to hire, promote or discriminate against an employee or job applicant on the basis of their credit report or history.

- b) Verify or investigate the credit history or report of an employee or applicant for a job.
- c) Order or obtain from a credit agency the credit report of an employee or job applicant.

Exceptions

An employer or potential employer will not be subject to the prohibitions established in Article 2 of this Act, if the position being evaluated is any of the following:

- a) Managerial position.
- b) Position in the Department of Justice.
- c) Position as a public order agent of the State or municipality.
- d) Position in the Judicial Branch.
- e) Position for which by any provision of law, regulation, activities that are regulated by the Office of the Commissioner of Financial Institutions or agreement with any federal agency, as required or permitted by regulations of the Government of the United States of America is required the credit report.
- f) Since it entails access to financial or personal information of other people, and that is not the information normally provided for the purposes of a purchase transaction.
- g) Since it implies a fiduciary responsibility to the employer, including, but not limited to, the authority to issue payments, collect debts, transfer money or enter into a contract.
- h) A position that implies access to trade secrets as defined in Law 80-2011.
- i) A position that implies regular access to cash, or other appropriated securities, for a total of ten thousand dollars (\$ 10,000) or more from an employer or client, during the working day.

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