

Oppose H.R. 3149, Prohibiting the use of credit checks for employment purposes

To Members of the House Financial Services Committee:

We understand that the Committee has tentatively scheduled H.R. 3149, the “Equal Employment for All Act” for Markup next week. We would urge the Committee to take this bill off of the agenda, and to oppose it if it is marked up.

The undersigned trade associations, representing millions of employers, are writing to express our opposition to H.R. 3149, that would in effect prohibit the use of credit in employment background checks in all but an extremely limited number of circumstances—most involving government employment.

Checking credit is done responsibly, and is not in and of itself a barrier to employment

Employers may check credit history as part of a background check to help them determine whether a prospective employee is a possible risk to the financial health of a business or to their customers. Employers use credit checks as part of a background check very responsibly, and prohibiting their use in assessing employees makes employers, other employees and customers more vulnerable to fraud and identity theft.

Credit checks are only used in about 15% of all background checks, and when they are used they are used primarily for executive positions, positions that have fiduciary and financial responsibility, or for positions that have access to confidential or proprietary information. When examining credit history, employers look for lawsuits, judgments and accounts in collection, NOT late payments (which did not even make the list of things employers consider, according to a study by the Society for Human Resource Management).¹

Finally, the vast majority of employers do not use credit as a “yes or no” proposition, but to provide prospective employees with the opportunity to explain their circumstances.

When employers check credit, they review several years of history, not a “snap-shot” of the current situation

When looking at credit as part of a background check, employers do not limit their examination to a recent “snap-shot” look at a person’s credit, but in fact most look at a 6-year window or longer.² This is significant, because it enables employers to see beyond possible short-term problems, and it gives potential employees the ability to demonstrate a long-term, stable payment history, and any difficulties caused by current conditions can be saved by many years of prior positive credit history.

¹ <http://www.shrm.org/Research/SurveyFindings/Articles/Pages/BackgroundChecking.aspx>

² <http://www.shrm.org/Research/SurveyFindings/Articles/Pages/BackgroundChecking.aspx>

Further, employers do not have access to credit scores and do not use credit scores when evaluating credit history for employment. Credit scores are not sold for employment purposes, and, as the SHRM survey demonstrates, employers do not use credit scores for such decisions.

Personal financial health can be an indicator of potential employee fraud

The Association of Certified Fraud Examiners (ACFE) reviewed occupational fraud between 2006 and 2008, and found that the top two red flag warnings exhibited by perpetrators leading up to the fraud were living beyond his or her financial means (present in 39% of all cases, with a median loss of \$250,000) or experiencing financial difficulties (present in 34% of all cases with a median loss of \$111,000).³

That is not to say that all financial difficulties will or could lead to fraud; however, it is simply wrong for Congress to undercut fraud prevention by outlawing use of information that shows a correlation between past behavior and future fraud.

Checking credit of potential employees protects companies, particularly small businesses, from fraud.

Employee theft accounts for more than \$15 billion annually, and companies lose a median of 5% of their annual revenue to employee fraud, which is expected to rise further.⁴

Small businesses are particularly vulnerable to financial fraud. For example, according to the ACFE, the median loss suffered by organizations with fewer than 100 employees was \$190,000 per incident. This was higher than the median loss in even the largest organizations. Small businesses have fewer internal controls on the back end once they have hired someone to control fraud if it occurs internally.

Consumers have significant protections when employers use credit as part of their hiring process

Existing law tightly regulates the use of consumer reports in employment situations. Under current law:

- Prior to requesting a consumer credit report, an employer must provide to the prospective employee a written notice stating the source of the information and how it will be used.
- The employer must also provide a copy of the consumer credit report to the consumer upon request, and prior to taking an adverse action.
- If an adverse employment action is taken against a prospective employee due to the information contained in a consumer credit report, the user must provide the name and contact information for the reporting agency to the consumer and explain the reasons for the action.
- Under the FCRA, any person who willfully fails to comply is liable to that consumer in an amount equal to the sum of (1) (A) any actual damages sustained by the consumer as a result of the failure or damages of not less than \$100 and not more than \$1,000; or (2) such amount

³<http://www.acfe.com/documents/2008-rttn.pdf>

⁴<http://www.acfe.com/occupational-fraud/occupational-fraud.asp>

of punitive damages as the court may allow; and (3) in the case of any successful action to enforce any liability under this section, the costs of the action together with reasonable attorney's fees as determined by the court.

Given these important considerations, we urge you to oppose the consideration of H.R. 3149, and to oppose it if it is brought up for a markup.

Sincerely,

Apartment Association, CA Southern Cities

Apartment Association of Orange County

California Chamber of Commerce

California Grocers Association

California Hospital Assn. (CHA)

California Independent Grocers Association

California Landscape Contractors Association

California Manufacturers & Technology Association

California New Car Dealers Assn

Capital Associated Industries, Inc.

College and University Professional Association for Human Resources

Consumer Data Industry Association

Employers Coalition of NC

Financial Services Roundtable

Food Marketing Institute

HR Policy Association

Illinois Retail Merchants Association

International Franchise Association

National Association of Manufacturers

National Association of Professional Background Screeners

National Council of Investigation & Security Services

National Council of Chain Restaurants

National Federation of Independent Business

National Retail Federation

National Business Coalition on E-Commerce and Privacy

Retailers Association of Massachusetts

Retail Industry Leaders Association

Society for Human Resource Management

TechAmerica

Western Electrical Contractors Association (WECA)

U.S. Chamber of Commerce