

SENATE No. 2271

The Commonwealth of Massachusetts

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In the One Hundred and Eighty-Ninth General Court
(2015-2016)
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SENATE, Monday, May 2, 2016

The committee on Labor and Workforce Development to whom was referred the petitions (accompanied by bill, Senate, No. 123) of Michael J. Barrett, Timothy J. Toomey, Jr., Chris Walsh, Denise Provost and other members of the General Court for legislation to regulate the use of credit reports by employers; and (accompanied by bill, House, No. 1736) of Elizabeth A. Malia and others for legislation to regulate the use of credit reports by employers and prospective employers,- reports the accompanying bill (Senate, No. 2271).

For the committee,
Daniel A. Wolf

SENATE No. 2271

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In the One Hundred and Eighty-Ninth General Court
(2015-2016)

An Act regulating the use of credit reports by employers.

Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:

1 SECTION 1. Chapter 93 of the General Laws, as appearing in the 2012 Official Edition,
2 is hereby amended by inserting after section 51A the following section:-

3 Section 51B . (a) Except as provided in paragraph (b), no person, including an
4 employer, prospective employer, employment agency, employment screener or licensing agency,
5 shall:

6 (1) use a consumer report in connection with or as a criterion for an employment
7 purpose, including decisions related to hiring, termination, promotion, demotion, discipline,
8 compensation, or the terms, conditions or privileges of employment;

9 (2) request or procure a consumer report for the purposes described in clause (1);

10 (3) ask an employee or applicant about his or her consumer report or about any
11 information contained therein regarding credit worthiness, credit standing or credit capacity.

12 (b) The provisions in paragraph (a) shall not apply in the following circumstances

13 (A) if an employer is required by federal or state law to use a consumer report for
14 employment purposes;

15 (B) if the employee or applicant applies for or holds an executive or managerial
16 position at a federally insured financial institution, and the annual compensation for the position,
17 exclusive of bonuses or commissions, equals or exceeds \$200,000 per year; or

18 (C) if the employee or applicant applies for or holds a position that requires
19 national security clearance..

20 (c) Notwithstanding paragraph (b) of this section, an employer shall not use a consumer
21 report in a manner that results in adverse employment discrimination prohibited by federal or
22 state law, including chapter 151B of the general laws and Title VII of the Civil Rights Act of
23 1964.

24 (d) If an employer obtains, uses, or seeks to obtain a consumer report pursuant to
25 paragraph (b) of this section, the employer shall:

26 (1) obtain the employee's or applicant's written consent, in a document consisting
27 solely of the consent, each time the employer seeks to obtain the employee's or applicant's
28 consumer report;

29 (2) disclose in writing to the employee or applicant the employer's reasons for
30 accessing the consumer report, and, if the employer intends to take an adverse employment
31 action in whole or in part based on the report, disclose the reasons for the action, including which
32 information in the report the employer is basing the decision on, in writing at least 14 days prior
33 to taking the action, along with a copy of the report and the notice of consumer rights required by

34 section 1681G(c)(1) of chapter 15 of the United States Code. The employer shall provide the
35 employee or applicant, in a private discussion, the opportunity to dispute the relevance of the
36 information upon which the employer based the adverse employment action, and shall consider
37 any such dispute before making a final decision;

38 (3) if the employee or applicant provides oral or written notice to the employer
39 during the 14 day period set forth in subparagraph (2) that he or she has disputed the accuracy of
40 the consumer report with a consumer reporting agency, the employer shall not take an adverse
41 employment action until the resolution of the dispute under section 58 of this chapter or section
42 1681i(a) of chapter 15 of the United States Code, and shall consider the results of any such
43 resolution;

44 (4) ensure that none of the costs associated with obtaining a consumer report are
45 paid by or passed on to the employee or applicant.

46 (e) Any person aggrieved by a violation of this section shall be entitled to file a complaint
47 with the Massachusetts Commission Against Discrimination, under chapter 151B of the general
48 laws.

49 (f) Failure to comply with the provisions of this section shall constitute an unfair practice
50 under the provisions of clause (a) of section 2 of chapter 93A.

51 (g) No person shall retaliate, discriminate, or take any adverse action against an employee
52 or applicant on the basis that the employee or application has or intends to:

53 (1) file a complaint pursuant to paragraphs (e) or (f) of this section;

54 (2) allege that the person violated any provision of this section;

55 (3) testify, assist, give evidence, or participate in an investigation, proceeding or
56 action concerning a violation of this section; or

57 (4) otherwise oppose a violation of this section.

58 (h) No person shall require or request an employee or applicant to waive any provision of
59 this section. Any such waiver shall be deemed null, void and of no effect.

60 SECTION 2. Subsection (a) of section 51 of chapter 93 of the general laws, as so
61 appearing, is hereby amended by inserting after the words “employment purposes,” in line 12 in
62 clause (3)(ii), the following words:- “subject to the provisions of section 51B of this chapter;”.

63 SECTION 3. Section 5 of chapter 151B of the general laws, as so appearing, is hereby
64 amended by inserting after the words “and seventy-two,” in line 4, the following words:- “, or
65 section 51B of chapter 93”.