



**Testimony of the Connecticut Public Interest Research Group  
In Support of Committee Bill 5521 (Lesser)  
“An Act Eliminating Credit Reports As A Basis For Employment Decisions”**

24 February 2009

Presented by Edmund Mierzwinski,<sup>1</sup> Consumer Program Director and Ilicia Balaban, Advocate

Thank you for the opportunity to submit this written testimony from ConnPIRG in support of Committee Bill 5521 (Lesser), “An Act Eliminating Credit Reports As A Basis For Employment Decisions.” The bill would restrict the use of credit reports for employment purposes. As you know, ConnPIRG is a statewide non-profit and non-partisan organization that takes on powerful interests on behalf of its members.

In 1970, Congress enacted the Fair Credit Reporting Act (FCRA), a comprehensive statute<sup>2</sup> regulating the collection and use of credit information for credit, insurance, employment and other decisions. Connecticut has also enacted its own comprehensive credit reporting,<sup>3</sup> Social Security Number protection and identity theft statutes.

Congress has since 1970 twice adopted major amendments to the federal FCRA. In 1996, in response to numerous complaints about errors it passed comprehensive amendments intended to mitigate errors.<sup>4</sup> As part of those comprehensive 1996 amendments, Congress strongly questioned the intent of the original authors of the 1970 act in allowing credit reports to be used for employment purposes. Although Congress did not repeal the use of credit reports for employment purposes, it provided employment applicants and employees with additional consumer protections not otherwise granted to credit or insurance applicants.

Under those 1996 amendments to the federal FCRA, employers must ask permission before looking at an applicant’s credit report. Employers must also show the applicant the report if it is to be used to deny employment. Conversely, if a report is used by a creditor or insurer for denial

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<sup>2</sup> 15 USC 1681 *et. seq.*

<sup>3</sup> See C.G.S. 36a-695-699.

<sup>4</sup> Consumer Credit Reporting Reform Act of 1996 (part of the Omnibus Consolidated Appropriations Act of 1996, Public Law 104-208, 30 Sept 2006.

or increase in price of services, that user must merely notify the consumer of his or her right to contact the credit bureau for additional information.

These additional rights were granted to employment applicants because Congress did not want mistake-laden credit reports to be used to deny consumers jobs. As the 1996 law's chief sponsor, Senator Richard Bryan (NV) said on the Senate floor: "People are being turned down for jobs and for promotions all because of faulty information in their credit reports..."<sup>5</sup>

In our view, Congress lacked the will to fully put the employment use genie back in the bottle, but that should not prevent you from acting.

Over the years, PIRG has conducted a number of studies of the accuracy of credit reports. Our most recent study, in 2004, found that over one-in-four credit reports contained errors serious enough to cause the denial of credit, insurance or employment.<sup>6</sup> These mistakes are caused by credit bureau incompetence, by identity theft accounts falsely appearing on your report, by the failure of the law to provide consumers adequate legal mechanisms to hold bureaus or creditors accountable for their mistakes and numerous other reasons not the consumer's fault.

We believe that in the tense job market consumers may now face, it is appropriate to further limit the use of credit reports for employment purposes to prevent these circumstances from harming employment opportunities. In circumstances where a consumer may be considered for a job where a credit report might be relevant, such as a fraud investigation or a job where a report might be "substantially related," your bill provides exceptions. We believe that the legislative history and/or amendments should endeavor to construe those exceptions narrowly, perhaps, for example, to relate only to jobs with fiduciary responsibilities. We believe that the bill could be clarified to also prohibit the use of "credit scores derived in whole or in part from credit reports" for employment uses. In addition, we believe that a widespread area of abuse of current federal limits on the use of credit reports for employment purposes is in the area of "pre-employment background checks."<sup>7</sup> It should be made clear that the use of credit reports for employment purposes, "including pre-employment background checks," is prohibited by the act.

But for a consumer applying for a job as an editor, or a software engineer, or any job without such fiduciary responsibilities, why should mistakes on a credit report harm them? Indeed, why should paying a credit card thirty days late because they had to pay a doctor's bill instead because they'd lost health insurance when they got laid off matter to whether they get a job?

We expect that opponents of the proposal will mount a number of arguments. Among these will be preemption. Most recently, in 2003, Congress enacted the Fair and Accurate Credit Transactions Act<sup>8</sup> amendments to the FCRA. This amendment added provisions largely designed to fight identity theft, such as giving consumers an annual free credit report on request. Further,

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<sup>5</sup> Congressional Record, 30 September 1996.

<sup>6</sup> U.S. PIRG, Mistakes Do Happen, June 2004, available at <http://www.uspirg.org/home/reports/report-archives/financial-privacy--security/financial-privacy--security/mistakes-do-happen-a-look-at-errors-in-consumer-credit-reports>

<sup>7</sup> See the pre-employment background checks resources available from the privacy Rights Clearinghouse. <http://www.privacyrights.org/workplace.htm>

<sup>8</sup> Public Law 108-159, 4 December 2003.

at the behest of powerful financial interests, Congress also permanently extended and somewhat expanded certain temporary preemption provisions enacted in 1996.

Yet, although the federal FCRA now has an extremely complex preemption scheme, it is our view that no provision of federal law as amended preempts or limits state authority to restrict the use of credit reports for employment purposes.<sup>9</sup>

We appreciate the opportunity to provide our views on your proposed legislation.

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<sup>9</sup> See Connecticut OLR Research Report on the Fair Credit Reporting Act, 18 December 2003, by Sandra Norman-Eady, 2003-R-0922, available at <http://www.cga.ct.gov/2003/rpt/2003-R-0922.htm> Also see "After the FACT Act: What States Can Still Do to Prevent Identity Theft," by Gail Hillebrand, staff attorney, Consumers Union, available at <http://www.consumersunion.org/creditmatters/creditmattersupdates/001640.html>

