

HOUSE No. 1744

The Commonwealth of Massachusetts

PRESENTED BY:

Elizabeth A. Malia

To the Honorable Senate and House of Representatives of the Commonwealth of Massachusetts in General Court assembled:

The undersigned legislators and/or citizens respectfully petition for the adoption of the accompanying bill:

An Act regulating the use of credit reports by employers.

PETITION OF:

| NAME: | DISTRICT/ADDRESS: |
|-------------------------------|-----------------------|
| <i>Elizabeth A. Malia</i> | <i>11th Suffolk</i> |
| <i>Danielle W. Gregoire</i> | <i>4th Middlesex</i> |
| <i>Paul W. Mark</i> | <i>2nd Berkshire</i> |
| <i>James J. O'Day</i> | <i>14th Worcester</i> |
| <i>Tom Sannicandro</i> | <i>7th Middlesex</i> |
| <i>Martha M. Walz</i> | <i>8th Suffolk</i> |
| <i>Jay R. Kaufman</i> | <i>15th Middlesex</i> |
| <i>Denise Provost</i> | <i>27th Middlesex</i> |
| <i>Denise Andrews</i> | <i>2nd Franklin</i> |
| <i>Christine E. Canavan</i> | <i>10th Plymouth</i> |
| <i>Diana DiZoglio</i> | <i>14th Essex</i> |
| <i>Carl M. Sciortino, Jr.</i> | <i>34th Middlesex</i> |
| <i>Jonathan Hecht</i> | <i>29th Middlesex</i> |
| <i>Benjamin Swan</i> | <i>11th Hampden</i> |
| <i>David M. Nangle</i> | <i>17th Middlesex</i> |
| <i>Kay Khan</i> | <i>11th Middlesex</i> |
| <i>Gloria L. Fox</i> | <i>7th Suffolk</i> |
| <i>Cory Atkins</i> | <i>14th Middlesex</i> |

| | |
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| <i>Thomas P. Conroy</i> | <i>13th Middlesex</i> |
| <i>Marjorie C. Decker</i> | <i>25th Middlesex</i> |
| <i>James B. Eldridge</i> | <i>Middlesex and Worcester</i> |
| <i>Antonio F. D. Cabral</i> | <i>13th Bristol</i> |
| <i>John J. Mahoney</i> | <i>13th Worcester</i> |
| <i>Marc R. Pacheco</i> | <i>First Plymouth and Bristol</i> |
| <i>Brian M. Ashe</i> | <i>2nd Hampden</i> |

HOUSE No. 1744

By Ms. Malia of Boston, a petition (accompanied by bill, House, No. 1744) of Elizabeth A. Malia and others for legislation to regulate the use of credit reports by employers and prospective employers. Labor and Workforce Development.

The Commonwealth of Massachusetts

In the Year Two Thousand Thirteen

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 is amended by inserting after section 51A
2 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 purpose,
7 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 if an employer is required by federal
13 or state law to use a consumer report for employment purposes.

14 (c) Notwithstanding paragraph (b) of this section, an employer shall not use a consumer
15 report in a manner that results in adverse employment discrimination prohibited by federal or
16 state law, including chapter 151B of the General Laws and Title VII of the Civil Rights Act of
17 1964.

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

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

23 (2) disclose in writing to the employee or applicant the employer's reasons for accessing
24 the consumer report, and if the employer intends to take an adverse employment action in whole
25 or in part based on the report, disclose the reasons for the action, including which information in
26 the report the employer is basing the decision on, in writing at least 14 days prior to taking the
27 action, along with a copy of the report and the notice of consumer rights required by section
28 1681G(c)(1) of chapter 15 of the United States Code. The employer shall provide the employee
29 or applicant, in a private discussion, the opportunity to dispute the relevance of the information
30 upon which the employer based the adverse employment action, and shall consider any such
31 dispute before making a final decision;

32 (3) if the employee or applicant provides oral or written notice to the employer during
33 the 14 day period set forth in subparagraph (2) that he or she has disputed the accuracy of the
34 consumer report with a consumer reporting agency, the employer shall not take an adverse
35 employment action until the resolution of the dispute under section 58 of this chapter or Section
36 1681i(a) of chapter 15 of the United States Code, and shall consider the results of any such
37 resolution;

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

40 (e) Any person aggrieved by a violation of this section shall be entitled to file a complaint
41 with the Massachusetts Commission Against Discrimination, under chapter 151B of the General
42 Laws.

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

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

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

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

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

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

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

54 SECTION 2. Subsection (a) of section 51 of chapter 93 of the General Laws, as
55 appearing in the 2010 Official Edition, is hereby amended by inserting after the words
56 “employment purposes,” in line 12 in clause (3)(ii), the following words: “subject to the
57 provisions of section 51B of this chapter;”.

58 SECTION 3. Section 5 of chapter 151B of the General Laws, as appearing in the 2010
59 Official Edition, is hereby amended by inserting after the words “and seventy-two,” in line 4, the
60 following words: “, or section 51B of chapter 93”.