SENATE DOCKET, NO. 711 FILED ON: 1/17/2013

SENATE . . . . . No. 80

The Commonwealth of Massachusetts

PRESENTED BY:

Michael J. Barrett

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:
Michael J. Barrett	*Third Middlesex*
Cleon H. Turner	*1st Barnstable*
Paul McMurtry	*11th Norfolk*
Martha M. Walz	*8th Suffolk*
Paul R. Heroux	*2nd Bristol*
Karen E. Spilka	*Second Middlesex and Norfolk*
Carl M. Sciortino, Jr.	*34th Middlesex*
Denise Provost	*27th Middlesex*
Kay Khan	*11th Middlesex*
Denise Andrews	*2nd Franklin*
Cory Atkins	*14th Middlesex*
Thomas P. Conroy	*13th Middlesex*
Kenneth J. Donnelly	*Fourth Middlesex*
Patricia D. Jehlen	*Second Middlesex*
James B. Eldridge	*Middlesex and Worcester*

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By Mr. Barrett, a petition (accompanied by bill, Senate, No. 80) of Michael Barrett, Cleon H. Turner, Paul McMurtry, Martha M. Walz and other members of the General Court for legislation to regulate the use of credit reports by employers. Consumer Protection and Professional Licensure.

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:

SECTION 1. Chapter 93 of the General Laws is amended by inserting after section 51A the following section:

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

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

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

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

(b) The provisions in paragraph (a) shall not apply if an employer is required by federal or state law to use a consumer report for employment purposes.

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

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

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

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

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

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

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

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

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

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

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

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

(4) otherwise oppose a violation of this section.

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

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

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