HOUSE DOCKET, NO. 3614 FILED ON: 1/18/2019

HOUSE . . . . . No. 1659

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:	DATE ADDED:
Elizabeth A. Malia	*11th Suffolk*	*1/18/2019*
Aaron Vega	*5th Hampden*	*1/22/2019*
Michael J. Barrett	*Third Middlesex*	*1/29/2019*
Mindy Domb	*3rd Hampshire*	*1/31/2019*
James B. Eldridge	*Middlesex and Worcester*	*1/31/2019*
James K. Hawkins	*2nd Bristol*	*1/25/2019*
Jonathan Hecht	*29th Middlesex*	*2/1/2019*
David Henry Argosky LeBoeuf	*17th Worcester*	*1/28/2019*
Rebecca L. Rausch	*Norfolk, Bristol and Middlesex*	*2/1/2019*
José F. Tosado	*9th Hampden*	*1/28/2019*

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HOUSE . . . . . No. 1659

By Ms. Malia of Boston, a petition (accompanied by bill, House, No. 1659) of Elizabeth A. Malia and others for legislation to further regulate the use of credit reports by employers. Labor and Workforce Development.

[SIMILAR MATTER FILED IN PREVIOUS SESSION
SEE HOUSE, NO. *3153* OF 2017-2018.]

The Commonwealth of Massachusetts

In the One Hundred and Ninety-First General Court
(2019-2020)

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. Section 51 of chapter 93 of the General Laws, as appearing in the 2016 Official Edition, is hereby amended by inserting after the word "purposes", in line 12, the following words:- under section 51B.

SECTION 2. Said chapter 93 is hereby further amended by inserting after section 51A the following section:-

Section 51B. (a) For the purposes of this section, the following terms shall have the following meanings unless the context clearly indicates otherwise:

"Employment purposes", when used in connection with a consumer report, a purpose related to the evaluation of a consumer for employment, promotion, reassignment or retention,

termination, demotion, discipline, compensation or the terms, conditions or privileges of employment.

"Financial institution", a trust company, state or federally chartered savings bank, state chartered cooperative bank, national banking association, state or federally chartered savings and loan association, state or federally chartered credit union, insurance or surety company, investment advisor, broker-dealer, bank holding company, financial holding company or an entity registered with the United States Securities and Exchange Commission.

(b) A person shall not: (i) use a consumer report in connection with or as a criterion for an employment purpose; (ii) request or procure a consumer report for employment purposes; or (iii) require an employee or applicant to answer a question about the contents of a consumer report or the information contained in it regarding credit worthiness, credit standing or credit capacity.

(c) Notwithstanding subsection (b), a person may use or request a consumer report under subsection (e) if 1 of the following conditions are met:

(i) a person is required by federal or state law or regulation or the rules of a self-regulatory organization, as defined in 15 U.S.C. 78c(a)(26), to use a consumer report for employment purposes;

(ii) the employee or applicant applies for or holds an executive or managerial position at a financial institution that is exempt from minimum wage and maximum hour requirements under the federal Fair Labor Standards Act, 29 U.S.C. 213(a)(1);

(iii) the employee or applicant applies for or holds a position that requires national security clearance; or

(iv) the position involves significant financial responsibility to the employer and involves: (i) signatory authority over third-party funds or assets valued at not less than $10,000; or (ii) a fiduciary responsibility to the employer with the authority to enter into financial agreements valued at not less than $10,000 on behalf of the employer.

(d) Notwithstanding subsection (c), a person shall not use a consumer report in a manner that results in adverse employment discrimination prohibited by law.

(e) An employer, or person acting on behalf of the employer for an employment purpose, shall not obtain, use or seek the consumer report of an employee or applicant under subsection (c) unless the employer or person acting on behalf of the employer:

(i) obtains the written consent of the employee or applicant in a document that consists solely of the consent and does so each time that the person seeks to obtain the consumer report of an employee or applicant;

(ii) discloses the employer's reason for accessing the consumer report to the employee or applicant in writing; provided, however, that if an employer intends to take an adverse employment action that is based, in whole or in part, on the report, the employer shall disclose the reason for the action, including the information in the report that was the basis for the action, 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 15 U.S.C. 1681g(c)(1); and provided further, that 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 the dispute before making a final decision; and

(iii) ensures that costs associated with obtaining a consumer report are not paid by or passed on to the employee or applicant.

If, during the 14 day period under clause (ii), the employee or applicant provides oral or written notice to an employer or person acting on behalf of the employer that the employee or applicant is disputing the accuracy of the consumer report with a consumer reporting agency, the employer or person acting on behalf of the employer shall not take an adverse employment action until the resolution of the dispute under section 58 or 15 U.S.C. 1681i(a) and shall consider the results of the resolution before taking an adverse action.

(f) An employer or person acting on behalf of the employer shall not retaliate, discriminate or take an adverse action against an employee or applicant on the basis that the employee or application has or intends to: (i) file a complaint pursuant to subsection (h); (ii) allege that the person violated this section; (iii) testify, assist, give evidence or participate in an investigation, proceeding or action concerning a violation of this section; or (iv) otherwise oppose a violation of this section.

(g) A waiver of this section shall be void and a person shall not require or request that an employee or applicant waive it.

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

SECTION 3. This act shall take effect on January 1, 2021.