

# HOUSE BILL REPORT

## ESSB 5827

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**As Passed House:**

April 4, 2007

**Title:** An act relating to consumer privacy.

**Brief Description:** Regarding consumer privacy.

**Sponsors:** By Senate Committee on Consumer Protection & Housing (originally sponsored by Senators Hobbs, Weinstein, Oemig, Fairley, Pridemore, Keiser, Regala, Kohl-Welles, Prentice, Kline and Rasmussen).

**Brief History:**

**Committee Activity:**

Insurance, Financial Services & Consumer Protection: 3/22/07, 3/29/07 [DP].

**Floor Activity:**

Passed House: 4/4/07, 60-37.

**Brief Summary of Engrossed Substitute Bill**

- Prohibits a person from procuring a consumer report for employment purposes if any information in the report "bears on" the credit worthiness, credit standing, or credit capacity of an applicant or current employee. This prohibition does not apply when the information is: (1) substantially job related and the employer discloses the use of the information to the consumer in writing; or (2) required by law.

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**HOUSE COMMITTEE ON INSURANCE, FINANCIAL SERVICES & CONSUMER PROTECTION**

**Majority Report:** Do pass. Signed by 5 members: Representatives Kirby, Chair; Kelley, Vice Chair; Hurst, Santos and Simpson.

**Minority Report:** Do not pass. Signed by 3 members: Representatives Roach, Ranking Minority Member; Strow, Assistant Ranking Minority Member and Rodne.

**Staff:** Jon Hedegard (786-7127).

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*This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not a part of the legislation nor does it constitute a statement of legislative intent.*

## **Background:**

### Consumer Reports

A consumer report is a written, oral, or other communication of information by a consumer reporting agency (CRA) bearing on a consumer's creditworthiness, credit standing, credit capacity, character, general reputation, personal characteristics, or mode of living that is used or expected to be used or collected in whole or in part for:

- the purpose of serving as a factor in establishing the consumer's eligibility for credit or insurance to be used primarily for personal, family, or household purposes;
- employment purposes; or
- other authorized purposes.

The use of credit reports and consumer reports is regulated under the federal Fair Credit Reporting Act (15 U.S.C. Sec. 1681 et seq.) and the state Fair Credit Reporting Act (Chapter 19.182 RCW). Both the federal and state laws require that consumer reporting agencies establish procedures to ensure that the information is accurate and is provided only for appropriate purposes. State procedures include a requirement that prospective users identify themselves, certify the use of the purpose for which the information will be used, and certify that the information will not be used for other purposes. A CRA must take reasonable effort to verify the identity of a prospective user and the uses certified by the prospective user before providing a report.

It is unlawful to obtain information knowingly and under false pretenses. A person who violates the law is subject to a fine of \$5,000, up to a year in prison, or both. It is also unlawful to knowingly provide information to a person who is not authorized to receive the information. An officer or employee of a CRA who violates the law is subject to a fine of \$5,000, up to a year in prison, or both.

There are mechanisms in state and federal law to dispute the completeness and accuracy of information on a consumer report.

### Use of Credit Reports by Employers Under State Law

Consumer reports may be used for employment purposes. Employment purposes include evaluating applicants for employment, promotion, reassignment or retention. A person may not obtain a consumer report for employment purposes with respect to any consumer who is not an employee at the time unless either:

- the consumer has received written disclosure that a consumer report may be obtained for purposes of considering the consumer for employment. This disclosure must be made prior to the employer obtaining the report. The disclosure may be contained in a written statement contained in employment application materials; or
- the consumer authorizes the procurement of the report.

A person may not obtain a consumer report for employment purposes with respect to an employee unless the employee was provided with written notice that consumer reports may be used for employment purposes. A written statement in employee guidelines or manuals available is adequate notice. These requirements do not apply with respect to a consumer

report of an employee who the employer has reasonable cause to believe has engaged in specific activity that constitutes a violation of law.

In using a consumer report for employment purposes, before taking any adverse action based in whole or part on the report, a person must provide the consumer with:

- the name, address, and telephone number of the CRA providing the report;
- a description of the consumer's rights regarding consumer reports obtained for employment purposes; and
- a reasonable opportunity to respond to any information in the report that is disputed by the consumer.

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### **Summary of Bill:**

A person may not procure a consumer report for employment purposes where any information contained in the consumer report "bears on" the credit worthiness, credit standing, or credit capacity of an applicant or current employee, unless the information is either:

- substantially job related and the employer discloses the use of the information to the consumer in writing; or
- required by law.

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**Appropriation:** None.

**Fiscal Note:** Not requested.

**Effective Date:** The bill takes effect 90 days after adjournment of session in which bill is passed.

### **Staff Summary of Public Testimony:**

(In support) Credit reports are used for many things in our society, including insurance. We expect that a credit report will be used when we apply for credit. It is starting to creep into areas like employment, though. A credit check probably should be done for employment in some professions and jobs. For other positions, it is clearly not necessary. A person who is struggling to make ends meet isn't going to have good credit. If someone applies for a job at a jewelry store or in law enforcement, it might be understandable. But not for other jobs, like waitress, plumber, or a pipe fitter. It is a privacy issue. We worked on the bill for quite some time. Both sides are slightly unhappy with the compromises made in the bill. Not everyone could be made completely happy. It was a bipartisan effort. The Senate passed the bill overwhelmingly. It has been endorsed by a number of media outlets. The bill helps average citizens. A business could do a credit check on a person that handles money but should not be able to check on a person who does not work in an area that is related to money or trust. The bill will help people get jobs. The language has been worked for quite some time. It is not perfect from our perspective, but it is a good first step.

(Neutral) A number of companies provide employment checks. There are various types or screens that are used. One company estimated that only 10 percent of requests involve a look at credit history. The industry had some concerns with the bill in the Senate. Most of those issues have been resolved. We are here today more to provide information and answer any questions.

(Opposed) Not many businesses use credit checks, but it is an important tool for a number of businesses, particularly those that are jewelers, pharmacies, or that sell electronics. A credit check costs money. A business is not going to do it unless they believe it is necessary. Quite a bit of theft is internal. Businesses need to be able to check on their applicants. We believe that the current law provides adequate protections. The phrase "substantially related" is too ambiguous and too high a standard. We don't know what that phrase means. A small business will have no way of knowing what it means. We have never supported the bill. We agree with the previous statements. We question the necessity of the bill. If this must move forward, we would request that "substantially" be removed. The negotiations in the Senate did not resolve our concerns.

**Persons Testifying:** (In support) Senator Hobbs, prime sponsor; and Zach Carstensen, Jewish Federation.

(Neutral) Cliff Webster, Consumer Data Information Association.

(Opposed) Vicky Marin, Washington Retail Association; and Carolyn Logue, National Federation of Independent Business.

**Persons Signed In To Testify But Not Testifying:** None.