

HOUSE BILL NO. 601

INTRODUCED BY C. EDMUNDS

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A BILL FOR AN ACT ENTITLED: "AN ACT LIMITING THE USE OF A CONSUMER REPORT FOR EMPLOYMENT PURPOSES; PROVIDING A FINE FOR MISUSE; AND AMENDING SECTIONS 31-3-102, 31-3-111, 31-3-131, AND 31-3-153, MCA."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 31-3-102, MCA, is amended to read:

"31-3-102. Definitions and rules of construction. (1) Definitions and rules of construction set forth in this section are applicable for the purposes of this part.

(2) ~~The term "consumer"~~ "Consumer" means an individual.

(3) (a) ~~The term "consumer "~~"Consumer report" means any written, oral, or other communication of any information by a consumer reporting agency bearing on a consumer's ~~credit worthiness~~ 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:

(i) credit or insurance to be used primarily for personal, family, or household purposes;

(ii) employment purposes as provided in 31-3-311(3); or

(iii) other purposes authorized under 31-3-111.

(b) The term does not include:

(i) any report containing information solely as to transactions or experiences between the consumer and the person making the report;

(ii) any authorization or approval of a specific extension of credit, directly or indirectly, by the issuer of a credit card or similar device; or

(iii) any report in which a person who has been requested by a third party to make a specific extension of credit, directly or indirectly, to a consumer conveys the consumer's decision with respect to the request if the third party advises the consumer of the name and address of the person to whom the request was made and that person makes the disclosures to the consumer required under 31-3-131.

1 (4) ~~The term "consumer~~ "Consumer reporting agency" means any person that, for monetary fees, dues,
2 or on a cooperative nonprofit basis, regularly engages in whole or in part in the practice of assembling or
3 evaluating consumer credit information or other information on consumers for the purpose of furnishing consumer
4 reports to third parties.

5 (5) ~~The term "employment~~ "Employment purposes", when used in connection with a consumer report,
6 means a report used for the purpose of evaluating a consumer for employment, promotion, reassignment, or
7 retention as an employee. The use of a consumer report for employment purposes is limited as provided in
8 31-3-311(3).

9 (6) ~~The term "file"~~ "File", when used in connection with information on any consumer, means all of the
10 information on that consumer that is recorded and retained by a consumer reporting agency regardless of how
11 the information is stored.

12 (7) ~~The term "investigative~~ "Investigative consumer report" means a consumer report or portion of a
13 consumer report in which information on a consumer's character, general reputation, personal characteristics,
14 or mode of living is obtained through personal interviews with neighbors, friends, or associates of the consumer
15 reported on or with others with whom the consumer is acquainted or who may have knowledge concerning any
16 items of information. However, the information may not include specific factual information on a consumer's credit
17 record obtained directly from a creditor of the consumer or from a consumer reporting agency when the
18 information was obtained directly from a creditor of the consumer or from the consumer.

19 (8) ~~The term "medical~~ "Medical information" means information or records obtained, with the consent
20 of the individual to whom it relates, from licensed physicians or medical practitioners, hospitals, clinics, or other
21 medical or medically related facilities.

22 (9) ~~The term "person"~~ "Person" means any individual, partnership, corporation, trust, estate, cooperative,
23 association, government or governmental subdivision or agency, or other entity."
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25 **Section 2.** Section 31-3-111, MCA, is amended to read:

26 **"31-3-111. Permissible purposes of reports.** A consumer reporting agency may furnish a consumer
27 report under the following circumstances and no other:

- 28 (1) in response to the order of a court having jurisdiction to issue ~~such~~ an order;
29 (2) in accordance with the written instructions of the consumer to whom it relates;
30 (3) to a person ~~which~~ that it has reason to believe:

1 (a) intends to use the information in connection with a credit transaction involving the consumer on whom
 2 the information is to be furnished and involving the extension of credit to, or review or collection of an account
 3 of, the consumer;

4 (b) intends to use the information for employment purposes subject to the limitations in 31-3-131(3);

5 (c) intends to use the information in connection with the underwriting of insurance involving the
 6 consumer;

7 (d) intends to use the information in connection with a determination of the consumer's eligibility for a
 8 license or other benefit granted by a governmental instrumentality required by law to consider an applicant's
 9 financial responsibility or status; or

10 (e) otherwise has a legitimate business need for the information in connection with a business
 11 transaction involving the consumer."

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13 **Section 3.** Section 31-3-131, MCA, is amended to read:

14 **"31-3-131. Requirements on users of consumer reports.** (1) (a) Whenever credit or insurance for
 15 personal, family, or household purposes ~~or employment~~ involving a consumer is denied or the charge for the
 16 credit or insurance is increased either wholly or partly because of information contained in a consumer report from
 17 a consumer reporting agency, the user of the consumer report shall advise the consumer against whom the
 18 adverse action has been taken and supply the name and address of the consumer reporting agency making the
 19 report.

20 (b) Whenever information contained in a consumer report from a consumer reporting agency is the
 21 reason for a denial involving a consumer for employment purposes, the user of the consumer report shall advise
 22 the consumer against whom the adverse action has been taken and supply the name and address of the
 23 consumer reporting agency making the report.

24 (2) Whenever credit for personal, family, or household purposes involving a consumer is denied or the
 25 charge for the credit is increased either wholly or partly because of information obtained from a person other than
 26 a consumer reporting agency bearing upon the consumer's ~~credit worthiness~~ creditworthiness, credit standing,
 27 credit capacity, character, general reputation, personal characteristics, or mode of living, the user of the
 28 information shall, within a reasonable period of time, upon the consumer's written request for the reasons for the
 29 adverse action received within 60 days after the consumer learned of the adverse action, disclose the nature of
 30 the information to the consumer. The user of the information shall clearly and accurately disclose to the consumer

1 the right to make the written request at the time the adverse action is communicated to the consumer.

2 (3) An employer may use public record information for employment purposes if the information is used
 3 as provided in 31-3-126, but the employer may not use any credit history contained in a consumer report for
 4 employment purposes unless the consumer report is being requested to investigate a potential or current
 5 employee who may be in a position:

6 (a) for which credit is issued in goods, a line of credit is provided, or a fiduciary responsibility is owed to
 7 the employer; or

8 (b) that is subject to the provisions of 15 U.S.C. 1681b(b)(2)(C) and (b)(4).

9 (4) (a) A violation of subsection (3) is a misdemeanor, and the penalty is \$250 for a first offense and no
 10 more than \$500 for a second or subsequent offense.

11 (b) An employer who fails to inform a consumer that a consumer report has been used for employment
 12 purposes for which an adverse action, as defined in 15 U.S.C. 1681a, is made is subject to the provisions of
 13 31-3-141 through 31-3-143.

14 ~~(3)(5)~~ A person may not be held liable for any violation of this section if the person shows by a
 15 preponderance of the evidence that at the time of the alleged violation the person maintained reasonable
 16 procedures to ensure compliance with the provisions of subsections (1) ~~and (2)~~ through (3)."

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18 **Section 4.** Section 31-3-153, MCA, is amended to read:

19 **"31-3-153. Violation.** ~~(1) For~~ Except as provided in subsection (2), for the purposes of this part, a
 20 violation of this law ~~would be in~~ is treated as a violation of Title 30, chapter 14, part 1.

21 (2) A violation of 31-3-131(3) is subject to the penalty in 31-3-131 and not to the provisions of Title 30,
 22 chapter 14, part 1."

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