

## AMENDMENTS TO HOUSE BILL NO. 1189

Sponsor: **ROBINSON**

Printer's No. 1746

1 Amend Title, page 1, line 2, by inserting after "Statutes,"  
2 providing for personal identifying information;  
3 Amend Sec. 1, page 1, line 7, by striking out "a section" and  
4 inserting  
5 sections  
6 Amend Sec. 1, page 1, by inserting between lines 7 and 8  
7 § 4120. Obtaining or disclosure of personal identifying  
8 information prohibited.  
9 (a) Offense defined.--A person commits an offense if he:  
10 (1) Knowingly and willfully obtains or attempts to  
11 obtain personal identifying information about a person from a  
12 consumer credit reporting agency under false pretenses.  
13 (2) As an officer or employee of a consumer credit  
14 reporting agency, knowingly and willfully provides personal  
15 identifying information concerning another person from the  
16 consumer credit reporting agency files to a person not  
17 authorized to receive such information.  
18 (b) Grading.--  
19 (1) A violation of this section constitutes a  
20 misdemeanor of the second degree. A second or subsequent  
21 violation of this section constitutes a misdemeanor of the  
22 first degree.  
23 (2) Where a person commits an offense under subsection  
24 (a) and the victim of the offense is 60 years of age or  
25 older, the grading of the offense shall be one grade higher  
26 than specified in paragraph (1).  
27 (c) Definitions.--As used in this section the following  
28 words and phrases shall have the meanings given to them in this  
29 subsection:  
30 "Consumer." A natural individual.  
31 "Consumer credit reporting agency." Any person who, for  
32 monetary fees, dues or on a cooperative nonprofit basis,  
33 regularly engages, in whole or in part, in the business of  
34 assembling or evaluating consumer credit information or other  
35 information about consumers for the purpose of furnishing  
36 consumer reports to third parties. The term does not include any  
37 governmental agency whose records are maintained primarily for  
38 traffic safety, law enforcement or licensing purposes.

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2 providing for personal identifying information;

3 Amend Sec. 1, page 1, line 7, by striking out "a section" and  
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6 Amend Sec. 1, page 1, by inserting between lines 7 and 8

7 § 4120. Unauthorized possession or use of personal identifying  
8 information.

9 (a) Offense defined.--A person commits an offense if he:

10 (1) possesses personal identifying information of  
11 another without the authorization of that person; or

12 (2) uses personal identifying information of another  
13 person to obtain, or to attempt to obtain, credit, goods or  
14 services in the name of the other person without the consent  
15 of that person.

16 (b) Grading.--

17 (1) A violation of subsection (a)(1) constitutes a  
18 misdemeanor of the third degree. A second or subsequent  
19 violation of subsection (a)(1) shall constitute a misdemeanor  
20 of the second degree.

21 (2) An offense under subsection (a)(2) shall fall within  
22 the following classifications depending on the value of the  
23 credit, goods or services secured or sought to be secured by  
24 means of the unauthorized use of personal identifying  
25 information:

26 (i) if the value involved exceeds \$500, the  
27 violation constitutes a felony of the third degree;

28 (ii) if the value involved was \$50 or more but less  
29 than \$500, the offense constitutes a misdemeanor of the  
30 second degree;

31 (iii) if the value involved was less than \$50, the  
32 offense constitutes a misdemeanor of the third degree;

33 (iv) if the value involved cannot be satisfactorily  
34 ascertained, the offense constitutes a misdemeanor of the  
35 third degree; or

36 (v) if the offense is a second or subsequent  
37 violation, the offense constitutes a felony of the second  
38 degree regardless of the amount involved.

### **Summary - A5060 (Robinson) to HB 1189**

Amendment 5060 to House Bill 1189 prohibits a person from obtaining or disclosing personal identifying information. Specifically, a person commits an offense if he:

- (1) knowingly or willfully obtains or attempts to obtain personal identifying information about a person from a consumer credit reporting agency under false pretenses.
- (2) as an officer or employee of a consumer credit reporting agency, knowingly and willfully provides personal identifying information concerning another person from the consumer credit reporting agency files to a person not authorized to receive such information.

A first violation constitutes a second degree misdemeanor. A second or subsequent violation constitutes a first degree misdemeanor.

When the person is 60 years of age or older, the grading of the offense shall be one grade higher than specified above.

The amendment defines a "consumer credit reporting agency" as any person who, for monetary fees, dues or on a cooperative nonprofit basis, regularly engages, in whole or in part, in the business of assembling or evaluating consumer credit information or other information about consumers for the purpose of furnishing consumer reports to third parties. The term does not include any governmental agency whose records are maintained primarily for traffic safety, law enforcement or licensing purposes.

"Personal identifying information" is defined as the name, address, telephone number, driver's license number, Social Security number, place of employment, employee identification number, mother's maiden name, checking account number, savings account number, debit card number, money access card number or credit card number of an individual person.

Existing Law - Laws governing consumer credit reporting agencies are primarily located within the federal Fair Credit Reporting Act of 1970 (Public Law 100-86, Title VI, Section 601)

### **Summary - A5111 (Robinson) to HB 1189**

Amendment 5111 prohibits the unauthorized possession or use of personal identifying information. Specifically, a person commits an offense if he:

- (1) possesses personal identifying information of another without the authorization of that person; or
- (2) uses personal identifying information of another person to obtain, or to attempt to obtain, credit, goods or services in the name of the other person without the consent of that person.

A first violation of (1) constitutes a third degree misdemeanor. A second or subsequent violation constitutes a second degree misdemeanor. A violation of (2) falls within the following categories:

- (i) if the value involved exceeds \$500, the violation constitutes a third degree felony;

acteristics or mode of living, and is obtained through personal interviews with neighbors, friends, associates or others who might have such knowledge.

Credit bureaus do not compile such reports and few credit granters ever have need for them. They are usually requested for insurance purposes.

Sometimes you may order an employment report containing this type of information. When this occurs, you must notify the applicant in writing, within three days after ordering the report, that it has been requested and will include information about character, mode of living, and so on. He or she must also be informed of your responsibility to accurately disclose the nature and scope of the investigation in writing within five days if requested to do so.

This must be done whether you hire the person or not. These notifications do not have to be made, however, if the individual has not specifically applied for the job and the employer is simply screening someone who might be recruited.

**Be careful - or your credit department might be considered a "consumer reporting agency"**

There are many obligations and special requirements for what the FCRA terms "consumer reporting agencies." As a result, most credit granters would prefer to avoid any activity that would bring them under this definition. However, there is nothing in the law that would cause a credit granter to hesitate to furnish its own ledger experience about a consumer, provided the information is accurate. This is not considered a "consumer report" as defined in the FCRA.

Unless a credit granter is prepared to do all the interviewing, notifying, correcting, record keeping, etc., that the law says is incumbent on a "consumer reporting agency," then it

should leave the credit reporting function to the credit bureau. The lesson here is simple: Give out *only* your own factual ledger experience about consumers.

Credit granters who arrange for consumer installment contracts to be financed through a third party must be particularly cautious to comply with the law. The store that offers a consumer's contract to a bank or finance company must inform the consumer of this and provide the name and address of the bank or finance company. And, if the bank or finance company denies the loan, then it must notify the consumer as required by law.

**Government agencies may obtain credit reports**

Credit bureaus may provide government agencies only with identifying information such as name, address, former address, place of employment and former places of employment unless credit information is required for certain allowed purposes.

One such purpose is if the agency intends to use the report for granting credit, review or collection of an account, insurance or employment. Another is if the agency is required to check a person's financial responsibility before granting certain licenses or security clearance.

Credit bureaus must also furnish credit reports in response to court orders. If a consumer supplies written instructions to report his or her credit information to a government agency, the bureau is allowed to do so.

**Need more information?**

If, after talking with your local credit bureau manager, you have further questions about the FCRA, please contact Associated Credit Bureaus, Inc.



**Associated Credit Bureaus, Inc.**  
1090 VERMONT AVENUE, N.W., SUITE 200  
WASHINGTON, D.C. 20005-4905

**CREDIT BUREAU**  
OF READING & BERKS COUNTY  
ROCKLAND PROF BLDG SUITE 200,  
1940 N. 13th ST.  
READING, PA 19604-1544

**Highlights of the Fair Credit Reporting Act for Credit Granters**



The purpose of the Fair Credit Reporting Act is to satisfy legitimate concerns of consumers without impeding the flow and accessibility of credit. The act is designed to accomplish that purpose without placing undue restrictions on credit granters and the credit reporting industry.

Since it went into effect in 1971, the Fair Credit Reporting Act - referred to in the industry simply as the "FCRA" - has demonstrated through practical, daily usage its capacity to accomplish the goals established by Congress.

The FCRA has proved that it can and does work.

One reason it works is because it is a practical and comparatively simple piece of regulatory legislation. Another reason is because major segments of the consumer credit industry have actively supported the principles of the FCRA and helped assure its proper implementation. Associated Credit Bureaus, Inc., and its members have been in the forefront of industry efforts to assist credit granters and consumers, as well as credit bureaus, to understand how the law works to their mutual benefit.

### **How the FCRA protects consumers**

The FCRA offers legal protection of consumer privacy by:

- limiting the purposes for which a consumer report may be used;
- giving the consumer the right to receive full disclosure of everything in the file;
- limiting the length of time which adverse information may be reported on a consumer;
- informing the consumer when a report has contributed to a denial of credit;
- providing the consumer with an opportunity to dispute information and enter his side of the dispute;

- limiting access of governmental agencies and
- providing civil and criminal liability for violations of the law.

Associated Credit Bureaus, Inc., has published a brochure explaining these points from the consumer's viewpoint entitled, "Consumers, Credit Bureaus and the Fair Credit Reporting Act." The purpose of *this* brochure, though, is to help credit granters understand the FCRA so you will know what the law requires of you. The contents are based on ACB's extensive knowledge of the legislative history of the law and years of working with the federal agencies, Congressional staffs, consumers, credit granters and credit bureaus to implement the FCRA in the marketplace.

Naturally, when you, as a creditor, have any doubts about provisions of the FCRA, you should consult and follow the advice of your own attorney.

### **Credit reports provided only for specific purposes**

Credit bureaus are limited to providing credit reports to credit granters for purposes allowed under the FCRA. Extending credit, review or collection of an account, employment purposes, underwriting insurance or in connection with some other legitimate business transaction, such as investment or partnership, are all acceptable reasons to request a report. Credit granters are required to certify that the reports they order will be used for those purposes only. This usually requires a signed contract, and the credit bureau must be satisfied that the prospective user is in compliance, and that reports are requested for permissible purposes only.

The user must clearly identify any requests that are made for employment purposes,

since credit bureaus have additional responsibilities when issuing this type of report.

### **Inform the consumer when denying credit based on a credit bureau report**

The FCRA requires that the credit granter give the consumer the name and address of the credit bureau when it provided information which wholly or in part caused denial of credit.

Six declination letters have been developed by ACB for suggested use by grantors. Each letter clearly identifies the necessary information which will be helpful for consumers in determining why they were denied credit. Practice has shown that effectively communicating the reason for denial reduces future calls and letters from confused consumers. These letters serve as a guide for credit granters when complying with disclosure requests under the FCRA.

Samples of the six letters as well as a "declination letter checklist" are available from ACB Credit Reporting Division offices or from ACB headquarters at the address shown on the back of this brochure.

### **The consumer has a right to know**

Whenever a credit granter denies credit based on information from a source or sources other than a credit bureau, such as a direct inquiry of another creditor, the consumer must be informed at the time of denial that he has a right to request in writing, within 60 days, the nature of the information.

Although the FCRA does not require the credit granter to disclose to the consumer the source of direct inquiry information, the consumer must be given enough facts to be able to refute or challenge the accuracy of the information. Creditors are advised not to accept any direct ledger information from a

source that is unwilling to be identified to the consumer.

### **Adverse information restricted**

No adverse information over seven years old can be included in a credit report, with the exception of straight bankruptcy information which may be reported for 10 years.

The only time these limitations do not apply is when the report is for a credit transaction or life insurance policy over \$50,000 or when an employment report is for an annual salary over \$20,000.

### **Credit granter liability**

Any credit granter who is believed to have willfully failed to comply with a requirement of the FCRA can be sued by a consumer for actual damages, unlimited punitive damages and legal fees. If a creditor is believed to have negligently failed to establish reasonable procedures to comply with all requirements of the law, he can be sued for actual damages and legal fees by a consumer.

### **Fraudulently obtaining a credit report is punishable**

Just as the law requires credit bureaus and officers or employees not to give a credit report to an unauthorized person, it also firmly prohibits anyone else from obtaining information under false pretenses.

Anyone—a creditor, news reporter, consumer or whoever—who obtains a credit report in a fraudulent manner is subject to a \$5,000 fine or one year in prison, or both.

### **How the law treats special investigative reports**

An *investigative* consumer report is one that contains information on an individual's character, general reputation, personal



**If there is an error in my report, do I have to contact anybody else?**

Three national credit reporting systems maintain credit data: Equifax, Trans Union and TRW. If the reinvestigation results in data being corrected, ask the credit bureau for the names of any bureaus using the other two national reporting systems. Contact those credit bureaus and ask to have the information corrected. Currently, an automated system of handling consumer disputes is being implemented to speed up this process. In the new system, a change to one national systems' database will automatically be referred to the other two.

**What's the cost to review my credit history or dispute information?**

If you have been denied credit in the past 30 days because of a credit report, you may review your credit history free of charge. ACB members extend the period to 60 days. If you have not been denied credit, you will be charged a maximum of \$8. It is in the credit reporting industry's best interest to have credit reports which are complete and accurate. You won't be charged for making corrections.

**How long does negative information stay in my credit history?**

Most negative information, by law, must be removed from the credit history after seven years. Bankruptcies may remain on the record for 10 years.

**CREDIT BUREAU**  
OF READING & BERKS COUNTY  
P. O. BOX 14114  
READING, PA 19612-4114



**Associated Credit Bureaus, Inc.**  
1090 Vermont Ave., N.W.  
Suite 200  
Washington, D.C. 20005-4905



**Some  
Quick  
Facts  
About  
Your  
Credit  
History**

 Associated Credit Bureaus, Inc.



## *Some Quick Facts About Your Credit History*

This brochure should answer many of your questions before you review your credit history with a credit bureau representative.

The following material provides some basic information on what credit bureaus do and what they do not do.

### What is a credit report?

A credit report is a record of how you've paid bills with credit grantors such as stores and banks. Credit grantors use credit reports to determine whether or not you will be extended credit. The report identifies you by information such as your name and address, credit accounts, and payment history. Your credit report also includes public record data, such as bankruptcies, court judgments and tax liens. A list of those who have recently requested a copy of your credit report is also included. A credit report does not contain information on arrest records, specific purchases, or medical records.

### How is the granting of credit determined?

Your account payment history can determine whether a store, bank or other lender will grant you credit. Your credit report, along with other relevant financial information -- salary, for instance -- provides a basis of information

on which a lender determines your ability to take on additional debt. Only creditors, like stores and banks, make the decision to approve or decline a loan. Credit bureaus simply supply the appropriate information.

### Are all my accounts listed in my credit report?

Most credit grantors report their data to credit bureaus at least monthly. Some smaller lenders, however, do not report information to credit bureaus.

### Why is something I paid off still in my credit report?

Remember that a lender's credit decision is based on a history of how you've paid your bills. The same type of information would be pertinent if a friend asked to borrow \$100 from you. How they've repaid past loans would be an important element in your decision making process.

### Is there information about my personal life in my credit report?

No. Credit reports do not contain information about your friends, personal habits, morals, or life-style. Specialized companies create investigative consumer reports, which contain personal information obtained from friends or neighbors. These companies are not credit bureaus and their product should not be confused with a credit report.

### Who can get a copy of my report?

Federal law grants credit report access to certain people through the Fair Credit Reporting Act (FCRA). The FCRA specifies that those granted access to credit reports must do so in order to grant credit or insurance, process an application for employment or to issue a special license, or because of potential financial dealings with another. Obtaining a credit report under false pretenses, or improper use of a credit report, is against the law. When privacy violations do occur, the credit reporting industry notifies the appropriate law enforcement authorities.

### If there are errors in my credit file, how can I get them corrected?

If you find an error in your credit report, please notify the credit bureau immediately. The FCRA requires the reinvestigation of any possible inaccuracies. The credit bureau will reverify the item in question with the creditor at no cost to the consumer. Almost all reinvestigations take less than 30 days. If the credit grantor who originally provided the information disagrees with your challenge, you can write a statement to be included in your credit report.



biggest credit purchases in most people's lives -- a home.

**Are there any laws pertaining to women and credit reporting?**

Yes, as a result of the Equal Credit Opportunity Act, women may now require creditors to show their participation in a family account when information about that account is reported to a credit bureau. Establishing credit accounts in her own name will probably result in a woman creating a separate file at the credit bureau, but normally family records are stored and accessed with the husband's name. If a woman wants a separate file, she should make the request at the credit bureau.

**How does a person with no credit history establish a credit record?**

The best way to establish credit is to start small and slowly, perhaps with a local retailer or by making a large down payment and paying the balance on credit. Many local department stores have special budget accounts -- with set limits -- for those with no credit history or with limited means. Once you've proven yourself with these merchants, you'll have started a record. And others will then be more likely to open accounts for you.

Everyone should have at least a few credit accounts. Otherwise, if you pay cash for everything, you won't have established a record of good paying habits. And, should you ever really need credit to buy a house or need a loan to pay hospital bills, you might have trouble getting it simply because you have no credit history.

**Once a consumer gets credit, how can getting too deeply into debt be avoided?**

The answer is simply -- the consumer must learn how to manage money -- to keep spending in line with what he or she makes.

**Are there certain guidelines?**

Most important, you need to know exactly how much your take home pay is each month -- to the penny. Then, restrict your credit payment to 20 percent of your monthly salary after subtracting your rent or mortgage and car payments. For example, if you bring home \$850 a month, your rent is \$220, and your car payment is \$175, that leaves \$445 for

additional expenses. Your payments for credit purchases should not be more than 20 percent of \$445 -- or \$91.

Also, you should learn to shop for credit the way you shop for other things. Look for the best bargains. Credit usually is not free, and some plans cost more than others.

Finally, don't let a salesperson tell you what you can or can't afford. You know your income and obligation; they don't.

Of course, in addition to buying wisely, people should plan for emergencies by saving money regularly and by having adequate insurance coverage.

**What about people who already have gotten themselves into credit trouble? What should they do?**

Any time you can't pay a bill on time, it is best to contact the creditor immediately and explain the situation. Creditors usually are understanding and willing to help you through a cash-short period. And they appreciate knowing that you still are aware of your obligations and are willing to pay, even though circumstances won't allow you to meet the payment schedule you originally agreed upon.




**Associated Credit Bureaus, Inc.**

1090 VERMONT AVENUE, N.W., SUITE 200  
WASHINGTON, D.C. 20005-4905

**CREDIT BUREAU**

OF READING AND BERKS COUNTY  
135 S. 5th St., P. O. BOX 79  
READING, PA 19603



**WHAT IS A  
CREDIT BUREAU**



### **What is a credit bureau? What does it do?**

Essentially, it's a clearinghouse of consumer credit information. In our "buy now, pay later" credit system, when merchants let you buy an item on credit, they are really lending you the money to buy the item, and they want some assurance that they will get the money back when promised. That assurance comes from your credit record which is compiled by the credit bureau. It's a summary of how you've handled similar obligations with other stores and lending institutions in the past.

If each credit grantor had to gather the necessary information on each consumer desiring to purchase goods or services on credit, the cost of granting credit would be prohibitive, and the consumer would experience a great deal of delay and inconvenience.

### **How does a credit bureau compile information?**

Some of it is supplied by you when you apply for credit -- such as your name, spouse's name, address, employer and former employer, social security number and so forth. Some of it is supplied by the merchants and other creditors with whom you've done business. As members of the credit bureau, they regularly supply information on how promptly you've paid your debts to them.

Other information comes from public records -- such as divorce notices, deaths, marriages, bankruptcies, court judgments and dispositions of lawsuits.

### **Does a credit file include comments from neighbors or others on a person's morals or character?**

No. That is called an investigative report, and it is information generally used by insurance companies for underwriting purposes. The information usually is obtained through personal interviews. Credit bureaus do not employ outside investigators and do not furnish that type of report.

### **Can a person find out what is in his or her file and where the information came from?**

You can go to a credit bureau and ask to review the file on you, and, after proper identification, you'll be told everything that's there and where it came from. If there are errors you can have them corrected, have anything you question reinvestigated and, if an account is in dispute between you and a

merchant, you can file your side of the story in the bureau's records. Your statement becomes a permanent part of the record. It's included with everything else whenever a credit report on you containing the disputed information is given out.

### **Are there any laws that regulate credit bureaus?**

The Fair Credit Reporting Act of 1971 was an effort by Congress to regulate the compilation of information on individuals in order to offer legal protection of their privacy while not impeding the credit granting process. In other words, legally a consumer did not have the right, before the law was passed, to know what was in his file. Credit grantors were not as limited in the purposes for which they could gain access to a person's record.

However, the credit reporting industry, under the leadership of its international trade association, Associated Credit Bureaus, Inc., already was policing itself. Most bureaus had been reviewing files with consumers for years without charge. And most had agreements with their grantor customers that reports were to be ordered only for the purposes of granting credit or employment. The Fair Credit Reporting Act gave all this the force of law. Furthermore, the credit industry was instrumental in helping Congress pass the bill.

### **What if there is something bad on a record -- say, a person couldn't pay some bills because of sickness or a layoff at one point. Is that information going to follow the consumer through life?**

No. The law limits the reporting of adverse information to seven years. The only exception is bankruptcy which is reported for 10 years. In practice, many firms don't base decisions on information that old; they would rather consider your record over the past three to five years.

### **How do you know when someone really has a legitimate purpose for requesting a credit report?**

First, credit grantors receive reports only by giving the bureau their code number. This code number -- assigned just to them -- insures that only bona fide members of the credit bureau obtain credit information.

Second, our members have to sign a contract with us that they will order reports only on persons

they are considering for credit or employment. If they violate this contract, they're also breaking the law and they may be punished with stiff fines of \$5,000 or one year in jail.

### **How is my credit rating determined?**

The history of how you paid your accounts establishes your credit rating. Some credit bureaus and credit grantors use a scoring system that considers a combination of information on your credit report and your application to determine a risk score. The creditor makes the decision to grant or deny the credit based on that score.

### **Suppose a consumer is turned down for credit. What should he or she do?**

If a consumer was rejected wholly or partly because of information contained in a credit report, the creditor must give the name and address of the credit bureau involved. Then he or she can arrange for an interview to review their file. This may be done at the bureau, in person, or by telephone if a written request is made first. There is no charge if this is done within 60 days of the credit rejection.

A trained interviewer will review the file and disclose the contents to the consumer. The bureau will reinvestigate any errors or disputes without charge.

Sometimes, though, a person may have a record of prompt pay and still be turned down. In such cases, it's usually because the consumer hasn't met other requirements of the firm...such as length of residence at one address or time on the job. Remember, each individual credit grantor sets its own requirements and specifications, not the credit bureau.

### **Suppose a consumer wants to know what information the credit bureau has about him or her, even though there has not been a rejection of credit. Can a report still be obtained?**

A consumer has the right to review the file at any time. However, there may be a small charge. As a matter of fact, it would be wise for consumers to visit their credit bureaus periodically for a file check just as they visit their doctors and dentists...since your economic health is based on credit. An especially important time to make sure your file is up-to-date and accurate is right before making one of the