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Personal Credit Information in Screening for Personnel Reliability

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Abstract

This paper reviews psychological, business and legal literature concerning the value and legal status of credit information in personnel decisions. Section 1 of the paper reviews the psychological and business literature. Section 2 of the paper reviews the legal literature.

The primary purpose of using credit information in personnel decisions lies in selecting those individuals seeking positions of trust. Such positions are those involving access to cash or valuable merchandise, as well as those in law enforcement, the nuclear power industry, and military/civilian positions which require security clearance. Employers seeking to reduce theft and avoid negligent hiring practices, often conduct credit checks on prospective employees. The rationale behind conducting a credit check is based on the assumption that a person who is financially unstable or has a great need for money will be more likely to steal from an employer. Although credit checks are widely used, their validity in pre-employment screening has yet to be established. At this time, there is no empirical research to indicate that credit histories are predictive of future theft or any other employment related criteria such as job performance. An annotated bibliography of this literature appears in Appendix A.

A review of the legal literature indicates that the use of personal credit information in personnel decisions is permissible. The Federal Fair Credit Reporting Act states specifically that consumer credit reports may be obtained for use in personnel decisions. Several states have enacted statutes based on this Federal Act. Also, the Federal Privacy Act effects how information is stored and disseminated. Several states, likewise, have statutes based on this Federal Act. Little relevant case law exists in this area. In general, legal proceedings have been based on the user of the credit information stating that he or she intends to use the information for employment decisions but, in fact, wants the information for other reasons.

Section 1

A Review of the Psychological and Business Literature

The motivation behind using credit information in making personnel decisions such as selection or promotion is the potential predictive value it holds. On the surface, a credit report simply provides information on the amount of money an individual spends as well as if and when they repay the debt incurred. From this perspective, credit information assess financial responsibility by examining whether or not an individual has repaid their debt. On a broader perspective, credit information can be a measure of financial need because the amount of money one owes is an indication of financial need. Taking this one step further, one could also view credit information as a measure of conscientiousness or integrity. People who make their credit payments every month, on time, can be said to be more conscientious with respect to their financial obligations. Some might infer that those who are conscientious concerning financial obligations may be conscientious in other areas of their life such as in the performance of their job duties.

Some authors (Beaudette, 1992; Donohue, 1992; Munchus, 1992; Sharp, 1991; Ralicki, 1992; Lorenzini, 1992; Perry, 1990; Maddaloni, 1990; Green, 1989, Sklar, 1990) have asserted that many advantages accrue for employers in conducting credit checks, an important one being the employer is able to assess whether the applicant has great financial need. One might argue that if one has a great need for money, one would be more likely to steal from the company. An extension of this logic is that people who have shown past unethical or irresponsible practices have a higher chance of repeating these practices in the future. In addition, these people "generally have poor attitudes, exhibit poor performance and work habits and usually create personnel or morale problems" (Ralicki, 1992).

Checking an applicant's credit history as part of the employment screening process is recommended by many (Beaudette, 1992; Donohue, 1992; Munchus, 1992; Sharp, 1991; Ralicki,

1992; Lorenzini, 1992; Perry, 1990; Maddaloni, 1990; Green, 1989, Sklar, 1990). Credit reports can uncover not only high debt but also possible alcohol and drug use, which may be motives for theft (Lorenzini, 1992). Credit references can reveal overdue accounts, items charged off or turned over for collection, and bankruptcies (Sharp, 1991). Donohue (1990) and Green (1990) believed that credit histories are good reviews of an applicant's responsibilities toward financial obligations. Beaudette (1992) asserted that credit information gives an employer some insight into the applicant's integrity. Running a credit check as part of the pre-employment screening process can help protect an employer from negligent hiring practices (Bates, 1990). All things considered, credit information can be regarded as a useful tool in screening out undesirable employees.

Credit information used to guide personnel selection decisions may be most frequently used when screening for positions of trust in law enforcement, the nuclear power industry, and military/civilian positions which require security clearance (McDaniel, 1989). Other positions of trust are those involving financial responsibility and/or security (Maddaloni, 1990). Such positions are found in the banking and retail industries.

Research on integrity tests suggests that credit information may have value in personnel screening. Ones, Viswesvaran, and Schmidt (1993) found that integrity tests predict supervisory ratings of job performance. In addition, Ones et al. (1993) documented that integrity tests are able to predict counter-productive behaviors such as theft, disciplinary problems, and absenteeism. Although credit information was not directly examined in the Ones et al. (1993) research, it is a type of integrity assessment (Jones & Terris, 1991). Thus, if integrity tests are able to predict job performance and counter-productive behaviors, then credit information, if used as an indication of financial integrity, may be able to predict job-relevant criteria such as job performance, theft, and disciplinary problems. McDaniel (1989) also cited credit history as a potentially "content valid predictor of behavioral reliability."

Unfortunately, at this time there is little direct empirical evidence to support the validity of using credit information in predicting future job performance or theft (Jones & Terris, 1991). A thorough review of both psychological and business literature has failed to locate empirical evidence that applicants with great financial need will be undesirable employees. Furthermore, no

studies have been located which evaluate a link between credit history and delinquent behavior on the job. Appendix A of this report presents an annotated bibliography of the literature.

Employers have the choice of utilizing two different types of credit reports: consumer reports and investigative consumer reports. The most commonly used are consumer reports. These reports can be any written or oral communication about an individual's credit worthiness, credit standing, character, reputation or mode of living (Moore & Burwell, 1993; Israel & Lechner, 1992; Hahn, 1991).

Investigative consumer reports contain the same information, however, they include additional data by obtaining information from interviews with friends, neighbors and other people close to the individual being investigated (Moore & Burwell, 1993; Israel & Lechner, 1992; Hahn, 1991). Both types of credit reports contain information regarding a prospective employee's professional background along with educational background and job training (Bequai, 1991).

Credit checks are relatively simple to conduct. An employer needs only to call a credit bureau, and for a small fee can collect information about an applicant's credit history. Although credit checks are not too costly, they have not been recommended, due to cost, in areas such as fast food or construction where turnover is high (Rothfeder, 1990). A background report from companies like Equifax can run into the thousands for a high ranking corporate executive, but may cost as little as \$100 for a lower level employee such as a manager for a fast food restaurant.

One caution is that if an applicant is rejected either in part or wholly because of the information provided in the report, one must inform the individual of the reason for the decision and give the name and address of the company which provided the information (Parlman & Dolan, 1990; Hahn, 1991; Beaudette, 1992; Bequai, 1991; Bates, 1990; Israel & Lechner, 1992). This gives the applicant the opportunity to correct any misinformation. In addition if an employer is conducting an investigative consumer report, the applicant must be notified in writing within three days of requesting the report and the employer must obtain written consent from the applicant in question (Moore & Burwell, 1993; Hahn, 1991).

Employers must use caution when using credit information for selection or promotion decisions because of the potential for adverse impact (Jones & Terris, 1991; Parlman & Dolan, 1990; Banach, 1990). Employment decisions based on credit ratings will likely show adverse

impact against women and minorities (Parliman and Dolan, 1990). Legal challenges regarding the use of credit information in personnel screening may require the employer to defend business necessity and job relatedness of the credit check. Beaudette (1992) recommended that employers not make a standing practice of rejecting applicants on the basis of bad credit history because minorities and low income groups often have bad credit ratings.

Although employers must be wary of legal and validity considerations when using consumer reports in personnel decisions, they are fast becoming an alternative method of screening applicants. This is due in part to the Polygraph Protection Act of 1988, which prohibits the use of polygraph tests for employment purposes (Hahn, 1991; Ralicki, 1992). Another reason credit checks are becoming popular has to do with difficulty in obtaining information from former employers. Many companies will not divulge any information about a former employee other than to verify the fact that the person was employed there. This is because if an applicant is refused employment on the basis of damaging information from a past employer, a lawsuit may result. (Jones & Terris, 1991; Ralicki, 1992). Employers must be careful that they are obtaining credit information under valid pretenses (Hahn, 1991). Failure to do so, or lying about the use of credit information, can have expensive consequences in court (Hahn, 1991; Beaudette, 1992; Parlman & Dolan, 1990). Some states may soon have laws against using credit information in making personnel decisions. For example, California recently passed a law that would have prohibited the use of credit information in the selection process, however it was vetoed by the governor (Kizorek, 1991).

Summary of Psychological and Business Literature

To date, research has yielded no direct empirical evidence to support the notion that people with great financial need or bad credit histories will make undesirable employees (Jones & Terris, 1991). Despite the lack of validity evidence and likely adverse impact, credit information is used frequently to make selection decisions. Future research needs to concentrate on establishing a more definitive link between credit information and factors such as job performance, theft, and disciplinary problems. More information is needed to establish whether or not credit information can be validly used to predict theft and other undesirable behaviors in the workplace.

Section 2

Review of the Legal Literature

The goal of this section of the paper is to review the legal literature which addresses the issue of the use of credit report information in employment decisions. We do so from five perspectives: The Fair Credit Reporting Act (1970, 1974), state Fair Credit Reporting Acts, The Federal Privacy Act (1974), state Privacy Acts, and case law.

The Federal Fair Credit Reporting Act

First we address the Fair Credit Reporting Act (15 U.S.C. 1681-1681t 1982 & Supp. III 1985). The FCRA discusses what is and is not acceptable in regards to obtaining and using personal credit information. There are seven acceptable reasons (as listed in Fisher, 1981) for obtaining consumer credit reports according to the FCRA. These are:

1. In response to a court order.
2. In accordance with written instructions of the consumer to whom it relates.
3. For use in relation to a credit transaction involving the consumer, the extension of credit to the consumer, or collection of an account of the consumer.
4. For the underwriting of insurance for the consumer.
5. For use by prospective employers.
6. For determination of the consumer's eligibility for a license or other benefit granted by a governmental instrumentality required by law to consider an applicant's financial responsibility or status.
7. For an otherwise legitimate business need for the information in connection with a business transaction involving the consumer"(p.322).

Included in the FCRA's list of "seven permissible purposes" for the Credit Reporting Act is: "use by prospective employers" (FCRA 1681b (3)(B)). The Federal Trade Commission (FTC) has administrative authority to enforce the FCRA (FCRA 1681s.). Investigative consumer reports fall under this jurisdiction. Following the initial investigation, the consumer must be notified that the report was made and advised of the right to request a complete disclosure regarding the intent

and process of the investigation (R. Clontz, Jr., Fair Credit Reporting Manual 1-19; Rev. ed. 1977; as cited in Fisher, 1981). However, after the initial creation and use of an investigative consumer report, the FCRA does not specify a need for the individual to be notified of any subsequent use of such reports (Fisher, 1981).

State Fair Credit Reporting Acts

In addition to the Federal FCRA, many states, at least 14, have enacted their own credit reporting acts. These states include: Arizona, California, Connecticut, Florida, Kansas, Maine, Maryland, Massachusetts, Montana, New Hampshire, New Mexico, New York, Oklahoma, and Texas (Duffy et. al. 1987). The Federal FCRA applies to workplace privacy (F.C.R.A. 15 U.S.C. 1681-1681t 1982 & Supp. III 1985). Here employees and job applicants are described as consumers who are protected as such by the FCRA.

Arizona

Arizona Fair Credit Reporting Act, Arizona Revised Statutes Annotated 44-1691 to 1696 (1985). A Consumer Report is defined here to include "any written, oral, or other communication of any information by a consumer reporting agency bearing on a consumer's credit worthiness, credit standing, credit capacity, character, general reputation, personal characteristics, or mode of living which 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 [among other things] employment purposes (44-1691)." Consumer report does not include a report based solely on information regarding transactions between the consumer and the person making the report. "Employment purposes" means the purpose of the report is to "evaluate a consumer for employment, promotion, reassignment or retention as an employee (44-1691)." One of the "permissible" uses of consumer reports as provided by 44-1692 is "to a person which it has reason to believe: ...Intends to use the information for employment purposes."

Rules and procedures regarding the use of reports, informing individuals of the use of the reports, and steps to address discrepancies between information in the report and what the consumer says is fact are also detailed here. Section 44-1693 states that upon written request an employer who "denies a consumer employment, a promotion, retention as an employee or reassignment or does reassign the consumer whichever is not to the advantage of the consumer"

must disclose the name and address of the consumer reporting agency who furnished the report to the employer (44-1693).

Procedures for correcting consumer credit reports are detailed in section 44-1694. 1) If there is a dispute regarding the accuracy of any part of a consumer's records, he or she may give written notice to the consumer reporting agency detailing what aspect of the report is inaccurate. The consumer reporting agency shall provide the necessary forms for notice and also assist the consumer, if assistance is requested, in the preparation of the notice. 2) After receiving a notice of inaccuracy, a consumer reporting agency has 30 days within which they must provide written denial or admittance of inaccuracy or state that more time is needed to complete the investigation. 3) If it is admitted that the item is inaccurate, it is to be immediately corrected in the agency's records and any person who previously received a report with the inaccurate information must be notified of the correction. 4) If the consumer reporting agency states that more time is needed to investigate this discrepancy, the item is to be immediately corrected in the records as the consumer requested and previous recipients of the information must be notified of the correction. 5) When the investigation is completed, the agency shall inform the consumer. If it is found that the original information was accurate, the agency can again report that information.

California

California Investigative Consumer Reporting Agencies Act, California Civil Code 1786-1786.56 (West 1985, Supp. 1994). An investigative consumer report is defined as a consumer report containing information about the consumer's "character, general reputation, personal characteristics, or mode of living" and is obtained through "personal interviews with neighbors, friends, or associates of the consumer, or others with whom he or she is acquainted or who may have knowledge concerning any such items of information." This does not include a report based solely on information obtained from consumer reporting agencies or based solely on creditor information. "Employment purposes" refers to reports used to evaluate a consumer for "employment, promotion, reassignment, or retention as an employee" (1786.2). One of the circumstances under which consumer reports can be furnished is for employment purposes (1786.12). Section 1786.16 states that if an investigative consumer report is sought for use in employment decisions not including promotion or reassignment, the person requesting the report

shall notify the consumer no more than three days after the date the report was initially requested. These requirements do not apply if the employer wants the information to determine whether or not to retain an employee or to determine whether the employee is "engaged in any criminal activity likely to result in a loss to the employer."

Among other items prohibited from investigative reports are bankruptcies more than 14 years past and paid tax liens more than seven years past. These are not prohibited "in the case of employment of an individual at an annual salary which equals, or may reasonably be expected to equal, thirty thousand dollars (\$30,000) or more" (1786.18).

Files that are maintained on an individual shall be available for inspection (1786.22). In addition, trained personnel must be available to explain the information presented in an investigative consumer report.

Connecticut

Connecticut General Statutes Annotated discusses consumer credit reports, 36-431 to 435 (West 1987, Supp. 1993). A credit report is said to be any "written or oral report, recommendation or representation of a credit rating agency as to the credit worthiness, credit standing, or credit capacity of any consumer, and includes any information which is sought or given for the purpose of serving as the basis for determining eligibility for credit to be used primarily for personal, family or household purposes" (36-431). This statute does not make provisions for use for employment purposes. A "credit rating agency" is an entity that gathers and evaluates information of "credit standing and credit worthiness of a consumer, for the purposes of furnishing credit reports, for monetary fees and dues to third parties."

A consumer has the right to review the information contained in his or her credit file. If there is a dispute, the consumer is to notify the credit rating agency. The agency then must reinvestigate and either modify or remove the information found to be inaccurate. If the dispute is not resolved, the consumer has the right to prepare a statement to go into his or her file. This statement shall be included in all subsequent reports that contain the disputed information. If the information is found to be in error, the credit rating agency must notify any person or persons who have requested the report for employment purposes within the previous two years.

Florida

Florida Statutes Annotated 559.55-.78 (West 1988 & Supp. 1993) addresses consumer collection practices. There is no information directly regarding the use of credit information for employment purposes.

Kansas

Kansas Statutes Annotated 50-701 to 722 (1983 & Supp. 1992) is entitled the Fair Credit Reporting Act. Consumer report, as defined here includes information by "a consumer reporting agency bearing on a consumer's credit worthiness, credit standing, credit capacity, character, general reputation, personal characteristics, or mode of living which is used or expected to be used or collected in whole or in part for the purpose of serving as a factor in...employment purposes..."(50-702 c).

An investigative consumer report is defined as a consumer report or portion of one wherein information regarding a consumer's "character, general reputation, personal characteristics, or mode of living is obtained through personal interviews with neighbors, friends, or associates of the consumer reported on or with others with whom the consumer is acquainted or who may have knowledge concerning any such items of information" (50-702 d). 50-705 states that an investigative consumer report may not be used for employment purposes when the consumer has not specifically made application for a position.

For a period of two years, consumers may obtain the names and addresses of anyone who has requested any consumer report on the individual for use in employment decisions (50-708 3 A) or such information on those who have requested consumer reports gathered for any purpose for a six month period (50-708 3 B).

Provisions are made for disputes regarding accuracy of information contained in consumer reports (50-710). Also, when consumer report information is used and employment involving a consumer is denied either in part or solely because of the information contained in such a report, the user of the consumer report shall advise the consumer. The name and address of the consumer reporting agency who provided the information must be available to the consumer (50-714 a).

Maine

The Maine Fair Credit Reporting Act is found in the Revised Statutes Annotated Title 10, 1311-1329 (West 1980 & Supp. 1993). A consumer report is any report of any information "by a consumer reporting agency bearing on a consumer's credit worthiness, credit standing, credit capacity, credit history and employment status which is used or expected to be used or collected in whole or in part for ...employment purposes" (1912). Employment purposes are defined as employment, promotion, reassignment or retention of a person as an employee. One of the "permissible purposes" of consumer reports is employment purposes (1313).

An investigative consumer report may be procured if it is to be used as part of an investigation of an employee which is made by the current employer. This investigation may involve an employment purpose that the employee has not him or herself specifically made application (1314). When an investigative consumer report has been initiated, notice must be given to the consumer. The consumer shall be informed that such a request for a report may be made and that he or she has access to such information. Within five days of requesting this information, the name, address and telephone number of the consumer reporting agencies involved in the report must be supplied to the consumer (1314).

Also, in the case of a report made for employment purposes, the names and addresses of all who received consumer or investigative consumer reports must be supplied to the consumer upon his or her request. The consumer is entitled to such information for a period of two years prior to the request (1315).

The steps necessary to correct any inaccurate information are put forth in section 1317. A consumer reporting agency is to "adopt reasonable procedures to enable a consumer to correct any inaccurate information in his [or her] file." If a consumer disputes any portion of a consumer report, the agency shall "promptly reinvestigate and record the current status of such information." However, if the consumer reporting agency has "reasonable grounds" to suspect that the consumer is bringing about a "frivolous" dispute, the reporting agency can determine not to reinvestigate the information. The consumer must be kept informed as to the progress and result of the investigation.

When a reinvestigation has taken place, the consumer reporting agency shall record the process in the consumer's file. Information regarding the efforts to reinvestigate, in addition to names of those who conducted the reinvestigation shall be added to the consumer's file. If the item is found to be inaccurate or no longer can be verified, the agency shall remove the item from the file, refrain from including that item in any further consumer reports, and shall inform any person who had received the incorrect or unverified information for the past two years in cases where the report was used for employment purposes.

If the dispute between the consumer and the consumer reporting agency cannot be resolved, the agency shall indicate in the file that the particular item is in dispute, allow the consumer to file a statement regarding the "nature of the dispute" in 200 words or less which will be included in subsequent credit reports which contain the disputed information. The consumer reporting agency shall clearly note in all subsequent reports that the particular item is disputed by the consumer.

When information of public record is furnished by consumer reporting agencies for use in employment decisions, the consumer must be notified. The "substance" of the information, as well as the names and addresses of those to whom the information is being reported must be given to the consumer. The consumer reporting agency is to "maintain strict procedures" in order to insure that the public record information that may have an "adverse effect on a consumer's ability to obtain employment" is accurate, complete, and current (1318).

Maryland

The Annotated Code of Maryland 14-201 to 14-204 (Michie, 1975) addresses consumer credit. This section is entitled Consumer Debt Collection. Rules regarding debt collection are described. However, consumer reports and their use in employment as well as rights of the consumer under these situations are not addressed.

Massachusetts

Massachusetts General Laws Annotated chapter 93 50-68 (West 1984 & Supp. 1993) addresses consumer credit reporting. A consumer report is defined as "any written, or other communication of any information by a consumer reporting agency bearing on a consumer's credit worthiness, credit standing or credit capacity which is used or expected to be used primarily

for...employment purposes" (93,50). Employment purposes includes evaluation of a consumer for "employment, promotion, reassignment or retention as an employee" (93,50). Investigative consumer report is a consumer report or part of one that contains information regarding a consumer's "character, general reputation, personal characteristics, or mode of living." This information is obtained through personal interviews with "neighbors, friends, or associates of the consumer reported on or with others with whom he [or she] is acquainted or who may have knowledge concerning any such items of information" (93,50). One of the circumstances under which a consumer report is permissible is for employment purposes (93,51).

When requesting an investigative consumer report, the consumer must be notified, in writing, no more than three days after the report was requested, even if the report was requested for employment decisions for which the consumer did not make application. The consumer is to be informed of his or her right to request information on the report. Upon written request by a consumer, any person who receives or requests an investigative consumer report shall, within a reasonable time period, "make a complete and accurate disclosure of the nature and scope of the investigation requested" (93, 53). This disclosure is to be made in writing and must be delivered to the consumer within five days of the date the request was received.

Section 93,58 addresses accuracy and disputes over information contained in a consumer's file. If the completeness or accuracy of any information that appears in a consumer's file is disputed, the agency is required to reinvestigate the information within a "reasonable period of time" and to "record the current status of that information unless it has reasonable grounds to believe that the dispute by the consumer is frivolous or irrelevant" (93,58).

If the information is no longer verifiable or found to be inaccurate, the consumer reporting agency shall remove the information. If the dispute over the information is not resolved, the consumer may file a "brief statement setting forth the nature of the dispute" (93,58). When there is a dispute filed, the consumer reporting agency shall clearly indicate that the item is under dispute and supply either a short summary of the dispute or a statement written by the consumer. If any information is deleted because it is found to be no longer accurate or can no longer be verified, the consumer reporting agency shall provide such information to any person or persons who have requested such a report within the last two years (93, 58).

If public record information is added to consumer reports which is "likely to have an adverse effect upon a consumer's ability to obtain employment" (ch. 93,60) the consumer reporting agency shall inform the consumer that public information is being reported. The reporting agency also shall provide the name and address of the person or persons the reporting agency will provide with such information. Or the agency must maintain "strict procedures" in order to insure that the public record information is complete and current. Chapter 93 section 62 states that whenever employment is denied or terminated because of information contained in a consumer report, the consumer shall be notified of the name and address of the person who provided such information.

Montana

Montana Code Annotated 30-3-101 to 153 (1993) addresses trade and commerce. This code describes rules for payment and guidelines about promissory notes. This code concerns payment of notes and debts. It does not refer to credit reports or their use in employment decisions.

New Hampshire

The Fair Credit Reporting Act for the state of New Hampshire is found in New Hampshire Revised Statutes Annotated chapter 359-B (Equity 1984 & Supp. 1992). A consumer report can be requested for use in employment decisions. These decisions include "employment, promotion, reassignment or retention as an employee."

Consumer reporting agencies shall, upon the consumer's request, provide information on recipients of consumer reports that were provided for employment purposes. This includes any requests made within the proceeding two years.

Procedures for disputes over accuracy of consumer reports are addressed as well. If the accuracy or completeness of any portion of a consumer report is disputed by a consumer in writing to the agency the information must be reinvestigated within a "reasonable period of time". If the information is found to be inaccurate or cannot be verified it must be removed from the file. In addition, any person or persons who have been furnished with the information for use in employment decisions within the past two years must be informed of the deletion of the information.

If the dispute is not resolved, the consumer may submit a written statement regarding the dispute. In subsequent reports, it must be clearly stated that there is a dispute over the information and either the consumer's own statement regarding the dispute or a summary of the statement shall be reported.

Public record information that is furnished for employment purposes is also subject to guidelines. An agency that reports such information that is likely to have "an adverse effect upon a consumer's ability to obtain employment" has responsibilities to the consumer. When the public record information is reported, the consumer reporting agency shall notify the consumer that such information is being reported along with the name and address of the person or persons who have received the information. Also, the information shall be carefully reviewed so that it may remain complete and current.

New Mexico

New Mexico Statutes Annotated chapter 56, article 3-1 to -8 (Michie 1986 & Supp. 1993) addresses the issue of credit information. According to the statutes, a credit bureau that provides information must have a service contract with the person or persons requesting the information. Credit reports may be requested for use in the "evaluation of the qualifications of present or prospective employees" (56-3-4).

New York

The Fair Credit Reporting Act of New York (NY General Business 380-380s, West 1984) discusses the issue of the use of credit reporting agencies and credit reports for information used in employment decisions. A consumer report is "any information by a consumer reporting agency bearing on a consumer's credit worthiness, credit standing, credit capacity, character, general reputation, personal characteristics, or mode of living which is used or expected to be used for ... employment purposes" (380-a.). Employment purposes include evaluation of a consumer for "employment, promotion, reassignment or retention as an employee" (380-a.).

A consumer reporting agency shall inform a consumer of the information contained in his or her file, the sources of that information, and the recipients of the information for a period of two years proceeding the time of the request for such information (380-d.). Section 380-f provides the procedures for resolving disputes. If a consumer disputes any information the

consumer reporting agency shall "promptly re-investigate and record the current status of such information". If the agency finds that there was an error in a report or that the information can not be verified any longer, the consumer reporting agency has specific obligations. The reporting agency shall remove the item from the file and shall refrain from including the item in any further reports.

If the credit reporting agency cannot resolve the dispute between the agency's sources and the consumer, the agency is required to take certain measures. The item in dispute must be indicated as such in the consumer's file. In addition, the consumer is allowed to file a statement regarding the dispute. This statement shall be included in all subsequent reports made.

Oklahoma

Oklahoma Statutes Annotated, title 24, 81-85 (West 1991 & Supp. 1993) addresses credit ratings. There is no specific mention of use in employment decisions. Nor is there any mention of any rights specific to consumers who have had consumer reports furnished for the use of a person or persons making such decisions.

The Federal Privacy Act

The Federal Privacy Act of 1974, 5 U.S.C. 552 a (1982 & Supp. III 1985) will be discussed. This Act created the Privacy Protection Study Commission which said the Privacy Act should apply to the private sector on a voluntary, not mandatory, basis. Several states, at least 8, have comprehensive legislation regarding collection, use, and disclosure of personal information by the government. These states include: California, Connecticut, Indiana, Massachusetts, Minnesota, Ohio, Utah, Virginia, and to a more limited extent Colorado. These states base the legislation on the Federal Privacy Act (Duffy et.al. 1987). Duffy et. al. (1987) explained that the area of most importance regarding workplace privacy is State legislation.

State Privacy Acts

California

California Civil Code 1798 - 1798.78 (West 1982 & Supp 1994) is entitled the Information Practices Act. This Act addresses how agencies and employees of agencies are to address personal and confidential information. Education, financial transactions, medical and employment history are all considered to be personal information. Records of addresses and

statistical information are considered not to be personal in nature. Personnel files of public employees, excluding applications and performance ratings, shall be available to the elected or appointed public official or officials who supervise the individual's work.

Connecticut

Connecticut General Statutes Annotated chapter 55, 4-190 to 197 (West 1985 & Supp. 1993) provides regulations regarding personal data. Personal data means "any information about a person's education, finances, medical or emotional condition or history, employment or business history, family or personal relationships, reputation or character which because of name, identifying number, mark or description can be readily associated with a particular person" (4-190).

Agencies are required to instruct employees regarding the handling of personal data. Reasonable care to maintain and update files while keeping them confidential is necessary. The agency must allow incorrect information to be corrected when an individual requests such. Also, if a person believes an agency is maintaining inaccurate information, he or she has a right to have a statement regarding the information added to the record. This statement is to be part of the permanent record of the personal data (4-193).

Indiana

Fair information practices; privacy of personal information as described in the Indiana Code Annotated 4-1-6-1 to -9 (West 1991 & Supp. 1993) defines personal information. It is "any information that describes, locates, or indexes anything about an individual or that affords a basis for inferring personal characteristics about an individual including, but not limited to, his [or her] education, financial transactions, medical history, criminal or employment records, finger and voice prints, photographs, or his [or her] presence, registration, or membership in an organization or activity or admission to an institution" (4-1-6-1). This Code refers to personal information maintained by governmental agencies.

Unless prohibited by law, a state agency that maintains records shall make such records available to the subject upon his or her request (4-1-6-3). Challenges to information made by the subject of the report may be made. The agency is required to investigate the accuracy of the information. If the information is found to be incomplete or inaccurate it is to be promptly

removed from the file or corrected. If the investigation cannot resolve the dispute, a written comment by the subject is to be included with the statement in the file. Any time there is a dispute, the agency must supply a copy of that as well as information regarding the result of their investigation to any previous recipient of the information. If the information is found to be in error, the agency shall provide the correction to all past recipients regarding the removal of the item or items.

Massachusetts

Massachusetts General Laws Annotated chapter 66A (West 1988 & Supp. 1993) describes "fair information practices". Personal data are defined as "any information concerning an individual which, because of name, identifying number, mark or description can be readily associated with a particular individual; provided, however, that such information is not contained in a public record, ... and shall not include intelligence information, evaluative information or criminal offender record information" (66A-1).

Those who maintain personal information are to identify an individual who is immediately responsible for the data. Employees who come into contact with the data are to be instructed in confidentiality and updating regulations (66A-2). An individual may request and shall be given information regarding whether he or she is a data subject. Also, he or she is to have access to information with some exceptions. Any information which identifies individuals those who have provided information for the file is to be removed. Also, any information that would interfere with an ongoing investigation shall not be made available to the subject.

Minnesota

Minnesota Statutes Annotated 13.01 to .90 (West 1988 & Supp. 1994) addresses the data privacy issue. 13.43 discusses personnel data. "Personnel data" are defined as "data on individuals collected because the individual is or was an employee of or an applicant for employment by, performs services on a voluntary basis for, or acts as an independent contractor with a state agency, statewide system or political subdivision or is a member of an advisory board or commission." Individual subjects do have some rights regarding data. Information that shall be given to individuals includes the purpose and intended use of the data. Individuals have access to data and are to be informed upon request whether data has been collected and if this data is

classified as public, as private, or as confidential (13.04). Public and private data are to be explained to the subject. The authority responsible for the data shall respond to requests made by subjects within five business days of the receipt of such.

If data are challenged by a subject as being either inaccurate or incomplete, the responsible authority has 30 days to investigate and either correct or make complete the information and notify past recipients of the changes, or inform the subject that the agency has investigated and believes the information to be correct. The parties must then have a hearing to attempt to resolve the dispute (13.04).

Ohio

Ohio's Revised Code Annotated Chapter 1347 (Page, 1979 & Supp. 1985) addresses personal information systems. Personal information is defined as "any information that describes anything about a person, or that indicates actions done by or to a person, or that indicates that a person possesses certain personal characteristics, and that contains, and can be retrieved from a system by, a name, identifying number, symbol, or other identifier assigned to a person" (1347.01).

Each state and or local agency that maintains personal information on individuals shall, upon request, provide the subjects of such records with information. The individual is to be informed as to whether or not such a personal information record exists for him or her. These personal files can be inspected by the subject. The types of information and the ways in which such information may be used is to be given. Users of the information system are also to be made known to the individual. Medical, psychiatric, or psychological information may also be disclosed to the individual or his or her guardian unless the doctor has said that such information, if disclosed, would have a negative effect on the individual.

If there is a dispute over the accuracy or completeness of personal information the agency shall, "within a reasonable time after, but no later than ninety days after, receiving the request" investigate the discrepancy. The agency shall inform the individual of the result of the reinvestigation. If the information is found to be inaccurate or cannot be verified it is deleted from the report. If the agency determines the information to be accurate and there is still a dispute the agency shall allow the individual to include a brief statement regarding the dispute in

the personal file. If the information is deleted due to inaccuracy or inability to verify the data, the individual may request in writing that the agency inform those who have received the incorrect information of the updated record 1347.09.

Utah

The "Archives and Records Services and Information Practices Act" found in the Utah Code Annotated 63-2-59 to -89 (Supp. 1985) addresses the rights of individuals who are subjects of private data records. Data on individuals are defined as "all records, files, and processes which contain any data on any individual and which are kept or intended to be kept by state government, including, but not limited to, that data by which it is possible to identify with reasonable certainty the person to whom the information pertains" (63-2-61). Private data are defined as "data on individuals collected and maintained by state government which is available only to the appropriate state agencies for the uses specified [by this Act], to others by the express consent of the individual, and to the individual himself [or herself] or next of kin when information is needed to acquire benefits due a deceased person" (63-2-61).

The rights of individuals who are subjects of personal data are set forth in 63-2-85.4. There is to be filed, in writing, a report on the intended purpose and use of data collected on individuals. If an individual is asked to supply confidential information he or she is to be informed of the intended use of the information. Confidential or private data shall be used only for the stated purposes and such data will not be disclosed to any person other than the individual to whom the information applies. An individual has the right to know if such data has been collected, what it has been used for, and what the exact content of the data entails. If the subject contests the accuracy or completeness of any data, the agency shall respond within 30 days. The data shall be corrected if found to be in error and past recipients of the data shall be notified of the correction. Data that remains in dispute shall not be provided "except under conditions required by law or rule and only if the individual's statement of disagreement is included with the disclosed data" (63-2-85.4).

Virginia

Chapter 26 of the Code of Virginia (Michie, 1992) is entitled the "Privacy Protection Act of 1976". Agencies that maintain personal information are subject to any regulations. Such

agencies are to inform individuals who are asked to provide personal information about the legal requirements of compliance with the request as well as any specific consequences that will result from non-compliance. The data subject is to be notified of who will have access to the information and the reasons for the documentation.

Upon request, the data subject has the right to inspect the data contained in his or her file. The types of sources of information and the names of those who regularly have access to the information shall be provided. If a subject indicates that he or she would like to "challenge, correct, or explain information" contained in his or her file, the agency who maintains the information shall investigate the disputed data. If there is a problem found, the data are to be corrected or deleted "promptly". If the dispute remains, the agency shall allow the individual to file a statement indicating his or her position regarding the disputed piece of information.

Whenever there is a dispute filed, the agency must notify those who have previously received the information and supply them with a copy of the disputed information. The rights of data subjects must be explained by the agency. If information is corrected or deleted, any past recipients of the data must be supplied with the correction.

Case Law

The use of Consumer Credit Reports in employment decisions is said to be acceptable by the FCRA. The test of how these reports can and cannot be used is found in case law. Litigation in this area is focused around determining what constitutes use of consumer credit information for employment decisions. In *Zamora v. Valley Federal Savings and Loan Association of Grand Junction*, 811 F.2d 1368 (10th Cir. 1987), the Court found that Valley Federal violated the FCRA by attempting to use the credit report of the employee's spouse in its search for information regarding consideration of employee for a "security-sensitive position". In *Comeaux v. Brown and Williamson Tobacco Company* (915 F.2d 1264, 1990 U.S. App) the court said the company could not run an additional credit check to prepare to defend themselves in court over an issue of employment at will. The company in this case had requested the credit report stating to the credit report issuer that the information was to be used in an employment decision. According to the FCRA "any person who knowingly and willfully obtains information on a consumer from a consumer reporting agency under false pretenses shall be fined not more than \$5,000, or

imprisoned not more than one year, or both." The lawsuit arose from the issue of employment at will and the court found that even if an offer of employment is extended prior to results of a credit report check, the employee is employed at will and the person or the organization can thus terminate their relationship at any time. This includes the company revoking an offer of employment on the basis of the results of a consumer report.

Obtaining personal information of a current employee has also been subject to litigation. In *Paul v. Davis* [424 U.S. 693, 47L.Ed.2d 405, 96 S.Ct. 1155 (1976)] the Supreme Court held that the right to privacy did not prohibit the State from publicizing a known public record of an official act such as an arrest. Also, the Court did not say that the State could compel disclosure of personal information as a condition of continued employment regardless of whether it was job relevant or not. In *National Federation of Federal Employees v. Greenberg* [983 F.2d 286 (1993 U.S. App.)] the issue of possible violations of privacy by some items of the "National Agency Questionnaire" was raised. The Court found that the self report items in question (referring to arrest records and finances) did not violate the privacy of the plaintiffs.

Other litigation concerns gaining access to credit information of former employees. In the case of *Russell v. Shelter Financial Services*, 604 F.Supp.201 (1984), the employee had resigned and the employer obtained a credit report on the basis of using it for employment decisions. In actuality, the employer wanted to review Russell's credit record to determine whether he had been embezzling funds or not. The Court said that a credit report regarding a former employee cannot be gained under the qualification of employment decisions since clearly it will not be used in that manner. The Court came to the same conclusion in *Mone v. Dranow*, 945 F.2d 306 (9th Cir.1989).

To date, the legislation and case law in the area of use of credit reports in employment indicates that it is acceptable. However, what seems to be important is how the employer gains such information. Case law indicates that Courts are strictly following the rule of using such personal credit information only when making personnel decisions about an individual. It appears that gaining such information under false pretenses will not be tolerated by the Courts. From our review of the Fair Credit Reporting Act, the Federal Privacy Act, and case law, it appears that the use of such information for personnel decisions is acceptable when used strictly in that manner.

Summary of the Legal Literature

In reviewing the legal literature concerning uses of credit information, it is apparent that the use of such information in making employment decisions is permissible. There are specific regulations regarding both use and informing the consumer of the request for such consumer reports. The consumer is provided steps that may be taken to address any questions he or she might have regarding the accuracy of any information contained in a consumer report. Federal and state laws exist regarding both credit and privacy issues that arise when consumer credit reports are collected, disseminated, and used in decision making. Relevant court cases have dealt with the issue of whether the consumer report was gained by the user based on one of the permissible purposes. When a user has stated the information was requested for employment purposes and used it for other reasons, the court has ruled against the user. Also, gathering credit information about the spouse of a current or prospective employee is not permissible. Thus, credit information may be used to make personnel decisions, however, the test is whether the use of such information has any benefits for the employer.

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- Utah Code Annotated 63-2-59 to 63-2-89 (Supp. 1985).
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Appendix A
Annotated Bibliography

Banach, E. (1990). Integrity tests probe to identify the trustworthy. Savings Institutions, 111(11), 64-65.

Examined use of integrity tests as a means of ascertaining the integrity of potential employees. After using a written integrity test, shrinkage reduced dramatically at First Interstate Bank. The most important issue was that of adverse impact against protected subgroups. No data were offered to support conclusions.

Bates, N.D. (1990). Understanding the liability of negligent hiring. Security Management, July, 1990, 7A-10A.

Examined ways that employers are liable for negligent hiring practices. Presented many different ways to take precautions against hiring dishonest employees including honesty tests credit reports and reference checks. No empirical data are discussed concerning which type of screening is best.

Beaudette, J. (1992). Hiring: Caveat Employer. Security Management, 36(4), 63-70.

Examined various ways to screen potential applicants including background checks, credit checks and driving record checks. Discussed ways to get the most information out of a consumer report. Advocated the use of credit information and gave suggestions concerning which type(s) of screening procedures to use, but no data were given to support conclusions.

Bequai, A. (1991). What can you ask? Security Management, 35(11), 58-60.

Examined preemployment screening and problems employers have in confirming applicant's credentials. Discussed potential means to screen applicants in order to ensure that their credentials are legitimate. Credit histories and use of consumer reports were also advocated. No data were given to support conclusions.

Donohue, J. D. (1990). A star-studded approach. Security Management, 34(9), 115.

Discussed several methods used in screening security guards by Wells Fargo Guard Services. Criminal record check, consumer credit reports and driver's license records were all advocated by Wells Fargo. No data were provided to support conclusions.

Green, A. (1989). Are banks making the grade on employee security tests? Bankers Monthly, 106(2), 65-68.

Examined how banks screen potential employees taking into consideration the law banning polygraph use in the workplace. Discussed scientific, moral, and ethical issues involved with using various integrity tests in screening applicants. Advocated running a credit check to assess financial problems. No data were given to support conclusions.

Hahn, J.M. (1991). Pre-employment information services: Employers beware? Employee Relations, 17(1), 45-69.

Discussed how employers are increasingly using detailed databases in order to screen potential applicants. These data bases yield a wide range of useful information including criminal, credit and worker's compensation. Federal and state laws regulate the use of this type of information. Legal ramifications were discussed.

Israel, D., & Lechner, A. (1992). Use of credit reports requires disclosure. HRMagazine, 37(4), 93-96.

Discussed the Fair Credit Reporting Act and the legal obligations the employer has when using credit information in preemployment screening. Distinguished between two types of credit reports and legal pitfalls associated with each one. Legal ramifications of not complying with the FCRA were also discussed.

Jones, J.W. & Terris, W. (1991). Integrity testing for personnel selection: An overview. Forensic Reports, 4, 117-140.

Examined the strengths and weaknesses of using various methods of screening applicants. Major concerns in using different types of integrity tests were voiced. Credit checks are mentioned as a way to combat employee theft, but there are no data to support the idea that those with greater financial need will be more likely to steal.

Kizorek B. (1991). Information access: Is there a balance? Security Management, 35(12), 98, 96.

Discussed the problem of individual's right to privacy and employer needs to verify credentials. Employers need to access personal information about potential applicants in order to insure integrity and protect themselves from liability of negligent hiring. However, the government is making it increasingly more difficult for employers to get this information. This article presented both sides of the argument.

Lorenzini, B. (1992). The secure restaurant. Part II: Internal security. Restaurants & Institutions, 102(25), 84-102.

Discussed the problem of hiring honest help and ways to insure internal security in a restaurant. Also examined the signals of theft and ways to keep track of employees. Encouraged credit checks as one way of screening employees who may have motives for theft. No data were presented on whether credit checks deter theft.

Maddaloni, M. V. (1990). You can't afford not to do them. Security Management, 34(9), 107.

Focused on the importance of conducting background checks on potential employees due to civil law suits arising from negligent hiring practices. It is suggested that employees with fiscal responsibility (executives, security people) should have a credit check run. Suggestions are also given for other levels of employees. No data were offered to support conclusions.

McDaniel, M. (1989). Biographical constructs for predicting employee suitability. Journal of Applied Psychology, 74(6), 964-970.

Investigated the use of background information in employment screening. Background information is typically used when hiring for positions of trust, typically law enforcement or those requiring security clearance. A survey measure of background information was examined for validity, however no data specific to credit checks were reported.

Moore, S. S., & Burwell, A. K. (1992). The mouse trap: Using consumer reports. HR Focus, 70(2), 17.

Summarized the important disclosure requirements employers need to know and follow when using consumer reports or investigative consumer reports in hiring a potential employee. Reported basic aspects and employer obligations in using each report. No data were reported on whether or not conducting credit checks deters theft in organizations.

Munchus III, G. (1992). Check references for safer selection. HRMagazine, 27(6), 75-77.

Discussed the problem of negligent hiring practices is discussed. Listed specific conditions under which employers are liable. Employers should conduct background checks, including credit history in order to learn more about applicants. Noted potential problems in using this type of information. No data were given to support conclusions.

Ones, D. S., Viswesvaran, C., & Schmidt, F. L., (1993). Comprehensive meta-analysis of integrity test validities: Findings and implications for personnel selection and theories of job performance. Journal of Applied Psychology, 78(4), 679-703.

Examined various paper and pencil integrity tests and investigated them as to whether or not they were valid and predicted theft or other organizationally disruptive behaviors. Meta analysis revealed that integrity tests are valid predictors of job performance. In addition, they were also able to predict theft along with other disruptive behaviors.

Parlman, G. C. & Dolan, E. A. (1990). Pre-employment information services: How useful are they? Employment Relations Today, 17(2), 127-132.

Discussed the legal difficulties in using consumer reports when hiring employees. Contended that although the potential value of consumer reports is enormous, employers must be careful that they have followed all the legal standards when using them. Credit history was discussed with reference to possible adverse impact. No data were given to support assertions.

Perry, P. (1990). Pre-screening priorities. Security Management, 34(9), 113-114.

Discussed preemployment screening procedures that should be used when hiring employees for a security company. Various methods were suggested as "musts" for security companies including credit history, criminal convictions and employment history. No data were offered to support the idea that such measures reduces negligent hiring suits or theft.

Ralicki, R. H. (1992). Mutual benefits through association. Security Management, March, 1992, 14A-19A.

Discussed various methods of employment screening are described. A Mutual Association was suggested as an alternative means for screening dishonest employees. This association would offer a list of previous employees who have stolen, passed bad checks shoplifted or have been involved in other dishonest acts. The hypothesis is that past behavior will predict future behavior, but no data were given to support this conclusion.

Rothfeder, J. (1990) Looking for a job? You may be out before you go in. Business Week, Sept. 24, 1990, 128, 130.

Discussed questions which employers cannot directly ask but believe they have a right to know. Ways in which employers can get around asking things like age, citizenship, and arrest record include conducting a credit check. Companies such as Equifax are cited as places to obtain background information such as this. No data were provided to verify validity of using this type of information in employment screening.

Sharp, W. A. (1991). Checking the personals. Security Management, 35(4), 39-42.

Contended that employee screening is a company's first defense against applicants with low integrity. Organizations should develop a prescreening program that is appropriate to the level of employee. Suggested that credit and background checks be conducted as a part of any routine in order to avoid negligent hiring, however, no data were provided to verify this conclusion.

Sklar, A. T. (1990). Screening for the top. Security Management, 34(9), 108.

Examined various ways in which applicants can falsify their credentials. This constitutes resume fraud. Some categories in prescreening employees are outlined. Credit checks are considered very important and can reveal and resume discrepancies. No data were available to establish conclusions.