

FCRA Legislation to Watch for the Remainder of 2023

WRITTEN BY

David N. Anthony | Timothy J. St. George | Scott Kelly

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The Fair Credit Reporting Act saw no shortage of activity in the first half of 2023. That activity included federal and state legislation. Congress has introduced several bills intended to amend the FCRA — and on the state level, many lawmakers are jumping into the fray, introducing new credit reporting legislation.

The increase in state credit reporting legislation may be attributed to the Consumer Financial Protection Bureau's interpretive rule, issued in June 2022, that encouraged states to play an active role in the regulation of credit reporting.

Here is a list of federal and state legislation worth watching for passage or implementation in the second half of 2023:

Federal Legislative Activity in 2023

There have been multiple federal bills introduced in Congress that aim to amend the FCRA. If passed, the pending bills would:

- Amend Section 604(c) of the FCRA to address the treatment of pre-screening report requests. Section 604(c) governs the furnishing of reports in connection with credit or insurance transactions that are not initiated by the consumer.[\[1\]](#)
- Require that a consumer authorize the release of certain information. The bill would increase the consumers' control over when and how their reports are released, and it would require verification of a consumer's identity and the consumer's permission before releasing reports in certain instances.[\[2\]](#)
- Amend the FCRA to require national credit reporting agencies to use a consumer's current legal name on consumer reports, upon request.[\[3\]](#)
- Prohibit credit reporting agencies from issuing consumer reports containing information about debts related to medically necessary procedures.[\[4\]](#)
- Expand the definition of an active-duty military consumer for purposes of certain credit monitoring requirements.[\[5\]](#)

- Clarify provisions of the FCRA that relate to reporting certain positive consumer credit information to credit reporting agencies.[\[6\]](#)
- Prohibit COVID-19-related evictions from being included in a consumer credit report. [\[7\]](#)

Note, however, that none of the aforementioned proposed federal laws have yet been passed.

State Legislative Activity in 2023

Several states have proposed legislation relating to credit reporting in 2023. Multiple states have introduced legislation that prohibits the use of consumer reports for tenant screening purposes and/or for determination of creditworthiness.[\[8\]](#)

Other states have introduced legislation that would prohibit employers from either taking adverse action against an individual because of their consumer report or credit history, and/or inquiring about an applicant or employee's consumer report or credit history.[\[9\]](#)

Connecticut's proposed legislation, for instance, would prevent a consumer's credit score from being "decreased exclusively because the consumer is the subject of a background check" and require that a landlord provide prospective tenants with a copy of any credit report acquired concerning such tenant.[\[10\]](#)

Illinois legislation, S.B. 1071, seeks to amend the state Consumer Fraud and Deceptive Business Practices Act to prohibit credit reporting agencies from furnishing a consumer report or contact information that is not requested by the consumer in connection with any inquiry made about either a residential mortgage loan or automobile loan.[\[11\]](#)

Maryland introduced legislation, H.B. 994, that would prohibit credit reporting agencies from including certain criminal records in consumer reports, including records related to criminal proceedings that resulted in exoneration, acquittal, a not guilty verdict or expungement. The legislation would also prohibit credit reporting agencies from relying on information in such criminal proceedings to determine a consumer's creditworthiness. [\[12\]](#)

Like their federal counterparts, none of these state bills have yet been enacted.

Conclusion

As the year progresses, FCRA litigants and practitioners should monitor pending federal and state legislation for passage or implementation.

If enacted, the pending legislation may result in significant changes for the FCRA landscape, which would require regulated entities and practitioners to pivot their FCRA practices to ensure compliance with any new legislation.

Additionally, the volume of state credit reporting legislation will be affected by the CFPB's position that states have the ability to enact stricter credit reporting laws and these state-level laws are generally not preempted by the

FCRA.

While most states already have state-level credit reporting laws, these developments signal a likely increase in state legislation more strictly regulating credit reporting practices in the second half of the year.

Due to the anticipated increase in state-by-state credit reporting laws, regulated entities and practitioners should be aware of all state developments that may affect their credit reporting obligations.

[1] H.R. 4198.

[2] S. 1327.

[3] H.R. 2444.

[4] H.R. 1773.

[5] H.R. 1521.

[6] H.R. 3418; S. 1654.

[7] H.R. 408.

[8] H.1308 (Mass. 2023); H.B. 4818 (Mich. 2023); HB 1293 (Md. 2023); SB 267 (Cal. 2023).

[9] S.B. 1360 (Ariz. 2023); H.B. 4240 (Mich. 2023); A00779 (N.Y. 2023); SB-16 (Ind. 2023).

[10] HB-5319 (Conn. 2023); HB-6421 (Conn. 2023).

[11] SB 1071 (Ill. 2023).

[12] HB 0994 (Md. 2023).

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