

Credit Reports and the Fair Credit Reporting Act

Consumer Law
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Konomark - Most rights sharable.

The Credit Bureaus

EQUIFAX

 **Experian**

 **TransUnion.**

State law causes of action against credit bureaus

- Defamation
- Invasion of privacy
- State statutes on credit reports

Barriers to defamation actions

- Qualified privilege
- Actual damages

Barriers to invasion-of-privacy actions

- Public disclosure of private facts
- Offensive and objectionable to reasonable person

Barriers to actions from state statutes

- Often pre-empted by federal law

Fair Credit Reporting Act

Passed in 1970

Principal amendments in 1996,
1998, and by the
FACT Act in 2003

at 15 U.S.C. § 1681 et seq.

Fair Credit Reporting Act

“aimed at protecting consumers from inaccurate information in consumer reports and at the establishment of credit reporting procedures that utilize correct, relevant and up-to-date information in a confidential and responsible manner.”

- *Jones v. Federated Financial Reserve* (6th Cir. 1998)

Fair Credit Reporting Act

- Consumer rights
- Duties on information furnishers
- Duties on users
- Duties on bureaus

Fair Credit Reporting Act

User duties

- Users must inform a consumer if information from a report results in an adverse action against the consumer.
 - Must provide the name and address of the credit bureau that furnished the report
 - Must explain the reason for the adverse action
 - Must advise consumer of the right to obtain a free copy of the credit report and the right to dispute the accuracy of the report
- Adverse actions include:
 - Denial of employment, credit, insurance, or a license.

Fair Credit Reporting Act

Information furnisher duties - §623

- Cannot furnish information with actual knowledge of errors
- Cannot furnish information that is inaccurate after consumer has notified furnisher that the information is inaccurate
- If information is disputed and furnisher provides information to a bureau, the furnisher must notify the bureau that the information is disputed
- Generally must notify bureau of voluntarily closed accounts.
- Must notify consumer when negative information is furnished to a bureau

Fair Credit Reporting Act

Consumer rights vs. bureaus: Seeing the information

- Consumers have the right to know what is in their file.
 - Free from each bureau once every 12 months
 - Free after adverse action because of report
 - Free for people who are unemployed, on welfare, or the victim of identity theft
- Consumer have the right to see their credit score.
 - But not for free

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Video:

<http://www.ftc.gov/multimedia/video/credit/reports/apartment.shtm>

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Fair Credit Reporting Act

Consumer rights vs. bureaus: Disputing and correcting

- Governed by §611
- Consumers have the right to dispute incomplete or inaccurate information.
 - The bureau must investigate the claim, unless frivolous.
- Inaccurate, incomplete, or unverifiable information must be removed, usually within 30 days.
 - Accurate information may continue to be reported.

Sunsetting bad information

- Bureaus generally cannot report:
 - Negative information more than 7 years old
 - Bankruptcies more than 10 years old

Access to Credit Reports

Access to credit reports

- §604 exhaustively lists circumstances under which bureaus can provide reports.
- Generally, only valid business reasons in connection with offering credit, insurance, employment, or a lease
- Plus government investigations

Use by employers

- Employers and potential employers must written obtain consent from consumers before obtaining a credit report on them.
- Credit bureaus must not give out information about a consumer to an employer without the consumer's consent.

Fair Credit Reporting Act

Use for “prescreened” offers

- Okay to check credit for making unsolicited offers of credit, *but*
- Consumers can opt out
 - 1-888-5 OPT OUT

Fair Credit Reporting Act

Remedies and Enforcement

Fair Credit Reporting Act

**Civil liability for willful
noncompliance - §616**

- **Compensatory damages**
 - Actual, or
 - Statutory damages of \$100 to \$1,000
- **Punitive damages**
- **Plaintiff's attorneys fees in any successful action**
 - Defendant's attorneys fees for bad faith / harassment

Fair Credit Reporting Act

**Civil liability for negligent
noncompliance - §617**

- **Actual damages**
- **Plaintiff's attorneys fees in any successful action**
 - Defendant's attorneys fees for bad faith / harassment

Fair Credit Reporting Act

Criminal liability - §619

- Only where a person obtains information under false pretenses
- Up to 2 years in prison

Fair Credit Reporting Act

Administrative enforcement - §621

- Enforcement by FTC
 - Injunctions
 - Up to \$2,500 per knowing violation after injunction or order from FTC
- Enforcement by other federal agencies
- Enforcement by states, in state or federal court

Sources

Federal Trade Commission, ftc.gov

15 U.S.C. § 1681 et seq.

Consumer Protection Law, by Gene A. Marsh