

**Disclaimer: This is intended for general information and guideline uses only. It should be understood that legislation is changed and amended, court cases set additional precedent and this information may therefore be affected. The Texas Association of Licensed Investigators or their officers, board or representatives are held harmless for any changes in or uses of the enclosed information. This is for information and initial reference only and further research and/or legal counsel should be considered.*

FAIR CREDIT REPORTING ACT (FCRA)

The Fair Credit Reporting Act (FCRA), Public Law No. 91-508, was enacted in 1970 to promote accuracy, fairness, and the privacy of personal information assembled by Credit Reporting Agencies (CRAs).

CRAs assemble reports on individuals for businesses, including credit card companies, banks, employers, landlords, and others. The FCRA provides important protections for credit reports, consumer investigatory reports, and employment background checks. The FCRA is a complex statute that has been significantly altered since 1970 by Congress and the courts. The Act's primary protection requires that CRAs follow "reasonable procedures" to protect the confidentiality, accuracy, and relevance of credit information. To do so, the FCRA establishes a framework of Fair Information Practices for personal information that include rights of data quality (right to access and correct), data security, use limitations, requirements for data destruction, notice, user participation (consent), and accountability.

Employers can request standard consumer credit reports or investigative consumer reports (ICRs) on their employees. Employers request the reports for hiring, promotion, reassignment, or retention decisions. In doing so, the employer must certify to the CRA that it will comply with the FCRA. The employer must also gain the individual's written consent before obtaining the report.

A patchwork of federal and state laws do limit the ability of employers to use background checks. Some states do not allow the consideration of arrest data (without a conviction) in employment decisions. Other states allow the consideration of conviction information only in certain circumstances. And, federal Equal Employment Opportunity Commission (EEOC) regulations prevent employers from taking adverse action against an individual for merely having a criminal conviction--the conviction must be relevant to the job, or there must be some other sound business reason for taking action against the individual.

The [Fair and Accurate Credit Transactions Act](#) of 2003, which updated the FCRA, excluded additional categories of employee investigation data from credit reports, thus eliminating protections offered by the FCRA. If the investigation is of suspected misconduct relating to employment, compliance with the law, or compliance with preexisting written policies of the employer, such information is not regulated by the FCRA. However, if the employer takes an adverse action due to such investigations, the employee has a right of notice.

The FCRA also prohibits the provision of reports that contain medical information for employment purposes without notice and explicit affirmative consent for release of the health data.

It is important to note that the FCRA does not apply to investigations performed by companies or individuals who are not CRAs.

Because credit reports can include sensitive personal information and because they are used to evaluate the ability to participate in so many different activities in modern life, they are subject regulations that follow a framework of Fair Information Practices.

****Disclaimer: This is intended for general information and guideline uses only. It should be understood that legislation is changed and amended, court cases set additional precedent and this information may therefore be affected. The Texas Association of Licensed Investigators or their officers, board or representatives are held harmless for any changes in or uses of the enclosed information. This is for information and initial reference only and further research and/or legal counsel should be considered.***

The FCRA establishes rights and responsibilities for "consumers," "furnishers," and "users" of credit reports:

- *Consumers* are individuals.
- *Furnishers* are entities that send information to CRAs regarding creditworthiness in the normal course of business.
- *Users* of credit reports are entities that request a report to evaluate a consumer for some purpose
- The [Fair and Accurate Credit Transactions Act](#) of 2003 restricts CRAs from reporting medical information in reports that will be used for employment, credit transactions or insurance transactions unless the consumer consents to such disclosures. The consent must be (a) in writing, (b) specific and (c) descriptive of the use for which the agency is disclosing the information (these specific requirements for consent are not necessary if the disclosure is for an insurance transaction). Furthermore, CRAs are prohibited from disclosing the name, address and telephone number of the medical furnisher (e.g. the hospital) responsible for specific information in the report. Creditors are disallowed from using consumer medical information in deciding whether to grant, or to continue granting, credit to a consumer.
- Although the sharing of information between affiliates is generally excluded, medical information is extended additional protection. The following types of information are protected: an individualized list or description based on the consumer's payment transactions for medical products or services, or an aggregate list of consumers who paid for a medical product or service. On the other hand, exceptions are provided for certain information exchanges including those related to insurance transactions and disclosures authorized by the Department of Health and Services.

The full text of the FCRA can be found at: <http://www.ftc.gov/os/statutes/031224fcra.pdf>