

**Prepared Statement of
THE FEDERAL TRADE COMMISSION**

Before the

**HOUSE BANKING AND FINANCIAL SERVICES COMMITTEE
SUBCOMMITTEE ON FINANCIAL INSTITUTIONS
AND CONSUMER CREDIT**

Washington, D.C.

May 4, 2000

Madam Chairman and members of the Subcommittee, my name is Debra Valentine, and I am General Counsel of the Federal Trade Commission. I am pleased to have this opportunity to present the Commission's views on ways to reconcile potential conflicts between the Fair Credit Reporting Act (FCRA) and other federal statutes and policy goals in the area of workplace investigations by third parties.⁽¹⁾ You have asked the Commission to comment specifically on H.R. 3408, the "Fair Credit Reporting Amendments Act of 1999," which would amend the FCRA to exempt certain workplace investigations from the Act, and you have posed a number of specific questions, which I will address in the course of my testimony.

As the Commission noted in its March 31, 2000 letter to Representative Sessions ([copy attached](#)), the sponsor of H.R. 3408, we share a concern that the FCRA should not unduly hinder workplace investigations that advance the goals of other federal statutes. Therefore, we fully support the subcommittee's effort to enact legislation to amend the Fair Credit Reporting Act to remove unintended impediments to workplace investigations. We endorse prudent amendments to the FCRA to remove those FCRA procedural requirements that unduly interfere with workplace investigations conducted for employers by outside entities. The Commission believes, however, that in all other respects Congress should retain the important privacy and procedural rights the FCRA currently provides when third parties conduct workplace investigations of individuals who have been accused, possibly falsely, of improprieties. This can be done without hindering the ability of employers to utilize outside entities to conduct such investigations. In short, any amendments to the FCRA should strike a balance between the need to facilitate efficient, timely investigations and the need to preserve the basic safeguards for employees that Congress enacted in 1970, and significantly expanded in 1996.

Background

The Fair Credit Reporting Act has been in effect for nearly thirty years and, since its inception, has applied to the collection and use of certain information for employment purposes. The Congressional statement of purpose notes that the objectives of the FCRA include the requirement "that consumer reporting agencies adopt reasonable procedures

for meeting the needs of commerce for consumer credit, *personnel*, insurance, and other information in a manner which is fair and equitable to the consumer, with regard to the confidentiality, accuracy, relevancy, and proper utilization of such information . . .".⁽²⁾ The FCRA definitions of "consumer report" and "consumer reporting agency" are expansive and apply to a variety of reports utilizing information for a number of purposes, including employment purposes.⁽³⁾ Moreover, "employment purposes," a term defined by Congress in the FCRA in 1970, is quite broad in its reach, encompassing significant personnel actions beyond the initial employment decision.⁽⁴⁾

In 1996, Congress adopted wide-ranging amendments to the FCRA (Pub. L. No.104-208), which imposed substantial new requirements on users of consumer reports for employment purposes. These new requirements are the focus of current attention.⁽⁵⁾ But, in the otherwise-sweeping amendments to the FCRA in 1996, none of the key definitions of "consumer report" or "employment purposes" were changed by Congress.

For any consumer report used for employment purposes, the 1996 amendments added requirements that, before an employer obtains a consumer report for employment purposes, the employer must notify the consumer and obtain from him or her written authorization to procure the report.⁽⁶⁾ Additionally, before taking any "adverse action"⁽⁷⁾ based in whole or in part on information from a consumer report, the employer must provide to the consumer to whom the report relates a copy of the report and a written description of the consumer's FCRA rights (*e.g.*, to dispute inaccuracies in the report with the consumer reporting agency).⁽⁸⁾

As a consequence of the 1996 amendments (and because the operative FCRA definitions are broad), an outside entity, such as a private investigator or law firm, that regularly conducts investigations of alleged workplace misconduct by employees will generally qualify as a "consumer reporting agency" and the reports it makes to the employer will likely be "consumer reports" within the meaning of the FCRA. Indeed, because such investigations typically include interviews at the workplace, the resultant report is an "investigative consumer report" within the meaning of the FCRA.⁽⁹⁾ Additional FCRA protections apply for investigative consumer reports, including notice to the consumer that an investigative consumer report may be obtained.⁽¹⁰⁾

With respect to investigative consumer reports, Congress made one particularly telling change in the 1996 amendments relevant to investigations of workplace misconduct. Before the 1996 amendments, an employer did not need to notify an employee when the employer obtained an investigative consumer report involving alleged workplace misconduct -- the general notice requirement did not apply to reports "to be used for employment purposes for which the consumer has not specifically applied." In the 1996 amendments, Congress *removed* this exemption at the same time that it added other requirements (such as disclosure and authorization) for users of all consumer reports for employment purposes.⁽¹¹⁾ The 1996 amendments therefore increased the obligations on employers using consumer reports, and particularly investigative consumer reports.

Not all affected parties immediately recognized the practical effects of the 1996 FCRA

amendments on employers and outside investigative entities. However, both the amendments themselves and the legislative history leading up to the 1996 amendments indicate that Congress, when it considered and ultimately passed those portions of the 1996 amendments that substantially expanded the employment provisions of the FCRA, was aware that these requirements would apply not only to the "new hire" employment decision, but also to employment actions involving existing employees.⁽¹²⁾ The Senate Committee Report regarding the employment-related FCRA amendments of S. 783 refers repeatedly to the use of consumer reports on "current employees" and makes clear that Congress realized that consumer reports could be used in the context of possible workplace misconduct, as "where the employer believes that the fraudulent or criminal activity [of an employee] is ongoing and directly related to the employment involved."⁽¹³⁾ Of course, when Congress enacted its FCRA reforms in 1996, it could not have foreseen subsequent legal developments, such as two 1998 Supreme Court decisions that create incentives for employers to prevent and promptly correct illegal behavior, and, in certain instances, to hire outside investigators to conduct expeditious workplace investigations.⁽¹⁴⁾

Awareness of the 1996 amendments' implications soon began to increase. A November 1998 law journal article analyzed the FCRA changes and discussed their ramifications for workplace investigations.⁽¹⁵⁾ The author of that article also wrote to Commission staff requesting its opinion on several issues related to the applicability of the FCRA to workplace investigations of, specifically, sexual harassment. The resultant staff opinion letter (the "[Vail](#) letter"), which was posted on the Commission's Internet web site, resulted in more widespread awareness of the Act's requirements as applied to workplace investigations by third parties.

That staff opinion letter and the Commission's [letter](#) to Representative Sessions constitute an analysis of current law. While that analysis has occasioned comment and discussion of what the FCRA should appropriately cover,⁽¹⁶⁾ Section 621(a)(4) of the FCRA specifies that the Commission is not permitted to issue rules or other regulations with respect to the FCRA. Therefore, any changes or exceptions to the statute must be directed through legislation.

The Commission fully appreciates that practical problems may arise in applying all the FCRA requirements to investigations by third parties of workplace misconduct.⁽¹⁷⁾ The Commission agrees that there is considerable tension between some of the affirmative requirements that the 1996 amendments to the FCRA impose on employers and certain public policy aims of statutes and regulations that, directly or indirectly, compel or encourage investigations of various forms of workplace misconduct. Most notably these include the FCRA requirement that an employer obtain the employee's written authorization before preparing a consumer report, which arguably provides an antagonistic employee the opportunity to thwart a third-party investigation by withholding authorization. We understand that this would be especially troubling for small employers (who may not have the personnel or expertise to conduct an "in-house" investigation) and any employer who wishes to put a workplace investigation in the hands of an outside entity in order to foster a greater sense of impartiality.

Additionally, the FCRA requirement that the employee who is the target of a workplace investigation be notified of the employer's intent to obtain a consumer report, and informed, upon request, of the "nature and scope" of an investigative consumer report has potential drawbacks. By alerting the employee to the investigation, it may permit a dishonest employee to destroy or alter evidence, seek to influence potential witnesses, and otherwise impair the reliability of the investigation. The requirements that the employee be provided a copy of the report and that, upon request, "all information" in the consumer reporting agency's file on the employee be disclosed to the employee likewise pose difficulties for thorough investigations. They may have a "chilling effect" on the willingness of *others* (co-workers, witnesses) to participate in the investigation, for they may fear retribution or other adverse consequences if their identity is divulged or if sufficient information is available to infer the individuals who gave evidence.

Commission Views on H.R. 3408

You have asked for our comments on H.R. 3408, which creates an exemption from the definition of "consumer report" that effectively removes from the coverage of the Act investigations of allegations of illegal conduct by an employee. It does so by adding such investigations to the existing statutory list of items that are not encompassed within the meaning of the term "consumer report" -- Section 603(d)(2) of the FCRA ("Exclusions").⁽¹⁸⁾ The effect of such a blanket exclusion, however, is to free workplace investigations not only from the FCRA provisions that are widely agreed to be problematic as applied to them, but also to eliminate a significant number of long-standing privacy and procedural protections that the FCRA traditionally has afforded to employees that are the target of such investigations.

The Commission emphasizes that it believes legislation is warranted to relieve an employer of the FCRA requirements that actually impede workplace investigations by outside parties. However, the Commission strongly believes that the best method of achieving this end is a targeted statutory exemption from the problematic requirements, not a broad-brush elimination of all FCRA protections. In short, while H.R. 3408's sweeping language may accomplish relief from the onerous requirements of the Act added by the 1996 amendments, it will also remove protections that the Act has provided, without objection or difficulty, to consumers for thirty years.

The Commission's Recommended Approach to Resolving the FCRA's Applicability to Workplace Investigations

The basic FCRA provisions that have long safeguarded the consumer/employee who is the target of a workplace investigation include requirements that consumer reporting agencies use reasonable procedures in the preparation of consumer reports; employ safeguards for accuracy and accountability; and observe procedures for disclosure and dispute resolution *after* adverse action. Given the grave consequences of employment decisions for the individual employee, these protections, in place since the initial enactment of the FCRA, are neither unrealistic nor undue requirements for consumer reporting agencies involved in workplace investigations. These minimal safeguards (in

contrast to the 1996 requirements) do not afford an uncooperative employee the opportunity to thwart or delay an investigation. Instead, these basic procedural protections are an appropriate balance to the need for expeditious investigations of alleged workplace misconduct, especially for those workers who may be the target of unfounded or erroneous accusations.

Accordingly, the Commission respectfully urges that Congress not exempt workplace investigation reports from *all* coverage by the FCRA but instead craft an amendment that carefully eliminates those FCRA provisions that potentially hamper timely investigations and arguably "chill" the willingness of co-workers to cooperate in the investigation of a colleague for fear of identification.

One way of achieving the desired goal would be to add a new FCRA provision, Section 626, applicable to investigations of alleged or suspected workplace illegality, which would provide that, in cases in which a consumer report is obtained for the purpose of investigating suspected or alleged illegal misconduct by an employee, compliance with Sections 604(b)(2)(A) and (3)(A) and 606(a), (b), (c) and (d)(1) is not required. The Commission also recommends that, in such cases, compliance with Section 609(a)(1) should not be required except that the consumer reporting agency must disclose to the employee a summary containing the nature and substance of the information in the consumer's file at the time of the request.

If Congress adopted this approach to amending the FCRA, it would serve to

- remove the requirements that, before procuring a consumer report, the employer must disclose to the employee under investigation that a consumer report will be obtained and obtain the written authorization of the employee to procure the report. (Thus, the target of a sensitive investigation will neither be alerted to the investigation nor have an opportunity to thwart the use of a third-party investigator by refusing authorization.)
- remove the requirements that, before taking adverse action based in whole or in part on a consumer report, the employer must provide to the consumer a copy of the consumer report and a written description of the consumer's rights under the FCRA. (This will enable an employer to fire or otherwise discipline an employee without having to provide a copy of the consumer report in advance.)
- remove the requirements that apply to investigative consumer reports, including notification of preparation of a report and notice of the consumer's right to request disclosure of the nature and scope of the investigation.
- remove the requirement that a consumer reporting agency that prepares an investigative consumer report must, upon request, disclose to the consumer *all* information in the consumer's file. Instead, for investigative consumer reports, the consumer reporting agency would be required to provide a summary of the "nature

and substance" of the information in the consumer's file.

To ensure continued fairness to employees under investigation, the Commission recommends that Congress consider an additional safeguard to the FCRA in connection with workplace investigations. Specifically, to avoid the possibility that exempting employers from the various disclosure and notice requirements could lead to unwarranted investigations, employers should be required to certify to the consumer reporting agency preparing the report that the employer has a reasonable suspicion or has received an allegation of illegal misconduct by an employee; that confidentiality of the investigation is necessary to preserve evidence and to prevent the destruction of evidence relevant to the investigation; or there is reason to believe that compliance with Section 604(b)(2) or (3) will result in the intimidation of a potential witness relevant to the investigation, or otherwise seriously jeopardize or unduly delay the investigation.

The approach recommended by the Commission leaves in place (among other provisions of the Act) Section 615 of the FCRA, which requires an employer who takes adverse action against an employee based in whole or in part on any information in a consumer report to provide to the consumer (employee) the name and other identifying information about the consumer reporting agency, and notification of the consumer's right to obtain a disclosure of the report⁽¹⁹⁾ and the consumer's right to dispute the accuracy of the information in the report. These actions would take place *after* the employer's action against the employee.

In certain cases of illegal workplace conduct, however, the employer may have also referred the matter to a law enforcement agency for investigation, or may do so upon termination of the employee. In this context, some law enforcement agencies have raised the possibility that an adverse action notice under Section 615 of the FCRA might prematurely disclose the existence of a criminal or other investigation that results from the referral by an employer of allegations of illegal activity by an employee, and seriously compromise the investigation. The Commission believes that, when a consumer report has figured both in the employer's decision to refer an investigation to law enforcement action and the employer's determination to take adverse action with respect to an employee, the FCRA should make some provision for deferring the adverse action notice otherwise required by Section 615.⁽²⁰⁾

We recommend a provision for delayed Section 615 notice in cases where the employer refers an investigation into illegal conduct in the workplace to a government enforcement authority for concurrent investigation or investigation following adverse action. In those cases where delayed notice is warranted, the head of the government enforcement authority or his/her designee should be required to certify in writing to an employer that an investigation of an employee is being conducted within the lawful jurisdiction of the government authority seeking the delay and that notice of the investigation to the employee will result in endangering life or physical safety of any person; flight from prosecution; destruction of or tampering with evidence; intimidation of potential witnesses; or otherwise seriously jeopardizing an investigation or official proceeding or

unduly delaying a trial or ongoing official proceeding.⁽²¹⁾

Responses to Additional Questions

You also asked us to discuss the liability provisions of the FCRA. The Act provides for civil liability for willful or negligent noncompliance.⁽²²⁾ A person who willfully fails to comply with an FCRA requirement with respect to a consumer/employee is liable to that consumer for actual damages sustained as a result of the failure or damages of not less than \$100 and not more than \$1000, together with such punitive damages as the court may allow. Negligent noncompliance can result in liability to the aggrieved consumer for actual damages sustained by the consumer as a result of the failure to comply. In both cases, a successful action to enforce liability can also result in the assessment of costs of the action and reasonable attorney's fees as determined by the court. Section 621 of the Act provides that, in administrative enforcement by the Commission, a knowing violation, which constitutes a pattern or practice of violations of the FCRA, can involve a civil penalty of not more than \$2,500 per violation.⁽²³⁾ However, there are important limitations on liability, in particular for those employers and reporting agencies that can demonstrate that they followed reasonable procedures.⁽²⁴⁾

You also asked us to address the fact that the FCRA covers workplace investigations by third-party investigators (so long as they meet the definition of a "consumer reporting agency") while internal employer reviews and reports on alleged employee misconduct are not subject to the FCRA. The Congress made a determination that consumer reports, including investigative consumer reports, prepared by outside entities are subject to safeguards that do not apply, at least as a matter of federal law, to information gathered directly by employers. The Commission believes that the distinction makes sense in the context of workplace investigations precisely because the outside investigator is hired based on considerations of independence, expertise and ability to gather information in ways or to a degree that may not be available to employers conducting their own investigation. Co-workers and other interviewees and witnesses may be more forthcoming with an independent investigator than they would be with the employer. The outside agency likely has greater investigational resources, access to data, and information-gathering expertise than does the employer. These considerations may give the resultant consumer report a greater credibility and weight than an internal report. It is appropriate that the agency that collects and maintains this sensitive information have corresponding requirements for accuracy and reasonable procedures imposed on it. The safeguards are commensurate with the heightened resources of third-party investigators, the legitimate expectations of all affected parties that the report will be a professional, high-quality product, and with the magnitude, influence and consequence of their reports.

Conclusion

In sum, the Commission agrees that the 1996 amendments to the Fair Credit Reporting Act have resulted in unanticipated conflicts between the aims of the Act and the public policy favoring prompt, objective investigations of workplace misconduct. We do not believe that a blanket exemption from the entirety of the FCRA is warranted for such

investigations. We recommend that the Congress enact a targeted amendment tailored to those specific procedural provisions of the Act that may genuinely impede workplace investigations by third parties. Because accused employees should still be protected through the FCRA's reasonable procedures and accuracy safeguards, we believe that the more measured approach set out above strikes the appropriate balance.

Endnotes:

1. While the views expressed in this statement represent the views of the Commission, my oral presentation and responses to questions are my own and do not necessarily reflect the views of the Commission or any individual Commissioner.

2. Section 602 (b) of the FCRA, 15 U.S.C. § 1681 (emphasis added).

3. A "consumer report" means "any . . . communication of any information by a consumer reporting agency bearing on a consumer's . . . 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 . . . employment purposes . . .". Section 603(d) of the Act, 15 U.S.C. § 1681a(d). A "consumer reporting agency" ("CRA") is defined by the Act to include any person which, for monetary fees, "assembles or evaluates" credit information or other information on consumers for the purpose of regularly furnishing consumer reports to third parties using any means or facility of interstate commerce. Section 603(f) of the FCRA, 15 U.S.C. § 1681a(f).

4. "The term 'employment purposes' when used in connection with a consumer report means a report used for . . . evaluating a consumer for employment, promotion, reassignment or retention as an employee." FCRA Section 603(h), 15 U.S.C. § 1681a(h).

5. The FCRA's requirements on consumer reporting agencies ("CRAs") as *suppliers* of consumer reports for employment purposes - such as the requirement that CRAs use "reasonable procedures" in the assembly of consumer reports - have been in place since the inception of the Act. Before the amendments of 1996, the FCRA's affirmative requirements on employers as *users* of consumer reports were more limited. Section 615 of the Act has always required employers who base an adverse employment decision, in whole or in part, on information from a consumer report to advise the consumer of the adverse action and supply the name and address of the consumer reporting agency making the report. The Commission has a history of monitoring employers' compliance with Section 615 and bringing enforcement actions. *See, e.g.*, Electronic Data Systems Corp., 114 F.T.C. 524 (1991); McDonnell Douglas Corporation, 115 F.T.C. 33 (1992); Macy's Northeast, Inc., 115 F.T.C. 43 (1992); Keystone Carbon Company, 115 F.T.C. 22 (1992); The Kobacker Company 115 F.T.C. 13 (1992); Marshall Field & Company, 116 F.T.C. 777 (1993).

6. Sections 604(b)(2)(A)(i) and (ii), 15 U.S.C. §§ 1681b(b)(2)(A)(i) and (ii).

7. "Adverse action" is defined in the FCRA to include "a denial of employment or any other decision for employment purposes that adversely affects any current or prospective employee. . .". Section 603(k)(1)(B)(ii), 15 U.S.C. § 1681a(k)(1)(B)(ii).

8. Sections 604(b)(3)(A)(i) and (ii), 15 U.S.C. §§ 1681b(b)(3)(A)(i) and (ii).

9. The FCRA defines an "investigative consumer report" as a consumer report "in which information on 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 he is acquainted or who may have knowledge concerning any such items of information." The definition of an "investigative consumer report" has remained unchanged since the enactment of the FCRA

in 1970. Section 603(f) of the FCRA, 15 U.S.C. § 1681a(f).

10. Section 606 of the FCRA provides that a person may not procure an investigative consumer report on a consumer unless, within three days of first requesting the report, the user discloses to the consumer that "an investigative consumer report including information as to his character, general reputation, personal characteristics and mode of living, whichever are applicable, may be made" and informs the consumer of his right to request additional disclosures of the "nature and scope" of the investigation requested. 15 U.S.C. §§ 1681d(a) and (b).

11. Congress also changed the language of Section 609(a)(1) of the Act, which now requires CRAs to disclose to a consumer, upon request, *all* information in the consumer's file (except risk scores). 15 U.S.C. § 1681g(a)(1). Previously, CRAs had been required by the FCRA to disclose the "nature and substance" of information in the consumer's file. Section 609(a)(2), which provides that a CRA does *not* have to disclose *sources* of information acquired solely for use in preparing an investigative consumer report, remained unchanged in the 1996 amendments. However, in the context of workplace investigations, the significance of the "all information" disclosure change in 609(a)(1) means that specific information will be divulged that could suggest the identity of interviewees and other sources, *e.g.*, a targeted employee's co-workers.

12. *See, e.g.*, Section 603(k)(1)(B)(ii) ("current or prospective employee"); H. Rep. No. 486, 103d Cong., 2d Sess. 30-31 (1994) ("... a person may comply with the [disclosure and authorization] requirements of this section . . . at any time during the tenure of the consumer's employment. . . . The bill also triggers special provisions when an employer contemplates taking adverse action based in whole or in part on a consumer report. Specifically, before taking adverse action regarding the consumer's *current* or prospective employment . . ." (emphasis added)).

13. S. Rep. No. 209, 103d Cong., 1st Sess. 11-12 (1993).

14. The 1998 U.S. Supreme Court rulings -- Faragher v. City of Boca Raton, 118 S. Ct 2275, and Burlington Industries v. Ellerth, 118 S. Ct. 2257 -- held that a company can defend itself against a harassment claim if it shows it did a prompt and thorough investigation.

15. Judi A. Vail, *Violence-Theft-Harassment and the Fair Credit Reporting Act*, Washington State Bar News, November 1998 (also available on the Internet at <http://www.wsba.org/barnews/archives98/faircred.html>).

16. Commission staff has met with staff of the Equal Employment Opportunity Commission, the Fraud Section of the Department of Justice's Criminal Division, and the Securities and Exchange Commission's Office of General Counsel and Division of Enforcement, as well as representatives of outside firms who conduct workplace investigations.

17. Other opinion letters by Commission staff address some of these problems and seek to help employers comply with the FCRA where it applies to reports they obtain from third parties.

18. H.R. 3408 provides a "laundry list" of types of investigations that would be wholly exempt from coverage by the FCRA. The list includes, however, a catch-all for "any other violations of law." The operative language of H.R. 3408 also excludes a "report . . . prepared by an employee . . . of a consumer's employer" even though the FCRA never covered such reports. A further provision of H.R. 3408 (an amendment to Section 609(d) of the Act) provides for certain disclosures of "the report", but the proposed amendment to the definition of "consumer report" means that the product of the investigation is not a "consumer report" within the meaning of the Act. It therefore is unclear how the amended 609(d) could be enforced.

19. For an investigative consumer report, the disclosure would be a summary of the "nature and substance" of the report. *See* note 11, above. Adherence to a requirement that the "nature and substance" of the report

be divulged should allow the affected consumer to obtain a degree of meaningful, genuine disclosure of the information that served as the basis for the adverse decision. Although such disclosure need not be so specific that it could be used to identify witnesses (with consequent risk of retaliation) or otherwise inhibit the ability of an outside party to collect the information necessary for a valid workplace investigation, we do not believe that generalized or conclusory statements would constitute a good-faith disclosure of the nature and substance of a report.

20. A useful analog is provided by the "delayed notice" provisions of the Right to Financial Privacy Act. 12 U.S.C. § 3409. This section provides that a consumer notice required by the RFPA may be delayed by order of an appropriate court if the court makes certain findings, including that providing the notice might result in flight from prosecution, destruction of evidence, intimidation of witnesses, or other serious jeopardy to the investigation.

21. An employer who receives such a certification should be required to defer Section 615 notification to an employee until the employer is notified of the completion of the government authority's investigation. If such investigation continues for more than one year, annual certification by the government authority to the employer should be required.

22. Sections 616 and 617, respectively. 15 U.S.C. §§ 1681n, 1681o.

23. 15 U.S.C. § 1681s. Section 621(a)(2)(B) further provides that "In determining the amount of a civil penalty . . . , the court shall take into account the degree of culpability, any history of prior such conduct, ability to pay, effect on ability to continue to do business, and such other matters as justice may require."

24. An employer cannot be held liable for a violation of the notice and disclosure requirements of Sections 606 if the employer shows that at the time of the violation he maintained reasonable procedures to comply. (Section 606(c)). A consumer is limited to the remedies provided in Sections 616 and 617, and cannot bring an action in the nature of defamation, invasion of privacy or negligence with respect to the reporting of information against any consumer reporting agency, any user of information, or any person who furnishes information to a consumer reporting agency, based on information disclosed pursuant to the Act or based on information disclosed by a user of a consumer report to or for a consumer against whom he has taken adverse action, based in whole or in part on the report, except as to false information furnished with actual malice or willful intent to injure the consumer. (Section 610 (e)).