



Fair Credit Act Legal Considerations

Dear Reader:

The following document was created from the MTAS website ([mtas.tennessee.edu](https://www.mtas.tennessee.edu)). This website is maintained daily by MTAS staff and seeks to represent the most current information regarding issues relative to Tennessee municipal government.

We hope this information will be useful to you; reference to it will assist you with many of the questions that will arise in your tenure with municipal government. However, the *Tennessee Code Annotated* and other relevant laws or regulations should always be consulted before any action is taken based upon the contents of this document.

Please feel free to contact us if you have questions or comments regarding this information or any other MTAS website material.

Sincerely,

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Fair Credit Act Legal Considerations

Reference Number: MTAS-1912

Employers who fail to comply with the rules are subject to FTC fines and penalties, which can be substantial if a large number of files are involved. In the event a person willfully fails to comply with any requirement imposed by the law, the employer is liable to that consumer in an amount equal to the sum of (a) any actual damages sustained by the consumer as a result of the failure or damages of not less than \$100 and not more than \$1,000 or in the case of liability of a natural person for obtaining a consumer report under false pretenses or knowingly without a permissible purpose, actual damages sustained by the consumer as a result of the failure or \$1,000, whichever is greater. 15 U.S.C. §§ 1681. The person could also be held liable for such amount of punitive damages as the court may allow (15 U.S.C. §§ 1681n(a)(2)) and, in the case of any successful action to enforce any liability, the cost of the action together with reasonable attorney's fees as determined by the court. 15 U.S.C. §§ 1681n(a)(3).

In the event of a knowing violation, the individual/company that obtains the consumer report is liable to the consumer reporting agency for actual damages sustained by the consumer reporting agency or \$1,000 whichever is greater. 15 U.S.C. § 616(b). Additionally, if the state has reason to believe that any person has violated the act, it may bring action to enjoin such violation in any appropriate United States district court and fine such person damages of not more than \$1,000 for each willful or negligent violation. In the case of any successful action, the individual/company will have to pay for the cost of the action and reasonable attorney fees as determined by the court. 15 U.S.C. §§ 621(c)(1). If your city routinely conducts credit checks on applicants or employees, you may want to consider only conducting the checks on positions involving money (finance department employees, police officers, etc.). Then be sure to provide notice and follow the guidelines when an adverse decision is made.

Additionally, Section 1681s(a)(2)(a) gives the Federal Trade Commission authority to seek civil penalties for violations of the FCRA in an amount not more than \$2,500 per violation. In setting a civil penalty amount, it requires a court to consider "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." 15 U.S.C. §§ 1681s(a)(2)(b).

DISCLAIMER: The letters and publications written by the MTAS consultants were written based upon the law at the time and/or a specific sets of facts. The laws referenced in the letters and publications may have changed and/or the technical advice provided may not be applicable to your city or circumstances. Always consult with your city attorney or an MTAS consultant before taking any action based on information contained in this website.

Source URL (retrieved on 06/04/2020 - 2:46pm): <https://www.mtas.tennessee.edu/reference/fair-credit-act-legal-considerations>



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