



KNOW YOUR CREW



USER'S GUIDE

Florida 3rd Edition



KNOW YOUR CREW

USER'S GUIDE

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FOREWORD

This manual is intended to accomplish two things: to inform our clients about the judiciousness and need for a sound, FCRA-compliant personnel onboarding system; and, to provide clients with a listing and descriptions of the screening tools you will need to order “investigative consumer reports” (background investigations) for “employment purposes” of the employees, associates, consultants and contractors serving your organization.

Financial transactions today are almost always influenced by a consumer’s financial history created by the credit reporting agencies. Consumers had limited access to their history and were generally unable to correct inaccurate information about them until the FCRA was passed.

The principal intent of the FCRA is to regulate credit reporting agencies and to obligate them to ensure that the financial information they gather about “consumers” (the public) is reported accurately, and that consumers have a legal recourse for causing corrections to their credit histories.

Although the FCRA is aimed at regulating credit reporting, consumers’ finances overlap to employment, borrowing, lending, renting and other forms of financial activities and arrangements—and the FCRA assures that consumers are protected on those fronts as well.

By consumers, the FCRA means individuals in the marketplace who, among other things, are also actual or candidate employees, consultants, contractors, and tenants. Thus, the FCRA impacts and regulates employment and housing processes.

This manual makes frequent reference to the FCRA law, which is too large to include here as an appendix. However, we can provide our clients with a copy of the FCRA, annotated by the Federal Trade Commission (FTC) and KYC Solutions, as a separate volume to this manual.

In this manual we provide our interpretations of relevant parts of the law to help our clients better understand and apply the FCRA to the task of onboarding employees and tenants. Our intent is to explain the usefulness and limitations of our KYC Solutions services.

KYC Solutions is interested in your feedback and success managing the people you run your business with. We look forward to serving your needs.

Sincerely,



Jacques Island
President, Inquesta | KYC Solutions

QUICK REFERENCE

This brief section is to get you working without delay!

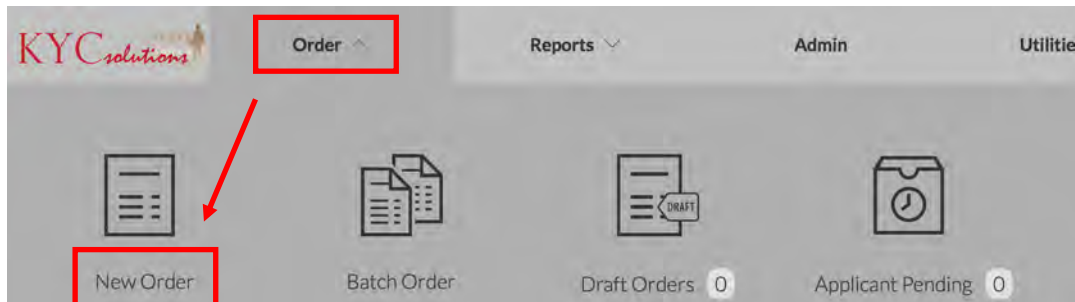
1. Be sure to observe the FCRA-Compliant Onboarding Model (p. x). Before placing orders you must first do the following: (a) provide FCRA rights forms to candidates or incumbents and (b) get a signed authorization (p. 23).

2. **Sign in** to your KYC Solutions account via <https://kyc.instascreen.net/sso/login.taz>.



3. Click on the **Order** tab. Start the process by selecting **New Order**. Initially you are likely to see the following four default choices, or your selections of services may already have been customized for your needs and you may see more than four choices:

- **Basic Package** (performs SSN trace, standard criminal and sex offender searches)
- **Standard Package** (adds courthouse criminal and homeland security searches)
- **Premium Package** (adds verifications of employment, education and licenses)
- **A La Cart** (usually these are add-on's to a package, but all services can be ordered a-la-cart)



4. **Examine the results of the SSN Trace** (p. 48). SSN traces return instantly and provide a good history of a subject's residences (and other personal data) in the U.S. They should match what you have been given by your subject or what you have developed through other research. An SSN trace that reports addresses or other information your subject has not disclosed is a **RED FLAG** to investigate. It could be an effort by the subject to conceal a firing or an arrest or some other problem in that region. Some inconsistencies between the application form and the SSN trace results to explore are (a) residences or employment in regions not given in the application; and (b) multiple users of the same social security number. These two are common flags. They are not necessarily an indication of fraud but they should be clarified through further research and the subject's explanations.

If you see no red flags then the bundled services may be enough. Proceed to step 6.

If the SSN trace points to red flags, go to step 5.

5. **Navigate to the Order > Investigative** section and “tick” additional services:

- **County Criminal Records Search** (p. 36) If your package did not include a county search, or it was for a county other than the omitted region, then you should add county searches in the areas omitted by the subject. These searches could discover and provide details about incidents your subject may be hiding.
- **Statewide Criminal Records Search** (p. 37). Although this search does not perform thorough searches of all county records within a state's jurisdiction, it is a good substitute for searching multiple counties within the same state at once.
- **Wants & Warrants.** This search is in order when red flags are fluttering.
- **Abuse Registry Database Search.** An abuse history may be in order.

These four suggestions are common add-on's but they are by no means the only services to employ. Use the Table of Contents (pp. i - iv) and our summary of available searches (p. 34) for a listing of the services available and navigate to the pages where each service is described in detail. The descriptions will tell you what a service explores and what kind of results can be expected.

Before reaching the adjudication phase, the researcher performing a background check should communicate with the subject to get explanations about issues or inconsistencies that are discovered. A subject may or may not give plausible clarifications to your concerns that should be considered during the next step: adjudication.

6. **Adjudicate.** This final step is crucial to maintaining a “safe hiring” program in compliance with the FCRA. During adjudication (pp. 25, 86), remember that—
- if the decision is an **Adverse Action** (pp. 24, 86), like a decision to NOT HIRE (or not rent), you must provide the applicant or incumbent your reason in writing and give them a reasonable period of time to provide a final explanation. Although it is not hard and fast, the FTC has deemed that a reasonable time period may be five days.
 - If the decision is to hire or rent, then continue to **enroll and train** the applicant.

Completing the adjudication process completes another background investigation case.

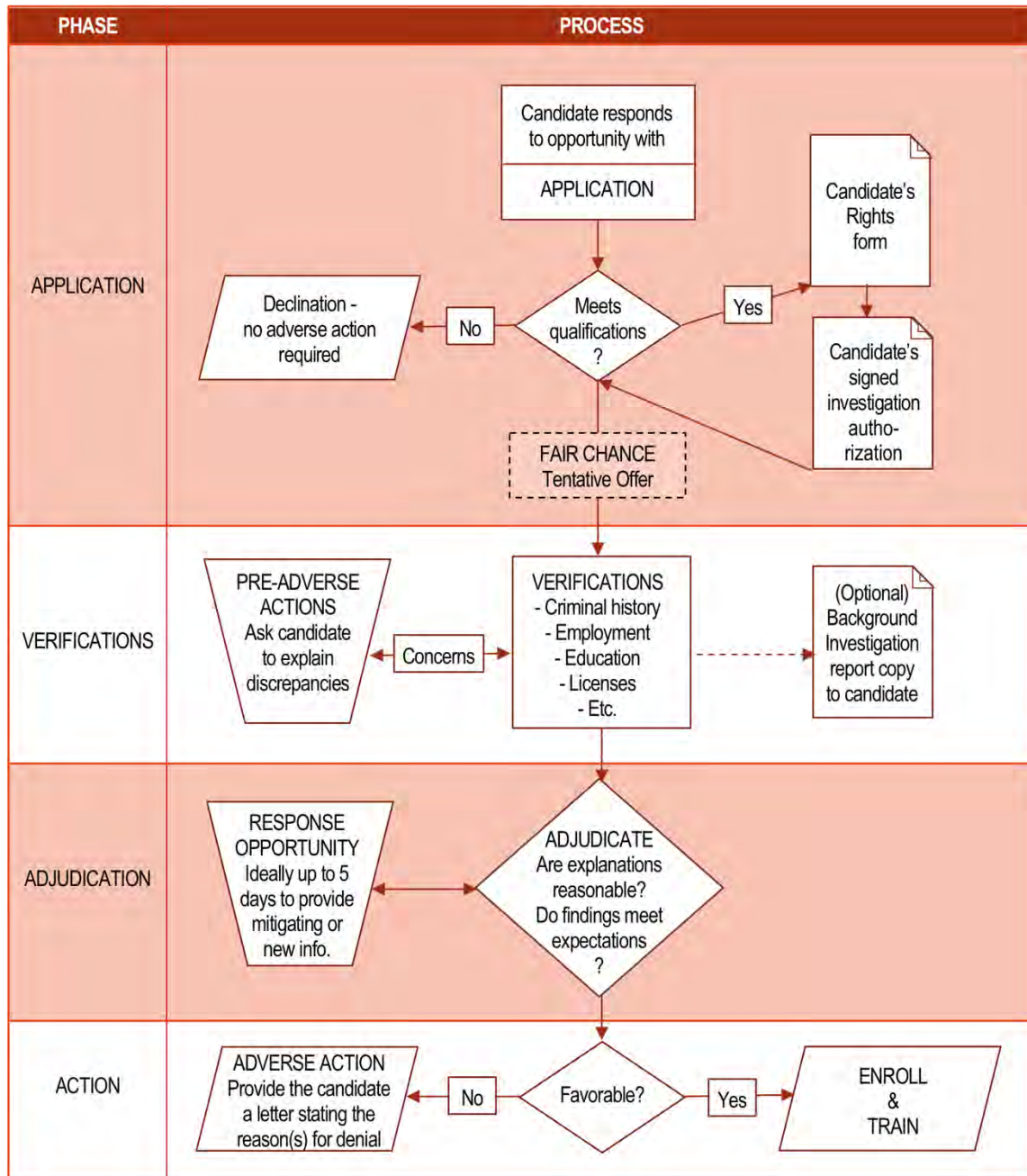
The screenshot shows the KYC solutions website interface. At the top, there is a header with the KYC solutions logo and an 'Order' dropdown menu. Below the header, there are four main sections, each with a red header bar and a list of services with checkboxes:

- Identity Development**
 - ☐ Person Search
 - ☐ SSN Trace
- Investigative**
 - ☐ County Criminal Records Search
 - ☐ Statewide Criminal Records Search
 - ☐ Federal Criminal Records Search
 - ☐ International Criminal Records Search
 - ☐ Criminal Database Search
 - ☐ Criminal Database Alias Search
 - ☐ Homeland Security Search
 - ☐ Sex Offender Records Search
 - ☐ County Civil Records Search
 - ☐ Federal Civil Records Search
 - ☐ Abuse Registry Database Search
 - ☐ Financial Enforcement Actions
- Verification**
 - ☐ Employment Verification
 - ☐ Workers Compensation Report
 - ☐ Personal Reference Verification
 - ☐ Wants & Warrants

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Figure 1: FCRA-Compliant Onboarding Model

Every entity is unique and requires tailored business processes that address the needs of its organization, industry, geography, and applicable laws. The model below demonstrates the basic steps that most entities need to apply to their onboarding of human resources in compliance with the FCRA and, if applicable, Fair Chance laws or policies (p. 13). A diagram for your entity's onboarding functions could have many more steps, like interview, testing, medical exam, etc., and you could want to elaborate the adjudication phase; or you may prefer the simplicity of this model.



Refer to Appendix D: Glossary for definitions given here and elsewhere in this manual.

1

WHY DO FCRA-COMPLIANT INVESTIGATIONS?

Résumé fraud has been around as long as there have been résumés, and diploma mills and Internet sites like FakeResume.com and CareerExcuse.com have made it easier, more convincing, and more pervasive than ever. These and other popular sites show in simple steps how to pad qualifications and fill time gaps a person may want to hide or gloss over, and to literally buy or create false credentials. One sample “testimonial” on CareerExcuse attests that “I Bought Fake Job References and it WORKED.”

Falsifications and omissions on applications can be costly in terms of liability and material losses.

The case of *Ponticas v. K.M.S. Investments* in Minnesota serves as a clear example. In that case, the owner of an apartment complex was found liable because the owner’s resident manager used his passkey to enter a tenant’s apartment and violently rape her at knifepoint. It was later discovered and presented in court that the resident manager had a history of convictions for violent crimes. Had the owner done “adequate due diligence,” the court found, the resident manager would have not been hired and the rape would not have happened. The tenant was awarded millions.

KNOW YOUR CREW

A very effective solution to résumé fraud and its consequences is the use of a screening program during the onboarding process. Such a program lets job applicants know that claims on résumés and job applications will be checked for accuracy, and then does it as thoroughly as possible. Not performing this due diligence presents risks that are just too great.

KNOW YOUR CREW

In the case of screenings and due diligence investigations, the “KYC” part of KYC Solutions stands for *Know Your Crew*; that is, know who your potential or current employees, contractors, independent consultants, vendors, associates, renters, licensees and volunteers are before and while you do business with them. In short, know who is working for or representing your organization in carrying out its mission.

The activity of performing background screenings or conducting enhanced due diligence investigations has the purpose of providing the user/client a way to factually verify or discover the histories of applicants or incumbents, and then compare those findings to submitted applications or resumes to establish the truthfulness and completeness of the statements and claims made in them.

THE “PEOPLE” LANDSCAPE

It’s no secret that many employers and property managers pay little attention to background investigations. The focus, instead, is placed on applications, interviews, résumés, skills tests and other "traditional" screening techniques.

There are, however, at least five reasons why background investigations should be added to a company’s standard practices. Let’s look a little closer at each one.

Unreliable Input by Applicants

We are all products of our past. The collection of experiences, good or bad, that defines our past does not necessarily determine our future. But background does clearly indicate what a person can and will become.

Thus, an employer who is interviewing applicants for employment has an obvious need to know fundamental facts in an individual’s background that may play a role in their future.

“If the employee causes a foreseeable injury to a third party, and the court determines that the employer's failure to detect or heed the warning signs was unreasonable, the company may well be held liable for damages.”

The standard source for obtaining background information on a job applicant is quickly becoming increasingly unavailable. Defamation lawsuits lodged by applicants against former employers are on the rise and have virtually shut off the transference of useful information from former employer to prospective employer.

Interviewing also has its limitations. Unfortunately, those most impressive at interviewing are often those most

adept at deceiving. It is reported too often that the person interviewed does not turn out to be the same person after two or three months. The employment honeymoon is over.

The professional's goal is to find the person who will be best-suited emotionally, temperamentally and skill-wise for the jobs the company offers. That takes input from a variety of sources, including background investigations.

Negligent Hiring & Negligent Retention

The second reason employee screening is so important is the real threat of liability employers now face under the legal doctrine of negligent hiring and negligent retention.

Courts are now accepting the premise that some facts in an employee's background should disqualify them for a given position. For example,

- a driver with a history of recklessness or intoxication behind the wheel,
- a salesperson with a background of violent assault,
- a healthcare worker with a drug history and access to medications, or
- a bookkeeper with a record of theft,

are clear examples of relevant, disqualifying histories for particular jobs.

If the employee causes a foreseeable injury to a third party, and the court determines that the employer's failure to detect or heed the warning signs was unreasonable, the company may well be held liable for damages.

Since negligence risk cannot be easily quantified, employers are well advised to exercise the utmost care in the investigation and selection of all employees.

One significant negligence lawsuit can result in severe financial stress, or even drive some companies into bankruptcy.

Demise of “Employment at Will”

The formerly universal notion that employers could hire and fire whomever they wanted whenever they wanted is slowly eroding. Different states are proceeding down this path at varying rates of speed. One typical example of an exception to "employment at will" laws is prohibiting the dismissal of an employee who misses work to serve on a jury.

The more protective states go much further. The most restrictive states actually prohibit the dismissal of a worker without a showing of clear and just cause. The employer must document the reasons behind all dismissals to show that there was an adequate basis for the action.

Employee initiated lawsuits for wrongful discharge are even more common than those for negligent hiring. One study showed that claimants win two thirds of the cases that go to trial, with an average jury award of more than \$600,000. Careful pre-employment screening will greatly reduce the risk of many wrongful discharge problems.

The Impact of Technology

Explosive technological advances in the workplace increase the dangers of unqualified or unethical workers. With the increasing number of computer savvy employees, a company's information and intellectual property is at risk more than ever. Sound background investigations will ferret out many high-risk applicants.

Exaggerated Credentials

Many observers say that the falsification or exaggeration of credentials on resumes and employment applications is at an all-time high.

An employee who comes into a job under false pretenses is the wrong person in the wrong job. The falsification suggests a potentially dangerous character defect that could resurface on the job later on. Or, overstated or falsified qualifications that go undetected may also place a new employee to perform a task for which the individual is incompetent. Both situations are problems that a company cannot and should not ignore.

PERSONNEL INTEGRITY PROGRAMS

Fortunately, employers do not need to break the bank to institute and run a good, risk-based personnel screening program. One of the serious risks that

can face an employer is “negligent hiring” or “negligent retention,” and in the case of a lender or lessor, “negligence” in extending or denying a loan or lease. These can result in costly litigation. And exaggerated credentials or outright false claims of work experience or financial history, or a past that portends dishonesty, can also be costly in many ways.

A proven strategy for managing these risks is a proper personnel integrity program, and KYC Solutions should be your security arm for personnel screening and verifications while its parent company, Inquesta Corporation, stands ready to respond to broader security issues that your company may experience, or when you require deeper, dynamic investigations.

The “insider threat” is very real and usually the costliest.

Detecting resume fraud, criminal convictions and past terminations is critical to a sound personnel program. It reduces operational risk before and after the hire. This is especially so in the case of candidate or incumbent executives, of personnel handling sensitive intellectual property or corporate finances, or simply workers engaged in potentially volatile or sensitive jobs.

“... the great majority of security problems a company may experience will involve internal human resources (employees, consultants and contractors/vendors) rather than thefts or penetrations entirely by outsiders. The ‘insider threat’ is very real and usually the costliest.”

KYC Solutions, together with Inquesta, provides peace of mind about the integrity of applicants and vendors with our background investigation services. We can verify the identities of potential and existing hires, prove professional and academic claims, and discover character issues that can affect job performance.

KYC Solutions is Inquesta’s division dedicated to personnel screenings and drug-free workplace programs. And Inquesta Consulting carries on beyond the screening phase when the case requires that the verifications process convert to a more dynamic “street” investigation—a full field background investigation—of a potential executive or business partner.

Inquesta and KYC Solutions are directed by an experienced former Federal Bureau of Investigation (FBI) and U.S. Foreign Service special agent who performed and managed background investigations of U.S. presidential appointees, FBI special agent applicants, U.S. diplomats and others in sensitive national security positions.

Our international network of experienced former U.S. agents, or foreign law enforcement officers, are the backbone of Inquesta's background investigation services. We assure objectivity through strict supervision and a quality control verifications process.

Our Methodology

Inquesta | KYC Solutions can provide you with many levels of inquiry, depending on your needs, the objective and your budget:

Basic background checks verify the subject's identity and query criminal and "wanted" records through name checks against databases. This check meets Florida's **Level 1** screening process for minors. This service results in what the FCRA defines as a "consumer report" (p. 86).

Security background checks meet Florida's **Level 2** screening requirements. These are based on a subject's "live scan" fingerprints taken by our technicians and sent directly to the Florida Department of Law Enforcement (FDLE) to query their records throughout Florida and to the Federal Bureau of Investigation (FBI) to query criminal histories nationally. These checks are superior to basic background checks for many reasons, not the least of which is that these queries are based on a subject's fingerprint identification and does not rely on names. This service results in what the FCRA defines as a "consumer report" (p. 86).

Comprehensive background record checks include the results of either a basic or a security background, plus employment and education, licenses, and employment credit history when appropriate and permitted. This level of inquiry results in what the FCRA defines as an "investigative consumer report" (p. 87).

Full field background investigations are traditional, extensive street-level investigations by experienced Inquesta investigators. They may begin with a KYC Solutions comprehensive background check before conducting in-person investigations into some or all the areas of inquiry shown below to explore character, habits, integrity and mode of living. Full field background investigations for employment purposes should begin with an in-person security interview conducted by one of our investigators and results in an *extended* "investigative consumer report" (p. 86).

The *basic*, *security* and *comprehensive* background checks are screening activities performed entirely through KYC Solutions. You will seldom need to progress beyond them. But there are times when you may want to delve deeply into the background of a prospective or incumbent executive or employee with access to significant company assets or intellectual property. On those extraordinary occasions you may want to engage Inquesta's experienced investigators to conduct a *full field* background investigation.

“The FCRA does not constrain ... [a full field background] investigation and we are not required to make the subject aware of the investigation when the objective is not employment, or if the expected salary is to be \$75,000 or more...”

To perform a full field background, Inquesta field investigators are provided well-documented research reports (or an investigative consumer report) as a foundation to pursue the *areas of inquiry* shown below, either in person or by telephone, depending on the issue and your budget.

Full Field Areas of Inquiry

Performed by Inquesta investigators, each full field background investigation is tailored to a client's objectives and budget.

The FCRA does not constrain a full field investigation and we are not required to make the subject aware of the investigation when the objective is **not** employment (or another consumer benefit defined by the FCRA); but if a subject's signed authorization for records is lacking, it does hamper our inquiries and may require higher costs to fulfill a client's objectives.

Although the list is not all-inclusive, the typical areas of inquiry for most full field background investigations are as follows:

- Identity verification
- Social Security numbers
- Criminal records
- Address histories
- Education and employment histories
- Professional licenses and certifications
- Neighborhood checks
- Independently developed sources
- Professional history and sanctions
- Motor vehicle reports
- Credit reports
- Civil and bankruptcy records
- Liens and judgment histories
- Regulatory sanctions
- Traditional media coverage
- Extracurricular activities
- Social media research

Limitations

Although we make every effort to make our inquiries as effective as the federal government's, private citizens and entities are limited to available public and proprietary databases. We also have legal constraints that government investigators do not have. For example, the credit histories that private parties can pull and use for employment purposes (with the subject's authorization) are "employment credit headers" rather than full credit histories.

As well, law enforcement and government security offices have access to comprehensive national resources like the FBI's National Crime Information Center (NCIC) database, to name just one, and can review internal intelligence files that are outside our reach.

Cost-Effectiveness

KYC Solutions offers clients a cost-effective personnel screening solution to help clients know their workers, contractors, customers, tenants, and business associates through a routine process.

DRUG-FREE WORKPLACE PROGRAMS

Inquesta's KYC Solutions provides services from simple drug testing to drug-free workplace compliant programs that can lower Worker Compensation premiums and increase workplace safety and productivity.

2



Those of us in a business that deal with opportunities for people—things like employment, housing, or financial benefits like loans or credit—will also hear the term “FCRA compliance.” But what does this mean?

Actually, the FCRA is a pretty long and complex federal law that has been amended many times.¹ It was passed to promote the accuracy, fairness and privacy of **consumer** information that is kept by *consumer reporting agencies*, and

¹ Federal Trade Commission (FTC), annotated version of 15 U.S. Code § 1681 that includes amendments to the FCRA set forth in the Consumer Credit Reporting Reform Act of 1996 (Public Law 104-208), the Omnibus Consolidated Appropriations Act for Fiscal Year 1997, Title II, Subtitle D, Chapter 1), Section 311 of the Intelligence Authorization for Fiscal Year 1998 (Public Law 105-107), the Consumer Reporting Employment Clarification Act of 1998 (Public Law 105-347), Section 506 of the Gramm-Leach-Bliley Act (Public Law 106-102), Sections 358(g) and 505(c) of the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001 (USA PATRIOT Act) (Public Law 107-56), the Fair and Accurate Credit Transactions Act of 2003 (FACT Act) (Public Law 108-159), Section 719 of the Financial Services Regulatory Relief Act of 2006 (Public Law 109-351), Section 743 (Div. D, Title VII) of the Consolidated Appropriations Act of 2008 (Public Law 110-161), the Credit and Debit Card Receipt Clarification Act of 2007 (Public Law 110-241), and Sections 205 and 302 of the Credit Card Accountability Responsibility and Disclosure (CARD) Act of 2009 (Public Law 111-24), the Consumer Financial Protection Act of 2010 (CFPA) (Title X of the Dodd-Frank Wall Street Reform and Consumer Protection Act, Public Law 111-203), and the Red Flag Program Clarification Act of 2010 (Public Law 111-203); rev. May 2016.

consumers are pretty much everybody—as individuals in the marketplace. Besides being employees, investors, tenants, borrowers, account holders, or utility users, we are also consumers.

BEFORE THE FCRA

Before the FCRA, credit reporting agencies collected a wide range of information about consumers without significant restrictions or oversight, and they sold that information to other businesses.

The lack of oversight permitted sloppy record keeping by the credit bureaus. That engendered many errors, and some falsehoods found their way into the histories of the consumers they were reporting on. Businesses buying these consumer reports used them then, as they do today, to make business decisions that impacted the economic benefits of consumers...decisions like whether or not to extend a home loan, open a checking or credit account or offer employment.

THE FAIR CREDIT REPORTING ACT OF 1970

Upon request by our clients, KYC Solutions can provide a copy of the full FCRA that is annotated by the Federal Trade Commission (FTC) and with KYC Solutions' highlights of the principal features of the act that pertain to employment and tenancy. But let's take a bird's view of the act now.

Purpose

All too often consumers were denied economic opportunities on the basis of faulty consumer reports by an industry that had developed “an elaborate mechanism...for investigating and evaluating the credit worthiness, credit standing, credit capacity, *character, and general reputation* of consumers...[and t]here is a need...[for] fairness, impartiality, and a respect for the consumer's right to privacy.”² (Italics added.)

Consumers generally did not have access to and could not easily challenge their consumer reports even if they learned of errors in their history—until the U.S. Congress recognized this problem and in 1970 passed the FCRA.

² Ibid.

This law has been amended several times since then to provide refinements and to modernize the initial law.³ It is now codified as 15 U.S.C. § 1681.

The FCRA's \$75,000 Rule

One particular part of the FCRA, Section 605, specifies what information must be excluded from an FCRA consumer report:

- Chapter 11 bankruptcy records older than ten years from adjudication
- Civil suits or judgments, or arrests, older than seven years or that are outside the statute of limitations time frame, whichever is longer;
- Paid tax lien records older than seven years;
- Accounts placed for collection or charged off older than seven years;
- Any other adverse information older than seven years other than convictions for crimes;
- Any data that identifies a medical information furnisher or provider or the nature of medical treatment, unless it is reported in code, or it is provided to an insurance business for purposes other than for property or casualty insurance.

The time scope limitations shown above effectively permit decision makers to see and consider only the last seven (or ten) years of a consumer's history. (We will cover these again in page 21 from the opposite perspective: what we can and do include in consumer reports.)

But the law's Section 605 also provides exemptions to the time limitations so that relevant derogatory information about a consumer (applicant or incumbent) can be reported and considered by decision makers without regard as to the age of the information:

- In the case of consumers applying for credit transactions for a principal amount of \$150,000 or more, or for life insurance with a face amount of \$150,000 or more; or
- In the case of employment of individuals who earn or are expected to earn yearly salaries of \$75,000 or more.

³ Ibid.

The FCRA process for consumer reports applies to all employment situations. But the FCRA restricts what information can be reported on consumers (subjects) who earn even a penny under \$75,000 per year.

On the other hand, the FCRA does not place a time limit on the age of derogatory records and information that can be included in the reports of consumers who earn or are expected to earn \$75,000 per year or more.

SOME WAYS THAT EMPLOYERS VIOLATE FCRA LAWS

It is not hard for employers or property managers to violate FCRA laws, particularly when they just don't know what is required of them. The following are examples:

Disclosure and authorization form errors. Employers oftentimes include the FCRA disclosure and authorization information in their organization's application form. But the FCRA specifies that the disclosure and authorization information must be separate from any other document.

Failure to provide applicants with their FCRA Summary of Rights. Each time that an employer or property manager decides to conduct a background check they must provide the subject with the three-page FCRA Summary of Rights.

Using records older than what the FCRA permits. Generally, the permissible scope is seven years back from the date of the application to the date of disposition. For FCRA purposes, disposition date means the date that the outcome of a case was decided (p. 87), such as a finding or declaration of guilt. Some records have a ten-year scope or have no time limit.

Making an adverse decision based on an incident with no conviction. This is probably the most serious violation an employer can commit (p. 86). The FCRA clearly states that only convictions can be reported on a consumer report for employment purposes. There are many dispositions that are forbidden: dismissed, expunged, deferred, pending, sealed, and not prosecuted are among them. And the best way to be sure you know what the disposition was is to review the record in the courthouse. Do not rely on the disposition shown in a database, or through an online check. Even if the find is through a database search, KYC Solutions always determines the actual, final disposition at its source in a courthouse.

Not allowing the subject to review and dispute the findings. The law stipulates that employers or property managers must have a pre-adverse and adverse action process. The subject always has a right to view/review a copy of their report and to identify and correct any inaccuracies. KYC Solutions provides each subject a copy of their report to assure we and our clients remain FCRA compliant.

3



FAIR CHANCE LAWS AND SAFE HIRING

Another body of employment practices, besides the FCRA's requirements for equality based on nationality, race, gender, and religion, seeks to give people a fair chance at employment based on skills and character and without consideration for criminal histories, while creating a safe work environment for both employees and management.

FAIR CHANCE HIRING LAWS

Over 70 million people in the U.S. have criminal records that can hinder their employment prospects or job retention, even after they have paid their debts to society.

To correct this, over 150 municipalities and 33 states have passed “fair chance hiring” laws since 2009, sometimes known as “fair-chance” and “ban the box” or ban-the-box laws, and the number increases every year. Today,

better than three-fourths of the U.S. population lives in a fair-chance jurisdiction.⁴

The leading cities in this labor law movement and who are providing the best models for others are San Francisco (Fair Chance Ordinance in 2014), New York City (NYC Fair Chance Act of 2015) and Los Angeles (Fair Chance Initiative for Hiring in 2017).

According to the National Employment Law Project (NELP), a good number of jurisdictions in the U.S. have adopted fair-chance laws that extend beyond the public sector to private employers as well. But no Florida municipality has gone that far yet. The State of Florida itself still has no fair-chance law but individual jurisdictions have acted on their own. One city, Jacksonville, extends its fair-chance process requirement to its contractors as well. Here is a list of Florida cities and counties that have adopted fair-chance policies:

CITY/COUNTY	COVERAGE
Clearwater	City covers public employees
Daytona Beach	City covers public employees
Fort Myers	City covers public employees
Gainesville	City covers public employees
Jacksonville	City covers public employees and its private contractors
Orlando	City covers public employees
Pompano Beach	City covers public employees
Sarasota	City covers public employees
Saint Petersburg	City covers public employees
Tampa	City covers public employees
Tallahassee	City covers public employees
Broward County	County covers public employees
Miami-Dade County	County covers public employees
Palm Beach County	County covers public employees

Adapted from NELP website illustrations.

⁴ The National Employment Law Project (NELP) provides an excellent interactive map at their website at <https://www.nelp.org/campaign/ensuring-fair-chance-to-work/> of the U.S. states and local jurisdictions that have fair-chance/ban-the-box policies and laws.

Ban-the-box policies specifically prohibit employment ads that infer that no felons should apply, or ban employment application forms that contain a check box asking if any arrests or convictions are in the applicant's past.

Fair-chance laws aim to prohibit employers from asking questions about an applicant's criminal history before or during a job interview. This gives former offenders a chance to have their qualifications and character considered so that the history alone does not prejudice an employer's decision to hire.

Although the ordinances and statutes by the different myriad jurisdictions vary, the typical hiring process required by these laws has most or all of the following features:

1. Employers may not ask an applicant about his/her criminal history or conduct any background checks until after a candidate's qualifications and character have been vetted and considered.
2. Criminal history checks may be conducted only after a candidate has been tentatively selected, or at least is among the short list of candidates for a position. Some jurisdictions require that a qualified candidate be given a conditional offer of employment pending the successful completion of a background check—before a background check is started.
3. If a background check then turns up convictions or imprisonment, an employer may be required to consider if the criminal history is relevant and conflicts with the position being filled.
4. If an employer rescinds a conditional job offer on the basis of a background check the employer is required to provide the candidate a written explanation as to why the background check results conflict with the prospective position.
5. In the event of a rescission of offer, the employer may be required to give the applicant an opportunity to correct any inaccuracies that may exist in the background check report before making a final decision to deny the applicant the position.

If these principles in fair-chance laws sound familiar it's because they are very similar to the FCRA requirements. The laws compliment each other. In fact, note that our recommended "FCRA-Compliant Onboarding Model" illustration on p. x follows these principles.

SAFE HIRING PROGRAMS

On the flip side of the same coin, “safe hiring” or safe-hiring, means using tools, skills and knowledge to perform the necessary “due diligence” to keep unqualified persons out of a workplace in order to protect the employer, co-workers and the public. And putting all of these together and using them in a coordinated and consistent way is a “safe hiring program” (SHP).⁵

Conversely, the failure to practice safe hiring can result in “negligent hiring” and “negligent retention,” legal concepts that too often find their way into courtrooms and can result in costly consequences.

Negligent Hiring

Negligent hiring is the responsibility an employer may have if an employee causes harm to others in the workplace. For example, an incident of violence in the workplace perpetrated by an employee may be avoided if the person’s existing violent history had been discovered through a background check and had been kept from being hired, and thus potential violence averted.

Conversely, if that same person with a history of violence is hired because the employer does not perform a criminal history check, and the employee causes harm to another, the employer may be found negligent in the hiring and be responsible for damages.

Using the Florida Court of Appeals’ own definition, it held that negligent hiring “occurs when, prior to the time the employee is actually hired, the employer knew or should have known of the employee’s unfitness, and the issue of liability primarily focuses upon the adequacy of the employer’s pre-employment investigation into the employee’s background.”

Negligent Retention

Like negligent hiring, the concept of negligent retention is an employer’s failure to continue due diligence after the hire, and an employee harms others in the workplace. This does not mean that the employer is always responsible for an employee’s harmful actions, but it does mean that the employer needs to stay tuned to employees’ behaviors, to respond appropriately to problems or transgressions, and to periodically conduct new background checks (usually every five years) after the hire to assure that employees’ behavior outside the workplace does not spill into the workplace.

⁵ Rosen, Lester S. *The Safe Hiring Manual: The Complete Guide to Keeping Criminals, Terrorists, and Impostors Out of Your Workplace*. Tempe, Arizona: Facts On Demand Press, 2004.

“... ‘safe hiring’ means using tools, skills and knowledge to perform the necessary ‘due diligence’ to keep unqualified persons out of a workplace in order to protect the employer, co-workers and the public... Conversely, the failure to practice safe hiring can result in ‘negligent hiring.’”

Depending on the type of business, another key element in a safe hiring program is periodic drug testing. This is particularly important for workers in healthcare and transportation, or in industries where equipment or processes are particularly hazardous, like construction.

Again using the Florida Court of Appeals’ definition, negligent retention “occurs when, during the course of employment, the employer becomes aware or should have become aware of problems with an employee that indicated his unfitness, and the employer fails to take further action such as investigating, discharge, or reassignment.”

A BALANCING ACT

If managing an organization’s human resources before and after a hire sounds to you like a balancing act between a consumer’s (an applicant’s or incumbent’s) FCRA rights and the organization’s responsibility to its members and the public—you are right. It is a balancing act, and the answer is to perform *reasonable* due diligence before and after onboarding people into your area of control.

What is Reasonable?

Reasonable due diligence is mostly the performance of background checks within a safe hiring program before hiring, continuing a vigilance through periodic re-investigations (and drug testing when appropriate), and responding appropriately to findings, observations or complaints to assist, reassign or discharge problem employees.

Protections Against Negligent Hiring Claims

There are arguments for and against digging up derogatory information. On the one hand you will seek to know what potentially harmful information exists about a subject as its absence, if it was available, can be interpreted as negligence. And on the other hand, you can be faulted for having knowledge of derogatory information even if you do not base a decision on it. “You’re damned if you do, and you’re damned if you don’t.”

Not knowing information you should know. Florida tort law sets a presumption *against* negligent hiring⁶ when the employer conducts a proper background investigation of applicants or incumbent employees. The “presumption against” means that an employer who conducts a “proper” background investigation—one that *includes* criminal history checks—and hires because no history is discovered of behavior that would endanger others, is presumed to be free of responsibility if that employee harms another in the workplace or in the course of business.

The same principle—that performing due diligence of a prospective tenant—may protect the property owner or property manager from responsibility should the tenant harm another on their property.

The presumed protection against negligent hiring is a very good reason for employers and property managers to assure that “proper” FCRA-compliant background investigations are conducted of their employees and tenants.

Knowing information you should not use. The other side of that argument protects your organization by keeping negative information about a subject from the decision maker when the law prohibits its use. Thus, a safe hiring program is wise to use a CRA (p. 86) to assure that only legally permissible information is seen by your organization for making employment or tenancy decisions.

Sooner or later you may face a lawsuit for wrongful denial or termination from someone who was denied a job or housing or who was dismissed for cause, based on their belief or false claim that you acted on information you should not have used. If that information is in your system it will be discovered and it will bolster their claim, whether or not you used it in making your decision. If your FCRA-compliant CRA vendor filtered prohibited information out of its report to your organization you will have a valid defense against the claim.

“Florida [law] ... sets a presumption against negligent hiring [so] an employer who conducts a ‘proper’ background investigation—one that includes criminal history checks—and hires because no history is discovered of behavior that would endanger others, is presumed to be free of responsibility if that employee harms another in the workplace or in the course of business.”

⁶ Florida Statutes, Title XLV, *Torts*, Chapter 768, *Negligence*, Section 096, *Employer presumption against negligent hiring*.



Balancing employment due diligence, fair-chance laws and safe-hiring practices may seem like a high-wire act but it can be done, and the best way to walk the wire from the search point to the successful management of human resources is through the use of a responsible CRA; that is, a consumer reporting agency. This section explains why a CRA is your safe course of action for hiring and housing and dealing with incumbents' issues.

We can begin with one fact: not all background screeners are created equal.

In fact, there are those that comply with the FCRA and fair-chance laws, and those that don't; and those that are dedicated to employment or housing screenings; while most just simply sell information to anyone ready to pay for the "service" with no questions asked except for the credit card number.

Oftentimes the low priced vendor's attractive offering is possible because the source of the search is also substandard and the vendor's overhead is minimal, lacking in research staff, compliance procedures or robust sources.

Such vendors may do for checking up on friends or a potential date but not for serious, regulated processes such as employment and housing.

In fact, there are ... [screening companies] that comply with the FCRA and fair-chance laws, and those that don't; and those that are dedicated to employment or housing screenings; while most just simply sell information to anyone ready to pay for the "service" with no questions asked except for the credit card number.

So, what can you expect to get when you order a background check? One of three outcomes:

An unfiltered dump from a vendor that provides you with too much may well attribute inaccurate or erroneous information to the subject. If you need to comply with the FCRA or fair-chance laws this could set you up for a legal challenge based on receiving information you may not use for a hiring or housing decision. Your claim that a negative decision was not based on information appearing on a report you received will probably be ineffective. If you receive it, it is likely to be considered to have been a part of your decision whether or not it was.

A rudimentary search from a cheap vendor could provide you with too little or no information when in fact there is more to be discovered. This outcome could result in an unsafe hire or housing situation. That too could have ultimate legal repercussions from those affected by an improper due diligence.

An FCRA-compliant search is one in which the CRA (a) reviews the results, (b) filters out information that is ineligible because of age or irrelevancy, (c) further reviews original sources when necessary to complete the record through adjudication, and (d) releases to the client a curated, FCRA-compliant report. In this scenario the decision maker can easily prove he or she based the decision only on permissible information by producing the report used. In fact, the applicant will have been provided a copy in the course of the onboarding process, per FCRA requirements. If challenged with a claim that an applicant's opportunity for employment or housing was improperly denied, the claim is countered with the FCRA-compliant report.

KYC SOLUTIONS' ROLE AS YOUR CRA

The last, foregoing point is the reason many employers and property managers are already using a CRA to screen their candidates. It gives them a safe process for complying with Fair Chance, Fair Credit, Civil Rights and EEOC requirements. Following are some of the better arguments for using KYC Solutions:

Comprehensive and accurate information. A background check can start with a commercial “comprehensive” multi-state or nationwide search. But such a report should be considered a lead generator and not a final product. We use that to drill down to original source files for the most complete criminal data in local, state and national jurisdictions. We also assure that impermissible information is filtered out and that it is accurate and up-to-date.

Customized screening solutions. KYC Solutions has the staff and resources to create as many customized solutions as our clients need—no more and no less—not a one-size-fits-all report. Our clients don’t need to spend time and energy sifting through findings that are irrelevant to them.

Compliance assistance. Both KYC Solutions and our clients must be and remain compliant with the FCRA and fair chance laws that may be applicable. While we cannot and do not render legal advice, our screening practitioners work with these laws daily and are available to our clients or their staff for routine guidance.

FCRA COMPLIANCE PROCESS

The FCRA spells out how consumers’ financial information can be collected, held and disseminated and how that information can be used. Among other uses, the FCRA permits consumer information to be used for “employment purposes,” but a specific process is required. Here we explain the FCRA features that are relevant to employment and housing.

What Information Can Be Used

For purposes of employment of individuals expected to earn something less than \$75,000 per year, the FCRA limits the information that employers can use in their decision making as follows:

- No time restriction for *convictions*
- 7-year scope for arrests from date of disposition
- 7-year scope for civil suits, civil judgments
- 7-year scope for paid tax liens
- 7-year scope for accounts placed for collection
- 7-year scope for other negative information.
- 10-year scope for Chapter 11 bankruptcies

How KYC Solutions Protects You

KYC Solutions has a process designed to keep you FCRA-compliant while making use of the information that the FCRA does permit decision makers to have. The following points are part of our process:

We provide the Disclosure and Authorization forms (pp. 81-85) you must provide to your subjects. These must be separate documents from your internal work or rent applications.

We provide training and guides like this User's Guide, as necessary, and we are always available for consultation if you have questions.

We filter out prohibited findings from our reports to you, the client/user (p. 88), so you do not receive or become aware of them and you make decisions only with information you are allowed to use. The absence of prohibited information in your system protects you.

The last point is very important for our clients (the users of consumer reports) because this practice allows you to reach decisions to take *adverse actions* (p. 86) purely with information you have lawful access to and can use for your onboarding process.

Should an applicant decide that your adverse decision (to not hire) was not for the reason you gave but because of some incident in the subject's past, you will have the KYC Solutions consumer report that will have documented evidence that only the history permitted by law was used in reaching your decision.

Conditions for Using Consumer Reports

The FCRA is clear about the conditions under which consumer reports may be used for "employment [and tenancy] purposes." They are as follows:

"... many budget-conscious businesses generate unfiltered consumer reports themselves through inexpensive information vendors who willfully or unwittingly ignore laws, or by performing the research themselves directly with government systems and from Internet sources. Using consumer reports that include information prohibited by law, or using any information outside the mandated process ... exposes the organization to civil and criminal penalties."

1. **Certification from users** (p. 88) that—
 - a. users have (or will) provide a “clear and conspicuous disclosure to the consumer” (applicant or incumbent) before reports are procured or caused to be procured; and,
 - b. information from consumer reports will not be used in violation of applicable laws.

Note that each one of our clients meets the FCRA’s “certification” criteria during our own “client onboarding” process. It is then that we and the new client complete and discuss required certifications, statements and agreements to begin your FCRA-compliant program with KYC Solutions.

In contrast, many budget-conscious businesses generate unfiltered consumer reports themselves through inexpensive information vendors who willfully or unwittingly ignore laws, or by performing the research themselves directly with government systems and from Internet sources.

Using reports that include information prohibited by law, or using any information outside the mandated process (p. 21) exposes the organization to civil and criminal penalties. Potential violations usually come to light when a consumer files a complaint with a government body, like the Federal Trade Commission (FTC), a consumer files a law suit, or a breach of the organization’s data becomes known.

2. **Disclosure before initiating a consumer report.** There are two steps to take before actively beginning a background investigation. The end-user/client (or KYC Solutions) must—
 - a. provide the applicant in oral, written or electronic form—
 - i. a summary of his/her rights (p. 83); and,
 - ii. a notice that the applicant (incumbent) is entitled to a copy of the consumer report when it is produced (p. 81); and,
 - b. receive from the applicant a signed, written authorization (p. 85) for a consumer report (background investigation).

The law permits applications “by mail, telephone, computer or other similar means” only if the position applied for is subject to qualifications and maximum hours that are regulated by the U.S. Secretary of Transportation. This exception is so rare and specific that it is not within normal practice. KYC Solutions and its end-users work through normal procedures.

“‘Users’ of ‘consumer reports,’ as defined in the FCRA, are ... the personnel of employers (or property managers) who look at the totality of information gathered about applicants and who use these reports to *adjudicate* the hire/no-hire or rent/no-rent decision. Consumer reports are confidential by law and may not be distributed to third-parties or for any other purpose.”

Oral notifications are highly discouraged. But if an oral notification cannot be avoided it should immediately be recorded as a memorandum and placed in the consumer’s file, and a copy forwarded to the applicant through a verifiable communication, like a *facsimile transmission* or a *receipt-generating email*. This assures compliance in a verifiable way.

3. **Adverse Actions.**

- a. *Before* taking any adverse action, the user/adjudicator must provide the applicant (or incumbent)—
 - i. a copy of the consumer report; and
 - ii. a written description of the applicant’s rights (p. 83).

In this preliminary stage of adjudication the user provides the applicant an opportunity to review the report and provide any mitigating explanations, or point out errors or inaccuracies the report may have.

Mitigating explanations or corrections provided by the applicant are best provided in writing. Responsibility for getting errors or inaccuracies corrected at their origin falls on the applicant as consumer reports only reflect what is in databases.

The length of time applicants are given to respond to pre-adjudication questions or concerns will vary with different users/adjudicators but a limit of five days is usually considered reasonable.

“In ... adjudication the user provides the applicant an opportunity to review the report and provide ... explanations, or point out errors or inaccuracies... Mitigating explanations or corrections provided by the applicant are best provided in writing ... five days is usually considered reasonable.”

- b. *Adjudication* finalizes this phase. End-users must review an applicant's (or incumbent's) file, consider the veracity of the individual, and make a decision based on the totality of the information at hand. Consideration should be given to and recorded in writing—
 - i. whether the negative issues impact on the opportunity in question,
 - ii. the recency of negative issues,
 - iii. the seriousness of the negative issues,
 - iv. mitigating circumstances, and,
 - v. positive, counter-balancing characteristics or traits.
- c. *Action*. Adjudication will result in a go or no-go decision; that is, hire or not hire, retain or discharge, rent or not rent, retain or evict, lend or deny loan, etc.
 - i. If the decision is to accept the applicant, then the usual next step is enrolling, processing and training the newcomer, or retraining in the case of an incumbent.
 - ii. If, after this process the consensus is to deny the opportunity to the applicant, then provide a written letter explaining the reasons for denial (or dismissal). Typical adverse actions include the following: a denial of employment; a denial of promotion; a demotion; a reassignment; a denial of housing, purchase or rental; or an eviction.

OTHER LAWS THAT IMPACT OPPORTUNITIES

Besides the FCRA, which is enforced by the FTC and the Consumer Financial Protection Bureau (CFPB), there are other laws enforced by the Equal Employment Opportunity Commission (EEOC) that also affect employment and tenancy processes and decisions.

KNOW YOUR CREW


Although not a part of the FCRA, and they do not affect KYC Solutions' consumer reports, we include the following list of other related laws you should be aware of:

- Civil Rights Act of 1964,
- Age Discrimination in Employment Act (ADEA),
- Equal Pay Act (EPA),
- Americans with Disabilities Act, and
- Genetic Information Nondiscrimination Act of 2008 (GINA).

These laws prohibit discrimination on the basis of race, color, sex, religion, national origin, age, disability, genetic information, or as retribution for opposing discrimination or for seeking legal recourse. The FCRA primarily protects individuals from financial discrimination or injustices.

Businesses that employ 15 or more persons should also be mindful of these laws when processing and adjudicating applicants.

5



FLORIDA EMPLOYMENT SCREENING LAWS

Florida's laws add to the complexity of employment-related screening. Specific statutes apply when a background check is *required* by Florida law. The purpose of this section is to demystify these laws so you can focus on onboarding your people safely.

WHO FLORIDA'S SCREENING LAW COVERS

Generally speaking, private employers in Florida need not do anything differently from their normal employment process—unless the position being filled is “covered,” meaning that it is a job that exposes an incumbent or potential employee to *official confidential information*, or to *minors* or *vulnerable adults*—and requires specific pre-employment and periodic post-employment checks to assure the safety of public records and vulnerable persons.

“Florida’s screening laws apply to the state’s own employment processes; it is not intended to mandate the screening standards to private enterprises—unless they function as a ‘state employer’ or ‘agency.’ ... [which] include ... licensees, and contractors and volunteers ... Furthermore, Florida’s Education Code ... includes any ‘vendor, individual, or entity under contract with a school or school board’.”

Who State Employees and Employers Are

Florida’s Chapter 435⁷ makes clear that Florida’s screening laws apply to the state’s own employment processes; it does not mandate the screening standards to private enterprises—unless they function as a “state employer” or “agency.”

Employers, as defined in this law, include direct hires by State of Florida agencies and private firms when they perform certain work that’s regulated by the state. Additionally, the state’s Department of Children and Families and other Florida departments may empower counties and municipalities to grant licenses or registrations that permit private entities to operate as a Florida “employer,” or if the county or municipality itself functions as a state agency.

Employees for purposes of this law are not limited to direct hires. They also include licensees (organizations or individuals licensed by the state to perform certain work, like selling liquor), and contractors and volunteers working on behalf of the state or any county or municipality acting as an agency of the state.

Vulnerable Persons

The principal purpose of these laws is to protect vulnerable persons; that is, minors and vulnerable adults. The following paragraphs describe these two groups of people:

Minor is any person who has not attained the age of 18.

Vulnerable adult is any “person 18 years of age or older whose ability to perform the normal activities of daily living or to provide for his or her own

⁷ Florida Statutes, Title XXXI, *Labor*, Chapter 435, *Employment Screening*.

care or protection is impaired due to mental, emotional, sensory, long-term physical or developmental disability or dysfunction, or brain damage, or the infirmities of aging.”

Official Confidential Information

Another Florida law criminalizes the misuse of Florida’s confidential information⁸ and requires that employees with access to confidential information meet Level 2 background checks.

Confidential information that can be misused is that to which any “public servant” has access to in their official capacity and can be of any “pecuniary [monetary value] or other benefit” to the public servant or “another” person.

It stands to reason that public servants are normally employees of a government, but employees are also defined elsewhere in the Florida statutes to include contractors, licensees and volunteers.

Positions of Special Trust or Responsibility

“Positions of special trust or responsibility” are those in which the state employment candidate or incumbent—

- has access to *and* can alter or destroy confidential information, records or files; or,
- provides care to and works with children, the developmentally disabled or vulnerable adults.

Although this definition pertains to state “employees” remember that the definition of employee includes contractors and volunteers for state programs.

Furthermore, Florida’s Education Code⁹ requires that “certain non-instructional school district employees and contractors,” which includes any “vendor, individual, or entity under contract with a school or the school board” meet Level 2 screening requirements described below.

⁸ Florida Statutes, Title XLVI, *Crimes*, Chapter 839, *Offenses by Public Officers and Employees*, 839.26 – *Misuse of confidential information*.

⁹ Florida Statutes, Title XLVIII, *Education Code*, Chapter 1012, *Personnel*.

SCREENING LEVELS

Employers filling positions that must meet Florida’s employment screening statutes must be familiar with the two levels defined by law: Level 1 and Level 2.

Level 1 Standards

Level 1 screenings are name-based security checks for State of Florida jobs that are not “positions of special trust or responsibility” as defined in Florida’s Chapter 435 (see p. 28).

As a condition to employment or continued employment, incumbents and applicants for employment with the State of Florida must be investigated as follows, at a minimum:

1. Employment history
2. Statewide (Florida) criminal check
3. National Sex Offender Public Website

“...Florida law criminalizes the misuse of Florida’s confidential information¹ and requires that employees [which includes licensees, contractors and volunteers] with access to confidential information meet Level 2 background checks.”

Remember that these are minimums, not limitations. The law also suggests—and KYC Solutions recommends—that checks of logical, local criminal records may be conducted in addition to the required statewide check. The main reason for this is that not all local incidents get reported to the statewide database and the reported incidents in the state’s database may be generalized and incomplete.

Another point is about employment histories, which should not be limited to just the last one or two employers. You should go back no less than seven years.

Level 2 Standards

Level 2 screenings are for Florida job “positions of special trust or responsibility.” As such, they must be investigated as follows at a minimum, but greater investigation is encouraged:

1. Fingerprints submitted electronically to FDLE
2. Statewide (Florida) criminal check (based on fingerprints)
3. Nationwide criminal history through the FBI (based on fingerprints)

Private entities functioning as Florida “employers” (see p. 28) that manage workers who are to occupy positions of special trust and responsibility on behalf of the state need to have such workers undergo Level 2 screening.

Candidates awaiting Level 2 results can be hired provisionally for training and orientation but they cannot be placed in spots where they are exposed to confidential information or vulnerable persons before they are cleared.

The FDLE can report Level 2 background results only to the State of Florida’s *sponsoring agency* and not to a private employer. In turn, sponsoring agencies notify Level 2 applicants only that their security clearance is either *approved* or *denied*, and nothing else.

Since private entities are not privy to the findings of a Level 2 investigation they still need to conduct their own pre-employment checks according to their own policies to determine candidates’ qualifications and suitability.

DISQUALIFYING VIOLATIONS

The list of disqualifying violations is long but not all hope is lost if an individual has a history. (More on this below.) For now let us first take a look at an incomplete and generalized list of disqualifying violations for covered (p. 86) jobs:

- Murder
- Sexual battery
- Adult abuse, neglect, or exploitation of aged or disabled adults
- Killing or harming a child by injuring the mother
- Assault or battery against a minor
- Assault or battery against staff of a facility
- Kidnapping and false imprisonment
- Transferring a child illegally across state lines

KNOW YOUR CREW

- Certain firearms violations near schools
- Prostitution, lewd and lascivious behavior, indecent exposure
- Arson, felonious theft, robbery and similar felonies
- Incest, child abuse, child neglect
- Resisting arrest with violence, depriving an officer of protection
- Aiding in an escape, gang activity, contraband into a correctional facility
- Sexual misconduct in juvenile justice programs

This list of violations likely are disqualifying for covered jobs (p. 86) because applicants and incumbents—

- may not have an arrest awaiting final disposition, or may not have been found guilty of, regardless of adjudication, or entered a plea of nolo contendere or guilty to, any offense prohibited under F.S. s. 435.04(2) or similar law in another jurisdiction (unless sealed or expunged); or,
- may not have been found guilty, regardless of adjudication, or entered a plea of nolo contendere or guilty to any offense that constitutes domestic violence committed in Florida or another jurisdiction.

A point to remember is that, save for a handful of violations like murder, sexual battery, kidnapping and crimes against minors, individuals with a history can still qualify for employment or continued employment if an exception is granted by the head of a sponsoring agency.

Exceptions take into account the type and severity of the violation, time elapsed since the violation, and evidence of rehabilitation, among other factors.

All hope is not lost!

“... individuals with a history can ... qualify for employment or continued employment if an exception is granted by the head of a sponsoring agency.”

6



BACKGROUND INVESTIGATION SERVICES

KYC Solutions provides a wide range of background investigation services to accommodate the risk tolerance and budgets of our clients. We know that an employer will not want to and should not conduct an all-out investigation of every member in their organization. Such a policy could run afoul of the law, would be costly, and would slow the hiring process unnecessarily.

Organizations are nothing if not the sum of their people. Machines and facilities are but tools that facilitate the tasks of its workforce. On the other hand, it is the people with access to the organization's assets, or with the capability to inflict intentional or accidental harm, that pose the greatest risk to an organization. The selection and retention of good people is where an organization's well-being lies and background investigations are the best way to promote an organization's safety and security.

An organization best manages its human resources with a program of objective policies. Clear, consistent, predictable practices are the most defensible in court. Background investigations are among the most important activities in this regard.

KNOW YOUR CREW

To that end, we offer background investigation services that are both “packaged” at two, three or more levels of complexity to match a client’s specific types of workers, or that can be deployed *a la cart* when particular circumstances require a customized investigation, or when a package can benefit from an add-on or two. Table 1 below summarizes these services:

Table 1: KYC Solutions available searches

RECORD NAME	DESCRIPTION	TIME
Criminal Records - County	Felony & Misdemeanor records obtained directly from county seat courts. All searches are initiated fresh; these are not database searches.	1 – 3 Days
Criminal Records - Statewide	Multi-jurisdictional repository maintained by the state. All records found are confirmed at the county level. May not contain all records; dependent on county participation.	1 – 3 Days
Criminal Records - Federal	Felony & Misdemeanor records obtained directly from federal courts. All searches are initiated fresh; these are not database searches.	1 – 2 Days
Criminal Records – National Database	Multi-state database compiled by data from third parties. Sources are courts, state repositories, correctional records, etc. This search should only be used as a supplemental search to other more thorough search of one or more specific jurisdictions.	4 Hours or less
Civil Court Records – County or Federal	These records concern: employer-employee conflicts, property, personal rights, personal injuries, liability suits, contract disputes, landlord-tenant conflicts, etc.	1 – 3 Days
Sex Offender Registry Search	Using state and national repositories, we search for known sexual offenders. Level of information is based on the state from which the information is retrieved.	1 Day
Homeland Security Search	This product is a search of OFAC and 45 national and international terrorist and fugitive lists.	4 Hours or less
National Wants & Warrants	Searches for outstanding extraditable warrants in any state. Provides originating agency; no other details available.	1 Day
SSN Trace	Need help identifying what counties to search for criminal history? This report will help identify past addresses and often reveals ones they hope you never find.	Instant
Driving Records	An employee runs an errand for his boss and has an injury accident. You didn’t bother to check his driving history – and he has multiple citations. Guess who’s liable? Three-year history is typical; some states supply more.	1 Day
Employment Credit Reports	Provides a sense of an individual’s fiscal responsibility, especially if the individual is going to have access to cash or negotiables, expensive equipment, the homes of people you serve, or other trusted environments.	Instant

Verifications & Reference Checks - Employment & Personal	Don't fall into the trap of thinking references are worthless. Even if you only get dates and title, this can reveal when an applicant has lied about or stretched their work history. Personal References are often the only source of information when an applicant claims self-employment.	1 – 3 Days
Education, Professional License & Credential Verification	Studies reveal that education is the most distorted and exaggerated item on a resume or application. And, if distorted, this reveals something about the character of the applicant.	1 – 3 Days
Federal Sanctions & Exclusions Search	Checks the GSA's Excluded Parties List System (EPLS) and the OIG's List of Excluded Individuals/Entities (LEIE) for excluded or sanctioned individuals.	4 Hours or less
Healthcare Sanctions Search	Checks GSA, OIG, DEA, FDA & 800+ other federal and state lists for sanctioned individuals.	4 Hours or less
Financial Enforcement Actions Search	This search identifies individuals and institutions that have been the subject of banking enforcement actions, orders or penalties.	1 Day
Worker's Compensation	Once a conditional job offer has been made, this search can be used to verify information and helps in assigning appropriate work or physical labor tasks.	1 – 10 Days
Electronic Form I-9	Complete and archive I-9 forms online; avoid costly I-9 audits.	Instant
E-Verify	Verify employment eligibility with DHS & SSA for newly hired employees.	Instant
International Searches	Criminal, civil, employment verification, education confirmation across the globe.	Up to 8 wks.
TenantSCREEN	Instant product that screens potential tenants against a national criminal and sex offender database.	Instant
EvictionCHECK	Instant product that screens potential tenants against a national evictions database.	Instant
Tenant Credit Reports	Similar to employment report, but also includes FICO score. From TransUnion bureau.	Instant
Tenant References - Landlord & Employment	Verifies rental history, salary, chance for continued employment.	1 – 3 Days
VolunteerSCREEN	Screens volunteers against a national criminal & sex offender database.	Instant
Drug Screen	Urinalysis, Hair & Breath; DOT & Non-DOT testing available. All confirmed positives will take an additional 24 hours.	24 Hours

The foregoing table is what most users need for reference once they are familiar with what the searches yield. However, new users may want to read the full descriptions of these screening services provided in the rest of this section.

COURT RECORDS

Criminal History Searches

County Criminal Court Records

Generally speaking, there is usually one upper level (felony) and one lower level (misdemeanor) court at a county seat. In some cases, however, the jurisdiction may have multiple lower level courts, as well as multiple city courts (municipal, etc.) with misdemeanor records spread out among them. Some courts have up to 25 of these courts, making it cost- and time-prohibitive to search them all. In those cases, KYC Solutions only searches the lower level court at the county seat location (in addition to the upper level court). We can search additional courts by client request only.

The default scope of a search is seven years back from the date of a client's request. Search results returned include information regarded as "readily available" by the researcher actually conducting the search, and often will likely exceed the minimum scope of the search, or it may from time to time include non-criminal offense information. We guarantee a minimum of seven years of review, but you will often get more when the findings are convictions.

General information. Searching the counties of residence or employment are obvious choices; however, it may be prudent to search additional adjacent counties. There is always a possibility that crimes have been committed in a county other than that of residence or place of work. Also, some cities straddle two or more counties, requiring a thorough search to include records in both counties.

Record contents. The rules vary widely from jurisdiction to jurisdiction regarding record contents. Each state has a unique court system; some are radically different in organization. There seems to be no standard for recording plaintiff, claimant, and conviction information. Often, only a name and physical description are available. Social security numbers are not consistently found in most court records.

The records furnished are designed to establish the existence of the records only. We do not normally provide transcripts or full records. Our

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information is typically limited to the court location, date of the offense or filing, description of the offense, disposition, and case or file number.

All counties in the United States, about 3,200, may be searched for felony and misdemeanor convictions. Be aware that some states restrict the use of certain types of information, especially misdemeanor and non-conviction records. Also, it is not unusual to have records sealed, or reduced down to a lesser crime. The only limitations regarding access to county criminal information have to do with turnaround time. Does the county use computers? Are the records searched by clerk only? Are they staffed with sufficient personnel? Are the records kept on-site?

State Repository Search (a.k.a. "Statewide" searches)

Most states maintain a repository of criminal case information from most or all counties in the state. A handful of states either do not have a statewide repository of criminal data or have statutes or policies restricting access to that information by non-law enforcement entities.

State repositories are **not** comprehensive; in most cases they do not contain all records from all courts in each county. This repository is dependent upon participation from the individual counties. Some counties do not participate at all; for those that do, they may not contribute all their records. Also, some statewide searches present felony convictions only, thus eliminating a potentially significant share of an individual's criminal history. In addition, in most cases, pending cases are not found in a statewide search. Although a substantial number of states do offer statewide searches, it has been our experience that most are not viable resources due to limited level of information, speed of return, completeness, and county participation.

Some clients find it beneficial to use statewide information (when available) before looking for more detail at the county level. However, most clients prefer to use a county-level as the turnaround time is often considerably shorter and reports are more detailed.

We do not endorse the use of, nor in any way guarantee the accuracy, availability, or thoroughness of information provided in a statewide repository search conducted through any state sponsored agency. Statewide repository searches are available for those clients that wish to take advantage of this broad-based source of information, but with the caveat that this office has no control over scope, content or quality of information returned from these agencies.

Federal Criminal Court Records

Federal courts are established under the U.S. Constitution to decide disputes involving the constitution and laws passed by Congress. Federal criminal

court records are searched by federal district, as opposed to by county. Federal district courts are found in all 50 states and DC. States may have anywhere from one to four federal districts. These courts contain records of federal level crimes, such as bank robbery, wire fraud, mail fraud, and drug trafficking, to name a few.

In addition to searching the Federal U.S. District Court, KYC Solutions also searches Federal incarceration records at no charge. This search will identify any individual who has been incarcerated in a Federal facility for a Federal crime at any time since 1982. An added benefit to the incarceration search is that it is nationwide in scope; you do not need to know in which U.S. District Court the charge originated.

The types of cases rely heavily on fingerprint identification. In most cases, we can search these records by name only. Any further identification must be verified by fingerprints.

National Criminal Database Search

Many agencies and jurisdictions sell their criminal and correctional records in bulk format to third parties. These companies then aggregate the data into one large database that can be searched by name. This is not a true ‘nationwide’ or comprehensive national search, rather it is considered *multi-jurisdictional*. This product is similar to the state repository search in that it is completely dependent on participation from the originating source. Originating sources may include: county court records, state repository records, or state correctional records. In some states, only correctional records may be included, which means that unless your subject has spent time in prison, you will not find any records that may exist. According to an MSNBC statistic, *national criminal history databases have a 41% error rate*.

We do, however, advocate this search as a supplemental, safety-net search. When used in conjunction with a county level criminal search, it can be a very useful tool for uncovering crimes committed beyond counties or states of residence – or crimes that the applicant is trying to hide.

“According to an MSNBC statistic, *national criminal history databases have a 41% error rate.*”

We do not endorse the use of, nor in any way guarantee the accuracy, availability, or thoroughness of information provided in a national criminal database search. This search is available for those clients that wish to take advantage of this broad-based source of information, but with the caveat that this office has no control over scope, content or quality of information returned.

Extended Criminal History

The revised Fair Credit Reporting Act allows employers to access criminal conviction information older than 7 years, where available by state law. This is an extension from the previous FCRA. The turn-around time may be extended, and extra fees are required in most cases.

Differences Between State and Federal Crimes

Generally speaking, federal crimes are those that violate the national security (terrorism, espionage, etc.), defraud United States Government programs, or those that interfere with interstate or international commerce. And state crimes generally are those against people or property.

The point to remember on the last bullet below is that crimes like drug trafficking or transporting stolen property may be a federal crime when the activity crosses state lines in some manner. Things may be moved physically across state lines, or conspirators in different states may communicate by mail or telephone, internet or similar means (like wire) to further their crimes.

Given this broadly stated distinction, the following tables will give good examples of crimes may be expected to be found in county, state or federal jurisdictions.

State crimes are violations of state and local statutes or ordinances. They are prosecuted in either Municipal or Superior Courts in the county in which the charges are filed, by either City Attorneys or District Attorneys. Typical examples of state crimes include the following:

- Murder
- Assault and battery
- Robbery/theft
- Fraud
- Embezzlement
- Sex crimes
- Child abuse/molestation
- Domestic violence
- Rape
- Under the influence
- Controlled substance possession
- Drug transportation
- Drug sales/distribution

Our county criminal records searches and our state repository searches are both based on state level criminal records. Our recommendation is to check by county, but you may also want to add the “statewide repository search” as a supplement. To search by county, we suggest you order any counties where your applicant has lived, worked or attended school for the last seven to ten years.

Federal crimes are crimes defined by or mentioned in the U.S. Constitution or those defined and/or punished by federal statute. Such crimes include treason against the United States, piracy, counterfeiting, crimes against the law of nations, and crimes relating to the federal government's authority to regulate interstate commerce. Other typical examples of federal crimes include:

- Pornography
- White collar fraud
- Bank robbery and bank fraud
- Mail fraud/theft of U.S. mails
- Smuggling controlled substances
- Interstate crimes
- Conspiracy
- Crimes committed on federal lands
- Internet and computer crimes
- Large quantity drug and narcotic conspiracy cases
- SEC violations and securities fraud
- Bribery of public officials
- Kidnapping (when transported across state lines)

Ordering Federal Criminal Records

Federal criminal records searches are based on records held by federal jurisdictions, known as districts. To search a federal district, provide our online system a city/state or ZIP code, and you will be provided with the corresponding federal district. Again, if you decide to check federal criminal records, we suggest you order all districts where your applicant has lived, worked or attended school for the last seven to ten years.

Civil Court Records

County Civil Court Records

Civil cases include disputes between private citizens, corporations, governmental bodies and other organizations. These records concern employer-employee conflicts, property, personal rights, personal injuries, liability suits, contract disputes, landlord-tenant conflicts, evictions, divorce and probate.

Federal Civil Court Records

Federal civil searches include records that involve alleged violations of federal statutory or constitutional rights. Examples of federal civil cases include violations of civil rights, actions against the federal government, interstate commerce, anti-trust activity and violation of federal codes.

Whether a federal court has jurisdiction over a civil case is a question of either diversity jurisdiction or federal question jurisdiction.

Diversity jurisdiction involves cases where the opposing parties are citizens of different states and the amount in controversy exceeds \$75,000 exclusive of interests and costs. If any plaintiff shares a common citizenship with any defendant, then diversity is invalidated and federal jurisdiction does not apply.

Federal question jurisdiction are cases or controversies arising under the Constitution and laws of the United States.

Civil court records are used less often in the employment situation as they seldom fall within hiring guidelines and can lead to discrimination if not handled within strict company policies.

Important Notes About Court Records

When searching court records, researchers typically search by **name** and then confirm by other identifiers. The date of birth (DOB) is most often used for confirmation, but other identifiers may also be used, such as SSN, driver's license number or address.

Most court records do not have an SSN; therefore, the subject's full legal name and DOB are extremely important. Misspelled names and nicknames could result in missed records. In addition, since most records are filed by name, it is common for cases to be under alternately or previously used names, such as maiden names.

Searches for records under all names used must be clearly indicated so on the Order Form or by providing the alias online. Please note that researchers and counties charge for each name searched, so a search for one current name and one maiden name would cost twice as much as only searching the current name.

Importance of Dates of Birth

As noted above, an applicant's date of birth is a crucial piece of information that is typically necessary for the thorough search or review of court records. Since the Age Discrimination in Employment Act of 1967 (ADEA) does not specifically prohibit an employer from asking an applicant's age or date of birth, our policy is to require a date of birth for all court search orders. If you are concerned about requesting this information on the release form, we will gladly arrange for your applicants to call us on a toll-free number to gather information about date of birth, sex, race, etc. Or, you are welcome to have that portion of the release completed by the applicant away from your office and faxed directly to us. Make sure you keep the signed original for your

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records and give the applicant a copy, to be completed later. In addition, we can also suppress the date of birth and/or SSN on all reports at a client's request.

Courthouse Verifications of Repository and Database Records

To maintain compliance with the FCRA, any possible records found in a statewide or national criminal database search will always be confirmed at the county level at the client's expense prior to being reported.

SEX OFFENDER REGISTRY SEARCH

This is a search of state and nationwide repositories for known sexual offenders. Rules vary from state to state regarding the dissemination of this data. Information returned may include offense and disposition, as well as subject's name, date of birth, social security number, address, race, sex, height, weight, hair and eye color, and alias(es). Be aware that some states do not disclose information on low risk offenders.

HOMELAND SECURITY SEARCH

Identifies individuals and companies owned or controlled by, or acting for or on behalf of, targeted countries. It also lists individuals, groups, and entities, such as terrorists and narcotics traffickers designated under programs that are not country-specific. Forty-five national and international terrorist and fugitive lists are searched, including the Office of Foreign Asset Control (OFAC) Specially Designated Nationals (SDN) list. In addition, this search also includes 7 sanction lists from the U.S. Bureau of International Security and Nonproliferation as well as 82 lists of individuals excluded from federal procurement, non-procurement and reciprocal programs.

National

- FBI Most Wanted Terrorists List
- FBI Top Ten Most Wanted List
- FBI Seeking Information on Terrorism
- FBI Parental Kidnappings
- Office of Foreign Asset Control (OFAC) Specially Designated Nationals (SDN)
- Palestinian Legislative Council (PLC)
- Defense Trade Controls (DTC) Debarred Parties

- FBI Crime Alerts
- FBI Kidnappings and Missing Persons
- FBI Televised Sexual Predators
- FBI Fugitives – Crimes Against Children
- FBI Fugitives – Cyber Crimes
- FBI Fugitives – Violent Crimes: Murders
- FBI Fugitives – Additional Violent Crimes
- FBI Fugitives – Criminal Enterprise Investigations
- FBI Fugitives – Domestic Terrorism
- FBI Fugitives – White Collar Crimes
- Bureau of Alcohol, Tobacco and Firearms Most Wanted
- DEA Most Wanted Fugitives
- DEA Major International Fugitives
- U.S. Postal Inspection Service Most Wanted
- U.S. Bureau of Industry and Security Denied Persons List
- U.S. Bureau of Industry and Security Denied Entities List
- U.S. Bureau of Industry and Security Unverified Entities List
- U.S. Marshals Service 15 Most Wanted
- U.S. Secret Service Most Wanted Fugitives
- U.S. Air Force Office of Special Investigations Most Wanted Fugitives
- U.S. Naval Criminal Investigation Service (NCIS) Most Wanted Fugitives
- U.S. Immigration and Customs Enforcement Most Wanted Fugitives
- U.S. Immigration and Customs Enforcement Most Wanted Fugitive Criminal Aliens
- U.S. Immigration and Customs Enforcement Most Wanted Human Smugglers

International

- Politically Exposed Persons List
- Foreign Agent Registrations
- OSFI Canada List of Financial Sanctions
- Royal Canadian Mounted Police Most Wanted

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- United Nations Consolidated Sanctions List
- Bank of England Financial Sanctions List
- World Bank List of Ineligible Firms
- Interpol Most Wanted List
- European Union Terrorist List
- Australia Department of Foreign Affairs & Trade List
- Russian Federal Fugitives
- Scotland Yard's Most Wanted
- World's Most Wanted Fugitives

NATIONAL WANTS & WARRANTS

The National Wants & Warrants Search is a nationwide search for outstanding, extraditable warrants in any state including misdemeanors and/or felonies. If a warrant is not extraditable, it may not show up in this search. This search provides originating source information only (agency name and phone number). Confirmation of any information is the client's responsibility.

DRIVING RECORD REPORTS

According to the courts, an employer is negligent when hiring drivers without checking driving records. If you send employees on errands, whether in company or private vehicles, you are legally exposed.

Reports in these records contain state driving information that go back at least three years, possibly up to seven years, depending on state policies. Some states make any infraction involving drugs or alcohol a permanent part of a driver's record. Reports may contain physical description, license information, infractions, home address, and possibly previous driver's license numbers. Some states no longer supply personal identification information due to restrictions.

If a DWI/DUI offense is the target information, it will usually appear in a criminal record, and not always on a driving record after 3 years.

Ordering Driving Records

The full name, date of birth (DOB), and driver's license number are required by most states. Name and driver's license number alone are adequate for a few states. Since the minimum data required is constantly changing, please

include all three identifiers. Many states are very specific with this data. Any error in name, SSN or DOB will result in "Driver Not Found." Please be very accurate and ensure legibility if faxing in orders.

Annual Driving Record Service

If you are required to or are interested in running a driving record on all employees annually, you may provide us with a spreadsheet containing all necessary data and we can import that information directly into our system. With this service, clients can avoid having to input data online for each individual driver.

In return, clients will receive a spreadsheet with summarized information for each driver, as well as a PDF file containing the full driving record report for each employee.

This service does not require a newly signed release from each driver as long as a 'blanket authorization' was obtained during pre-employment screening or at some prior point in employment. (Please note that 'blanket authorizations' are not allowed in the state of California. The employee must sign a new release each time a driving record is procured.)

State Specific Information

Some states require a special state authorization in order to procure a driving record on another individual. When you order a driving record from any of those states, we will notify you of the requirement and provide the form for your applicant to complete.

- **Pennsylvania** requires that any end-user be registered with the state to order driving records for employment purposes. Notify us if you believe you may ever need driving records in the state of PA so that we may provide you with the required documentation. Please be aware that registration with the state may take up to two weeks, so please plan accordingly.
- **Texas** requires that we manually tag a record as a CDL if a commercial driving record is needed. If you are running a driving record on a Texas CDL holder, please notify us of the CDL status at the time of your order. If ordering online, please type "CDL" in the Special Research Instructions. If ordering by fax, please write "CDL" on the Order Form.

CDLIS Report

The Commercial Driver's License Information System (CDLIS) allows employers and their agents to comply with FMCSA requirements by

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searching within the "Commercial Driver's License Information System" for the subject's current CDL and up to three prior licenses.

The contents of CDLIS reports are as follows:

- Present jurisdictional state and driver's license number
- Name
- Date of birth
- Social Security number match
- Up to three previously held CDL numbers
- A.k.a. (also known as) information

Mandated by the Commercial Motor Vehicle Safety Act (CMVSA) of 1986, CDLIS supports the issuance of commercial driver licenses (CDLs) by the jurisdictions, and assists jurisdictions in meeting the goals of the basic tenet "that each driver, nationwide, have only one driver license and one record" through the cooperative exchange of commercial driver information between jurisdictions.

FMCSA Pre-Employment Screening Program (PSP)

The Pre-Employment Screening Program (PSP) is a screening service which allows individual drivers, motor carriers and third-party administrators to access driving history information from the Federal Motor Carrier Safety Administration's (FMCSA) database, as well as the Motor Carrier Management Information System (MCMIS).

The contents of these records are as follows:

5 Years of Crash and
Violation Data

- DOT Number
- Number & Date of Crashes
- Number of Injuries
- Number of Fatalities
- Carrier Name

3 Years Inspection Activity

- Driver Inspections
- Driver Out-of-Service Inspections and Service Rate
- Hazmat Inspections
- Hazmat Out-of-Service Inspections and Service Rate
- Vehicle Out-of-Service Inspections and Service Rate
- Inspection Details
- Violation Summary

The SSN Trace may not under any circumstances be used, in whole or in part, as a factor in determining a consumer's eligibility for credit, insurance, employment, or for any other purpose which would qualify the service as a consumer report under the FCRA or by any authority having jurisdiction over the parties.

PSP records may be requested solely to conduct pre-screening of potential operators and only with the operator-applicant's written consent.

SSN TRACE

A Social Security Number (SSN) Trace is used to identify names and addresses that are historically associated with a given Social Security Number. This search of public and private information sources provides a strong indication as to whether the name and date of birth provided by the applicant match the information in the files of credit bureaus, driver licensing bureaus, and commercial firms. It will also suggest previously used names or other aliases that should be researched. This search also provides a validation of the Social Security Number by verifying that it is a validly issued number along with the year and state of issue. This search is a crucial component of

criminal history research as the address history is the roadmap used to select court jurisdictions that should be researched for criminal records.

Please note that the SSN Trace **does not** verify your applicant's identity with the government, even though it uses the government issued SSN for the search.

Following are what SSN Traces typically show:

- ✓ If the social security number has been validly issued (only the Social Security Administration can *confirm* the number belongs to a given name).
- ✓ Year in which the SSN was issued (red flags should fly when a 21-year-old applies for a job using a 35-year-old SSN)
- ✓ In what state the SSN was issued.
- ✓ If the number belongs to someone deceased.
- ✓ Addresses where the applicant has lived or might be living now.
- ✓ Aliases, previous names, AKAs, misspelled names, changed identity.
- ✓ Dates of birth associated with that SSN.
- ✓ Spouse's name.
- ✓ Extraneous "junk data" that can be ignored.

SSN Trace as a Tool to Direct the Criminal History Search

Often applicants will fail to list all previous addresses hoping you will not find the history they are attempting to hide. The SSN Trace will often reveal cities and states they wish would remain buried along with their criminal records.

Information on "Reported Dates"

The *Reported Dates* listed on an SSN Trace is generated by the originating credit bureau and is derived from the dates an address is **first** and **last** reported by a subscribing financial institution. Be aware that these dates may not coincide with the actual dates of residence at that address.

Credit bureaus do not send an update each month verifying that a particular address is current. If more than one credit bureau reports the same address on different dates, the range displayed is usually the first date the address was reported and the last date the address was reported. If an address was

Credit reports of any kind leave tracks. A record of your inquiry will appear on the applicant's credit report. The individual will be able to determine when, why, and by whom a credit report was ordered. However, it will denote it was for employment purposes only, and therefore will not be a factor in calculating credit-worthiness ratings.

reported to a bureau only once, the same date is displayed as the first date reported and the last date reported.

For many reasons, it is possible for a credit bureau to indicate more than one current address for an individual. This will result in more than one address with the same *Last Date Reported*. Of these addresses, the one with the most recent *First Date Reported* is the most likely current address. Also, many people have more than one current address.

Important Disclaimer Regarding the SSN Trace

The SSN Trace is an investigative starting point designed to assist in the

identification of possible recent and historical name variations and addresses which may be associated with an individual based upon a given SSN. The SSN Trace gathers information from a multitude of proprietary data sources, using complex algorithms to attempt to make connections between numerous disparate data elements. Due to the nature of these data sources, reports may contain errors. Source data is sometimes entered or reported inaccurately and is not represented to be free from defect. SSN Trace aggregates and reports data but is not the ultimate source of the data, nor is it represented to be a comprehensive compilation.

The SSN trace is *not* a “consumer report” as defined by the FCRA.

SSN VERIFICATION – CBSV

With the consent of the SSN holder, the Social Security Administration administers the Consent Based SSN Verification (CBSV) system that can verify if the SSN holder's name, date of birth, and SSN match Social Security Administration (SSA) records. CBSV returns a verification of “match” or “no match.” If records show that the SSN holder is deceased, CBSV returns a death indicator. CBSV does not verify an individual's identity; it only matches provided identifiers to SSA records.

EMPLOYMENT CREDIT REPORTS

Employment credit reports describe an individual's credit history. These reports differ from standard credit reports in that they are designed specifically for the employment environment. They will not include credit-worthiness ratings, and account numbers are disguised for security.

We have direct access to credit reports compiled by TransUnion. They are one of the three major credit reporting bureaus collecting information on Americans who are 18 or older.

Use of Credit Reports

Employers use credit reports for those situations where employees may have access to cash, equipment, or other people's property. In these situations, an employer's knowledge of the applicant's credit history is prudent.

Note that some states have passed laws that severely restrict the use of credit reports in the hiring process. Employers must be aware of any applicable laws that pertain to credit reports.

General Information

All “end users” must be identified to the credit bureau and issued a subscriber number before credit reports can be ordered. KYC Solutions reserves the right to verify the existence and authenticity of any company requesting employment credit reports. This will include, but is not limited to, verification of bank and trade references as well as a physical inspection of the client's premises. We will not sell or give credit information to detective agencies, private investigators, security services, or attorneys, except in the nature of their internal employment needs. KYC Solutions will not knowingly sell these reports for skip tracing, lending or other non-employment purposes. Specific End-User application forms, required by TransUnion, can be found on our website.

Credit information used for employment requires a written policy delineating unacceptable criteria. High potential exists for discrimination and arbitrary selection if such a policy is not used in the decision.

EMPLOYMENT VERIFICATIONS AND REFERENCES

Here are some statistics where the rules are followed:

- ✓ 5% of the references are bogus; they never existed
- ✓ 20% are "stretched" to cover other unlisted periods
- ✓ 100% of the time we get dates of employment and job title...if it is a real employer
- ✓ 80% of the time we get salaries and reasons for leaving
- ✓ 60% of the time we get some additional questions answered

When submitting information for a Previous Employment Verification, review the application **and** résumé thoroughly. Keep in mind, résumés alone do not supply all the information needed, and are often “doctored” to meet your advertised needs. Many past employers will only verify information we can supply. Therefore, it is important that the information we receive is complete, up to date, and accurate.

There are other points to remember about verifications:

- Self-employment, temporary assignments and working for family are not considered viable employer references.
- Information from these sources are usually non-existent or biased. We can perform them, but we place little credence on the results.

Remember, a verification is not an investigation. The more information you can supply, the more we can verify.

Default Search Product

For customers ordering a service by facsimile, we will review the employment history on a completed application and/or résumé and attempt to retrieve a reference on all viable employers within a five-year history.

Requirements for Ordering

The following information is needed:

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- Complete name of each employer (initials and abbreviations are not sufficient)
- City and state of each employer
- Location of branch or satellite office where they were assigned
- Dates of employment

The following additional information is helpful:

- Telephone number with area code
- Name of immediate supervisor
- Title
- Salary
- Name used when employed
- Reason for leaving

Although a signed release is not always required it usually is, and employers are increasingly averse to providing any information without a release from their former employee. It is highly recommended that a signed release be uploaded or faxed to us to greatly enhance the likelihood of procuring the requested verification. When we offer to provide this release to former employers, cooperation improves and the turn-around time decreases.

The following lists show what employment data we seek from former employers:

Employment Reference Information

- Dates of employment
- Job title
- Reason for leaving
- Notice given by the employee
- Salary
- Rehire eligibility
- Punctuality and attendance
- Performance
- Strengths and weaknesses

Personal Reference Information

- How long the reference has known the individual
- In what capacity has the reference known the individual
- Individual's character, reliability and trustworthiness
- Recommendations for hire

Customized Reference Questions

Sometimes a reference check for specific industries or positions can require different or additional questions. We can develop additional screening questions, or you may provide us with a list of your preferred questions. If you are interested in this service, please contact our office directly.

KYC Solutions can also perform mandatory Department of Transportation drug and alcohol inquiries at a client's request.

Third Party Fees

Many employers outsource their employment verifications to a third party. Any cost incurred by the mandatory use of these services in order to verify employment is passed along to the client.

Verification Process

All domestic verifications and references are processed in-house by KYC Solutions staff. Every effort is made to complete references as quickly as possible; however, we are at the mercy of the responding employer or reference. Contact is attempted daily via telephone, fax or, occasionally, by email. If a response is not received within five business days, the reference will be closed out. If we are able to obtain information after the reference is closed, we will update the order and resend it to the client.

“... as with any documentary “evidence” provided by an applicant, be alert for alterations or fabrications.”

IRS Income Verification

The IRS' Income Tax Return Verification mitigates fraud by matching the applicant directly to IRS information. This verification requires that the applicant authorize the inquiry through a signed “4506T Form” (Request for Transcript of Tax Return). This inquiry results a transcript of the individual's personal and business income tax returns, and it is very useful in substantiating the applicant's information related to employment, mortgage, lending, property management, tenant screenings and more. IRS results are returned in two business days or less.

IRS income verifications are particularly recommended for applicants who hold or will hold sensitive positions of trust or financial responsibility.

Military Records

If an applicant's work history includes service in a branch of the military, you should request that the applicant provide you with a copy of their DD-214, the Defense Department's notice of separation or discharge. This military exit form lists dates of service, duties held, and type of discharge. It usually provides all the information you need to verify their military service. But, as with any documentary “evidence” provided by a candidate, be alert for alterations or fabrications.

Alternatively, we can send a request to the personnel records center in St. Louis, Missouri, but be aware that requests may take up to 6 weeks to be fulfilled.

EDUCATION VERIFICATION

Most applicants are eager to supply college or continuing education information. This information may be misrepresented to receive more favorable consideration. Look for words like "attended" or "completed course work," which implies possession of a degree when, in fact, this may not be the case. Surveys indicate that 30% of all job applicants lie about degrees received, institutions attended or dates of attendance. Vocational training, certification and professional licenses are often misrepresented.

“... 30% of all job applicants lie about degrees received...”

“... it is becoming easier to obtain fraudulent degrees from online “diploma mills.” To guard against the proliferation of bogus accrediting agencies and fraudulent degrees and diplomas, the U.S. Department of Education and the Council for Higher Education Accreditation publishes a list of recognized accrediting agencies. If a college or university claims to be accredited by an agency not listed as recognized, further investigation is warranted.”

Degree Verification

Our default search product is the highest degree earned or last institution attended. However, we will gladly confirm all degrees earned and all institutions attended at a client's request. High School Diploma verification is also available, as is GED completion. Academic transcripts, GPA, or grades are not typically available.

With the growing popularity of the Internet, it is becoming easier to obtain fraudulent degrees from online “diploma mills.” To guard against the proliferation of bogus accrediting agencies and fraudulent degrees and diplomas, the U.S. Department of Education and the Council for Higher Education Accreditation publishes a list of recognized accrediting agencies. If a college or university claims to be accredited by an agency not listed as recognized, further investigation is warranted.

For each post-secondary education verification, KYC Solutions will also provide you with the school's accreditation information at no extra charge. The requirements for ordering a degree verification are as follows:

- Full name of campus (initials are not sufficient)
- City and state of campus the applicant actually attended
- Major course of study
- Degree level obtained
- Dates of attendance, to reduce the search criteria

Third Party Fees

As employers may outsource their verifications to a third party, so too may educational institutions. Any cost incurred by the mandatory use of these services in order to verify education or attendance is passed along to the client.

CREDENTIAL AND LICENSE VERIFICATION

If the position requires an individual to have received specialized training, certification, or a professional license, we can confirm the information an applicant provides. Our credential or license verifications typically report the license type, the issuing authority and the dates of validity.

The following information is required for ordering verifications of credentials or licenses:

- Full name of issuing agency or organization
- Level of association or license type
- Identifying license or registration numbers
- State where the license was issued

FEDERAL SANCTIONS AND EXCLUSIONS

This search checks the General Services' (GSA) Excluded Parties List System (EPLS) and the Department of Health and Human Services (HHS) Office of the Inspector General's (OIG) List of Excluded Individuals/Entities (LEIE) for excluded or sanctioned individuals.

The EPLS includes information regarding entities or people who have been debarred, suspended, proposed for debarment, excluded or disqualified under the non-procurement common rule, or otherwise declared ineligible from receiving federal contracts, certain subcontracts, and certain federal assistance and benefits.

The LEIE includes information regarding individuals or entities excluded from participating in federally-funded health care programs. The HHS/OIG, under Congressional mandate, established a program to exclude individuals and entities affected by various legal authorities, contained in sections [1128](#) and [1156](#) of the [Social Security Act](#), and maintains a list of all currently excluded parties. Bases for exclusion include convictions for program-related fraud and patient abuse, licensing board actions and default on Health Education Assistance Loans.

HEALTHCARE SANCTIONS

This product is an expansion of the coverage by the federal sanctions search and is designed for the specific needs of the healthcare industry. In addition to the HHS/OIG's LEIE and the GSA's EPLS, it adds searches of the U.S. Food and Drug Administration's (FDA) exclusion lists and 800 other federal and state sources.

The HHS/OIG search identifies those individuals and entities currently excluded from receiving payment from Medicare, Medicaid and all federal health care programs. The GSA's Excluded Party List contains information on those parties excluded throughout the U.S. Government from receiving federal contracts or certain subcontracts and from certain types of federal financial and nonfinancial assistance and benefits. The FDA sanctions list identifies all clinical investigators who have been disqualified or "totally restricted" by the FDA due to repeated or deliberate failure to comply with applicable regulatory requirements or when the clinical investigator has repeatedly or deliberately submitted false information to the sponsor or to the FDA.

FINANCIAL ENFORCEMENT ACTIONS

This search identifies individuals and institutions that have been the subject of banking or financial enforcement actions, orders or penalties under the following agencies:

- Federal Deposit Insurance Corporation (FDIC)
- Board of Governors of the Federal Reserve System (FRB)
- National Credit Union Administration (NCUA)
- Office of the Comptroller of the Currency (OCC)
- Financial Industry Regulatory Authority (FINRA) BrokerCheck
- Securities and Exchange Commission (SEC)
- Commodities Futures Trading Commission (CFTC)
- National Futures Associates (NFA)
- HUD Limited Denial of Participation (LDP)

- FHFA Suspended Counterparty Program

WORKERS COMPENSATION

Workers Compensation records contain abbreviated information taken from state government documents, including first reports of injury, court contested claims, medical awards, lost time claims, compensable claims and privately contributed data. The amount of information available varies from state to state. Only the most recent seven years (or less as noted) are available.

Some states do not allow public access to Workers Compensation claim information. In that case, at your request, we can search civil court records for claim information. Therefore, the search will not contain information on claims filed, but only claims that reached the courts.

The contents of worker compensation records may vary from state to state but they generally include the following:

- Date of the incident
- Time lost
- Employer name
- Type of injury
- Body part injured
- Disposition

When any state's specific Workers Compensation report is ordered, we also search at no additional cost through a pool of 8 million similar claims records proprietary records compiled from 40 states.

Coverage

Workers Compensation reports are not available in all states. This may change as laws and guidelines are adjusted at the state level. Many states require a standard signed release for this search and some require special forms that must be obtained from the state. Several require notarization.

Important Information About Workers Compensation Records

Workers Compensation information is considered to be health and disability related under the Americans with Disabilities Act (ADA). The ADA, as well as numerous state laws, seeks to protect job seekers from discrimination in hiring as a result of filing valid claims. The ADA also seeks to prevent the

discrimination against workers who, although suffering from a disability, are nevertheless able to perform essential job functions as long as there are reasonable accommodations.

The bottom line is that an employer cannot request workers compensation records in accordance to a policy of not hiring anyone who has made a claim. It is discriminatory to penalize a person who has exercised a lawful right in a lawful way and filed a valid claim.

To comply with the ADA an employer may not inquire about an applicant's medical condition or past workers compensation claims *until a conditional job offer has been extended*. A conditional job offer means that a person had been made an offer of employment, subject to certain conditions such as a job-related medical review.

“To comply with the ADA an employer may not inquire about an applicant’s medical condition or past workers compensation claims *until a conditional job offer has been extended*.... [Only then can] an employer ... pursue information ... related to whether the person can perform the essential job functions with, or without, reasonable accommodation.”

Once a job offer has been made, an employer may pursue information about health or disability if such inquiry is related to whether the person can perform the essential job functions with, or without, reasonable accommodation.

This information should be asked for on a separate health and disability questionnaire. If an applicant discloses a disability, then there should not be any follow-up. Questioning should be limited to whether that applicant can perform the job.

If a history of filing claims is found, then the offer may only be rescinded under very limited circumstances. The following are some examples of circumstances that may warrant rescinding a conditional job offer:

- Lying about a workers compensation history or medical condition during a medical examination.
- Past claims demonstrate the applicant is a safety or health threat to himself or others, in the opinion of a medical expert.

- Past claims demonstrate the applicant is unable to perform the essential functions of the job even with reasonable accommodation.

Before attempting to run a search for workers compensation claims as part of a screening program, an employer is advised to consult with their attorney.

ELECTRONIC I-9 FORM

The Employment Eligibility Verification Form I-9 is used by an employer to verify an employee's identity and to establish that the worker is eligible to accept employment in the United States. Our Electronic I-9 Form service provides a comprehensive error-detecting solution that virtually eliminates processing errors and simplifies the document completion process.

Legal Requirement

Every employee hired after November 6, 1986 must complete an I-9 form at the time of hire. Employees must complete Section 1 of the form at the actual beginning of employment. The employer must complete Section 2 within three days of starting work.

The I-9 is not required for unpaid volunteers or for contractors.

Benefits of Our I-9 Service

Our I-9 service provides several advantages:

- Secure, paperless Form I-9 storage, with 24/7 access for updating, re-verification and governmental inspection.
- The ability to e-sign the I-9 form that uses a high-security, DHS-compliant click-to-sign solution.
- The “Add eDocuments” feature allows you to electronically attach related I-9 documents to employees’ I-9 Forms so the related documents are stored as a set.
- 90, 60, and 30-day e-mail alerts will be forwarded to you prior to the expiration of work authorization documents.
- The ability to run reports by client location.
- Scan, index and archive paper copies of I-9 forms so that an employer can easily access all I-9 records from one location at the touch of a

button. This is especially beneficial in the case of an I-9 audit, which is becoming more and more commonplace in today's workforce.

EMPLOYMENT ELIGIBILITY VERIFICATION (E-VERIFY)

E-Verify is a Web-based system that electronically verifies the employment eligibility of newly hired employees through Social Security Administration and Department of Homeland Security databases.

“... public and private sector employers may use the [E-Verify] system voluntarily *but only to verify newly hired employees*, not to E-Verify existing employees, unless they are federal contractors or sub-contractors.” (Italics added.)

Legal Requirement

Federal contractors and subcontractors have been required to use the U.S. Citizenship and Immigration Services' E-Verify system since September 8, 2009 to verify their employees' eligibility to legally work in the United States.

In addition to the federal government, many states also require or strongly encourage E-Verify on certain employees. Other public and private sector employers may use the system voluntarily but only to verify newly hired employees, not to E-Verify existing employees, unless they are federal contractors or sub-contractors.

KYC Solutions recommends that you use E-Verify on **all** newly hired employees to keep your hiring process consistent and compliant. Our check uses the federal E-Verify program to electronically query DHS and SSA databases and verify your new employees' eligibility to work in the U.S.

The query result confirms (or not) that the social security number submitted belongs to an individual who is legally permitted to work in the U.S.

Enhanced capabilities include email alerts and reports that help track and monitor tentative non-confirmations.

Benefits

Our E-Verify service will provide your company with the following benefits:

- Significantly reduces your potential risks of non-compliance. Employers who knowingly hire or knowingly continue to employ unauthorized workers are exposed to civil penalties that range from \$250 to \$11,000 per violation. And employers who engage in *a pattern or practice* of knowingly hiring or continuing to employ unauthorized workers can face criminal penalties of as much as \$3,000 per unauthorized employee and/or 6 months imprisonment.
- Help ensure workforce stability and assist in eliminating the potential for disruptive and costly turnover created by the mandatory removal of legally unauthorized employees
- Minimize the potential for attracting legally unauthorized applicants by acknowledging your participation in E-Verify
- Seamlessly integrates with KYC Solutions' existing ordering system
- Employee information will be carried over to the E-Verify screen to reduce data entry

INTERNATIONAL SEARCHES

KYC Solutions can conduct court records searches, employment verification and education confirmation in many countries throughout the world. Availability, turnaround time and cost vary depending on the country where searches are to be conducted. For specific information regarding international searches, please contact our office.

International Court Records

Criminal and civil court records are available in most countries. Turnaround time may range from a few days to a few weeks. Local, regional and/or national courts may be accessed for information. Due to privacy laws in other countries, a copy of the applicant's signed release or other information may be required.

Before conducting international court records searches, we will contact the client with the cost and approximate turnaround time. Clients can make decisions on a case-by-case basis based on these factors.

International Verifications and References

Once your company specifies that it is interested in pursuing international verifications, you will not be contacted on a case-by-case basis (unless specifically requested). There is a \$60 surcharge on all international

employment references, personal references and education confirmations. This covers the cost of multiple phone calls and/or faxes to the reference country, calls made during off-hours, and calls made by a researcher that is fluent in the language of the responding company or educational institution.

In many countries, employers will require an employee ID for verification purposes. Also, educational institutions commonly require a copy of the degree or transcript, as well as a student ID or seat number, in order to confirm a degree.

There is a \$20 international reference cancelation fee incurred when a reference is canceled after it is already in process.

“Employers who knowingly hire or knowingly continue to employ unauthorized workers are exposed to civil penalties.... And employers who engage in a *pattern or practice* of knowingly hiring or continuing to employ unauthorized workers can face ... imprisonment.”

TENANT SCREENING

TenantSCREEN

This search is for property management companies and landlords that need an inexpensive, quick search for potential tenants. Our TenantSCREEN product combines into one package—

- a national criminal history database check, and
- a national sex offender registry check

to identify potentially violent criminals and sex offenders before they sign a lease.

Please note that this is not a true ‘nationwide’ or comprehensive national search; rather it is considered multi-state (multi-jurisdictional) criminal database search. It is dependent on participation from the originating source. Originating sources may include: county court records, state repository records, or state correctional records. Although most jurisdictions do participate, not all do.

EvictionCHECK

This tenant screening product searches a database of over 30 million landlord-tenant records to locate Unlawful Detainer (Eviction) court records.

Limitations

Because these records typically only include a name and address as identifiers, the search will also pull the subject's most recent five addresses from credit header information, and compares those addresses to the ones found on the eviction court records. This greatly increases the probability that the information returned to you actually belongs to your lease applicant.

Evictions may also show up as a public record on a credit report if the case involved a monetary judgment. For example, if a tenant violates the pet agreement terms of their lease, but was current on their rent, that eviction judgment will not show up on their credit report. In addition, many cases are only or initially filed for possession only, just so the landlord can get possession of the unit back quickly. They may file for monetary recovery later, or not at all.

Information in the database comes from researchers who travel to courthouses where they search for all court cases pertaining to failure to pay rent, property damage, judgments, writs and any other lease violations.

Scope

The information in the EvictionCHECK database comes mainly from medium to highly-populated areas. Small cities and rural areas tend to be omitted.

As with most civil court records, Social Security numbers and dates of birth are not normally recorded in them. So our critical search parameters are two: name and address.

TENANT CREDIT REPORTS

A credit report is a fundamental way to determine your applicant's financial ability to afford rent. As such, your applicant's financial obligations and payment patterns play an important part in your rental decision.

Qualified companies will be able to access a report that contains the applicant's credit history, including a summary of data, trade lines, collections, and public records, and a FICO credit score. In addition, you will see detailed information on each account, including dates, balances, limits, and a 24-month payment history.

All “end users” must be identified to the credit bureau and issued a subscriber number before credit reports can be ordered. KYC Solutions reserves the right to verify the existence and authenticity of any company requesting credit reports. This will include, but is not limited to, verification of bank and trade references as well as a physical inspection of the client's premises.

We cannot sell or give credit information to detective agencies, private investigators, security services, or attorneys. Specific End-User application forms, required by TransUnion, can be found on our website.

TENANT REFERENCE CHECKS

Rental Verification

Information provided by a previous or current landlord is crucial to determining your potential tenant's rental performance. Rental verifications seek to verify the following information:

- Length of lease
- Past due/unpaid balances or NSF checks
- Evictions
- Lease Violations
- Unauthorized pets
- Notice to vacate
- Damages
- Deposit refund

Employment & Salary Verification

Income level and stability is fundamental to choosing the right tenant. We will verify a potential tenant's salary and likelihood of continued employment to make sure they meet your rental criteria.

VOLUNTEERSCREEN

Although employers may not consider volunteers to be “employees,” the Federal Trade Commission does indeed extend the definition of “employee” to include independent contractors and volunteers. As such, we feel it behooves businesses and non-profit organizations to screen volunteers as you would regular employees. But screening volunteers is not always cost-effective when submitting them to the same level of due diligence as direct hires.

A Cost-Effective Volunteer Check

KYC Solutions offers VolunteerSCREEN as a cost-effective option to a fuller due diligence process.

This search combines a national criminal history database check with a national sex offender registry check to identify potentially violent criminals and sex offenders before they come into contact with at-risk populations.

Note that this is not a true ‘nationwide’ or comprehensive national search; rather it is considered multi-jurisdictional. It is completely dependent on participation from the originating source. Originating sources may include: county court records, state repository records, or state correctional records.

Verification of Repository and Database Records

To maintain compliance with the FCRA, any possible records found in a statewide or national criminal database search will always be confirmed at the county level at the client’s expense *prior to being reported*.

This is because we must consider a “name match” finding in a multi-jurisdictional database record as potentially a “false positive” that must be verified (or negated) through a review of the detailed court records to determine if in fact the finding pertains to your volunteer. If it is verified, the full details will be reported to the end-user/client; if the finding is negated by the review, the search will be reported as “no finding” even though the invoice will reflect the costs of the necessary investigation to disprove it.

This procedure assures FCRA compliance by shielding the end-user (adjudicator) from information that may not be used to determine eligibility for an FCRA-protected opportunity, including employment or housing.

EVALUATING CONSUMER REPORTS

A sound policy for your human resources (HR) processes is crucial for staying compliant with the FCRA and labor laws. It is a good idea to engage a legal counsel or an experienced human resources expert to review your operation, policies and procedures to assure you have a compliant program, or to establish such a program if your current operation is found lacking.

Critical components of the HR process are the policies for onboarding of personnel, and the management of personnel incidents.

A publication by the EEOC, *Consideration of Arrest and Conviction Records in Employment Decisions Under Title VII of the Civil Rights Act of 1964*, last amended

on April 25, 2012, is an excellent guide on the use of certain types of public records in the hiring process.

In addition to the EEOC's publication there may be applicable state laws regarding the use and evaluation of consumer reports in the hiring process. New York employers should be familiar with *New York Correction Law Article 23-A*.



DRUG TESTING PROGRAMS

When considering a drug testing program, consider these statistics:

- Nearly 7% of adults employed full-time and 9% of those employed part-time currently use illegal drugs, according to the Substance Abuse and Mental Health Services Administration (SAMHSA).
- More than 70% of substance abusers hold some type of job, according to the American Council of Drug Education.

KYC Solutions is a Third Party Administrator (TPA) for clients who wish to have a drug testing program in the workplace. We offer several different types of drug testing through our strategic alliance partners, including federally-regulated Department of Transportation (DOT) drug testing, as well as medical review officer (MRO) services where required or when requested. We also provide collection site management and random selection services.

We contract with Quest Diagnostics for urine and hair screening. Quest Diagnostics is the world's leading provider of diagnostic testing, information and services. Each year, they perform more than 8.5 million drug tests. All Quest testing locations are subject to Clinical Laboratory Improvement Amendments of 1988 (CLIA-88) certification and maintain current CLIA licenses. Quest Diagnostics' main laboratories are accredited by the College of American Pathologists (CAP).

TYPES OF DRUG TESTS

Urinalysis

Urine testing, one of the most common screening methods, is an accurate and reliable way to detect casual drug use within 72 hours of the administration of the test. We offer both non-regulated (non-DOT) and regulated (DOT) drug tests. It is widely used for pre-employment screening even though the timeline for detection through a urine test is relatively short. At the same time, it is also a perfect solution for post-accident or reasonable suspicion (for cause) drug tests. We test for the following drugs:

10-PANEL EXPANDED NON-DOT SCREEN	5 PANEL DOT SCREEN
Amphetamines: Amphetamine, Methamphetamine, MDMA, MDA	Amphetamines: Amphetamine, Methamphetamine, MDMA, MDA
Barbiturates	
Benzodiazepines	
Cocaine	Cocaine
Marijuana (THC)	Marijuana (THC)
Methadone	
Opioids: Codeine, Morphine, 6-AM (Heroin), Oxycodone, Oxymorphone, Hydrocodone, Hydromorphone	Opioids: Codeine, Morphine, 6-AM (Heroin), Oxycodone, Oxymorphone, Hydrocodone, Hydromorphone
Phencyclidine (PCP)	Phencyclidine (PCP)
Propoxyphene	

In addition to screening the urine for drugs, Quest Diagnostics also screens for any adulterants present in the specimen due to donor contamination.

If the initial screen, using enzyme immunoassay technology, detects the possible presence of one of the above drugs, a confirmation test is automatically performed at no charge to the client. The confirmation

methodology, called gas chromatography / mass spectrometry (GC/MS), is a superior and highly accurate drug screening process. To ensure accuracy and reliability, this independent procedure uses a technique and chemical principle different from the initial screening test.

Hair Sample

Hair testing is becoming more and more popular for the purpose of pre-employment testing. The detection window for this type of test is approximately 90 days, which allows the employer to determine if the applicant has a recent history of drug use without providing the applicant time to abstain before a job search. We test for the following drugs:

5-PANEL HAIR TEST

Amphetamines: Amphetamine, Methamphetamine, MDMA, MDA

Cocaine Metabolites

Marijuana (THC) Metabolites

Opioids: Codeine, Morphine, 6-AM (Heroin), Oxycodone, Oxymorphone, Hydrocodone, Hydromorphone

Phencyclidine (PCP)

Breath Alcohol

The purpose of breath alcohol testing is to determine current impairment, rather than simply the presence of alcohol. Therefore, timeliness is extremely important, even more so when you are aware of how quickly alcohol is absorbed into the system. Breath testing is typically used for post-accident or reasonable suspicion testing. It is also required as a random test for DOT employees, such as truck drivers or pilots.

MRO SERVICES

A Medical Review Officer (MRO) is a licensed physician who is responsible for receiving and reviewing laboratory results generated by an employer's drug testing program and evaluating medical explanations for certain drug test results. Although we offer (and recommend) MRO services for both DOT and non-DOT test results, review of the DOT results is required by law. In addition, some states require MRO review of either positive-only or positive and negative results.

COLLECTION SITE MANAGEMENT

Quest Diagnostics has an extensive database of in-network and third-party collection sites covering most of the country. In addition to Quest Diagnostic's network, we have established our own extended network of third-party collection sites to fill the voids in Quest's network.

Upon establishing an account, we provide our clients with an appendix to this Reference Manual that is customized to their operating needs. If a client's operational needs were to reveal a gap in our extensive network of collection points, we will research the area in question, negotiate and establish an account, and add it to our database. You will then be notified of the location, hours and requirements. There is no fee for this research service.

RANDOM SELECTION

Random drug testing is a mandatory part of any DOT drug testing program. In order for the employer to maintain impartiality, KYC Solutions can handle your random selection needs. Our special software will randomly select the federally required percentage of employees for alcohol and drug testing at an appropriate interval (monthly, quarterly, etc.). Clients are also welcome to utilize our DOT consortium pool for random selections.

Although not legally required, we are also happy to provide random selection services for non-DOT programs at no charge.

ORDERING DRUG TESTS

Clients will be provided with all of the forms and information necessary to begin a drug testing program. In most cases, clients can be ready to test within 24 hours.

Use the collection site locator found on our website to find a location for the drug test. Any location listed on the Quest Diagnostics website may be used (<https://secure.questdiagnostics.com/hcp/psc/jsp/SearchLocation.do>), but please be aware that a \$10 collection fee is assessed when utilizing any non-Quest ("preferred") locations. We recommend that all donors call the collection site in advance for hours and directions.

KNOW YOUR CREW

To use the Quest PSC locator website, simply enter a ZIP code in Step 1. In Step 2, choose:

FOR NON-DOT DRUG TESTING	FOR DOT DRUG TESTING
Employer and wellness services	Employer and wellness services
Drug Testing	Drug Testing
Non-Regulated Testing	Federal/State Regulated Testing
Urine drug screen -or- Hair collection	DOT / NRC Urine Drug -or- DOT / NRC Breath Alcohol
Paper CCF	Paper CCF

Please note that all applicants must take a chain of custody form (COC) and a government-issued photo ID to the collection site. The COC is the detailed documentation of the drug screening process. It accounts for the integrity of each step of the procedure by tracking the handling and storage of the specimen from collection to disposal. A clinical lab will not proceed with a drug screen if they recognize the chain of custody has been broken.

8



FINGERPRINTING SERVICES

Background screening conducted through fingerprint-based checks is far more accurate and effective than the standard checks through proprietary databases and court runs. It's incredibly simple and fast when the fingerprinting is done through a "live scan" of the individual's fingerprints rather than the old way of taking ink impressions.

In fact, many government agencies are hard-pressed to continue accepting ink-based print cards; they now require that criminal history checks be requested electronically as live scan submissions.

So, why don't all employers conduct their background checks through fingerprints? That's a very good question — one that we'll answer in this section. But the short answer is: because fingerprinting for employment purposes are limited to situations permitted by state or federal law.

When permitted, live scan fingerprinting is the best way to go—and KYC Solutions is your resource for fingerprinting services.

ABOUT FINGERPRINT-BASED CHECKS

Individuals who may be fingerprinted are children, for safety and security purposes, in the event that a child goes missing; military personnel (and similar occupations), for security background checks; and for employment related to government or industries related to healthcare, education, finance and banking, care of the elderly or children, public transportation including taxis, or other positions that affect public safety.

Employment-related fingerprinting is consensual and must be channeled through a sponsoring agency that is authorized by law.

The Pros

Fingerprint-based checks are our best employment screening best tool,. Following are some arguments for using them:

Local and state criminal histories are more complete than federal.

All states maintain their own fingerprint and criminal history databases. State law may require that its authorities purposely omit reporting some incidents to the FBI's nationwide, centralized fingerprint repository known as the Integrated Automated Fingerprint Identification System, or IAFIS. In Florida the state's repository is the Florida Department of Law Enforcement (FDLE) which by state law retains records that *cannot* be reported to the IAFIS (such as sealed records) or are ordered expunged from the IAFIS. This is by design to correct legal errors or for fairness to affected individuals.

IAFIS is the most complete nationwide criminal history repository.

Keeping in mind that local and state authorities are not obligated to and may miss reporting an arrest (or subsequent proceedings) to the FBI by oversight, or by law, IAFIS is the best one-stop nationwide repository for criminal histories based on fingerprints. Even if it's not perfectly complete, the IAFIS repository is the most complete set as it includes nearly all criminal histories within the 50 states plus its district and territories. As for sealed or expunged records a state may hold exclusively, such records are purposely hidden except for lawful use by the holding state and as specified by law.

The Cons

The IAFIS is the largest database of identifiers such as names, addresses, employment, military history and arrest histories matched to corresponding fingerprints. It is the nation's law enforcement central repository, but it is not perfect.

Several shortcomings have been pointed out as arguments against using the IAFIS for employment purposes:

Records may contain biased information. Researchers of the National Employment Law Project (NELP) in 2013 found that a significant number of arrests reported to the FBI's IAFIS were racially-biased and can have an unjust, negative affect on job-seekers. This means that people of color may have more arrest records that don't lead to convictions.

Arrest histories may be unfairly incomplete. Jurisdictions that report initial arrests to IAFIS do not always follow up with dispositions. This results in incomplete criminal histories where in fact charges may have been dismissed or reduced, or where an accused may have been found innocent. A diligent investigator may need to drill down and review the details of the original jurisdiction's records of incidents reported to IAFIS.

Not all arrests result in fingerprints. Fingerprinting is not a mandatory part of an arrest. Local or state agencies do not always fingerprint. Or, if they do, they don't always submit them to the IAFIS. So, it is possible that a fingerprint-based check with the FBI could miss a criminal history that could be uncovered at the local level.

The FBI's IAFIS can only be accessed when authorized by a law.
The law can be local, state or federal, but it must be so authorized.

The CRA Advantage

Level 2 (fingerprint-based) background checks are only the minimum requirement by the state. Unfavorable findings from a Level 2 can be resolved with a more complete CRA background because "hits" will have been researched to the point of origin.

Employers who work with a CRA make safer, better informed hiring decisions and protect applicants (consumers) from missing out on opportunities.

A diligent employer's policy for Level 2 candidates could be to perform the required Level 2 checks and to conduct courthouse checks as necessary to determine the details and adjudication of the report's "hits."

FLORIDA SPONSORS THROUGH THE FDLE

Section 3 (Florida Employment Screening Laws) beginning on page 27 in this guide provides a good explanation of Florida's Chapter 435 and "Level 2 Standard" checks; that is, fingerprint-based background screenings for a range of individuals who are, or are expected to be, exposed to vulnerable people, or who have access to or are custodians of sensitive government records.

When that's the case, the following types of individuals who are functioning, or are expected to function, in a *covered* position (p. 27) on behalf of the State of Florida are required to pass a Level 2 Standard check:

- Employment candidates and incumbents (directly with the state);
- Licensees (functioning under the authority of the state);
- Contractors (functioning on behalf of the state);
- Volunteers (for the state or for an agency or contractor of the state);
- Vendors, individuals or entities under contract with a school or school board.

To be clear, Chapter 435 does not apply to the private sector unless a private sector entity is under contract with the State of Florida or is functioning as an agency of the state.

The usual Florida agencies that require Level 2 (fingerprint-based checks) are:

Department of Children and Families

The Department of Children and Families (DCF) is the Florida agency that provides social services and oversees the welfare of vulnerable persons (p. 28).

Agency for Health Care Administration

Also known as AHCA, this agency is charged with regulating the medical profession in Florida. As such, AHCA requires that certain medical occupations undergo Level 2 background checks before being licensed.¹⁰

Florida Office of Financial Regulation

This agency regulates the activities of mortgage loan originators and brokers to prevent fraud and promote integrity in the mortgage lending business. It requires that loan originators undergo Level 2 background checks.

Department of Education

In conjunction with the FDLE, the Department of Education (DOE) is charged with conducting periodic Level 2 criminal history checks of school

¹⁰ Florida Statutes, Title XLVII, Criminal Procedure and Corrections. §943.0525. Criminal justice information systems; use by state and local agencies.

staff and “certain non-instructional school district employees and contractors,” which includes any “vendor, individual, or entity under contract with a school or the school board.”¹¹

U.S. SPONSORS THROUGH THE FBI

As in the case of Florida, U.S. laws and regulations provide access to the FBI's IAFIS repository to the states who issue laws authorizing fingerprint-based background checks. Additionally, federal laws also authorize some private entities under federal supervision to submit their personnel to fingerprint-based checks.¹² The following two are examples:

“... the FDIC ... has estimated that 10 percent of the fingerprint-based checks uncover a criminal record.”

Financial Industry Regulatory Authority

This institution, itself a private corporation also known as FINRA, was formed in 2007 as the successor of the National Association of Securities Dealers (NASD) and exists to self-regulate the financial industry in the United States. It acts to regulate, enforce and arbitrate for members of the New York Stock Exchange (NYSE) but banks may also fall under FINRA's oversight if they also operate as a securities brokerage or investment advisory firm. Ultimately, FINRA itself is regulated by the U.S. Securities and Exchange Commission (SEC).

FINRA may require fingerprint-based checks for its members.

Federal Deposit Insurance Corporation

The FDIC is a government regulator of banks. In 2008 it launched new requirements that include FBI fingerprint-based criminal history checks for a range of banking personnel, for example:

- Bank directors
- Upper management of banks

¹¹ Florida Statutes, Title XLVIII, *Education Code*, Chapter 1012, *Personnel*.

¹² 12 U.S.C. 1829. Banks and banking. Penalty for unauthorized participation by convicted individual.

- Bank employees

Although some exemptions can be made. Fingerprints must be submitted to the FBI through an intermediary, which in this case is the American Bankers Association (ABA).¹³ Of interest is that the FDIC in its policy documentation has estimated that 10 percent of the fingerprint-based checks uncover a criminal record.

FINGERPRINTING FOR PERSONAL REVIEW

There are times when fingerprinting is required by state law, as discussed above; times when fingerprinting may be required—or at least permitted—by federal law for certain industries, as in the case of banks; and times when submitting to a fingerprint-based criminal history check is entirely voluntary for individuals who either want to —

- personally review for accuracy what the government (FBI) has in its historical records about them; or,
- respond to a requirement by a government or institution as a condition to a requested service, such as an apostille; or,
- voluntarily provide his or her FBI “rap sheet” to a third party.

Once in the subject’s hands, he or she can choose to personally share his or her criminal history with others for any reason. Sharing one’s own rap sheet is a personal right and choice.

Following are some examples of situations in which an individual could choose to share his or her rap sheet with a third party:

- To his or her attorney preparing for a legal process.
- To an employer adjudicating an application, to help clarify findings.
- To a consular officer as a condition for providing a service.
- Many other similar uses and purposes.

¹³ FDIC Trust Examination Manual, Section 11-Management.

The main point to remember is that for privacy and legal reasons the FBI will deliver rap sheets requested for private review *only to the individual who is the subject* of the check.

KNOW YOUR CREW

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This section contains five appendices:

Background Check Disclosure.....	A
FCRA Summary of Rights.....	B
Background Check Authorization.....	C
Glossary.....	D
Acronyms and Abbreviations.....	E

You will need to provide A and B to applicants before beginning a background check or verifications (consumer investigation); and appendix C is the authorization KYC Solutions needs to conduct a consumer investigation. C and D serve as references to this guide.

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APPENDIX A: BACKGROUND CHECK DISCLOSURE

This disclosure shall serve as notification that _____ (the "Company") may request a consumer report or investigative consumer report on you in connection with your application for employment. If hired, or if you already work for the Company, additional reports, consistent with current or future job description, may be requested on you to determine your suitability for continued employment.

Consumer reports will be prepared and supplied to the Company by Inquesta|KYC Solutions, which is located at 2655 S. Le Jeune Road, Suite 500, Coral Gables, FL 33134 and can be reached at 305-779-3069.

A consumer report (background check) contains information regarding your character, general reputation, mode of living, personal characteristics, and credit standing. An investigative consumer report is a type of consumer report that includes information from personal interviews with friends, neighbors and associates, except in California where that term means any background report that is not a credit report. The nature and scope of the most common type of investigative consumer report is an investigation into your education and/or employment history conducted by KYC Solutions or another outside organization. You may request more information about the nature and scope of an investigative consumer report, if any, by contacting KYC Solutions. A summary of your rights under the Fair Credit Reporting Act is being provided to you with this form.

As directed by company policy and consistent with your job description, the types of information that may be requested on you include but are not limited to: court records, driving record, employment history, education, credentials and licensing, credit, workers' compensation claims, Social Security number verification, personal references, and drug testing results. Workers' compensation information will only be requested in compliance with federal Americans with Disabilities Act and/or any other applicable federal, state or local laws and only after a conditional job offer is made. Credit history will only be requested when permitted by law and where such information is substantially related to the duties and responsibilities of the position for which you are applying. The information may be obtained from public and private sources.

The Fair Credit Reporting Act gives you specific rights in dealing with consumer reporting agencies. You will find these rights summarized on A Summary of Your Rights under the Fair Credit Reporting Act.

BACKGROUND CHECK STATE NOTICES

If you live or work for the Company in the states listed below, please note the following:

CALIFORNIA: You may view the file that Hire Level has for you, and order a copy of the file, upon submitting proper identification and paying copying costs, by coming to their offices, during normal business hours and on reasonable notice, or by mail. You may also ask for a file-summary by telephone. Hire Level can answer questions about information in your file, including any coded information. If you come in person, another person can come with you, so long as that person can show proper identification.

MAINE: If you ask us, you have the right to know whether the Company ordered an investigative consumer report on you. You may request the name, address, and telephone number of the nearest office for Hire Level. You will get this information within 5 business days of our receipt of your request. You have the right to ask Hire Level for a free copy of the report.

MARYLAND: If the Company obtains credit history information on you, it will be used to evaluate whether you would present an unacceptable risk of theft or other dishonest behavior in the job for which you are being considered.

MASSACHUSETTS/NEW JERSEY: If you submit a request to us in writing, you have the right to know whether the Company ordered an investigative consumer report from Hire Level. You may inspect and order a free copy of the report by contacting Hire Level.

MINNESOTA: If you submit a request to us in writing, you have the right to get from the Company a complete and accurate disclosure of the nature and scope of the consumer report or investigative consumer report ordered, if any.

NEW YORK: If you submit a request to us in writing, you have the right to know whether the Company ordered a consumer report or an investigative consumer report from Hire Level, and you will be provided with the name and address of Hire Level. You may inspect and order a free copy of the reports by contacting Hire Level. A copy of Article 23A of the New York Correction Law is being provided with this form.

OREGON: If the Company obtains credit history information on you, it will be used to evaluate whether you would present an unacceptable risk of theft or other dishonest behavior in the job for which you are being considered.

WASHINGTON STATE: If you submit a request to us in writing, you have the right to get from the Company a complete and accurate disclosure of the nature and scope of the investigative consumer report we ordered, if any. You also have the right to ask Hire Level for a written summary of your rights under the Washington Fair Credit Reporting Act. If the Company obtains information bearing on your credit worthiness, credit standing or credit capacity, it will be used to evaluate whether you would present an unacceptable risk of theft or other dishonest behavior in the job for which you are being considered.

APPENDIX B: SUMMARY OF RIGHTS

Para información en español, visite www.consumerfinance.gov/learnmore o escribe a la Consumer Financial Protection Bureau, 1700 G Street N.W., Washington, DC 20552.

A Summary of Your Rights Under the Fair Credit Reporting Act

The federal Fair Credit Reporting Act (FCRA) promotes the accuracy, fairness, and privacy of information in the files of consumer reporting agencies. There are many types of consumer reporting agencies, including credit bureaus and specialty agencies (such as agencies that sell information about check writing histories, medical records, and rental history records). Here is a summary of your major rights under the FCRA. **For more information, including information about additional rights, go to www.consumerfinance.gov/learnmore or write to: Consumer Financial Protection Bureau, 1700 G Street N.W., Washington, DC 20552.**

- **You must be told if information in your file has been used against you.** Anyone who uses a credit report or another type of consumer report to deny your application for credit, insurance, or employment – or to take another adverse action against you – must tell you, and must give you the name, address, and phone number of the agency that provided the information.
- **You have the right to know what is in your file.** You may request and obtain all the information about you in the files of a consumer reporting agency (your “file disclosure”). You will be required to provide proper identification, which may include your Social Security number. In many cases, the disclosure will be free. You are entitled to a free file disclosure if:
 - a person has taken adverse action against you because of information in your credit report;
 - you are the victim of identity theft and place a fraud alert in your file;
 - your file contains inaccurate information as a result of fraud;
 - you are on public assistance;
 - you are unemployed but expect to apply for employment within 60 days.

In addition, all consumers are entitled to one free disclosure every 12 months upon request from each nationwide credit bureau and from nationwide specialty consumer reporting agencies. See www.consumerfinance.gov/learnmore for additional information.

- **You have the right to ask for a credit score.** Credit scores are numerical summaries of your credit-worthiness based on information from credit bureaus. You may request a credit score from consumer reporting agencies that create scores or distribute scores used in residential real property loans, but you will have to pay for it. In some mortgage transactions, you will receive credit score information for free from the mortgage lender.
- **You have the right to dispute incomplete or inaccurate information.** If you identify information in your file that is incomplete or inaccurate, and report it to the consumer reporting agency, the agency must investigate unless your dispute is frivolous. See www.consumerfinance.gov/learnmore for an explanation of dispute procedures.
- **Consumer reporting agencies must correct or delete inaccurate, incomplete, or unverifiable information.** Inaccurate, incomplete or unverifiable information must be removed or corrected, usually within 30 days. However, a consumer reporting agency may continue to report information it has verified as accurate.
- **Consumer reporting agencies may not report outdated negative information.** In most cases, a consumer reporting agency may not report negative information that is more than seven years old, or bankruptcies that are more than 10 years old.
- **Access to your file is limited.** A consumer reporting agency may provide information about you only to people with a valid need – usually to consider an application with a creditor, insurer, employer, landlord, or other business. The FCRA specifies those with a valid need for access.
- **You must give your consent for reports to be provided to employers.** A consumer reporting agency may not give out information about you to your employer, or a potential employer, without your written consent given to the employer. Written consent generally is not required in the trucking industry. For more information, go to www.consumerfinance.gov/learnmore.
- **You may limit “prescreened” offers of credit and insurance you get based on information in your credit report.** Unsolicited “prescreened” offers for credit and insurance must include a toll-free phone number you can call if you choose to remove your name and address from the lists these offers are based on. You may opt-out with the nationwide credit bureaus at 1-888-5-OPTOUT (1-888-567-8688).
- The following FCRA right applies with respect to nationwide consumer reporting agencies:

CONSUMERS HAVE THE RIGHT TO OBTAIN A SECURITY FREEZE

You have a right to place a “security freeze” on your credit report, which will prohibit a consumer reporting agency from releasing information in your credit report without your express authorization. The security freeze is designed to prevent credit, loans, and services from being approved in your name without your consent. However, you should be aware that using a security freeze to take control over who gets access to the personal and financial information in your credit report may delay, interfere with, or prohibit the timely approval of any subsequent request or application you make regarding a new loan, credit, mortgage, or any other account involving the extension of credit.

KNOW YOUR CREW

As an alternative to a security freeze, you have the right to place an initial or extended fraud alert on your credit file at no cost. An initial fraud alert is a 1-year alert that is placed on a consumer's credit file. Upon seeing a fraud alert display on a consumer's credit file, a business is required to take steps to verify the consumer's identity before extending new credit. If you are a victim of identity theft, you are entitled to an extended fraud alert, which is a fraud alert lasting 7 years.

A security freeze does not apply to a person or entity, or its affiliates, or collection agencies acting on behalf of the person or entity, with which you have an existing account that requests information in your credit report for the purposes of reviewing or collecting the account. Reviewing the account includes activities related to account maintenance, monitoring, credit line increases, and account upgrades and enhancements.

- **You may seek damages from violators.** If a consumer reporting agency, or, in some cases, a user of consumer reports or a furnisher of information to a consumer reporting agency violates the FCRA, you may be able to sue in state or federal court.
- **Identity theft victims and active duty military personnel have additional rights.** For more information, visit www.consumerfinance.gov/learnmore.

States may enforce the FCRA, and many states have their own consumer reporting laws. In some cases, you may have more rights under state law. For more information, contact your state or local consumer protection agency or your state Attorney General. For information about your federal rights, contact:

TYPE OF BUSINESS:	CONTACT:
1.a. Banks, savings associations, and credit unions with total assets of over \$10 billion and their affiliates.	a. Consumer Financial Protection Bureau 1700 G Street N.W. Washington, DC 20552
b. Such affiliates that are not banks, savings associations, or credit unions also should list, in addition to the CFPB:	b. Federal Trade Commission: Consumer Response Center – FCRA Washington, DC 20580 (877) 382-4357
2. To the extent not included in item 1 above:	a. Office of the Comptroller of the Currency Customer Assistance Group 1301 McKinney Street, Suite 3450 Houston, TX 77010-9050
a. National banks, federal savings associations, and federal branches and federal agencies of foreign banks	b. Federal Reserve Consumer Help Center P.O. Box 1200 Minneapolis, MN 55480
b. State member banks, branches and agencies of foreign banks (other than federal branches, federal agencies, and Insured State Branches of Foreign Banks), commercial lending companies owned or controlled by foreign banks, and organizations operating under section 25 or 25A of the Federal Reserve Act	c. FDIC Consumer Response Center 1100 Walnut Street, Box #11 Kansas City, MO 64106
c. Nonmember Insured Banks, Insured State Branches of Foreign Banks, and insured state savings associations	d. National Credit Union Administration Office of Consumer Protection (OCP) Division of Consumer Compliance and Outreach (DCCO) 1775 Duke Street Alexandria, VA 22314
d. Federal Credit Unions	
3. Air carriers	Asst. General Counsel for Aviation Enforcement & Proceedings Aviation Consumer Protection Division Department of Transportation 1200 New Jersey Avenue, S.E. Washington, DC 20590
4. Creditors Subject to Surface Transportation Board	Office of Proceedings, Surface Transportation Board Department of Transportation 395 E Street, S.W. Washington, DC 20423
5. Creditors Subject to Packers and Stockyards Act, 1921	Nearest Packers and Stockyards Administration area supervisor
6. Small Business Investment Companies	Associate Deputy Administrator for Capital Access United States Small Business Administration 409 Third Street, SW, 8th Floor Washington, DC 20416
7. Brokers and Dealers	Securities and Exchange Commission 100 F Street, N.E. Washington, DC 20549
8. Federal Land Banks, Federal Land Bank Associations, Federal Intermediate Credit Banks, and Production Credit Associations	Farm Credit Administration 1501 Farm Credit Drive McLean, VA 22102-5090
9. Retailers, Finance Companies, and All Other Creditors Not Listed Above	FTC Regional Office for region in which the creditor operates or Federal Trade Commission: Consumer Response Center – FCRA Washington, DC 20580 (877) 382-4357

APPENDIX C: BACKGROUND CHECK AUTHORIZATION

After carefully reading the Background Check Disclosure form, I authorize the Company to order my background report, including investigative consumer reports. I understand that the Company may rely on this authorization to order additional background reports, including investigative consumer reports, during my employment without asking me for my authorization again as allowed by law.

I also authorize the following agencies and entities to disclose to KYC Solutions and its agents all information about or concerning me, including but not limited to: my past or present employers; learning institutions, including colleges and universities; law enforcement and all other federal, state and local agencies; federal, state and local courts; the military; credit bureaus (where allowed by law); driving record agencies; if applicable, workers' compensation injuries; all other private and public sector repositories of information; and any other person, organization, or agency with any information about or concerning me. Workers' compensation information will only be requested in compliance with federal Americans with Disabilities Act and/or any other applicable federal, state or local laws and only after a conditional job offer is made. The information that can be disclosed to KYC Solutions and its agents includes, but is not limited to, information concerning my employment history, education, personal references, credit history (where allowed by law), driving record, criminal history, military service, and professional credentials and licenses.

I agree that a copy of this form is valid like the signed original. I certify that all of my personal information on this form is *true and correct* and understand that dishonesty may disqualify me from consideration for employment with the Company, or if I am hired or already work for the Company, that my employment may be terminated.

Full name as it appears on license: _____
Last First Middle

Previously used name: _____ Dates Used: _____

Previously used name: _____ Dates Used: _____

Social Security #: _____ Driver's License #: _____ State: _____

May your present employer be contacted? ☐ YES ☐ NO ☐ Not employed

FOR IDENTIFICATION PURPOSES ONLY:	Date of Birth: _____
	Sex: <input type="checkbox"/> Male <input type="checkbox"/> Female
	Race: <input type="checkbox"/> Asian <input type="checkbox"/> African-American <input type="checkbox"/> Caucasian <input type="checkbox"/> Hispanic <input type="checkbox"/> Other

Current address: _____
Street City State Zip

Length of time at current address: _____ Below, please list cities and states of residence for the past **ten years**:

City	State	Dates	City	State	Dates
City	State	Dates	City	State	Dates
City	State	Dates	City	State	Dates

If you live or work for the Company in California, Minnesota or Oklahoma: Check this box if you would like a free copy of your report: ☐

Signature: _____ Date: _____

For contact purposes only: Email address: _____ Phone #: _____

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APPENDIX D: GLOSSARY

Adjudication is the phase of the onboarding process, or the post-hire/rent incident process, in which the end-user of a consumer report considers the totality of information gathered, including the reasonableness of explanations and corrections offered by an applicant or incumbent (p. 25), and makes a hire/retain/rent/approve or deny/dismiss/evict/disapprove decision.

Adverse action as applicable to employment means “a denial of employment or any other decision for employment purposes that adversely affects any current or prospective employee...”

Ban-the-box see *fair chance*.

Basic background checks verify the subject’s identity and query criminal and “wanted” records through name checks against databases and results in a “consumer report.” This check meets Florida’s Level 1 screening process.

Candidate see *consumer*.

Comprehensive background record checks include the results of either a basic or a security check, and add employment and education, licenses, and employment credit history when permitted.

Consumer as defined in the FCRA, means an individual, a natural person. But, for purposes of this manual, the term *consumer* applies to applicants (or incumbents) for employment or housing.

Consumer report is defined by the FCRA as “any written, oral, or other communication of any information by a consumer reporting agency bearing on a consumer’s credit worthiness, credit standing, credit capacity, character, general reputation, personal characteristics, or mode of living which is used or is 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 [and housing] purposes ...”

Consumer reporting agency (CRA) means any individual or business that for monetary fees, dues or other form of payment regularly collects, assembles or evaluates information on applicants or incumbents for employment (or housing). This includes private investigators and information aggregators who sell or resell personal data about individuals (see *consumer*).

Covered opportunities are housing or employment (see *employee*) opportunities that meet the requirements of the FCRA in which consumers are extended rights under the federal FCRA or a state law.

- Disposition** is the outcome of a particular civil or criminal case, and the disposition date is the date in which the outcome occurs. For example, the disposition of a shoplifting charge would be a finding of guilty in a trial, or a plea of guilty or nolo contendere before a judge; and the disposition date would be the day that disposition occurred. In our shoplifting example, the shoplifting charge against a consumer whose case was disposed of (i.e., pled guilty) on April 20, 2011 and who applied for work on April 22, 2018 cannot be used in a “hire” decision because it was disposed just two days longer than the seven-year scope, even if the sentencing occurred a month later and within the seven-year period. The FCRA generally permits the use of criminal or civil records that were disposed not earlier than seven years before the date of application.
- Employment purposes** in the FCRA is “when [a consumer report is] used ...for the purpose of evaluating an [applicant or incumbent] for employment, promotion, reassignment or retention as an employee.” But remember that the FCRA includes “any other purpose authorized,” like housing.
- Employee** see *consumer*. Also, the term employee includes vendors, licensees, and contractors in service for a state program.
- Fair chance** also known as ban-the-box, is a hiring practice codified as law, regulation or institutional policy that strives to give individuals with a criminal history the chance to be evaluated for the qualifying skills and character they present for an employment opportunity before background checks are conducted. The intent is to prevent potential employers from asking about and considering criminal histories before evaluating applicants’ qualifications for employment. Generally, entities or jurisdictions that adhere to fair chance policies are required to process applicants through to the point of selection, and extending an offer of employment that is conditional on the outcome of the investigation and adjudication.
- Full field background** investigations are traditional, extensive investigations by experienced Inquesta investigators. They begin with a comprehensive background check before conducting in-person investigations into areas of inquiry that explore character, habits, integrity and mode of living. Full field background investigations normally begin with an in-person security interview.
- Incumbent** see *consumer*. For our purposes in this manual, we consider an incumbent to be an individual already connected to an entity as an employee or already housed as a tenant.
- Investigative consumer report** means “a consumer report or portion thereof 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 [applicant or incumbent].”

Level 1 is a State of Florida standard for background security checks for minors; that is, applicants and incumbents for Florida employment (see *employee*) who have not turned 18 years of age. Level 1 security checks are based on names and personal descriptors.

Level 2 is a State of Florida standard for background security checks for adults; that is, individuals who are at least 18 years old who are applicants or incumbents for Florida employment (see *employee*). Level 2 security checks are based on fingerprints that are compared against FDLE and FBI databases.

Minor are individuals under the age of 18.

Negligent hiring is the responsibility an employer may have if an employee causes harm to others in the workplace and the incident might have been avoided through a pre-employment reasonable due diligence investigation.

Negligent retention is an employer's failure to continue due diligence after the hire, fails to discover through reasonable due diligence that an employee has gained a discoverable history that may put other employees at risk, and the employee harms others in the workplace. Reasonable due diligence after the hire is usually considered a new background check every five years.

Security background checks meet Florida's Level 2 screening requirements. These are based on a subject's "live scan" fingerprints that are sent directly to the FDLE to query their records throughout Florida and to the FBI to query criminal histories nationally.

Tenant see *consumer*.

User of a *consumer report* (a verification or background investigation report) as defined in the FCRA, is an employee, agent or officer of an employer (or property manager) who looks at the totality of information gathered about applicants and who uses the report(s) to adjudicate the hire/no-hire or rent/no-rent decision. Consumer reports are confidential by law and may not be distributed to third-parties or for any other purpose.

Verifications are services in which proprietary and public databases are queried; and original records or public and private organizations and institutions are visited in person or contacted by telephone, email or other means; to verify the accuracy and truthfulness of claims and information provided on a resume or application for an opportunity such as employment, housing, a contract, or a loan. Verifications may also include standardized inquiries into a consumer's character, habits and reputation, such as would be provided by former employers, references and credit bureau reports. Verifications result in consumer reports or investigative consumer reports.

Vulnerable adult is defined in Florida's law as an elderly or disabled person.

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APPENDIX E: ACRONYMS AND ABBREVIATIONS

ABA	American Bankers Association
ADEA	Age Discrimination in Employment Act of 1967
AHCA	Agency for Health Care Administration
IAFIS	Integrated Automated Fingerprint Identification System
AKA	Also Known As (or a.k.a.)
CAP	College of American Pathologists
CBSV	Consent Based SSN Verification
CDL	Commercial Driving License
CDLIS	Commercial Drivers License Information System
CFPB	Consumer Financial Protection Bureau
CFTC	Commodities Futures Trading Commission
CLIA	Clinical Laboratory Improvement Amendments
CMVSA	Commercial Motor Vehicle Safety Act of 1986
CRA	Consumer reporting agency
DCF	Department of Children and Families
DEA	U.S. Drug Enforcement Administration
DHS	U.S. Department of Homeland Security
DOB	Date of birth
DOE	Department of Education
DOT	U.S. Department of Transportation
DTC	Defense Trade Controls
DUI	Driving Under the Influence (violation)
DWI	Driving While Intoxicated (violation)

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EEOC	U.S. Equal Employment Opportunity Commission
EPLS	Excluded Parties List System
FBI	Federal Bureau of Investigation
FACTA	Fair and Accurate Credit Transactions Act
FCRA	Fair Credit Reporting Act (U.S. code 15 U.S.C. § 1681)
FDA	U.S. Food and Drug Administration
FDIC	Federal Deposit Insurance Corporation
FDLE	Florida Department of Law Enforcement
FHFA	Federal Housing Finance Agency
FICO	Fair Isaac Co. (former name, now just FICO, a predictive analytics company)
FINRA	Financial Industry Regulatory Authority
FMCSA	Federal Motor Carrier Safety Administration
FRB	Board of Governors of the Federal Reserve System
FTC	Federal Trade Commission
F.S.	Florida Statutes
F.S. s.	Florida Statutes Section
GSA	General Services Administration
HazMat	Hazardous Materials
HR	Human Resources
KYC	Know Your Customer (an acronym found in U.S. laws) and our variation, Know Your Crew
LDP	HUD Limited Denial of Participation
LEIE	List of Excluded Individuals and Entities
MCMIS	Motor Carrier Management Information System
MRO	Medical Review Officer

NASD	National Association of Securities Dealers
NCUA	National Credit Union Administration
NELP	National Employment Law Project
NFA	National Futures Associates
NYSE	New York Stock Exchange
OCC	Office of the Comptroller of the Currency
OFAC	Office of Foreign Assets Control
OIG	Office of the Inspector General (there are 32 in the U.S. Government)
PLC	Palestinian Legislative Council
PSP	Pre-Employment Screening Program
SAMHSA	Substance Abuse and Mental Health Services Administration
SDN	Specially Designated Nationals (issued by OFAC)
SEC	Securities and Exchange Commission
SHP	Safe Hiring Program
SSA	Social Security Administration
SEC	Securities and Exchange Commission
SHP	Safe Hiring Program
SSN	Social Security number
TPA	Third Party Administrator
U.S.C.	United States Code

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1

10-panel expanded non-DOT screen. *See* drug testing

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5-panel DOT screen. *See* drug testing

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