

# One Minute Memo<sup>®</sup>



## Vermont Becomes Eighth State to Prohibit Employers From Using Credit Information in Employment

Although some employers routinely obtain credit reports on applicants and employees for use in employment, the recent trend in state legislation has been curtailing employers' ability to use credit history as a tool in making employment decisions. On May 17, 2012, the Governor of Vermont enacted into law Act No. 154 (S. 95) ("Act"), which generally precludes employers from even inquiring about credit history, let alone using credit reports or credit history information in the employment context. This new law, which goes into effect **July 1, 2012**, applies to all employers in Vermont, subject to various exceptions, set forth below.

The Act is premised on the legislature's statement that credit reports "do not provide meaningful insight in to a candidate's character, responsibility or prospective job performance." It generally prohibits employers from inquiring into an applicant or employee's credit report or credit history and further prohibits employers from discriminating against or making any employment decisions (e.g. hire, fire, alter the compensation or any other term or condition of employment) against an individual based on his or her credit report or credit history. Notably, credit history includes any credit information obtained from any third party, not only information contained in a credit report.

The Act sets forth various exemptions based on the type of employer at issue and/or the position or responsibilities of the applicant/employee about whom the employer wishes to obtain the credit information. Employers may only obtain and use credit history information in the employment context if they meet one or more of the following criteria:

- The information is required by state or federal law or regulation;
- The position of employment:
  - involves access to "confidential financial information," defined as sensitive financial information of commercial value that consumers or clients explicitly authorize the employer to have and which the employer only entrusts to certain employees;
  - is that of a law enforcement officer, emergency medical personnel or a firefighter (as these terms are defined by state law);
  - requires a financial fiduciary responsibility to the employer or its clients, including authority to issue payments, collect debts, transfer money, or enter into contracts; or involves access to employer's payroll information.
- The employer is a financial institution or credit union (as these terms are defined by state law); or
- The employer can demonstrate that the information is "valid and reliable predictor of employee performance in a specific position of employment."

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The Act provides, however, that even exempted employers that seek to obtain or act upon a credit information concerning an applicant or employee, are prohibited from using credit report or credit history as the sole factor in making any employment decision. Additionally, as requires by the Fair Credit Reporting Act ("FCRA"), 15 U.S.C. §1681 *et seq.*, the Act requires employers to first obtain the employee or applicant's written consent to the disclosure of the credit information. In doing so, the employers must also disclose in writing its reasons for accessing the report. Furthermore, again similar to the FCRA, if an employer intends to take an adverse employment action based partly on the contents of the credit report, it must notify the affected individual in writing of its reasons for doing so and also afford him or her an opportunity to contest the accuracy of the credit report or credit history.

In passing the Act, Vermont joins California, Washington, Oregon, Hawaii, Illinois, Maryland and Connecticut and has become the eighth state to enact legislation restricting employers use of credit reports. These laws evidence a marked trend against the use of such information in employment decisions. Indeed, several other states have similar proposed legislation. Based on these developments, coupled with the Equal Employment Opportunity Commission's (EEOC) statements that the use of credit history may have a disparate impact on certain minority groups, employers are well advised to reassess their practices and policies on the use of credit information in employment.

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