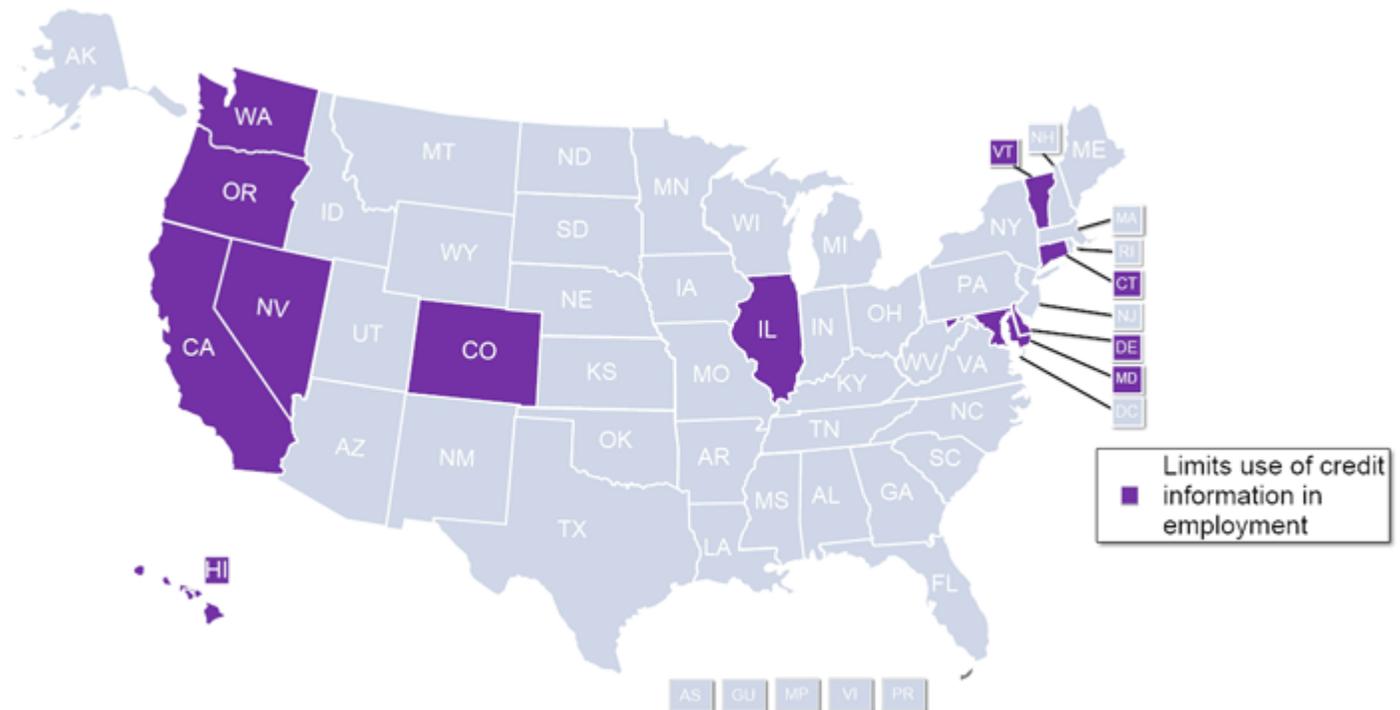


## State Laws Limiting Use of Credit Information For Employment

As of May 5, 2016, there are eleven (11) states that currently limit employers' use of credit information in employment: California, Colorado, Connecticut, Delaware, Hawaii, Illinois, Maryland, Nevada, Oregon, Vermont and Washington. In addition, there are dozens of pending bills in numerous states relating to the use of credit information in employment decisions, the majority of which address restrictions or exemptions.



[Washington](#) enacted legislation in 2007, [Hawaii](#) enacted legislation in 2009, and [Illinois](#) and [Oregon](#) enacted legislation in 2010. [California](#), [Connecticut](#) and [Maryland](#) enacted legislation in 2011. [Vermont](#) enacted its legislation in 2012. [Colorado](#) and [Nevada](#) enacted legislation in 2013. [Delaware](#) prohibited a public employer from inquiring into or considering the criminal record, criminal history or credit history or score of an applicant before it makes a conditional offer to the applicant in 2014. The remaining thirty nine (39) states general allow the use of credit information in employment decisions, subject to the laws of some U.S. cities, and Federal Law.

**NOTE: The information included herein is for educational purposes only and is valid only as of the date specified herein and may change thereafter. For updates, or if you have questions regarding whether an individual employer can use credit information in employment decisions, please consult with your own legal or compliance counsel, or contact your [state department of labor](#). We are unable to provide legal assistance or advice.**

By way of summary:

### **California**

California Assembly Bill 22 (AB 22) amends Section 1785.20.5 of the Civil Code and adds Chapter 3.6 (commencing with Section 1024.5) to Part 2 of Division 2 of the Labor Code, relating to employment. AB 22 prohibits employers or prospective employers – with the exception of certain financial institutions – from obtaining a consumer credit reports for

employment purposes unless the position of the person for whom the report is sought is one of the following:

- A managerial position;
- A position in the state Department of Justice;
- A sworn peace officer or other law enforcement position;
- A position for which the information contained in the report is required by law to be disclosed or obtained;
- A position that involves regular access to specified personal information for any purpose other than the routine solicitation and processing of credit card applications in a retail establishment;
- A position in which the person is or would be a named signatory on the employer's bank or credit card account, or authorized to transfer money or enter into financial contracts on the employer's behalf;
- A position that involves access to confidential or proprietary information; or
- A position that involves regular access to \$10,000 or more of cash.

In addition, AB 22 also requires the written notice informing the person for whom a consumer credit report is sought for employment purposes to also inform that person of the specific reason for obtaining the report.

California Passes AB 22 Placing Restrictions on Use of Credit Checks by Employers:  
[http://leginfo.ca.gov/pub/11-12/bill/asm/ab\\_0001-0050/ab\\_22\\_bill\\_20110920\\_enrolled.pdf](http://leginfo.ca.gov/pub/11-12/bill/asm/ab_0001-0050/ab_22_bill_20110920_enrolled.pdf).

### **Colorado**

The "Employment Opportunity Act" (SB13-018) specifies the purposes for which consumer credit information such as consumer credit reports and credit scores can be used by employers or potential employers in making employment-related decisions.

Specifically, the "Employment Opportunity Act":

- Prohibits an employer's use of consumer credit information for employment purposes if the information is unrelated to the job;
- Requires an employer to disclose to an employee or applicant for employment (jointly referred to as "employee") when the employer uses the employee's consumer credit information to take adverse action against him or her and the particular credit information upon which the employer relied;
- Authorizes an employee aggrieved by a violation of the above provisions to bring suit for an injunction, damages, or both; and
- Requires the department of labor and employment to enforce the laws related to employer use of consumer credit information.

The "Employment Opportunity Act" defines employment purposes broadly to include "evaluating a person for employment, hiring, promotion, demotion, reassignment, adjustment in compensation level, or retention as an employee." Two types of employers are permitted to use consumer credit information for employment purposes under the law: "banks or financial institutions" and employers "required by law" to conduct credit checks. The remaining employers may only review credit reports for "executive or management personnel" and positions that involve "contracts with defense, intelligence, national security, or space agencies of the federal government."

Colorado Employment Opportunity Act Specifies Permissible Use of Credit Reports by Employers Starting July 1, 2013. The "Employment Opportunity Act":

<http://www.coloradocapitolwatch.com/bill/0/SB13-018/2013/1/>

## Connecticut

Connecticut Senate Bill No. 361 (S.B. 361) prohibits certain employers from using credit reports in making hiring and employment decisions regarding existing employees or job applicants. The law took effect October 1, 2011 and applies to all employers in Connecticut with at least one employee.

Exceptions to S.B. 361 are employers that are financial institutions as defined under law, credit reports required to be obtained by employers by law, and credit reports “substantially related to the employee’s current or potential job.” These “substantially related” reports are allowable if the position:

- Is a managerial position that involves setting the direction or control of a business, division, unit or an agency of a business;
- Involves access to personal or financial information of customers, employees or the employer, other than information customarily provided in a retail transaction;
- Involves a fiduciary responsibility to the employer, as defined under the law;
- Provides an expense account or corporate debit or credit card;
- Provides access to certain confidential or proprietary business information, as defined under the law; or
- Involves access to the employer’s nonfinancial assets valued at \$2,005 or more, including, but not limited to, museum and library collections and to prescription drugs and other pharmaceuticals.

New Connecticut Law Restricts Use of Credit Reports in Employment and Hiring Decisions Effective October 1, 2011. Senate Bill 361: <http://www.cga.ct.gov/2011/ACT/PA/2011PA-00223-R00SB-00361-PA.htm>.

## Delaware

Delaware House Bill No. 167 (H.B. 167) amends Titles 19 and 20 of the Delaware Code with regard to employment practices. Under H.B. 167, it is an unlawful employment practice for any public employer in Delaware to inquire into or consider the credit history or credit score of an applicant for employment during the initial application process, up to and including the first interview. A public employer may inquire into or consider an applicant’s credit history or credit score after it has determined that the applicant is otherwise qualified and has conditionally offered the applicant the position. The requirements of this law shall not apply where a credit check is a requirement of State or federal law for a particular class of services.

Delaware Bill Prohibits Employers from Considering Criminal Record and Credit History of Applicants before Job Offer. Delaware House Bill No. 167: [http://legis.delaware.gov/LIS/lis147.nsf/vwLegislation/HB+167/\\$file/legis.html?open](http://legis.delaware.gov/LIS/lis147.nsf/vwLegislation/HB+167/$file/legis.html?open).

## Hawaii

House Bill 31 SD1 CD1 was passed by the Hawaiian legislature – over the Governor’s veto – and put limits on the use of employment credit history or credit reports unless it “directly related to a bona fide occupations qualification” or falls under another exception. Effective July 1, 2009, the law amended the Hawaiian Fair Employment Practices Act by making it an unlawful discriminatory practice for any employer to refuse to hire or employ, continue employment or to bar or discharge from employment, or otherwise to discriminate against any individual in compensation or in the terms, conditions, or privileges of employment of any individual because of the individual’s credit history or credit report, unless the information in the individual’s credit history or credit report directly relates to a bona fide occupational qualification.

The law also indicated that in terms of hiring in the first place, the employer can only inquire into the credit history or credit report on a prospective employee only after there has been a conditional job offer, and only if the information is directly related to a bona fide occupational qualification. The law makes exceptions for employers that are expressly permitted to inquire

into credit history or a credit report by federal or state law, financial institutions that are insured by a federal agency or to managerial or supervisory employees. The law sets out a specific definition of what constitutes a “Managerial” or “Supervisory” employee.

Hawaii Puts Limits on Use of Credit Reports. House Bill 31 SD1 CD1: [http://www.capitol.hawaii.gov/session2009/bills/HB31\\_CD1\\_.pdf](http://www.capitol.hawaii.gov/session2009/bills/HB31_CD1_.pdf).

## Illinois

The “Employee Credit Privacy Act” (Illinois House Bill 4658) prohibits employers in the state from discriminating based on the credit history of job seekers or employees. The law took effect January 1, 2011 and prohibits employers from inquiring about or using an employee’s or prospective employee’s credit history as a basis for employment, recruitment, discharge, or compensation. Employers who violate the new law can be subject to civil liability for damages or injunctive relief.

However, under the law, employers may access credit checks under limited circumstances, including positions that involve:

- Bonding or security per state or federal law;
- Unsupervised access to more than \$2,500;
- Signatory power over businesses assets of more than \$100;
- Management and control of the business; and
- Access to personal, financial or confidential information, trade secrets, or state or national security information.

Illinois Law Prohibits Pre-Employment Credit Checks on Most Job Applicants.

“Employee Credit Privacy Act” (House Bill 4658): <http://e-lobbyist.com/gaits/text/21025>.

## Maryland

The “Job Applicant Fairness Act” (Maryland House Bill 87) took effect October 1, 2011 and enacted new legislation placing restrictions on so-called credit checks by employers that use the credit report or credit history of job applicants or employees for employment decisions. The Act reads as follows:

(c) When employer may request or use employee’s credit history. --

(1) An employer may request or use an applicant’s or employee’s credit report or credit history if:

- (i) 1. the applicant has received an offer of employment; and 2. the credit report or credit history will be used for a purpose other than a purpose prohibited by subsection (b) of this section; or
- (ii) the employer has a bona fide purpose for requesting or using information in the credit report or credit history that is: 1. substantially job-related; and 2. disclosed in writing to the employee or applicant.

(2) For the purposes of this subsection, a position for which an employer has a bona fide purpose that is substantially job-related for requesting or using information in a credit report or credit history includes a position that:

- (i) is managerial and involves setting the direction or control of a business, or a department, division, unit, or agency of a business;
- (ii) involves access to personal information, as defined in § 14-3501 of the Commercial Law Article, of a customer, employee, or employer, except for personal information customarily provided in a retail transaction;
- (iii) involves a fiduciary responsibility to the employer, including the authority to issue payments, collect debts, transfer money, or enter into contracts;
- (iv) is provided an expense account or a corporate debit or credit card; or
- (v) has access to: 1. information, including a formula, pattern, compilation, program, device, method, technique, or process, that: A. derives independent

economic value, actual or potential, from not being generally known to, and not being readily ascertainable by proper means by, other persons who can obtain economic value from the disclosure or use of the information; and B. is the subject of efforts that are reasonable under the circumstances to maintain its secrecy; or 2. other confidential business information

Along with prohibiting an employer from using the credit report or credit history of an employee or job applicant for employment purposes, the Act specifically prohibits most employers from using credit checks to determine whether to:

- Deny employment to a job applicant;
- Discharge an employee;
- Decide compensation; or
- Evaluate other terms and conditions of employment.

While the Act applies to Maryland employers of any size, some employers are excluded from the Act's prohibitions, including financial institutions and employers required under federal or state law to inquire into the credit history of job applicants or employees.

The Act also requires that employers wishing to request or use credit information of job applicants and employees for a bona fide purpose must disclose the intent to do so in writing to the job applicant or employee.

Maryland to Place Restrictions on Use of Credit Checks by Employers. "Job Applicant Fairness Act" (House Bill 87): [http://mlis.state.md.us/2011rs/chapters\\_noln/Ch\\_29\\_hb0087T.pdf](http://mlis.state.md.us/2011rs/chapters_noln/Ch_29_hb0087T.pdf).

### **Nevada**

With Governor Brian Sandoval signing Senate Bill 127 (SB 127) into law, Nevada has now become the tenth state in the U.S. to prohibit employers from conditioning employment on a consumer credit report or other credit information with few exceptions. Nevada SB 127 goes into effect on October 1, 2013.

Senate Bill 127 amends Chapter 613 of the Nevada Revised Statutes (NRS) that covers "Employment Practices" to make it unlawful for any employer in the state to:

- Directly or indirectly, require, request, suggest or cause any employee or prospective employee to submit a consumer credit report or other credit information as a condition of employment;
- Use, accept, refer to or inquire concerning a consumer credit report or other credit information;
- Discharge, discipline, discriminate against in any manner or deny employment or promotion to, or threaten to take any such action against any employee or prospective employee: (a) who refuses, declines or fails to submit a consumer credit report or other credit information; or (b) on the basis of the results of a consumer credit report or other credit information; or
- Discharge, discipline, discriminate against in any manner or deny employment or promotion to, or threaten to take any such action against any employee or prospective employee who has pursuant to the new law: (a) filed any complaint or instituted or caused to be instituted any legal proceeding; (b) testified or may testify in any legal proceeding instituted; or (c) exercised his or her rights, or has exercised on behalf of another person the rights afforded to him or her.

However, Senate Bill 127 does provide for exceptions where an employer may request or consider a consumer credit report or other credit information for employment purposes if:

- The employer is required or authorized, pursuant to state or federal law, to use a consumer credit report or other credit information for that purpose;
- The employer reasonably believes that the employee or prospective employee has engaged in specific activity which may constitute a violation of state or federal law; or
- The information contained in the consumer credit report or other credit information is “job related” or reasonably related to the position for which the employee or prospective employee is being evaluated for employment, promotion, reassignment or retention as an employee.

If an employer violates the new law, the Labor Commissioner may impose an administrative penalty against the employer of not more than \$9,000 for each violation.

Nevada Becomes Tenth State to Prohibit Use of Credit Reports by Employers for Employment Purposes. Nevada Senate Bill 127: <http://openstates.org/nv/bills/77/SB127/>

### **Oregon**

Oregon Senate Bill (SB) 1045, signed into law in February 2010 and declared to be effective immediately, prohibits the use of credit histories of job applicants in making employment-related decisions including hiring, discharge, promotion, and compensation.

However, SB 1045 provides exceptions for financial institutions, public safety offices, and other employment if credit history is job-related and use is disclosed to applicant or employee. The exceptions to the law include the following circumstances:

- Employers that are federally insured banks or credit unions;
- Employers that are required by state or federal law to use Individual credit history for employment purposes;
- The employment of a public safety officer, or
- Employers that can demonstrate that the information in a credit report is substantially job-related AND the employer’s reasons for the use of such information are disclosed to the employee or prospective employee in writing.

Oregon Law Prohibits Use of Credit History of Job Applicants for Employment Screening. Senate Bill 1045:

<https://olis.leg.state.or.us/liz/2010S1/Downloads/MeasureDocument/SB1045/A-Engrossed>

### **Vermont**

Effective July 1, 2012, Vermont Act No. 154 (S. 95) prohibits employers in the state, subject to various exceptions, from using or inquiring into credit reports or credit histories of job applicants and employees in the employment context and further prohibits discriminating against individuals based on their credit information.

Enacted into law by Governor Peter Shumlin on May 17, 2012, Vermont Act No. 154 (S. 95) pertains to “credit history” that includes any credit information obtained from any third party, not only information contained in a credit report. The Act sets forth exemptions based on the type of employers at issue and the position or responsibilities of applicants or employees. Employers are exempt and may obtain and use credit information if they meet one or more of these conditions:

- The information is required by state or federal law or regulation.
- The position of employment involves access to confidential financial information.
- The employer is a financial institution or credit union as defined by state law.
- The position of employment is that of a law enforcement officer, emergency medical personnel, or a firefighter as defined by state law.

- The position of employment requires a financial fiduciary responsibility to the employer or a client of the employer, including the authority to issue payments, collect debts, transfer money, or enter into contracts.
- The employer can demonstrate that the information is a valid and reliable predictor of employee performance in the specific position of employment.
- The position of employment involves access to an employer's payroll information.

However, even exempted employers that seek to obtain or act upon the credit information of an applicant or employee are prohibited by the Act from using credit report or credit history as the sole factor in making any employment decision. In addition, the Act requires employers to first obtain the written consent of the employee or applicant to the disclosure of the credit information and must also disclose in writing its reasons for accessing the report. If an employer intends to take an adverse employment action based on any contents of the credit report, the employer must notify the applicant or employee in writing of its reasons for doing so and also offer the subject an opportunity to contest the accuracy of the credit report or credit history.

Vermont Prohibits Employers from Using Credit Reports for Employment Decisions Starting July 1, 2012.

Vermont Act No. 154 (S. 95): <http://www.leg.state.vt.us/docs/2012/bills/Passed/S-095.pdf>.

### **Washington**

Washington passed a law in 2007 amending the Revised Code of Washington (RCW) that stated employers could not obtain a credit report as part of a background check unless the information was substantially job related and the employer's reasons for the use of such information were disclosed to the consumer in writing.

Under the amended Washington law, employers cannot obtain a credit report as part of a background check unless the information is:

- Substantially job related and the employer's reasons for the use of such information are disclosed to the consumer in writing; or
- Required by law.

Employers in the state of Washington utilizing employment credit reports needed to change their forms, carefully review any job position where a credit report is requested, and communicate to job applicants the reason a credit report is substantially related to a particular job.

WA Restrictions on the Use of Credit Reports:

RCW 19.182.020 (Consumer report — Furnishing — Procuring):

<http://apps.leg.wa.gov/rcw/default.aspx?cite=19.182.020>.

RCW Chapter 19.182 — Fair Credit Reporting Act:

<http://apps.leg.wa.gov/RCW/default.aspx?cite=19.182>.

### **Cities with Credit Report Laws**

Along with the states mentioned above, some U.S. cities have laws that restrict employers from using credit reports in employment decisions. By way of example only, New York City passed a ban on employment credit checks that took effect on September 3, 2015, that strictly prohibits most NYC employers from using credit history to decide whether to hire, fire, or promote an individual.

New York City Businesses Must Comply with New Law Banning Credit Checks by Employers.

Stop Credit Discrimination in Employment Act, N.Y.C. Admin. Code §§ 8-102(29), 8-107(9)(d), (24); Local Law No. 37 (2015):

<http://www.nyc.gov/html/cchr/downloads/pdf/CreditHistory-InterpretiveGuide-LegalGuidance.pdf>.

NYC Commission on Human Rights (NYCCHR) Enforcement Guidance:

[http://www.nyc.gov/html/cchr/downloads/pdf/CreditHistory\\_1Page-Employer.pdf](http://www.nyc.gov/html/cchr/downloads/pdf/CreditHistory_1Page-Employer.pdf).