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New Illinois Law Prohibits Most Employers from Relying on Credit History in Making Employment Decisions

On August 10, 2010, Public Act 096-1426 (Employee Credit Privacy Act) was signed into law by Illinois Governor Pat Quinn. This Act, which becomes effective on January 1, 2011, prohibits most Illinois private employers from using an employee's or applicant's personal financial history or other credit information, including credit reports, in making any employment decision. Exempted from this statute are banking and financial institutions, insurance or surety businesses, state law enforcement or investigative unit, state or local governmental agencies that require use of credit history or credit report, and debt collection entities. Also exempted are positions where the employer can demonstrate that the credit information is justified as a bona fide occupational requirement for that position.

The Act prohibits Illinois employers employing one or more persons from obtaining credit histories, credit reports, or any other information, written or otherwise, concerning "borrowing and repaying behavior," or that otherwise "bears on a consumer's creditworthiness, credit standing, credit capacity or credit history."

Exclusions. The statute governs all employers except those specifically excluded or exempted. Five categories are excluded from coverage:

Banking institutions, including savings and loans, credit unions or any subsidiary or affiliate of such institution

Insurance or surety companies as defined by the Illinois Insurance Code

Any state law enforcement or investigative unit

Any state or local government agency “which otherwise requires use of the employee’s or applicant’s credit history or credit report”

Any entity defined as a debt collector under federal or state law

Bona Fide Occupational Requirement Exemption. The statute also authorizes exceptions for those positions for which the employer can demonstrate the use of the financial and credit information is justified as a “bona fide occupational requirement.” This requires that the positions at issue meet at least one of seven specific criteria:

Where state or federal law requires bonding or other security for the position

Where the position includes “custody of or unsupervised access to cash or marketable assets valued at \$2,500 or more

Where the position has signatory power over business assets of \$100 or more per transaction

Where the position is a managerial position that involves “setting the direction or control of the business”

Where the position involves access to personal or confidential information, financial information, trade secrets, or state or national security information

Any position that the U.S. Department of Labor or Illinois Department of Labor has defined by administrative rule or regulation that credit history is a bona fide occupational requirement

Where the employee’s or applicant’s credit history is required by, or exempt under, federal or state law

Prohibited Actions. The statute prohibits non-exempt employers from making any employment decision, from hiring to termination, because of the individual’s credit history or credit report. They are prohibited from making any inquiry about the individual’s credit history, or from ordering or obtaining a credit report from a consumer reporting agency. The statute also prohibits retaliating against any individual who files a complaint under this law, or who testifies, assists or participates in any action under this law, or who opposes a violation of this law.

Remedies. The remedies available to individuals for violation of this law include injunctive relief, damages, costs and attorneys fees.

What This Means To You

If you are currently using credit information in making employment decisions, you should evaluate

whether you fall under any of the business exemptions of the law. If not, you should evaluate whether there are positions where the bona fide occupational applies, and document that evaluation and justification. Finally, you should advise personnel involved in employment decisions, including supervisors, of the requirements and prohibitions of the law and include the law in your periodic supervisory training.

Contact Information

Should you have any questions about this law or its application, please contact your Husch Blackwell Sanders attorney.

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