



ILLINOIS JOINS LIST OF STATES NARROWLY CIRCUMSCRIBING CREDIT CHECKS BY EMPLOYEES

Effective January 1, 2011, the ability of Illinois employers to conduct credit checks on applicants/employees and use the information for employment purposes will be significantly restricted. Illinois House Bill 4658 -- the Employee Privacy Act -- was signed on August 10, 2010 by Governor Quinn. The Act will prohibit all but a handful of employers from: (1) inquiring into an applicant or an employee's credit history; (2) ordering a credit report from a consumer reporting agency; or (3) taking any employment action (such as refusing to hire someone) because of the individual's credit history or credit report. An individual can bring a private cause of action in state court to enforce this Act and can seek injunctive relief and damages as well as costs and attorneys' fees.

There are exceptions to the Act's coverage. Employers in the following industries are specifically exempted from coverage:

- banks and other financial institutions;
- businesses engaged in insurance;
- state law enforcement agencies;
- state and local government agencies that require credit reports; and
- qualified debt collection agencies.

Also, any business can still conduct a credit check if it can establish credit worthiness is a *bona fide* job qualification. To be a *bona fide* job qualification, however, the employer will have to establish at least one of the following specific requirements:

- The position involves unsupervised access to cash or goods with a value of \$2,500 or more;
- The position involves power to sign for business assets of \$100 or more per transaction;
- The position is a managerial position which involves setting the direction or control of the business;
- The position includes access to protected information such as personal or confidential information, financial information, trade secrets or State or national security information;
- The United States Department of Labor or the Illinois Department of Labor has promulgated criteria establishing that credit worthiness is a *bona fide* job qualification; or
- State or Federal requires the individual's credit history or requires that the individual be bonded or otherwise secured to hold the position.

Finally, it is important to note that the Act only restricts access to credit information. It does not prevent an employer from obtaining a background report or investigatory report from a consumer reporting agency as allowed under the Fair Credit Reporting Act as long as the report obtained does not include credit information. Further, if an employer is permitted to obtain credit information, no specific disclosures are required on any type of consent form.