

## D.C. Bill Bars Credit Check for Prospective and Current Employees

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On December 20, 2016, the Washington D.C. Council unanimously passed the “Fair Credit in Employment Amendment Act of 2016” (“Act”) ([D.C. Bill 21-0244](#)) which amends the [Human Rights Act of 1977](#) to add “credit information” as a trait protected from discrimination and makes it a discriminatory practice for most employers to directly or indirectly require, request, suggest, or cause an employee (prospective or current) to submit credit information, or use, accept, refer to, or inquire into an employee’s credit information. The Act will take effect following approval by D.C. Mayor Muriel Bowser, a 30-day period of congressional review per the [District of Columbia Home Rule Act](#), and publication in the D.C. Register, and shall apply upon inclusion of its fiscal effect in an approved budget and financial plan.

### Prohibited Inquiries and Actions

The Act will prevent most D.C. employers from using any method to inquire about an applicant or current employee’s credit information for any reason, including, as part of the application, interview process, or background check. The Act defines “credit information” as any written, oral, or other communication of information bearing on an employee’s creditworthiness, credit standing, credit capacity, or credit history. Unlike [District of Columbia’s Ban-the-Box-Legislation](#), which only limits the timing of when employers can request criminal conviction information (upon a contingent offer of employment), the Act prohibits the use of credit information with respect to any employment decisions, unless an exemption applies.

### Exemptions

The Act provides seven exemptions under which employers may still request and obtain credit information:

- where the employer is otherwise required by District law to (a) require, request, suggest, or cause any employee to submit credit information, or (b) use, accept, refer to, or inquire into an employee’s credit information;

- where an employee is applying for a position as or is employed as a police officer, including campus police officers, and other positions with a law enforcement function;
- employees of the Office of the Chief Financial Officer of the District of Columbia;
- where an employee is required to possess a security clearance under District law;
- disclosures by District government employees of their credit information to the Board of Ethics and Government Accountability, or the Office of the Inspector General, or to the use of such disclosures by those agencies;
- financial institutions,<sup>1</sup> where the employee's position involves access to "personal financial information";<sup>2</sup> or
- where an employer requests or receives credit information pursuant to a lawfully issued subpoena, court order or, law enforcement investigation.

### **Covered Employers and Employees**

The Act applies to all D.C. employers, employment agencies, and labor organizations. It applies to all individuals employed in D.C. and decisions regarding employees made by D.C. employers. This law does not appear to apply to independent contractors.

### **Enforcement**

The D.C. Office of Human Rights ("OHR") will investigate charges of violations of the Act. If after a hearing, the Commission on Human Rights determines that a violation has occurred, the employer faces a \$1,000 fine for the first violation, \$2,500 for the second, and \$5,000 for each following violation. Individuals also have the same right to a private cause of action as for other discriminatory employment practices.

The Act also directs the OHR to develop and conduct a public information campaign to educate people about the Act prior to January 2, 2018.

With this legislation, D.C. joins 11 states (California, Colorado, Connecticut, Delaware, Hawaii, Illinois, Maryland, Nevada, Oregon, Vermont, and Washington) and at least four municipalities (New York City, Chicago, Madison, WI, and Philadelphia) that have

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<sup>1</sup> "Financial institution" means a bank, savings institution, credit union, foreign bank, trust company, non-depository financial institution, or any other person which is regulated, supervised, examined, or licensed by the Department of Insurance, Securities, and Banking; which has applied to be regulated, supervised, examined, or licensed by the Department of Insurance, Securities, and Banking; which is subject to the regulation, supervision, examination, or licensure by the Department of Insurance, Securities, and Banking; or which is engaged in an activity covered by the District of Columbia Banking Code.

<sup>2</sup> The law does not define "personal financial information."

passed legislation limiting to varying degrees the use of credit checks in the hiring process for private employers.

### **What Employers Should Do Now**

While awaiting the Mayor's signature and Congressional review, D.C. employers should:

- review the exemptions to the Act to determine if they may request or use consumer credit history in connection with one or more particular positions;
- review (and prepare to revise) background check procedures, as necessary;
- prepare to train recruiters and human resources professionals who perform background checks on whether credit information may be used at all or for certain positions; and
- confirm that employment, placement, and temporary agencies, as well as background check providers, are aware of the Act and are poised to revise their forms and procedures in compliance with the Act for D.C. applicants and employees in positions covered (and not exempted) by the Act.

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