

## Client Alert.

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# California Governor Vetoes Bill Restricting Employer Use of Employee Credit Reports

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On Monday, September 27, 2010, Governor Schwarzenegger vetoed California Assembly Bill 482 ("AB 482").<sup>1</sup> AB 482 would have dramatically restricted the circumstances under which an employer could use a credit report for pre-employment screening or other employment purposes.

Under AB 482, an employer would have been prohibited from using a consumer credit report for employment purposes unless the job position fell into at least one of the following categories:

- A "managerial" position;
- A sworn peace officer or other law enforcement position;
- A position in the state Department of Justice; or
- A position for which the information contained in the report is required by law to be disclosed or obtained by the employer.

In addition, the information contained in the credit report would need to be "substantially job-related" in order to be used by the employer.<sup>2</sup> The bill would have created an exemption for financial institutions subject to the financial privacy provisions of the Graham-Leach-Bliley Act.

The Governor previously vetoed similar proposed legislation in 2008 and 2009. In his veto message for AB 482, the Governor explained: "California's employers and businesses have inherent needs to obtain information about applicants for employment and existing law already provides protections for employees from improper use of credit reports." He also expressed concern that the bill would "significantly increase the exposure for potential litigation over the use of credit checks."<sup>3</sup>

Existing federal and California laws already require employers to follow specific measures when obtaining consumer reports for employment purposes. These measures include (1) providing advance notice to the applicant or employee who would be the subject of the report; (2) obtaining the individual's authorization to procure the report; (3) allowing the individual to request and obtain a copy of the report; (4) providing notice and a copy of the report before the employer relies on it to make an adverse employment decision against the individual; and (5) providing notice of any adverse

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<sup>1</sup> The full text of the proposed legislation is available at <http://www.leginfo.ca.gov/>.

<sup>2</sup> AB 482 defined "substantially job-related" to mean "that the position of the person for whom the report is sought has access to money, other assets, or trade secrets or other confidential information." *Id.* The term "trade secret," as used in the bill, was to have the same meaning as defined in California's Uniform Trade Secrets Act. *Id.*; Cal. Civ. Code § 3426.1, subd. (d).

<sup>3</sup> See <http://gov.ca.gov/press-release/16065/>.

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employment decision against the individual based in whole or in part on information contained in the report.<sup>4</sup>

The veto of AB 482 closely follows the passage of the “Employee Credit Privacy Act,” which recently became law in Illinois.<sup>5</sup> The Illinois statute prohibits employers from obtaining a credit report regarding an applicant or employee, and asking an applicant or employee about the individual’s credit history, unless the position in question falls within certain exceptions. Illinois joins Hawaii, Oregon and Washington, which also restrict the use of credit history in employment decisions.<sup>6</sup>

Congress has proposed similar legislation at the federal level. H.R. 3149, introduced in July 2009, would amend the Fair Credit Reporting Act to restrict employers from considering a consumer credit report as a contributing factor in adverse employment decisions.<sup>7</sup> The federal bill is currently before the Committee on Financial Services. As a result, despite the veto of AB 482, California employers should be aware that there are continuing efforts to limit the use of credit reports for employment purposes.

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*Because of the generality of this update, the information provided herein may not be applicable in all situations and should not be acted upon without specific legal advice based on particular situations.*

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<sup>4</sup> See 15 U.S.C. § 1681 *et seq.*; Cal. Civ. Code § 1785 *et seq.*

<sup>5</sup> 2009 Ill. Laws 1426.

<sup>6</sup> Haw. Rev. Stat. § 378-2(8) (2010); 2010 Ore. Laws 102; Wash. Rev. Code § 19.182.020 (2010).

<sup>7</sup> The full text of H.R. 3149 is available at <http://thomas.loc.gov/cgi-bin/query/z?c111:H.R.3149>.