

## Alerts and Updates

### MARYLAND TO RESTRICT CREDIT REPORTS IN EMPLOYMENT DECISIONS

April 7, 2011

Under a just-passed law, Maryland's General Assembly has greatly restricted the use of credit reports in employment decisions. The Maryland Senate vote in the week of April 3, 2011, sends the bill to Maryland Gov. Martin O'Malley for his signature. O'Malley's spokesperson indicated the governor will sign the bill into law. Once signed, the new law will go into effect on October 1, 2011.

The Maryland Job Applicant Fairness Act (the "Act") prohibits employers from using an applicant's or employee's credit report or credit history in determining whether to deny employment; discharge an employee; or determine compensation, terms, conditions or privileges of employment. This restriction does not apply to certain types of employers identified in the new law or to employers who have a bona fide purpose for seeking the credit information that is substantially job-related.

The restrictions in the new law do not apply to an employer that is:

1. required to inquire into an applicant's or employee's credit report or credit history under federal law or any provision of state law for the purpose of employment;
2. a financial institution that accepts deposits that are insured by a federal agency, or an affiliate or subsidiary of the financial institution;
3. a credit-union share-guaranty corporation that is approved by the Maryland Commissioner of Financial Regulation; or
4. an entity, or an affiliate of the entity, that is registered as an investment advisor with the U.S. Securities and Exchange Commission.

Under the Act, a position for which an employer has a substantially job-related bona fide purpose for requesting or using information in a credit report or credit history includes a position that:

1. is managerial and involves setting the direction or control of a business, or a department, division, unit or agency of a business;
2. involves access to personal information—as defined in section 14-3501 of the commercial law article—of a customer, employee or employer, except for personal information customarily provided in a retail transaction;
3. involves a fiduciary responsibility to the employer, including the authority to issue payments, collect debts, transfer money or enter into contracts;
4. is provided an expense account or a corporate debit or credit card; or
5. has access to:

- information, including a formula, pattern, compilation, program, device, method, technique or process, that:
  - Derives independent economic value—actual or potential—from not being generally known to, and not readily ascertainable by proper means by, other persons who can obtain economic value from the disclosure or use of the information; and
  - is the subject of efforts that are reasonable under the circumstances to maintain its secrecy; or
- other confidential business information.

Complaints about violations of the new law may be filed with the Maryland Commissioner of Labor and Industry. Employers found to have violated the Act can be fined up to \$500 for the first violation, and up to \$2,500 for each repeat violation.

### **About Duane Morris**

In [April and May 2011 in various locations](#) across the United States, Duane Morris is holding its annual “Developments in Workplace Law and Practice” seminars, providing a comprehensive update of significant employment, labor relations, benefits and immigration law developments over the past year.

### **For Further Information**

If you have any questions about the information addressed in this *Alert*, please contact [Scott H. Marder](#), in the Baltimore office of Duane Morris, any [member](#) of our [Employment, Labor, Benefits and Immigration Practice Group](#) or the attorney in the firm with whom you are regularly in contact.

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