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# CREDIT REPORT USE BY EMPLOYERS

## EMPLOYMENT CONSUMER CREDIT REPORT

Employment consumer credit reports are deliberately different than credit reports used by creditors. This type of report reports limited amounts of information. The Employment Credit report prohibits the use of credit scores. These reports do not report account numbers nor account numbers. Another difference is no age or year of birth is provided. The credit inquiry also has no impact on credit scores unlike credit inquiries from creditors. Employment Consumer Credit Reports contain the following:

- Type of Account
- Account holders
- Payment history
- Balance information
- Payment amounts
- Employment History
- Account Status
- Name Variations
- Address History
- Last Verified or updated
- Public Records, such as Tax Liens or Bankruptcy
- Other credit related data

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## CONSENT

Written consent is required before an employer can obtain a credit report. Some states, currently California and Colorado, have specific consent requirements. Please seek the advice of legal counsel to ensure compliance.

## CONSUMER RIGHTS

The Fair Credit Reporting Act offers consumer protections. See Appendix A for Summary of Consumer Rights.

## PRE-ADVERSE AND ADVERSE PROCEDURES

Adverse Action procedures are required for the users of all consumer reports, including employment credit reports. Colorado has specific Adverse Action Procedure requirements for credit report users. Please refer to Senate Bill 13-018 for more information.

## BUSINESS SITE VISIT VERIFICATION

The National Credit Bureaus require an independent party verify the business entity using credit reports. This visit will verify the business address, office type, and how and where the credit reports will be stored. This visit must be completed before credit reports can be provided to the employer. This visit must be complete and meet the National Credit Bureaus standards before credit services can be performed.

## ADDRESS DISCREPANCY POLICY

The FACT Act require those who use credit reports as part of their screening process to develop and implement a verification process in the event that they receive a notice of address discrepancy. This policy would enable the user to form a reasonable belief whether the consumer report relates to the consumer about whom it was requested. If the user cannot form a reasonable belief that the report relates to the applicant/consumer, the report may not be used.

In the event a user receives notice from a nationwide consumer reporting agency that the address the user provided is "substantially different" from the address in the nationwide Consumer Reporting Agency's files, the user must then take reasonable steps to enable the user to form a reasonable belief that the consumer report actually relates to the applicant/consumer about whom the user has requested the consumer report.

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## POLICY RECOMMENDATIONS

Every company is responsible for creating their own policy that is compliant with state and federal regulations. Designing a compliant policy should be done with the advice of legal counsel. This process should be documented. The policy should be written and made available to anyone subject to the policy.

## LEGISLATIVE OUTLOOK

Many State Legislators are reviewing the use of credit for employment purposes. Many States have passed laws limiting the use of credit reports for employment purposes. While each state is unique, the overriding principle is to limit the use to only jobs where credit is relevant to the job function. The states and the FCRA place the burden of compliance on the employer. There are always exceptions for other legal state and federal requirements.

See Appendix B for current state specific information.

**PLEASE NOTE: Integrated Screening Partners/ProMesa does not provide legal counsel. For questions concerning the use of credit information in your background checks, please consult your legal counsel.**

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## APPENDIX A

Para información en español, visite [www.consumerfinance.gov/learnmore](http://www.consumerfinance.gov/learnmore) o escriba al Consumer Financial Protection Bureau, 1700 G Street N.W., Washington, DC 20552.

### A Summary of Your Rights Under the Fair Credit Reporting Act

The federal Fair Credit Reporting Act (FCRA) promotes the accuracy, fairness, and privacy of information in the files of consumer reporting agencies. There are many types of consumer reporting agencies, including credit bureaus and specialty agencies (such as agencies that sell information about check writing histories, medical records, and rental history records). Here is a summary of your major rights under the FCRA. **For more information, including information about additional rights, go to [www.consumerfinance.gov/learnmore](http://www.consumerfinance.gov/learnmore) or write to: Consumer Financial Protection Bureau, 1700 G Street N.W., Washington, DC 20552.**

- **You must be told if information in your file has been used against you.** Anyone who uses a credit report or another type of consumer report to deny your application for credit, insurance, or employment – or to take another adverse action against you – must tell you, and must give you the name, address, and phone number of the agency that provided the information.
- **You have the right to know what is in your file.** You may request and obtain all the information about you in the files of a consumer reporting agency (your “file disclosure”). You will be required to provide proper identification, which may include your Social Security number. In many cases, the disclosure will be free. You are entitled to a free file disclosure if:
  - a person has taken adverse action against you because of information in your credit report;
  - you are the victim of identity theft and place a fraud alert in your file;
  - your file contains inaccurate information as a result of fraud;
  - you are on public assistance;
  - you are unemployed but expect to apply for employment within 60 days.

In addition, all consumers are entitled to one free disclosure every 12 months upon request from each nationwide credit bureau and from nationwide specialty consumer reporting agencies. See [www.consumerfinance.gov/learnmore](http://www.consumerfinance.gov/learnmore) for additional information.

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- **You have the right to ask for a credit score.** Credit scores are numerical summaries of your credit-worthiness based on information from credit bureaus. You may request a credit score from consumer reporting agencies that create scores or distribute scores used in residential real property loans, but you will have to pay for it. In some mortgage transactions, you will receive credit score information for free from the mortgage lender.
- **You have the right to dispute incomplete or inaccurate information.** If you identify information in your file that is incomplete or inaccurate, and report it to the consumer reporting agency, the agency must investigate unless your dispute is frivolous. See [www.consumerfinance.gov/learnmore](http://www.consumerfinance.gov/learnmore) for an explanation of dispute procedures.
- **Consumer reporting agencies must correct or delete inaccurate, incomplete, or unverifiable information.** Inaccurate, incomplete or unverifiable information must be removed or corrected, usually within 30 days. However, a consumer reporting agency may continue to report information it has verified as accurate.
- **Consumer reporting agencies may not report outdated negative information.** In most cases, a consumer reporting agency may not report negative information that is more than seven years old, or bankruptcies that are more than 10 years old.
- **Access to your file is limited.** A consumer reporting agency may provide information about you only to people with a valid need -- usually to consider an application with a creditor, insurer, employer, landlord, or other business. The FCRA specifies those with a valid need for access.
- **You must give your consent for reports to be provided to employers.** A consumer reporting agency may not give out information about you to your employer, or a potential employer, without your written consent given to the employer. Written consent generally is not required in the trucking industry. For more information, go to [www.consumerfinance.gov/learnmore](http://www.consumerfinance.gov/learnmore).
- **You may limit “prescreened” offers of credit and insurance you get based on information in your credit report.** Unsolicited “prescreened” offers for credit and insurance must include a toll-free phone number you can call if you choose to remove your name and address from the lists these offers are based on. You may opt out with the nationwide credit bureaus at 1-888-5-OPTOUT (1-888-567-8688).

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- **You may seek damages from violators.** If a consumer reporting agency, or, in some cases, a user of consumer reports or a furnisher of information to a consumer reporting agency violates the FCRA, you may be able to sue in state or federal court.
- **Identity theft victims and active duty military personnel have additional rights.** For more information, visit [www.consumerfinance.gov/learnmore](http://www.consumerfinance.gov/learnmore).

**States may enforce the FCRA, and many states have their own consumer reporting laws. In some cases, you may have more rights under state law. For more information, contact your state or local consumer protection agency or your state Attorney General. For information about your federal rights, contact:**

TYPE OF BUSINESS:	CONTACT:
1.a. Banks, savings associations, and credit unions with total assets of over \$10 billion and their affiliates	a. Consumer Financial Protection Bureau 1700 G. Street N.W. Washington, DC 20552
b. Such affiliates that are not banks, savings associations, or credit unions also should list, in addition to the CFPB:	b. Federal Trade Commission: Consumer Response Center – FCRA Washington, DC 20580 (877) 382-4357

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<p>2. To the extent not included in item 1 above:</p> <p>a. National banks, federal savings associations, and federal branches and federal agencies of foreign banks</p> <p>b. State member banks, branches and agencies of foreign banks (other than federal branches, federal agencies, and Insured State Branches of Foreign Banks), commercial lending companies owned or controlled by foreign banks, and organizations operating under section 25 or 25A of the Federal Reserve Act</p> <p>c. Nonmember Insured Banks, Insured State Branches of Foreign Banks, and insured state savings associations</p> <p>d. Federal Credit Unions</p>	<p>a. Office of the Comptroller of the Currency Customer Assistance Group 1301 McKinney Street, Suite 3450 Houston, TX 77010-9050</p> <p>b. Federal Reserve Consumer Help Center P.O. Box. 1200 Minneapolis, MN 55480</p> <p>c. FDIC Consumer Response Center 1100 Walnut Street, Box #11 Kansas City, MO 64106</p> <p>d. National Credit Union Administration Office of Consumer Protection (OCP) Division of Consumer Compliance and Outreach (DCCO) 1775 Duke Street Alexandria, VA 22314</p>
<p>3. Air carriers</p>	<p>Asst. General Counsel for Aviation Enforcement &amp; Proceedings Aviation Consumer Protection Division Department of Transportation 1200 New Jersey Avenue, S.E. Washington, DC 20423</p>
<p>4. Creditors Subject to the Surface Transportation Board</p>	<p>Office of Proceedings, Surface Transportation Board Department of Transportation 395 E Street, S.W. Washington, DC 20423</p>
<p>5. Creditors Subject to the Packers and Stockyards Act, 1921</p>	<p>Nearest Packers and Stockyards Administration area supervisor</p>

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6. Small Business Investment Companies	Associate Deputy Administrator for Capital Access United States Small Business Administration 409 Third Street, S.W., 8 <sup>th</sup> Floor Washington, DC 20549
7. Brokers and Dealers	Securities and Exchange Commission 100 F Street, N.E.
	Washington, DC 20549
8. Federal Land Banks, Federal Lank Bank Associations, Federal Intermediate Credit Banks, and Production Credit Associations	Farm Credit Administration 1501 Farm Credit Drive McLean, VA 22102-5090
9. Retailers, Finance Companies, and All Other Creditors Not Listed Above	FTC Regional Office for region in which the creditor operates <u>or</u> Federal Trade Commission: Consumer Response Center – FCRA Washington, DC 20580 (877) 382-4357

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## APPENDIX B

### STATE SPECIFIC RESTRICTIONS

#### CALIFORNIA

Generally only permits employers who are seeking to fill specific enumerated “exempt” positions to obtain and use credit reports to screen applicants and/or current employees. The use of the credit reports in other occupations generally is prohibited. Further, employers will be required to provide a specific disclosure setting forth the specific basis permitting the employer to obtain a credit report, identifies the source of the report and alerts the applicant or employee to request a free copy of the report from the employer by checking a box. If the employee or applicant checks the box, the employer must request a copy for the applicant or employee at the same time as the employer requests the report.

- Specifically, credit reports may only be obtained if the position to be filled falls into one of eight “exempt” categories:
  - Positions with the state Department of Justice;
  - Managerial positions, i.e. employees who qualify for the “executive exemption” under California wage and hour law, meaning an individual who is an exempt executive whose primary duty is the management of two or more people;
  - Sworn peace officers or other law enforcement personnel;
  - Positions where the information contained in the credit report is required by law;
  - Positions that involve regular access to the personal information of others (i.e., bank or credit card account information, social security numbers, dates of birth) other than the routine solicitation and processing of credit card applications at a retail establishment;
  - Positions requiring the employee to be a named signatory on the employer’s bank or credit card account or otherwise authorized to transfer money or to enter into financial contracts on behalf of the employer;
  - Positions involving access to confidential or proprietary information of the employer; and
  - Positions that involve regular access to \$10,000 or more in cash.
- Credit reports also may be obtained for employees of financial institutions subject to Sections 6801-6809 of the United States Code. Technically such businesses are not required to disclose the statutory support for obtaining a credit report.

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## COLORADO

Colorado's law generally prohibits employers from using "consumer credit information" for employment purposes. This means that employers may not use any written or oral information bearing on a consumer's credit worthiness, credit standing, credit capacity or credit score in "evaluating a person for employment, hiring, promotion, demotion, reassignment, adjustment in compensation level, or retention as an employee."

The law applies to private sector employers with four or more employees and the term "employer" is defined expansively to include any "person, association of persons, firm or private corporation including manager, personal representative, assignee, trustee or receiver".

Two types of employers are generally exempt from the law's prohibitions: (1) banks or financial institutions; and (2) employers who are required by law to procure consumer credit information. These two classes of employers are permitted to obtain and use credit information for all their employees, regardless of specific positions or responsibilities and need only abide by the law's additional adverse action requirements (detailed below).

The vast majority of employers, however, are prohibited from requesting or using an applicant or employees' consumer credit information unless that information is "substantially related to the employee's current or potential job." The statute defines the substantially related language to mean one of two types of positions:

1. A position that constitutes executive or management personnel (or officers or employees who constitute professional staff to executive and management personnel) and which involves one or more of the following:
  - sets the direction or control of a business, division, unit or an agency of the business;
  - owes a fiduciary responsibility to the employer;
  - has access to customers', employees' or the employer's financial information; or
  - has the authority to make payments, collect debts or enter into contracts.
2. A position that involves contracts with defense, intelligence, national security, or space agencies of the federal government.

Even for these positions where credit information is "substantially related to the employee's current or potential job", an employer must satisfy two additional requirements before it uses an applicant or employee's consumer credit information in making an employment decision. First, the employer must have a "bona fide purpose" for requesting or using the information in the credit report. Second, the employer must disclose its bona fide purpose to the applicant employee. Notably, the law is silent as to when this disclosure must be made and does not define the term "bona fide purpose."

Also, when consumer credit information is "substantially related to the employee's current or potential job" an employer may, but is not required to, afford the applicant or employee an opportunity to explain any unusual or mitigating circumstances (e.g. error, lay off, identity theft, medical expenses etc. ).

Unless, (1) an employer is a bank or financial institution; (2) the report is required by law; or (3) the report is substantially related to the employee's current or potential job and meets the additional requirements detailed above;

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an employer may not require an employee to consent to a request for a credit report that contains information about the employee's credit score, credit account balances, payment history, account balances and the like as a condition of employment.

## CONNECTICUT

Generally prohibits employers from using credit reports in making employment decisions regarding applicants for employment or existing employees.

Applies to all employers in Connecticut that have at least one employee.

Employers may not require an employee or prospective employee to consent to a credit report, subject to the following exceptions:

- The employer is a financial institution, as defined under the law
- The report is required by law
- The employer reasonably believes the employee has engaged in specific activity that constitutes a violation of the law related to the employee's employment
- Such report is substantially related to the employee's current or potential job, or the employer has a bona fide purpose for requesting or using information in the credit report that is substantially job-related and is disclosed in writing to the employee or applicant}
- Under the fourth exception, the report is "substantially related to the employee's current or potential job" and allowable if the position:
  - Is a managerial position that involves setting the direction or control of a business, division, unit or an agency of a business
  - Involves access to customers', employees' or the employer's personal or financial information, other than information customarily provided in a retail transaction
  - Involves a fiduciary responsibility to the employer, as defined under the law
  - Provides an expense account or corporate debit or credit card
  - Provides access to certain confidential or proprietary business information, as defined under the law
  - Involves access to the employer's nonfinancial assets valued at \$2,500 or more, including, but not limited to, museum and library collections and to prescription drugs and other pharmaceuticals

Where an employer requests credit information pursuant to the substantial purpose exception, it must disclose its intent to do in writing to the employee or applicant.

## HAWAII

Restricts the use of credit reports to:

- Industries that are required by law, financial institutions, or managerial/supervisory positions(as defined by the statute) or if the information in the individual's credit history or credit report directly relates to a bona fide occupational qualification

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- Inquiries made under the bona fide occupational qualification can only be done after there has been a conditional job offer.

## ILLINOIS

Prohibits 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. Exceptions:

- 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 that credit worthiness is a bona fide job qualification.
- The bona fide qualification applies generally to those positions involving money-handling or other confidential job duties. For instance, employers may use credit information for employees whose duties; require bonding by state or federal law; have unsupervised access to cash or certain assets valued at \$2500 or more; have signatory power of \$100 or more per transaction; are in a managerial position which involves setting direction or control of the business; or involve access to confidential information, financial information, or trade secrets.
- Employers may not retaliate or discriminate against a person for exercising rights under the Employee Credit Privacy Act. Employers who violate the Act may be sued and ordered to pay damages including attorneys' fees. Further, the Act does not allow waivers of the Act's rights and invalidates any such waivers that exist.

## MARYLAND

Generally prohibited from using an applicant's or employee's credit report history for employment purposes.

- Does not apply to employers that are financial institutions, state-approved credit unions, investment advisors registered with the SEC (Securities and Exchange Commission), and companies that are required by federal or state law to examine credit history data.
- An employer who uses a credit report under an exemption must disclose its use of information in writing to the employee or applicant.
- Violations are subject to fines of up to \$500 for a first offense and up to \$2,500 for any subsequent violation. Further, since the Act states Maryland public policy, any employee who is denied employment or terminated may file the equivalent of a wrongful termination or a failure-to-hire suit and seek compensatory and punitive damages.
- There is also an exemption for use of credit information that is "substantially job-related." The law does not define "substantially job-related," but it recognizes certain jobs as exempt under the law. Exempt positions include:

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- Managers and/or those who have the authority to set the direction or control of a business or a department, division, unit, or agency of a business.
- Those that involve access to personal information of a customer, employee, or employer (including an individual's first and last name, and his or her social security number, driver's license number, or financial account number). However, a position that involves access solely to personal information that is customarily provided in retail transactions is not exempt.
- Those that involve a fiduciary responsibility to the employer, including the authority to issue payments, collect debts, transfer money, or enter into contracts.
- Those that are provided an expense account or a corporate debit/credit card.
- Those that have access to trade secrets, proprietary or confidential business information.

## NEVADA

The new law adopts a very broad definition of employer to include private employers and “any person acting directly or indirectly in the interest of an employer in relation to an employee or prospective employee.” With limited exceptions, this wide array of Nevada “employers” is now prohibited in their attempts to:

- Directly or indirectly, require, request, suggest or cause any employee or prospective employee to submit a consumer credit report or other credit information as a condition of employment
- Use, accept, refer to or inquire concerning a consumer credit report or other credit information;
- Discharge, discipline, discriminate against in any manner or deny employment or promotion to, or threaten to take any such action against any employee or prospective employee: (a) who refuses, declines or fails to submit a consumer credit report or other credit information; or (b) on the basis of the results of a consumer credit report or other credit information; or
- Discharge, discipline, discriminate against in any manner or deny employment or promotion to, or threaten to take any such action against any employee or prospective employee who has pursuant to the new law: (a) filed any complaint or instituted or caused to be instituted any legal proceeding; (b) testified or may testify in any legal proceeding instituted; or (c) exercised his or her rights, or has exercised on behalf of another person the rights afforded to him or her.

Exceptions from the preceding prohibitions. Under these exceptions, an employer may request or consider a consumer credit report or other credit information for the purpose of evaluating an employee or prospective employee for employment, promotion, reassignment or retention as an employee if:

- The employer is required or authorized, pursuant to state or federal law, to use a consumer credit report or other credit information for that purpose;
- The employer reasonably believes that the employee or prospective employee has engaged in specific activity which may constitute a violation of state or federal law; or
- The information contained in the consumer credit report or other credit information is “job related” or reasonably related to the position for which the employee or prospective employee is being evaluated for employment, promotion, reassignment or retention as an employee.

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The “job relatedness” requirement from this final exception is met if the duties of the position involve: (a) responsibility for financial assets or employment with a financial institution; (b) access to confidential information; (c) managerial or supervisor responsibility; (d) direct exercise of law enforcement authority; (e) responsibility for or access to another person’s financial information; and of course (because this is Nevada) (f) employment with a licensed gaming establishment.

## NEW YORK

A Local Law to amend the administrative code of the city of New York, in relation to prohibiting discrimination based on consumer credit history for an employer to use an individual’s consumer credit history in making employment decisions.

Be it enacted by the Council as follows:

- a) Except as provided in this subdivision, it shall be an unlawful discriminatory practice for an employer, labor organization, employment agency, or agent thereof to request or to use for employment purposes the consumer credit history of an applicant for employment or employee, or otherwise discriminate against an applicant or employee with regard to hiring, compensation, or the terms, conditions or privileges of employment. Shall not apply to:
- An employer, or agent thereof, that is required by state or federal law or regulations or by a self-regulatory organization as defined in section 3 (a)(26) of the securities exchange act of 1934, as amended to use an individual’s consumer credit history for employment purposes.
  - May not use consumer credit history information for employment purposes unless the position is an appointed position in which a high degree of public trust.
  - In a position in which an employee is required to be bonded under City, state or federal law.
  - In a position in which an employee is required to possess security clearance under federal law or the law of any state.
  - In a non-clerical position having regular access to trade secrets, intelligence information or national security information.
  - In a position (i) having signatory authority over third party funds or assets valued at \$10,000 or more; or (ii) that involves a fiduciary responsibility to the employer with the authority to enter financial agreements valued at \$10,000 or more on behalf of the employer.
  - In a position with regular duties that allow the employee to modify digital security systems established to prevent the unauthorized use of the employer’s or client’s networks or databases.
- b) The term “intelligence information” means records and data compiled for the purpose of criminal investigation or counterterrorism, security of a correctional facility, reports of informants, investigators or other persons, or from any type of surveillance associated with an identifiable individual, or investigation or analysis of potential terrorist threats.
- c) The term “trade secrets” means information that: (a) derives independent economic value, actual or potential, from not being generally known to (b) is the subject of efforts that are reasonable under the circumstances to maintain its secrecy (c) can reasonably be said to be the end product of significant innovation. The term “trade secrets” does not include general proprietary company information such as handbooks and policies.

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- d) Except as otherwise provided in this paragraph, it shall be an unlawful discriminatory practice for an agency to request or use for licensing or permitting purposes information contained in the consumer credit history of an applicant, license or permittee for licensing or permitting purposes.

## OREGON

Restricts the use of credit reports in employment decisions:

- Must be substantially related to the position.
- Employer must disclose in advance and in writing the reason for using the credit information.
- Does not apply to employers that are federally insured banks or credit unions, employers that are required by state or federal law to use credit history for employment purposes, and the employment of a public safety officer.

## VERMONT

Generally prohibits employers from making employment decisions based on an applicant's credit report. Written consent and providing the reasons for accessing the report. Employers are prohibited from inquiring into an applicant or employee's credit report history for employment decisions except if an employer meets the following exemptions:

- The information is required by state or federal law or regulation;
- The position of employment:
  - o Involves access to "confidential financial information," defined as sensitive financial information of commercial value that consumers or client explicitly authorize the employer to have and which the employer only entrusts to certain employees:
  - o Is that of law enforcement officer, emergency medical personnel or a firefighter
  - o Requires a financial fiduciary responsibility to the employer or its clients, including authority to issue payments, collect debts, transfer money, or enter into contracts; or involves access to employer's payroll information.
- The employer is a financial institution or credit union as defined by state law.
- The employer can demonstrate that the information is "valid or reliable predictor of employee performance in a specific position of employment."
- Employers who meet exceptions are prohibited from using credit report or credit history as the sole factor in making any employment decision.
- If an employer intends to take an adverse employment action partly based on the contents of the credit report, it must notify the affected individual in writing of its reasons for doing so and also afford him or her an opportunity to contest the accuracy of the credit report or credit history.

## WASHINGTON

Restricts the use of credit reports:

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- Must be substantially related to the position or required by law.
- Employer must disclose in writing the reason for using the credit information.

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