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LEGISLATIVE MOVES TO BAR CREDIT CHECKS IN HIRING

Many banks use credit checks as a screening tool in hiring or promotions based on the reasonable belief that employees responsible for handling other people's money should be able to show they are competent at handling their own. However, a proposal in Congress and several state legislative initiatives would severely limit the use of credit records as a basis for making an adverse employment decision. Studies show that minority populations have worse credit records than whites, so the use of credit checks may have a disparate impact on minorities. There is also concern that in a recessionary economy with high unemployment, many excellent candidates may have their employment opportunities curtailed because of a credit record that does not accurately reflect their qualifications to handle money.

HR 3149, the Equal Employment for All Act, would amend the Fair Credit Reporting Act (FCRA) to prohibit use of consumer credit checks against prospective and current employees for the purposes of making adverse employment decisions, including hiring, promotions, transfers, and terminations. Opponents of the bill say it is too broad, and the FCRA already includes extensive protections against the misuse of credit information in employment.

The bill includes exceptions for certain jobs, including where required for Federal Deposit Insurance Corporation clearance, or if the position carries "significant financial responsibility," such as bank manager, loan officer, or financial manager. Four states—Hawaii, Illinois, Oregon, and Washington—already have laws limiting the use of credit data for employment purposes. Seventeen other states have bills pending on the issue.

Practice Pointers:

- **Use credit checks only where a credit record is truly relevant to the job sought**
- **Use credit checks only after a contingent offer has been extended, thus reducing the risk of inadvertent discriminatory impact, and your costs**
- **Use credit scores and ratings consistently and thoughtfully**
- **Follow FCRA requirements to give the candidate an opportunity to correct an inaccurate credit report**
- **Use other screening tools such as criminal record checks and past employment references to gain a complete picture of the candidate**

For more information on this and other employment compliance topics, please contact us.