



**Committee:** HHS  
**Committee Review:** At a future date  
**Staff:** Christine Wellons, Senior Legislative Attorney  
**Purpose:** To introduce agenda item – no vote expected

AGENDA ITEM #5B  
December 5, 2023  
**Introduction**

## SUBJECT

Bill 44-23, Human Rights and Civil Liberties – Prospective Employees – Health Care Privacy

Lead Sponsors: Councilmembers Albornoz and Luedtke

## EXPECTED ATTENDEES

None

## COUNCIL DECISION POINTS & COMMITTEE RECOMMENDATION

- N/A

## DESCRIPTION/ISSUE

Bill 44-23 would:

- (1) limit inquiries by employers regarding certain health information of prospective employees;
  - (2) prohibit inquiries by employers regarding certain sexual and reproductive health information of prospective employees;
  - (3) limit consideration by employers of certain health information of prospective employees;
  - (4) permit enforcement by the Office of Human Rights and the Commission on Human Rights;
- and
- (5) generally amend the laws regarding human rights and health care privacy.

## SUMMARY OF KEY DISCUSSION POINTS

N/A

### This report contains:

Staff Report  
Bill 44-23

Pages 1-2  
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**MEMORANDUM**

November 30, 2023

TO: County Council

FROM: Christine Wellons, Senior Legislative Attorney

SUBJECT: Bill 44-23, Human Rights and Civil Liberties – Prospective Employees – Health Care Privacy

PURPOSE: Introduction – no Council votes required

Council Bill 44-23, Human Rights and Civil Liberties – Prospective Employees – Health Care Privacy, sponsored by Lead Sponsors Councilmembers Albornoz and Luedtke, is scheduled for introduction on December 5, 2023. A public hearing is tentatively scheduled for January 16, 2024, and a Health and Human Services (HHS) Committee worksession will be scheduled at a later date.

Bill 44-23 would:

- (1) limit inquiries by employers regarding certain health information of prospective employees;
- (2) prohibit inquiries by employers regarding certain sexual and reproductive health information of prospective employees;
- (3) limit consideration by employers of certain health information of prospective employees;
- (4) permit enforcement by the Office of Human Rights and the Commission on Human Rights; and
- (5) generally amend the laws regarding human rights and health care privacy.

**BACKGROUND/PURPOSE**

On March 31, 2023, Council Bill 5-23, Personnel and Human Resources – Prospective Employees – Health Care Privacy, was signed into law. Under Bill 5-23, the County government may not ask prospective County employees certain questions about the individual’s healthcare or reproductive health information. Council Bill 44-23 would extend similar protections to prospective employees of private employers in the County.

Under Maryland law, employers may not “require” prospective employees to provide certain healthcare information when the information is unrelated to job duties. *See* Md. Code Ann., Labor & Employment § 3-701. In addition, Title I of the Americans with Disabilities Act (ADA) restricts employers (with 15 or more employees) from asking job applicants about their disabilities prior to extending the applicant a conditional offer.

Bill 44-23 would supplement these state and federal requirements<sup>1</sup> by prohibiting an employer in the County from even asking for, or seeking, healthcare information that is unrelated to job qualifications. In addition, the bill would flatly prohibit asking applicants about sexual or reproductive health information.

### **BILL SPECIFICS**

Under Bill 44-23, employers in the County would be permitted to ask prospective employees about health care information only to the extent information is “business-related” in that it bears on the individual’s ability to meet published minimum job qualifications.

The bill would explicitly prohibit employers from requesting or considering applicants’ sexual or reproductive health information, such as information related to abortion care, miscarriage, contraception, sterilization, pregnancy, or family planning.

The requirements of the bill would be included within Chapter 27, Human Rights and Civil Liberties, of the County Code. Provisions of Chapter 27 are enforceable by the Office of Human Rights and the Commission on Human Rights by awarding damages and assessing civil penalties. *See* County Code, §§ 27-7, 27-8, and 27-9.

This packet contains:

Bill 44-23

Circle #

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<sup>1</sup> The ADA expressly allows for state or local law that “provides greater or equal protection” to persons with disabilities. 42 U.S.C. Section 12201(b) (“Nothing in this Act shall be construed to invalidate or limit the remedies, rights, and procedures of any Federal law or law of any State or political subdivision ... that provides greater or equal protection for the rights of individuals with disabilities than are afforded by this Act.”).

The Maryland Supreme Court has held that counties may adopt employment discrimination laws that are more protective of employees than the state law. *See Nat’l Asphalt Pavement Ass’n.*, 292 Md. 75 (1981) (holding that the State did not preempt the field of employment discrimination, and that Prince George’s County could adopt more stringent anti-discrimination protections for employees than the state).

Bill No. 44-23  
Concerning: Human Rights and Civil Liberties – Prospective Employees – Health Care Privacy  
Revised: 11/15/23 Draft No. 4  
Introduced: December 5, 2023P  
Expires: December 7, 2026  
Executive: \_\_\_\_\_  
Effective: \_\_\_\_\_  
Sunset Date: None  
Ch. \_\_\_\_\_, Laws of Mont. Co. \_\_\_\_\_

## COUNTY COUNCIL FOR MONTGOMERY COUNTY, MARYLAND

Lead Sponsor: Councilmembers Alborno and Luedtke

**AN ACT** to:

- (1) limit inquiries by employers regarding certain health information of prospective employees;
- (2) prohibit inquiries by employers regarding certain sexual and reproductive health information of prospective employees;
- (3) limit consideration by employers of certain health information of prospective employees;
- (4) permit enforcement by the Office of Human Rights and the Commission on Human Rights; and
- (5) generally amend the laws regarding human rights and health care privacy.

By adding

Montgomery County Code  
Chapter 27, Human Rights and Civil Liberties  
Article XVI. Employee Health Care Privacy  
Section 27-86

*The County Council for Montgomery County, Maryland approves the following Act:*

<b>Boldface</b>	<i>Heading or defined term.</i>
<u>Underlining</u>	<i>Added to existing law by original bill.</i>
[Single boldface brackets]	<i>Deleted from existing law by original bill.</i>
<u>Double underlining</u>	<i>Added by amendment.</i>
[[Double boldface brackets]]	<i>Deleted from existing law or the bill by amendment.</i>
* * *	<i>Existing law unaffected by bill.</i>

1           **Sec. 1. Article XVI, Section 27-86 is added as follows:**

2                   **ARTICLE XVI. EMPLOYEE HEALTH CARE PRIVACY**

3           **27-86. Prospective Employees – Health Care Privacy.**

4           (a)    *Definitions.* As used in this section:

5                   *Americans with Disabilities Act* means the federal *Americans with*  
6                   *Disabilities Act of 1990, as amended.*

7                   *Applicant* means an individual seeking or applying for employment by  
8                   *an employer.*

9                   *Business-related health information* means health care information that  
10                   *is necessary to evaluate whether an applicant meets a minimum*  
11                   *qualification for a position.*

12                   *Director* has the meaning stated in Section 27-6.

13                   *Employee* has the meaning stated in Section 27-6.

14                   *Employer* has the meaning stated in Section 27-6.

15                   *Health care* means any care, treatment, or procedure by a health care  
16                   *provider:*

17                   (1)    to diagnose, evaluate, rehabilitate, manage, treat, or maintain  
18                   the physical or mental condition of a patient or recipient; or

19                   (2)    that affects the structure or any function of the human body.

20                   *Health care information* means any individually identifiable  
21                   *information related to health care.*

22                   *Minimum qualification* means a mandatory qualification that:

23                   (1)    must be met to perform the required job functions of the position;  
24                   and

25                   (2)    was posted publicly prior to the acceptance of any application for  
26                   the position.

27 Sexual and reproductive health information means health care  
 28 information related to any aspect of reproductive health, including  
 29 abortion care, miscarriage, contraception, sterilization, pregnancy,  
 30 sexually transmitted disease, fertility treatment, gender affirming care,  
 31 and family planning.

32 (b) Requesting or considering health care information - Limitations.

33 Except as provided in subsection (d), an employer must not:

- 34 (1) request or seek health care information regarding an applicant; or
- 35 (2) consider health care information as a factor in determining  
 36 whether to hire an applicant.

37 (c) Requesting reproductive health information - Prohibited. The  
 38 employer must not request or consider an applicant's sexual and  
 39 reproductive health information.

40 (d) This Section does not prohibit:

- 41 (1) an employer from requesting or seeking business-related health  
 42 care information;
- 43 (2) an employer from considering business-related health care  
 44 information solely to determine whether an applicant meets a  
 45 minimum qualification;
- 46 (3) an applicant from voluntarily submitting, or an employer from  
 47 processing, a request for a reasonable accommodation under the  
 48 Americans with Disabilities Act related to the job application  
 49 process; or
- 50 (4) if the applicant is already employed by the employer, an applicant  
 51 from disclosing, or the employer from requesting, health care  
 52 information necessary for:
  - 53 (A) enrolling in or processing employee benefits;

54                   (B) making or processing workers' compensation claims;

55                   (C) making or processing leave requests; or

56                   (D) complying with applicable state or federal law.

57           (e) An applicant aggrieved under this section may file a complaint with the  
58                   Director under Section 27-7.

59           **Sec. 2. Effective date.** This Act takes effect 120 days after it becomes law.