

Bill No. 44-23
Concerning: Human Rights and Civil Liberties – Prospective Employees – Health Care Privacy
Revised: 12/18/2023 Draft No. 5
Introduced: December 5, 2023
Enacted: March 19, 2024
Executive: _____
Effective: _____
Sunset Date: None
Ch. _____, Laws of Mont. Co. _____

COUNTY COUNCIL FOR MONTGOMERY COUNTY, MARYLAND

Lead Sponsors: Councilmembers Alborno and Luedtke
Co-Sponsors: Councilmember Katz, Council Vice-President Stewart, and Councilmember Jawando

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:

Boldface	<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 an
8 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 the
18 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 information
21 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. Except
 33 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 whether
 36 to hire an applicant.

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

Approved:



March 19, 2024

Andrew Friedson, President, County Council

Date

Approved:

Marc Elrich, County Executive

Date

This is a correct copy of Council action.

Sara R. Tenenbaum, Clerk of the Council

Date