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H.261

Introduced by Representatives O’Sullivan of Burlington, Woodward of
Johnson, Baser of Bristol, Botzow of Pownal, Burke of
Brattleboro, Carr of Brandon, Christie of Hartford, Clarkson of
Woodstock, Cole of Burlington, Dakin of Chester, Gonzalez of
Winooski, Juskiewicz of Cambridge, Murphy of Fairfax,
Pearson of Burlington, Stuart of Brattleboro, and Sullivan of
Burlington

Referred to Committee on

Date:

Subject: Labor; fair employment practices; criminal records; employment
applications

Statement of purpose of bill as introduced: This bill proposes to prohibit
requiring the disclosure of criminal history record information on an initial
employment application. An employer may inquire as to an applicant’s
criminal history record during an interview or thereafter.

An act relating to criminal record inquiries by an employer

It is hereby enacted by the General Assembly of the State of Vermont:

1 ~~Sec. 1. 21 V.S.A. § 495j is added to read:~~

2 § 495j. CRIMINAL HISTORY RECORDS; EMPLOYMENT

3 APPLICATIONS

4 (a) Except as provided in subsection (b) of this section, an employer shall
5 not request criminal history record information on its initial employee
6 application form. An employer may inquire about a prospective employee's
7 criminal history record in an interview or once the prospective employee has
8 been deemed otherwise qualified for the position.

9 (b) An employer may inquire about any criminal convictions on an initial
10 employee application form if:

11 (1) the applicant is applying for a position for which any federal or State
12 law or regulation creates a mandatory or presumptive disqualification based on
13 a conviction for one or more types of criminal offenses; or

14 (2) the employer or an affiliate of the employer is subject to an
15 obligation imposed by any federal or State law or regulation not to employ
16 individuals, in either one or more positions, who have been convicted of one or
17 more types of criminal offenses.

18 (c) An employer who violates the provisions of this section shall be
19 assessed a civil penalty of up to \$100.00 for each violation.

1 ~~(d) As used in this section:~~
2 ~~(1) "Criminal history record" has the same meaning as set forth~~
3 ~~in 20 V.S.A. § 2056a.~~
4 ~~(2) "Employee" has the same meaning as set forth in section 302 of~~
5 ~~this title.~~
6 ~~(3) "Employer" has the same meaning as set forth in section 302 of~~
7 ~~this title.~~
8 Sec. 2. EFFECTIVE DATE
9 ~~This act shall take effect on July 1, 2015.~~

Sec. 1. 21 V.S.A. § 495j is added to read:

§ 495j. CRIMINAL HISTORY RECORDS; EMPLOYMENT

APPLICATIONS

(a) Except as provided in subsection (b) of this section, an employer shall not request criminal history record information on its initial employee application form. An employer may inquire about a prospective employee's criminal history record during an interview or once the prospective employee has been deemed otherwise qualified for the position.

~~*(b) An employer may inquire about criminal convictions on an initial employee application form if the following conditions are met:*~~

~~*(1)(A) the prospective employee is applying for a position for which any federal or State law or regulation creates a mandatory or presumptive*~~

~~disqualification based on a conviction for one or more types of criminal offenses; or~~

~~(B) the employer or an affiliate of the employer is subject to an obligation imposed by any federal or State law or regulation not to employ individuals, in either one or more positions, who have been convicted of one or more types of criminal offenses; and~~

~~(2) the questions on the application form are limited to the types of criminal offenses creating the disqualification or obligation~~

(b)(1) An employer may inquire about criminal convictions on an initial employee application form if the following conditions are met:

(A)(i) the prospective employee is applying for a position for which any federal or State law or regulation creates a mandatory or presumptive disqualification based on a conviction for one or more types of criminal offenses; or

(ii) the employer or an affiliate of the employer is subject to an obligation imposed by any federal or State law or regulation not to employ an individual, in either one or more positions, who has been convicted of one or more types of criminal offenses; and

(B) the questions on the application form are limited to the types of criminal offenses creating the disqualification or obligation.

(2) An employer shall be permitted to inquire about criminal convictions on an initial employee application form pursuant to subdivision (1) of this subsection even if the federal or State law or regulation creating an obligation for the employer or its affiliate not to employ an individual who has been convicted of one or more types of criminal offenses also permits the employer or its affiliate to obtain a waiver that would allow the employer or its affiliate to employ such an individual.

(c) If an employer inquires about a prospective employee's criminal history record information, the prospective employee, if still eligible for the position under applicable federal or State law, must be afforded an opportunity to explain the information and the circumstances regarding any convictions, including postconviction rehabilitation.

(d) An employer who violates the provisions of this section shall be assessed a civil penalty of up to \$100.00 for each violation.

(e) As used in this section:

(1) "Criminal history record" has the same meaning as set forth in 20 V.S.A. § 2056a.

(2) "Employee" has the same meaning as set forth in section 495d of this chapter.

(3) "Employer" has the same meaning as set forth in section 495d of this chapter.

Sec. 2. EFFECTIVE DATE

This act shall take effect on July 1, 2017.