

1 H.261

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

9 Referred to Committee on

10 Date:

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

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

17 An act relating to criminal record inquiries by an employer

18 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~~ during an interview or once the prospective
8 employee has been deemed otherwise qualified for the position, ~~whichever~~
9 comes later.

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

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

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

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

1 (c) If an employer inquires about an applicant’s criminal history record
2 information, the applicant, if still eligible for the position under applicable state
3 or federal law, must be afforded the opportunity to explain the information and
4 the circumstances regarding any convictions, including post-conviction
5 rehabilitation.

6 (d) This section shall not diminish an employer’s existing obligations
7 under other fair employment practices laws, including, without limitation,
8 section 495 of this title and Title VII of the Civil Rights Act of 1964.

9 (e) An employer shall not retaliate against an employee exercising his or
10 her rights under this section. The provisions against retaliation in subdivision
11 495(a)(8) of this title and the penalty and enforcement provisions of section
12 495b of this title shall apply to this section. In addition, an employer who
13 violates the provisions of this section shall be assessed a civil penalty of up to
14 \$100.00 for each violation.

15 (f) As used in this section:

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

18 (2) “Employee” has the same meaning as set forth in section ~~302~~ 495d
19 of this title.

20 (3) “Employer” has the same meaning as set forth in section ~~302~~ 495d
21 of this title.

1 Sec. 2. EFFECTIVE DATE

2 This act shall take effect on July 1, 2016.