

H. 261 AS PASSED BY HOUSE, WITH AMENDMENTS
PROPOSED BY THE ATTORNEY GENERAL'S OFFICE (3.29.16)

H.261

An act relating to criminal record inquiries by an employer

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

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, if the hiring process does not include a job interview, 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

Comment [JT1]: This amendment recognizes that some employers hire without conducting job interviews. The inquiry would be made when the applicant is deemed qualified for the job.

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

(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) The provisions against retaliation in subdivision 495(a)(8) of this title shall apply to prospective employees covered by this section.

Comment [JT2]: Job applicants should not face retaliation if, for example, they report a ban-the-box violation to the Attorney General or the Human Rights Commission .

(ef) 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.