1	S.129
2	Introduced by Senators Vyhovsky, Clarkson, Gulick, MacDonald,
3	McCormack, Perchlik, Ram Hinsdale, Watson and White
4	Referred to Committee on
5	Date:
6	Subject: Labor; employment practices; criminal history record checks; credit
7	checks; drug testing
8	Statement of purpose of bill as introduced: This bill proposes to prohibit
9	employers from conducting criminal history record checks, credit checks, and
10	drug testing in relation to employees and prospective employees unless there is
11	a direct relationship between the information sought and the employee or
12	prospective employee's job.
13	An act relating to employee privacy protections
14	It is hereby enacted by the General Assembly of the State of Vermont:
15	Sec. 1. 21 V.S.A. § 495i is amended to read:
16	§ 495i. EMPLOYMENT BASED ON CREDIT INFORMATION;
17	PROHIBITIONS
18	* * *
19	(b) An employer shall not:

1	(1) fail or refuse to hire or recruit, discharge, or otherwise discriminate
2	against an individual with respect to employment; compensation; or a term,
3	condition, or privilege of employment because of the individual's credit report
4	or credit history; or
5	(2) inquire about an applicant's or employee's credit report or credit
6	history.
7	(c)(1) An employer is exempt from the provisions of subsection (b) of this
8	section if one or more of the following conditions are met:
9	(A) The information is required by State or federal law or regulation.
10	(B) The position of employment involves access to confidential
11	financial information.
12	(C) The employer is a financial institution as defined in 8 V.S.A.
13	§ 11101(32) or a credit union as defined in 8 V.S.A. § 30101(5) and the
14	employer can demonstrate that the information has a direct relationship to the
15	job duties of the specific position of employment.
16	(D) The position of employment is that of a law enforcement officer
17	as defined in 20 V.S.A. § 2351a, emergency medical personnel as defined in
18	24 V.S.A. § 2651(6), or a firefighter as defined in 20 V.S.A. § 3151(3).
19	(E) The position of employment requires a financial fiduciary

responsibility to the employer or a client of the employer, including the

1	authority to issue payments, collect debts, transfer money, or enter into
2	contracts.

- (F) The employer can demonstrate that the information is a valid and reliable predictor of employee performance in the specific position of employment and has a direct relationship to the job duties of the specific position of employment.
- (G) The position of employment involves access to an employer's payroll information and the employer can demonstrate that the information has a direct relationship to the job duties of the specific position of employment.
- (2) An employer that is exempt from the provisions of subsection (b) of this section may not use an employee's or applicant's credit report or history as the sole factor in decisions regarding employment; compensation; or a term, condition, or privilege of employment.

14 ***

(e) An employer shall not discharge or in any other manner discriminate against an employee or applicant who has filed a complaint of unlawful employment practices in violation of this section or who has cooperated with the Attorney General or a State's Attorney in an investigation of such practices or who is about to lodge a complaint or cooperate in an investigation or because the employer believes that the employee or applicant may lodge a

offenses; or

1	complaint or cooperate in an investigation The provisions against retaliation in
2	subdivision 495(a)(8) of this subchapter shall apply to this section.
3	* * *
4	Sec. 2. 21 V.S.A. § 495j is amended to read:
5	§ 495j. CRIMINAL HISTORY RECORDS; EMPLOYMENT
6	APPLICATIONS
7	(a) Except as provided in subsection (b) of this section, an employer shall
8	not request criminal history record information on its initial employee
9	application form. An employer may inquire about a prospective employee's
10	criminal history record during an interview or once the prospective employee
11	has been deemed otherwise qualified for the position, provided the information
12	contained in a criminal history record has a direct relationship to the job duties
13	of the specific position or the employer is permitted to inquire about criminal
14	convictions on an initial employee application form pursuant to subsection (b)
15	of this section.
16	(b)(1) An employer may inquire about criminal convictions on an initial
17	employee application form if the following conditions are met:
18	(A)(i) the prospective employee is applying for a position for which
19	any federal or State law or regulation creates a mandatory or presumptive
20	disqualification based on a conviction for one or more types of criminal

be waived by the applicant.

1	(ii) the employer or an affiliate of the employer is subject to an
2	obligation imposed by any federal or State law or regulation not to employ an
3	individual, in either one or more positions, who has been convicted of one or
4	more types of criminal offenses; and
5	(B) the questions on the application form are limited to the types of
6	criminal offenses creating the disqualification or obligation.
7	* * *
8	Sec. 3. 21 V.S.A. § 512 is amended to read:
9	§ 512. DRUG TESTING OF APPLICANTS; PROHIBITIONS;
10	EXCEPTIONS
11	* * *
12	(b) Exception. An employer may require an applicant for employment to
13	submit to a drug test only if all of the following conditions are met:
14	(1) Conditional offer of employment. The applicant has been given an
15	offer of employment conditioned on the applicant receiving a negative test
16	result.
17	(2) Notice. The applicant received written notice of the drug testing
18	procedure and a list of the drugs to be tested. The notice shall also state that
19	therapeutic levels of medically prescribed medically prescribed drugs tested
20	will not be reported. The notice required under this subdivision may shall not

hospital service corporation.

1	(3) Administration. The drug test is administered in accordance with
2	section 514 of this title.
3	(4) Relationship to job duties. Information relating to the applicant's
4	possible use of drugs has a direct relationship to the applicant's ability to
5	perform the job duties of the specific position that has been offered.
6	Sec. 4. 21 V.S.A. § 513 is amended to read:
7	§ 513. DRUG TESTING OF EMPLOYEES; PROHIBITIONS;
8	EXCEPTIONS
9	* * *
10	(c) Exception. Notwithstanding the prohibition in subsection (a) of this
11	section, an employer may require an individual employee to submit to a drug
12	test if all the following conditions are met:
13	(1) Probable cause. The employer or an agent of the employer has
14	probable cause to believe the employee is using or is under the influence of a
15	drug on the job.
16	(2) Employee assistance program. The employer has available for the
17	employee tested a bona fide rehabilitation program for alcohol or drug abuse
18	and such program is provided by the employer or is available to the extent
19	provided by a policy of health insurance or under contract by a nonprofit

(3) Employee may not be terminated. The employee may snall not be
terminated if the test result is positive and the employee agrees to participate in
and then successfully completes the employee assistance program; however,
the employee may be suspended only for the period of time necessary to
complete the program, but in no event longer than three months. The
employee may be terminated if, after completion of an employee assistance
program, the employer subsequently administers a drug test in compliance with
subdivisions (1) and, (4), and (5) of this subsection and the test result is
positive.
(4) Administration of test. The drug test is administered in accordance
with section 514 of this title.
(5) Relationship to job duties. Information relating to whether the
employee is using or is under the influence of a drug on the job has a direct
relationship to the employee's ability to perform the employee's job duties.
Sec. 5. EFFECTIVE DATE

This act shall take effect on July 1, 2023.