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S.129

Introduced by Senators Vyhovsky, Clarkson, Gulick, MacDonald,
McCormack, Perchlik, Ram Hinsdale, Watson and White

Referred to Committee on

Date:

Subject: Labor; employment practices; criminal history record checks; credit
checks; drug testing

Statement of purpose of bill as introduced: This bill proposes to prohibit
employers from conducting criminal history record checks, credit checks, and
drug testing in relation to employees and prospective employees unless there is
a direct relationship between the information sought and the employee or
prospective employee's job.

An act relating to employee privacy protections

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

Sec. 1. 21 V.S.A. § 495i is amended to read:

§ 495i. EMPLOYMENT BASED ON CREDIT INFORMATION;

PROHIBITIONS

* * *

(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
20 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.

3 (F) The employer can demonstrate that the information is a valid and
4 reliable predictor of employee performance in the specific position of
5 employment and has a direct relationship to the job duties of the specific
6 position of employment.

7 (G) The position of employment involves access to an employer's
8 payroll information and the employer can demonstrate that the information has
9 a direct relationship to the job duties of the specific position of employment.

10 (2) An employer that is exempt from the provisions of subsection (b) of
11 this section may not use an employee's or applicant's credit report or history as
12 the sole factor in decisions regarding employment; compensation; or a term,
13 condition, or privilege of employment.

14 * * *

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

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
21 offenses; or

1 (3) Employee may not be terminated. The employee ~~may~~ shall not be
2 terminated if the test result is positive and the employee agrees to participate in
3 and then successfully completes the employee assistance program; however,
4 the employee may be suspended only for the period of time necessary to
5 complete the program, but in no event longer than three months. The
6 employee may be terminated if, after completion of an employee assistance
7 program, the employer subsequently administers a drug test in compliance with
8 subdivisions (1) ~~and~~, (4), and (5) of this subsection and the test result is
9 positive.

10 (4) Administration of test. The drug test is administered in accordance
11 with section 514 of this title.

12 (5) Relationship to job duties. Information relating to whether the
13 employee is using or is under the influence of a drug on the job has a direct
14 relationship to the employee's ability to perform the employee's job duties.

15 Sec. 5. EFFECTIVE DATE

16 This act shall take effect on July 1, 2023.