| 1 | S.90 |
|----|-------------------------------------------------------------------------------|
| 2 | Introduced by Senator Vyhovsky |
| 3 | Referred to Committee on |
| 4 | Date: |
| 5 | Subject: Labor; employment practices; criminal history checks; credit checks; |
| 6 | drug testing |
| 7 | Statement of purpose of bill as introduced: This bill proposes to prohibit |
| 8 | employers from conducting criminal history checks, credit checks, and drug |
| 9 | testing in relation to employees and prospective employees unless there is a |
| 10 | direct relationship between the information sought and the employee or |
| 11 | prospective employee's job. |
| | |
| | |
| 12 | An act relating to employee privacy protections |
| 13 | It is hereby enacted by the General Assembly of the State of Vermont: |
| 14 | Sec. 1. 21 V.S.A. § 495i is amended to read: |
| 15 | § 495i. EMPLOYMENT BASED ON CREDIT INFORMATION; |
| 16 | PROHIBITIONS |
| 17 | * * * |
| 18 | (b) An employer shall not: |
| 19 | (1) fail or refuse to hire or recruit, discharge, or otherwise discriminate |
| 20 | against an individual with respect to employment; compensation; or a term, |

contracts.

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

| 1 | (F) The employer can demonstrate that the information is a valid and |
|----|-----------------------------------------------------------------------------------|
| 2 | reliable predictor of employee performance in the specific position of |
| 3 | employment and has a direct relationship to the job duties of the specific |
| 4 | position of employment. |
| 5 | (G) The position of employment involves access to an employer's |
| 6 | payroll information and the employer can demonstrate that the information has |
| 7 | a direct relationship to the job duties of the specific position of employment. |
| 8 | (2) An employer that is exempt from the provisions of subsection (b) of |
| 9 | this section may not use an employee's or applicant's credit report or history as |
| 10 | the sole factor in decisions regarding employment; compensation; or a term, |
| 11 | condition, or privilege of employment. |
| 12 | * * * |
| 13 | (e) An employer shall not discharge or in any other manner discriminate |

(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 complaint or cooperate in an investigation The provisions against retaliation in subdivision 495(a)(8) of this subchapter shall apply to this section.

| 1 | Sec. 2. 21 V.S.A. § 495j is amended 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 nor inquire about an applicant's criminal history during a job |
| 7 | interview. An employer may only inquire about a prospective employee's |
| 8 | criminal history record during an interview or convictions or recent arrests that |
| 9 | have not yet been judicially adjudicated under this subsection once the |
| 10 | prospective employee has been deemed otherwise qualified for the position |
| 11 | receives a conditional offer of employment and the inquiry has a direct |
| 12 | relationship to the job duties of the specific position. If the information |
| 13 | provided has a direct relationship to the job duties of the specific position, the |
| 14 | employer may withdraw the conditional offer of employment. In considering |
| 15 | whether the provided information has a direct relationship to the job duties of |
| 16 | the specific position, the employer shall consider: |
| 17 | (1) the job duties of the specific position; |
| 18 | (2) the nature and gravity of the offense; |
| 19 | (3) the passage of time since the offense occurred or the prospective |

employee completed a prison sentence;

| 1 | (4) the age of the prospective employee at the time the offense occurred; |
|----|----------------------------------------------------------------------------------|
| 2 | <u>and</u> |
| 3 | (5) the legitimate interest of the employer in protecting the property and |
| 4 | safety and welfare of specific individuals or the general public. |
| 5 | (b)(1) An employer may inquire about criminal convictions on an initial |
| 6 | employee application form if the following conditions are met: |
| 7 | (A)(i) the prospective employee is applying for a position for which |
| 8 | any federal or State law or regulation creates a mandatory or presumptive |
| 9 | disqualification based on a conviction for one or more types of criminal |
| 10 | offenses; or |
| 11 | (ii) the employer or an affiliate of the employer is subject to an |
| 12 | obligation imposed by any federal or State law or regulation not to employ an |
| 13 | individual, in either one or more positions, who has been convicted of one or |
| 14 | more types of criminal offenses; and |
| 15 | (B) the questions on the application form are limited to the types of |
| 16 | criminal offenses creating the disqualification or obligation. |
| 17 | * * * |
| 18 | (c) If an employer inquires about a prospective employee's criminal history |
| 19 | record information, the prospective employee, if still eligible for the position |

under applicable federal or State law, must be afforded an opportunity to

result.

| 1 | explain the information and the circumstances regarding any convictions, |
|----|----------------------------------------------------------------------------|
| 2 | including postconviction rehabilitation. |
| 3 | (d) An employer who violates the provisions of this section shall be |
| 4 | assessed a civil penalty of up to \$100.00 \$1,000.00 for each violation. |
| 5 | (e) As used in this section: |
| 6 | (1) "Criminal history record" has the same meaning as set forth in 20 |
| 7 | V.S.A. § 2056a. [Repealed.] |
| 8 | (2) "Employee" has the same meaning as set forth in section 495d of |
| 9 | this chapter. |
| 10 | (3) "Employer" has the same meaning as set forth in section 495d of this |
| 11 | chapter. |
| 12 | Sec. 3. 21 V.S.A. § 512 is amended to read: |
| 13 | § 512. DRUG TESTING OF APPLICANTS; PROHIBITIONS; |
| 14 | EXCEPTIONS |
| 15 | * * * |
| 16 | (b) Exception. An employer may require an applicant for employment to |
| 17 | submit to a drug test only if all of the following conditions are met: |
| 18 | (1) Conditional offer of employment. The applicant has been given an |
| 19 | offer of employment conditioned on the applicant receiving a negative test |

drug on the job.

| 1 | (2) Notice. The applicant received written notice of the drug testing |
|----|--------------------------------------------------------------------------------------------------|
| 2 | procedure and a list of the drugs to be tested. The notice shall also state that \underline{a} |
| 3 | positive test for therapeutic levels of medically prescribed drugs tested, |
| 4 | including cannabis for symptom relief, will not be reported. The notice |
| 5 | required under this subdivision may shall not be waived by the applicant. |
| 6 | (3) Administration. The drug test is administered in accordance with |
| 7 | section 514 of this title. |
| 8 | (4) Relationship to job duties. Information relating to the applicant's |
| 9 | possible use of drugs has a direct relationship to the applicant's ability to |
| 10 | perform the job duties of the specific position that has been offered. |
| 11 | Sec. 4. 21 V.S.A. § 513 is amended to read: |
| 12 | § 513. DRUG TESTING OF EMPLOYEES; PROHIBITIONS; |
| 13 | EXCEPTIONS |
| 14 | * * * |
| 15 | (c) Exception. Notwithstanding the prohibition in subsection (a) of this |
| 16 | section, an employer may require an individual employee to submit to a drug |
| 17 | test if all the following conditions are met: |
| 18 | (1) Probable cause. The employer or an agent of the employer has |
| 19 | probable cause to believe the employee is using or is under the influence of a |

21

Sec. 5. EFFECTIVE DATE

This act shall take effect on July 1, 2025.

| 1 | (2) Employee assistance program. The employer has available for the |
|----|-------------------------------------------------------------------------------------|
| 2 | employee tested a bona fide rehabilitation program for alcohol or drug abuse |
| 3 | and such program is provided by the employer or is available to the extent |
| 4 | provided by a policy of health insurance or under contract by a nonprofit |
| 5 | hospital service corporation. |
| 6 | (3) Employee may not be terminated. The employee may shall not be |
| 7 | terminated if the test result is positive and the employee agrees to participate in |
| 8 | and then successfully completes the employee assistance program; however, |
| 9 | the employee may be suspended only for the period of time necessary to |
| 10 | complete the program, but in no event longer than three months. The |
| 11 | employee may be terminated if, after completion of an employee assistance |
| 12 | program, the employer subsequently administers a drug test in compliance with |
| 13 | subdivisions (1) and, (4), and (5) of this subsection and the test result is |
| 14 | positive. |
| 15 | (4) Administration of test. The drug test is administered in accordance |
| 16 | with section 514 of this title. |
| 17 | (5) Relationship to job duties. Information relating to whether the |
| 18 | employee is using or is under the influence of a drug on the job has a direct |
| 19 | relationship to the employee's ability to perform the employee's job duties. |