

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,

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
20 contracts.

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

20 employee completed a prison sentence;

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
20 result.

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.

20 Sec. 5. EFFECTIVE DATE

21 This act shall take effect on July 1, 2025.