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H.42

Introduced by Representatives Wizowaty of Burlington, Donovan of Burlington, Evans of Essex, French of Shrewsbury, Lorber of Burlington, Marek of Newfane, Martin of Springfield, Martin of Wolcott, Moran of Wardsboro, Mrowicki of Putney, Ram of Burlington, Sharpe of Bristol, South of St. Johnsbury and Till of Jericho

Referred to Committee on

Date:

Subject: Labor; employment practices; credit information; prohibition

Statement of purpose: This bill proposes to generally prohibit employers from making employment decisions based on an applicant's credit report.

An act relating to employment decisions based on credit information

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

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

~~§ 495i. EMPLOYMENT BASED ON CREDIT INFORMATION;~~

~~PROHIBITIONS~~

~~No employer shall require that an employee or an applicant for employment provide or consent to provide a credit report that contains information about the employee's or applicant's credit score, credit account balances, payment~~

1 history, savings or checking account balances, or savings or checking account  
2 numbers as a condition of obtaining or continuing employment except if one or  
3 more of the following conditions are met:

4 (1) The information is required by law.

5 (2) The employer reasonably believes that the employee has engaged in  
6 specific activity that constitutes a violation of a fiduciary responsibility or any  
7 law relating to financial matters.

8 (3) The information is substantially related to present or proposed job  
9 duties of the employee or applicant for employment because the job is one or  
10 more of the following:

11 (A) It is a managerial position that involves setting the direction or  
12 control of the business.

13 (B) It involves access to financial or personal information of a  
14 customer, an employee, or the employer, other than information that is  
15 customarily provided in a retail transaction.

16 (C) It requires fiduciary responsibility to the employer, including the  
17 authority to issue payments, transfer money, or enter into contracts.

18 (D) It provides an expense account.

*Sec. 1. FINDINGS*

*The general assembly finds that:*

*(1) Studies on middle and low income households have found that most indebted families go into debt to pay for basic expenses, such as groceries, utilities, child care, and health care. A study has shown that families with*

medical debt had 43 percent more credit card debt than those without medical debt.

(2) Employer surveys conducted by the Society of Human Resources Management suggest that over the last 15 years, employers' use of credit reports in the hiring process has increased from a practice used by fewer than one in five employers in 1996 to six of every 10 employers in 2010.

(3) Social science research thus far has shown that information contained in a credit report has no correlation to job performance. The Palmer-Koppes study conducted in 2004 found that those employees who were late on payments were more likely to be associated with a positive job performance.

(4) Further, there is no common standard among employers as to how to interpret credit reports, which reinforces the fact that credit reports do not provide meaningful insight into a candidate's character, responsibility, or prospective job performance. An employee of Transunion was quoted as saying: "We don't have any statistical correlation between what's in somebody's credit report and their job performance or their likelihood to commit fraud."

(5) The Equal Employment Opportunity Commission has stated that: "Inquiry into an applicant's current or past assets, liabilities, or credit rating . . . generally should be avoided because they tend to impact more adversely on minorities and females."

Sec. 2. 21 V.S.A. § 495i is added to read:

§ 495i. EMPLOYMENT BASED ON CREDIT INFORMATION;  
PROHIBITIONS

(a) For purposes of this section:

(1) "Confidential financial information" means sensitive financial information of commercial value that a customer or client of the employer gives explicit authorization for the employer to obtain, process, and store, and that the employer entrusts only to managers or employees as a necessary function of their job duties.

(2) "Credit history" means information obtained from a third party, whether or not contained in a credit report, that reflects or pertains to an individual's prior or current:

(A) borrowing or repaying behavior, including the accumulation, payment, or discharge of financial obligations; or

(B) financial condition or ability to meet financial obligations, including debts owed, payment history, savings or checking account balances, or savings or checking account numbers.

(3) "Credit report" has the same meaning as in 9 V.S.A. § 2480(a).

(b) An employer shall not:

(1) Fail or refuse to hire or recruit; discharge; or otherwise discriminate against an individual with respect to employment, compensation, or a term, condition, or privilege of employment because of the individual's credit report or credit history.

(2) Inquire about an applicant or employee's credit report or credit history.

(c)(1) An employer is exempt from the provisions of subsection (b) of this section if one or more of the following conditions are met:

(A) The information is required by state or federal law or regulation.

(B) The position of employment involves access to confidential financial information.

(C) The employer is a financial institution as defined in 8 V.S.A. § 11101(32) or a credit union as defined in 8 V.S.A. § 30101(5).

(D) The position of employment is that of a law enforcement officer as defined in 20 V.S.A. § 2358, emergency medical personnel as defined in 24 V.S.A. § 2651(6), or a firefighter as defined in 20 V.S.A. § 3151(3).

(E) The position of employment requires a financial fiduciary responsibility to the employer or a client of the employer, including the authority to issue payments, collect debts, transfer money, or enter into contracts.

(F) The employer can demonstrate that the information is a valid and reliable predictor of employee performance in 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 or applicant's credit report or history as the sole factor in decisions regarding employment, compensation, or a term, condition, or privilege of employment.

(d) If an employer seeks to obtain or act upon an employee's or applicant's credit report or credit history pursuant to subsection (c) of this section that contains information about the employee's or applicant's credit score, credit account balances, payment history, savings or checking account balances, or savings or checking account numbers, the employer shall:

(1) Obtain the employee's or applicant's written consent each time the employer seeks to obtain the employee's or applicant's credit report.

(2) Disclose in writing to the employee or applicant the employer's reasons for accessing the credit report, and if an adverse employment action is taken based upon the credit report, disclose the reasons for the action in writing. The employee or applicant has the right to contest the accuracy of the credit report or credit history.

(3) Ensure that none of the costs associated with obtaining an employee's or an applicant's credit report or credit history are passed on to the employee or applicant.

(4) Ensure that the information in the employee's or applicant's credit report or credit history is kept confidential and if the employment is terminated or the applicant is not hired by the employer, provide the employee or applicant with the credit report or have the credit report destroyed in a secure manner which ensures the confidentiality of the information in the report.

(e) An employer shall not discharge, ~~fail to hire,~~ 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.

(f) Notwithstanding subsection (c) of this section, an employer shall not seek or act upon credit reports or credit histories in a manner that results in adverse employment discrimination prohibited by federal or state law, including section 495 of this title and Title VII of the Civil Rights Act of 1964.

(g) This section shall apply only to employers, employees, and applicants for employment and only to employment-related decisions based on a person's credit history or credit report. It shall not affect the rights of any person, including financial lenders or investors, to obtain credit reports pursuant to other law.

**Sec. 3. EFFECTIVE DATE**

This act shall take effect on July 1, 2011.