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H.121

Introduced by Representatives Cole of Burlington, Gonzalez of Winooski,  
O’Sullivan of Burlington, Woodward of Johnson, Burke of  
Brattleboro, Carr of Brandon, Chesnut-Tangerman of  
Middletown Springs, Connor of Fairfield, Davis of Washington,  
Hooper of Montpelier, Keenan of St. Albans City, Krowinski of  
Burlington, Lippert of Hinesburg, Macaig of Williston,  
McCullough of Williston, Morris of Bennington, Pearson of  
Burlington, Ram of Burlington, Stuart of Brattleboro,  
Townsend of South Burlington, and Troiano of Stannard

Referred to Committee on

Date:

Subject: Labor; fair employment practices; criminal history records

Statement of purpose of bill as introduced: This bill proposes to prohibit  
inquiries about the criminal history of an applicant for employment on their  
initial job application and to require employers that make an adverse hiring or  
employment decision based on an applicant or employee’s criminal history to  
provide the affected applicant or employee with written notice of the reason for  
the adverse decision and a copy of his or her criminal record.

1 An act relating to the use of criminal records in employment decisions

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

3 Sec. 1. 21 V.S.A. § 495j is added to read:

4 § 495j. EMPLOYMENT DECISIONS BASED ON CRIMINAL

5 CONVICTION INFORMATION; PROHIBITIONS

6 (a) As used in this section:

7 (1) “Criminal conviction record” has the same meaning as set forth in  
8 20 V.S.A. § 2056c.

9 (2) “Criminal history record” has the same meaning as set forth in  
10 20 V.S.A. § 2056a.

11 (3) “Employee” has the same meaning as set forth in section 302 of this  
12 title.

13 (4) “Employer” has the same meaning as set forth in section 302 of this  
14 title.

15 (b) Except as provided in subsection (d) of this section, an employer shall  
16 not inquire about the criminal history of an applicant for employment, or the  
17 applicant’s criminal history record or criminal conviction record, on the  
18 employer’s initial employment application form.

19 (c) Except as provided in subsection (e) of this section, an employer may  
20 inquire about whether an applicant for employment has ever been convicted of  
21 a crime or obtain a copy of the applicant’s criminal conviction record at any

1 time during or after the initial interview, or after the applicant has been deemed  
2 otherwise qualified for the position. An employer shall not inquire about any  
3 arrests or charges that did not result in the applicant's being convicted of a  
4 crime, or that have been sealed or expunged from the applicant's criminal  
5 conviction record.

6 (d) Notwithstanding subsection (b) of this section, an employer may  
7 inquire about an applicant's criminal convictions or criminal conviction record  
8 on an initial employment application form if the applicant is applying for a  
9 position for which any federal or State law or regulation creates a mandatory or  
10 presumptive disqualification based on a conviction for one or more types of  
11 criminal offenses.

12 (e) Notwithstanding subsection (c) of this section, an employer may obtain  
13 a copy of an applicant's criminal history record or perform a criminal  
14 background check at any time during or after the initial interview, or at any  
15 time after the applicant has been deemed otherwise qualified for the position, if  
16 any federal or State law or regulation requires the employer to conduct a  
17 criminal background check or otherwise consider an applicant's criminal  
18 history during the hiring process for that position.

19 (f) If an employer chooses to obtain a copy of an applicant's or employee's  
20 criminal conviction record or criminal history record, or to perform a criminal  
21 background check with respect to him or her:

1           (1) the employer must obtain the applicant's or employee's written  
2           authorization each time it seeks to obtain a copy of his or her criminal  
3           conviction record or criminal history record, or to perform a criminal  
4           background check; and

5           (2) the employer shall not require the applicant or employee to obtain,  
6           submit personally, or pay for a copy of his or her criminal conviction record or  
7           criminal history record, or any cost associated with conducting a criminal  
8           background check.

9           (g) If an employer makes an adverse hiring or employment decision in  
10          relation to an applicant or employee on the basis of his or her criminal  
11          conviction record or criminal history record, or a conviction disclosed by him  
12          or her, the employer shall:

13           (1) notify the applicant or employee in writing of the adverse decision  
14           and the specific reasons for it, including any conviction, arrest, or charge, upon  
15           which the decision is based; and

16           (2) if applicable, provide the applicant or employee with a copy of his or  
17           her criminal conviction record or criminal history record and inform him or her  
18           in writing that he or she may contest the accuracy of the record pursuant to the  
19           rules adopted by the Vermont Crime Information Center.

20           (h) An employer shall not seek or act upon an applicant's or employee's  
21           criminal conviction record or criminal history record in a manner that results in

1 adverse employment discrimination prohibited by federal or State law,  
2 including section 495 of this title and Title VII of the Civil Rights Act of 1964.

3 (i) In addition to the penalties set forth under section 495b of this title, an  
4 employer who violates the provisions of this section shall be assessed an  
5 additional civil penalty of up to \$100.00 for each violation.

6 (j) An employer shall not discharge or in any other manner discriminate  
7 against an applicant or employee who:

8 (1) has filed a complaint of unlawful employment practices related to a  
9 violation of this section;

10 (2) has cooperated with the Attorney General or a State's Attorney in an  
11 investigation of unlawful employment practices related to a violation of this  
12 section; or

13 (3) is about to lodge a complaint or cooperate in an investigation or who  
14 the employer believes is about to lodge a complaint or cooperate in an  
15 investigation.

16 (k) Nothing in this section shall be deemed to relieve an employer or any  
17 person providing an employer with a criminal conviction record or criminal  
18 history record of their obligation to comply with any applicable federal or State  
19 law or regulation.

20 Sec. 2. EFFECTIVE DATE

21 This act shall take effect on July 1, 2015.