

ACT NO. 8134
BILL NO. 32-0230

THIRTY-SECOND LEGISLATURE OF THE VIRGIN ISLANDS

Regular Session

2018

An Act amending title 24 Virgin Islands Code, chapter 17 adding subchapter II to limit employer's use of criminal records in hiring and other employment practices

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Be it enacted by the Legislature of the Virgin Islands:

SECTION 1. Title 24, Virgin Islands Code, chapter 17 is amended by designating the existing sections 451 to 462 as subchapter I and adding subchapter II to read as follows:

“SUBCHAPTER II Limited Use of Criminal Records in Hiring Practices

§465 (a) No employer, whether a public agency or private individual or corporation, may ask any applicant for employment to disclose, through any written form or orally, information concerning an arrest or detention that did not result in conviction, or information concerning a referral to, or participation in, any pretrial or post trial diversion program, or concerning a conviction that has been judicially dismissed or ordered sealed pursuant to law; nor may any employer seek from any source whatsoever, or use, as a factor in determining any condition of employment, including hiring, promotion, termination, or any apprenticeship training program or any other training program leading to employment, any record of arrest or detention that did not result in conviction, or any record regarding a referral to, and participation in, any pretrial or post trial diversion program, or concerning a conviction that has been judicially dismissed or ordered sealed pursuant to law.

(b) As used in this section, a conviction includes a plea, verdict, or finding of guilt regardless of whether sentence is imposed by the court.

(c) Nothing in this subchapter prevents an employer from asking an applicant about an arrest for which the employee or applicant is out on bail or on his or her own recognizance.

(d) Nothing in this subchapter prohibits the disclosure of the information authorized for release to a government agency employing a peace officer.

§466 (a) Persons seeking employment or persons already employed as peace officers or persons seeking employment for positions in the Department of Justice or other criminal justice agencies are not covered by this subchapter.

(b) Nothing in this subchapter prohibits an employer at a health facility, as defined in 19 V.I.C. § 221(1) from asking an applicant for employment either of the following:

(1) With regard to an applicant for a position in with regular access to patients, to disclose an arrest under any section specified in title 14 V.I.C., chapter 86.

(2) With regard to an applicant for position with access to drugs and medication, to disclose an arrest under any section specified title 19 V.I.C., chapter 29.

§467 (a) It is unlawful for a peace officer or employee of a law enforcement agency with access to criminal offender record information maintained by a local enforcement criminal justice agency to knowingly disclose, with intent to affect a person's employment, any information contained therein pertaining to an arrest or detention or proceeding that did not result in a conviction, including information pertaining to a referral to, and participation in, any pretrial or post trial diversion program, to any person not authorized by law to receive that information.

(b) It is unlawful for any other person authorized by law to receive criminal offender record information maintained by a local law enforcement, or criminal justice agency to knowingly disclose any information received therefrom pertaining to an arrest or detention or proceeding that did not result in a conviction, including information pertaining to a referral to, and participation in, any pretrial or post trial diversion program, to any person not authorized by law to receive that information.

(c) It is unlawful for any person, who knowing he is not authorized by law to receive or possess criminal justice records information maintained by a local law enforcement criminal justice agency, pertaining to an arrest or other proceeding that did not result in a conviction, including information pertaining to a referral to and participation in any pretrial or post trial diversion program, to receive or possess that information.

(d) Nothing in this subchapter requires the Department of Justice to remove entries relating to an arrest not resulting in conviction from summary criminal history records forwarded to an employer pursuant to law.

§468 (a) In any case where a person violates this subchapter, the applicant may bring an action to recover from that person actual damages or \$200, whichever is greater, plus costs, and reasonable attorney's fees, as a civil penalty and, as a criminal penalty, imprisonment not to exceed six months or a fine not to exceed \$500, or both.

(b) The remedies under this section are in addition to and not in derogation of all other rights and remedies that an applicant may have under any other law.

§469 Exceptions

This subchapter does not apply if:

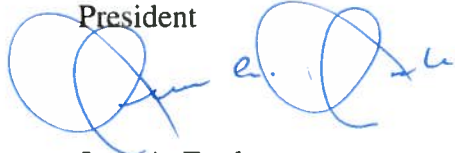
- (1) state or federal law requires an applicant to be rejected based on criminal history;
- (2) the employment requires a satisfactory criminal background as an established bona fide occupational position or a group of employees;
- (3) a standard fidelity or equivalent bond is required and a conviction of one or more specified criminal offenses would disqualify the applicant from obtaining such a bond; or
- (4) the employment is within a facility that provides programs, services, or direct care to minors or vulnerable adults including the educational system or child care.”

Thus passed by the Legislature of the Virgin Islands on October 12, 2018.

Witness our Hands and Seal of the Legislature of the Virgin Islands this 27th Day of October, A.D., 2018.



Myron D. Jackson
President



Jean A. Forde
Legislative Secretary

Bill No. 32-0230 is hereby approved.

Witness my hand and the seal of the Government of the United States Virgin Islands at Charlotte Amalie, St. Thomas, this 10th day of November, 2018 A.D.



**Kenneth E. Mapp
Governor**

