

COMMITTEE ON GOVERNMENT OPERATIONS,
VETERANS AFFAIRS AND CONSUMER PROTECTION

BILL NO. 35-0115

Thirty-Fifth Legislature of the Virgin Islands

August 22, 2023

An Act repealing title 24 Virgin Islands Code chapter 17, subchapter II, “Limited Use of Criminal Records in Hiring Practices,” and enacting in its place “The Fair Chance for Employment Act” relative to criminal record checks in the employment application process; and amending title 3 Virgin Islands Code, chapter 25, subchapter I, section 452 requiring the Director of Personnel to develop and implement fair chance hiring policies; and for other related purposes

PROPOSED BY: Senator Donna A. Frett-Gregory

1 **WHEREAS**, removing automatic disqualification for job applicants with a criminal
2 history eliminates barriers and provides a fair chance for employment;

3 **WHEREAS**, employing formerly incarcerated individuals supports their reintegration
4 back into the community by removing barriers to gainful employment and reducing the
5 likelihood of recidivism;

6 **WHEREAS**, stable and meaningful employment enhances the health and security of the
7 community by assisting people with conviction histories to provide for their families and
8 themselves;

1 **WHEREAS**, employing individuals with a criminal history helps to reduce crime in even
2 the most crime-filled neighborhoods as legal employment provides economic and social
3 opportunities for those who are ready to work and contribute to society;

4 **WHEREAS**, employing persons with a criminal history widens the tax base for the
5 Government of the Virgin Islands;

6 **WHEREAS**, offering fair chances for employment is a nationwide concern for which 35
7 states, the District of Columbia, and 150 cities and counties have adopted legislation; Now,
8 therefore;

9 ***Be it enacted by the Legislature of the Virgin Islands:***

10 **SECTION 1.** This act is known as and may be cited as The Fair Chance for Employment
11 Act.

12 **SECTION 2.** Title 24 Virgin Islands Code, chapter 17, subchapter II is repealed and
13 reenacted with amendments to read as follows:

14 **“Subchapter II. The Fair Chance for Employment Act**

15 **§ 465. Short title, policy, and purpose**

16 (a) This chapter may be cited as the Virgin Islands Fair Chance for Employment Act.

17 (b) The purpose of this chapter is to prohibit unfair discrimination in hiring policies
18 against persons previously convicted and to provide a mechanism to ensure that persons and
19 businesses supplying goods and services to the Government of the Virgin Islands adopt and
20 employ fair hiring policies and practices that are consistent with the Legislature’s goal of
21 removing obstacles to the employment of persons with prior convictions.

22 **§ 465a. Definitions**

23 (a) “Applicant” means any person a private employer, public employer, or a public
24 employer’s agent, vendor, or contractor considers when identifying potential employees

1 through any means including, but not limited to recruitment, solicitation, or seeking personal
2 information, or any person who requests consideration for employment by an employer, or who
3 requests information from an employer related to seeking employment.

4 (b) “Employer” means a public agency private individuals, businesses and
5 corporations, training and apprenticeship program, vendor or contractor.

6 (c) “Conviction” means a plea, verdict, or finding of guilt regardless of whether a
7 sentence is imposed by the court.

8 (d) “Criminal record” means any record pertaining to a citation or arrest for criminal
9 conduct, including records relating to probable cause to arrest, a criminal or juvenile case filed
10 with any court, convictions that have been judicially dismissed or sealed according to law, and
11 any referral to or participation in a pretrial or posttrial diversion program.

12 (e) “Conditional offer of employment” means an offer of employment for a position in
13 the private or public sector from an employer which is subject to the results of a criminal history
14 inquiry.

15 **§ 466. Limitations on inquiries concerning conviction history**

16 (a) Except as otherwise provided by local and federal law, an employer may not inquire
17 about an Applicant’s conviction history before the applicant is determined to be otherwise
18 qualified for the position. Job applications may not contain a “box” or inquiry regarding a job
19 applicant’s prior convictions.

20 (b) An employer may not ask or seek from any source whatsoever or use as a factor in
21 determining any condition of employment, through written or oral form, information regarding
22 a criminal record or history of conviction until the applicant has been given a conditional offer
23 of employment.

1 (c) Unless a specific crime statutorily prevents the applicant from qualifying,
2 employers advertising a job position may not state, imply or document that persons with a
3 criminal background cannot apply.

4 (d) Employment applications distributed by employers to applicants must include a
5 statement that: “A record of conviction will not exclude an applicant from being eligible for
6 the position. Factors that may be examined include:

7 (1) The rational relationship of the nature of the offense to the duties and
8 responsibilities of the position; and

9 (2) Evidence of the rehabilitation of the applicant.”

10 **§ 467. Rescission of conditional offers of employment**

11 (a) An employer may rescind a conditional offer of employment for an applicant who
12 has pending charges filed within the last six months or has been convicted of a felony
13 conviction in the past five years or a misdemeanor conviction that occurred in the past three
14 years only after considering:

15 (1) Whether the criminal offense charge relates to the responsibilities of the
16 position for which the person has applied; and

17 (2) Any documentation or information demonstrating the rehabilitation of the
18 applicant.

19 (b) Employers who rescind offers of employment to job applicants due to criminal
20 history must:

21 (1) state in writing that the applicant’s criminal history was the basis for the
22 rescission of the conditional offer; and

23 (2) provide an opportunity for the applicant to discuss the rescission of the offer
24 with the employer or a qualified person designated by the employer.

1 **§ 468. Exceptions**

2 (a) Nothing in this subchapter prohibits an employer from asking an applicant orally
3 or in writing about an arrest for which the applicant is out on bail or his own recognizance.

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

6 (c) Nothing in this subchapter prohibits an employer at a health facility, as defined in
7 19 V.I.C. § 221(9), from asking an applicant for employment either of the following:

8 (1) An applicant for a position with regular access to patients to disclose an
9 arrest under any section specified 14 V.I.C. chapter 86.

10 (2) An applicant for a position with access to drugs and medication-must
11 disclose an arrest under any section specified in title 19 V.I.C. chapter 29.

12 (d) Nothing in this subchapter covers persons seeking employment, persons already
13 employed as peace officers or persons seeking employment for a position in the Department of
14 Justice or other criminal justice agencies.

15 (e) Nothing in this subchapter applies if:

16 (1) Local or federal law requires an applicant to be rejected based on criminal
17 history;

18 (2) The employment requires a satisfactory criminal background check as an
19 established bona fide occupational position or a group of employees;

20 (3) A standard fidelity or equivalent bond is required, and a conviction of one or
21 more specified criminal offenses would disqualify the applicant from obtaining such a
22 bond; or

23 (4) The employment is within a facility that provides programs, services, or
24 direct care to minors or vulnerable adults, including the educational system or childcare.

1 **§ 469. Handling of Criminal Records**

2 (a) It is unlawful for a peace officer or employee of a law enforcement agency with
3 access to criminal offender record information maintained by a local enforcement criminal
4 justice agency to knowingly disclose, with intent to affect a person's employment, any
5 information contained in a criminal record or pertaining to a history of conviction to any person
6 not authorized by law to receive that information.

7 (b) It is unlawful for any other person authorized by law to receive criminal offender
8 record information maintained by a local law enforcement or criminal justice agency to
9 knowingly disclose any information received from either of those agencies pertaining to a
10 criminal record or history of conviction to any person not authorized by law to receive that
11 information.

12 (c) It is unlawful for any person, who knows he is not authorized by law to receive or
13 possess criminal justice records information maintained by a local law enforcement criminal
14 justice agency pertaining to a criminal record or history of conviction to receive or possess that
15 information.

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

19 **§ 470. Penalties.**

20 (a) Any employer who violates this subchapter may be subject to an action by the
21 applicant to recover actual damages from that person or \$200, whichever is greater, plus costs
22 and reasonable attorney's fees as a civil penalty, and as a criminal penalty imprisonment not to
23 exceed six months or a fine not to exceed \$500, or both.

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

3 **SECTION 4.** Title 3 Virgin Islands Code, chapter 25, subchapter I, section 452 is
4 amended by adding a subsection (e) to read as follows:

5 “(e) The Director of the Division of Personnel shall develop and implement Fair-Chance
6 hiring policy pursuant to 24 V.I.C. § 465 *et seq.* which considers existing policies, including
7 the use of background checks.”

8 **SECTION 5.** The Director of Personnel shall develop and submit a report on the Fair
9 Chance hiring policies to the Governor and Legislature no later than 90 days after the effective
10 date of this act.”

11 **BILL SUMMARY**

12 This bill prohibits unfair discrimination in hiring policies against persons previously
13 convicted. The bill ensures that public agencies, private individuals, businesses and
14 corporations, training and apprenticeship programs, vendors and contractors adopt and employ
15 fair hiring policies and practices that are consistent with the goal of removing obstacles to the
16 employment of such persons. The bill also requires the Director of Personnel to develop and
17 implement Fair-Chance in hiring policies.

18 **BR23-0044/May 24, 2023/NS**