



**VIRGIN ISLANDS DEPARTMENT OF JUSTICE**  
**OFFICE OF THE ATTORNEY GENERAL**

October 10, 2023

Honorable Kenneth L. Gittens  
Senator  
35<sup>th</sup> Legislature of the Virgin Islands  
#3022 Estate Golden Rock  
Christiansted, VI 00820

**Re: *Review of Bill No. 35-0086***

Dear Senator Gittens:

The Office of the Attorney General appreciates the opportunity to comment on Bill No. 35-0086, an Act amending title 3, Virgin Islands Code, chapter 1, section 10h to require background checks for all IT personnel and employees of the Bureau of Information Technology, agencies that have data centers, and any employee who handles classified information, and offers the following comments:

Background checks, in general, are designed to make sure each person hired is reliable, trustworthy, and of good conduct and character. For example, in the federal government, all employees are vetted, at the very least, through a basic background check, and depending on the job description and necessary clearance levels, higher levels of security checks are conducted. Additionally, virtually all states conduct some basic background checks on potential employees. There is no uniform litmus test among the 50 states other than to say that some background checks were required by statute—others by state policy. The type of background check is often dependent upon the job and its duties and responsibilities and need for and access to confidential or sensitive information. Based on our research, there does not appear to be legislation within the fifty states that specifically addresses background checks for IT positions, although many states perform general background checks on potential employees regardless of the position. Our research has also uncovered no statutory prohibitions that would preclude this body from requiring criminal background checks for individuals who apply for IT positions within the government of the Virgin Islands, its agencies, or instrumentalities.

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*Senator, 35<sup>th</sup> Legislature of the Virgin Islands*  
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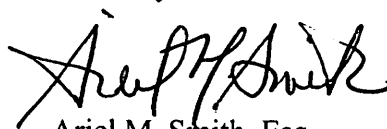
Moreover, it is not uncommon for a criminal background check to be conducted for employees being hired for positions that handle confidential or sensitive information. IT personnel have access to, manage and potentially review all information of the government, and its employees, confidential or not. As a result, assuring that individuals hired in IT positions meet a minimum criterion is not new in the hiring process.

The legislation as proposed requires a criminal background check for applicants and current active employees of the Government of the Virgin Islands who hold IT positions. The legal employment rights of applicants and current employees differ. It should be noted that a background check *after* employment has commenced may pose issues. The government can terminate an employee after they have been hired if information from a background check, commenced during the application process, is discovered that would make the employee ineligible for the position. However, the government must comply with all laws regarding background checks and employment discrimination as well as any collective bargaining agreements, if applicable. Much would depend on the employee's status—classified or exempt. All legal procedures must be complied with and adhered to and as such, criminal background checks after employment with the Government has commenced should be approached prudently.

Additionally, the Bill refers to the handling of classified information. That normally has very specific connotations, at least, in the federal context. For example, a classified document has been defined as “any document or other record, whether in paper, electronic, or other form, that contains information regarded as sensitive by a national government and which, for that reason, is legally accessible only to persons with an appropriate government-issued security clearance.” The Virgin Islands does not officially recognize clearance levels nor do we have a definition within the Virgin Islands Code for “classified” information or “classified” document. So perhaps a better term to use in this context is “confidential” and define that term within the statute, specifically in section 3 V.I.C. section 10(b) by adding a new definition to that section.

These are our comments and concerns regarding Bill No. 35-0086. If you have any questions, please do not hesitate to contact me or Solicitor General Pamela Tepper.

Sincerely,

A handwritten signature in black ink, appearing to read 'Ariel M. Smith', written in a cursive style.

Ariel M. Smith, Esq.  
Attorney General

cc: Members of the Committee on Homeland Security, Justice and Public Safety