



TESTIMONY BILL No. 35-0115

Legislature of the Virgin Islands | 35th Legislature

Committee of Homeland Security, Justice, and Public Safety
The Honorable Kenny Gittens, Chairperson

The Division of Personnel
Presented by:

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Good morning, Honorable Senator Kenny Gittens, Chairperson of the Committee on Homeland Security, Justice, and Public Safety, committee members, non-committee members, ladies and gentlemen in our viewing and listening audience, colleagues, and the Division of Personnel team.

My name is Florine Audain-Hassell, and I serve as the Assistant Director for the Division of Personnel. I am here today on behalf of Director Cindy L. Richardson. Accompanying me today are members of our team, Aliya Felix, Esq., Legal Counsel, and Millicent Aubain, Territorial Administrator of Recruitment and Classification. In response to your invitation, we are here today to provide testimony on Bill No. 35-0115 proposed by Senator Donna Frett-Gregory.

Bill No. 35-0115 is 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" concerning criminal records checks in the employment application process. Additionally, it amends title 3 V.I.C., chapter 25, subchapter I, section 452, requiring the Director of Personnel to develop and implement fair chance hiring policies, and addresses other related proposals.

Upon reviewing the proposed legislation in its entirety, regrettably, the Division of Personnel is not in support of this bill as amended. Section 4 of the Bill states, "...the Director of the Division of Personnel shall develop and implement Fair Chance hiring policy pursuant to 24 V.I.C. § 465 et seq., which considers existing policies, including the use of background checks." We do not support this policy being put under the Director of the Division of Personnel; it should remain where it's at the Department of Labor.

Section 2, subchapter II, § 467, of the bill, it states, "Employers who rescind offers of employment to job applicants due to criminal history must:

(1) state in writing that the applicant's criminal history was the basis for the rescissions of the conditional offer; and" We currently have policies and procedures in place to inform applicants when they have been rejected for job vacancies. However, we do NOT send out rejections to applicants based solely on their criminal history, as this practice is discriminatory.

(2) provide an opportunity for the applicant to discuss the rescission of the offer with the employer or a qualified person designated by the employer. Our position is that this could burden HR staff, who do not currently meet with other applicants to discuss why they were not chosen for the position, and it could be perceived as discriminatory.

In the Division of Personnel, this hiring process already exists and is guided by the Virgin Islands Personnel Rules and Regulations outlined under chapter 1, section 8, Equal Employment Opportunity of these regulations specifically addresses Equal Employment Opportunity, stating that Virgin Islands Government is to provide equal employment opportunity to all employees and applicants, prohibiting employment discrimination based on various factors defined by applicable federal or local law.

Under the Civil Rights Act of 1964, title VII - Equal Employment Opportunity, section 703, unlawful employment practices related to discrimination based on race, color, religion, sex, or national origin are outlined. This section prohibits discriminatory actions by employers, employment agencies, and labor organizations, including refusal to hire, discharge, or segregation based on these characteristics. Exceptions for bona fide occupational qualifications and security requirements are included. An example of bona fide occupational qualifications is a translator or interpreter, this position may require the individual to speak certain languages which is essential to the job function but may exclude individuals based on the requirement.

- a) Notably, this policy (Personnel Rules and Regulations chapter 1, section 8 Equal Employment Opportunity) of the Virgin Islands Government is to provide equal employment opportunities to all employees and applicants. Employment discrimination of any type on the basis of race, color, sex, national origin, citizenship, age, handicap, political affiliation, and other such categories as defined by applicable federal or local law is prohibited.
- b) All agencies, including the Division of Personnel, are required to evaluate their personnel practices and take prompt corrective action as needed to eliminate discrimination.

- c) When discriminatory personnel practices are identified, the Personnel Director must be notified immediately, and appropriate corrective action taken. This corrective action includes both restoring victims of discrimination to their rightful place and changing existing practices to prevent future discrimination.

While we appreciate the intention behind the bill to provide a fair chance for employment to individuals with criminal records, these policies and practices are already in place in the Government of the Virgin Islands. At Personnel, we do not erect barriers against persons with criminal records, nor do we inquire about any criminal record, as Ban the Box policies prohibit us from requesting criminal background information from job applicants before extending an offer, with a few exceptions. It incorporates federal guidance on the Use of Arrest and Conviction Records in employment decisions. These policies prevent the solicitation of criminal background information from job applicants until after a job offer is extended, aligning with federal guidelines. These guidelines recognize the potential for discrimination outlined in Title VII of the Civil Rights Act of 1964. Employers can still request background checks for specific roles, such as law enforcement or finance, after extending a conditional job offer. Given the existing framework's comprehensiveness, introducing potentially redundant legislation is unnecessary.

Last November, the Division of Personnel presented testimony before the Committee on Homeland Security, Justice and Public Safety on Bill no. 35-0086, an Act amending title 3 V.I.C. Ch 1 Sec. 10, "...to require background checks for all IT personnel and employees of BIT, agencies that have data centers, and any employee who handles confidential information. In this testimony, we informed the Committee that we have provided all GVI agencies and their human resource staff with the necessary information when it comes to background checks. Also, we met with the bill sponsor and other agencies that would be affected by this bill in hopes of creating substantial legislation. We hope to do the same with this bill as well.

We recommend that Act #8134 V.I.C. 24 chapter 17, subchapter II (limiting employer's use of criminal records in hiring and other employment practices) remain as is under the Labor Laws of the Virgin Islands, as DOP has no control over the private sector nor the semi-autonomous agencies. Before enacting any new measures, we advocate for a thoughtful and comprehensive

dialogue within the Committee. This discussion should involve a detailed analysis of the current policies, their impact, and potential areas for improvement. Engaging in such deliberations will not only strengthen our commitment to fair chance hiring but also enable us to refine existing practices where necessary.

In conclusion, it is essential to underscore that the Division of Personnel is deeply committed to promoting inclusivity and equal opportunities within the workforce. Our existing policies have been meticulously designed to ensure fair consideration for individuals with diverse backgrounds and experiences. At DOP, we encourage all Human Resource officers of the Government of the Virgin Islands to remain in compliance with these policies. These policies, which encompass fair chance hiring principles, have proven to be effective in cultivating a work environment that is both equitable and diverse.

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My team and I stand ready to answer any questions.