

5554

2013-2014 Regular Sessions

I N S E N A T E

May 20, 2013

Introduced by Sen. BOYLE -- read twice and ordered printed, and when printed to be committed to the Committee on Consumer Protection

AN ACT to amend the general business law, in relation to banning the sale of employment data reports

THE PEOPLE OF THE STATE OF NEW YORK, REPRESENTED IN SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

1 Section 1. Section 380-u of the general business law, as relettered
2 by chapter 63 of the laws of 2006, is relettered section 380-v and a new
3 section 380-u is added to read as follows:
4 S 380-U. SALE OF EMPLOYMENT DATA REPORTS. (A) NO CONSUMER REPORTING
5 AGENCY SHALL SELL OR RESELL, OR OFFER FOR SALE OR RESALE OR DISTRIBUTE
6 EMPLOYMENT DATA REPORTS TO THIRD PARTIES WITHOUT WRITTEN CONSUMER
7 CONSENT IN A SEPARATE STAND-ALONE DOCUMENT. SUCH EMPLOYMENT REPORTS
8 SHALL INCLUDE, BUT NOT BE LIMITED TO, PAYROLL AND EARNINGS INFORMATION,
9 HOURS WORKED, CONSUMER HISTORY AND HEALTH INSURANCE INFORMATION.
10 (B) WHEREVER THERE SHALL BE A VIOLATION OF THIS SECTION, AN APPLICA-
11 TION MAY BE MADE BY THE ATTORNEY GENERAL IN THE NAME OF THE PEOPLE OF
12 THE STATE OF NEW YORK TO A COURT OR JUSTICE HAVING JURISDICTION BY A
13 SPECIAL PROCEEDING TO ISSUE AN INJUNCTION, AND UPON NOTICE TO THE
14 DEFENDANT OF NOT LESS THAN FIVE DAYS, TO ENJOIN OR RESTRAIN THE CONTIN-
15 UANCE OF SUCH VIOLATION; AND IF IT SHALL APPEAR TO THE SATISFACTION OF
16 THE COURT OR JUSTICE THAT THE DEFENDANT HAS, IN FACT, VIOLATED THIS
17 SECTION, AN INJUNCTION MAY BE ISSUED BY SUCH COURT OR JUSTICE, ENJOINING
18 AND RESTRAINING ANY FURTHER VIOLATION, WITHOUT REQUIRING PROOF THAT ANY
19 PERSON HAS, IN FACT, BEEN INJURED OR DAMAGED THEREBY. IN ANY SUCH
20 PROCEEDING, THE COURT MAY MAKE ALLOWANCES TO THE ATTORNEY GENERAL AS
21 PROVIDED IN PARAGRAPH SIX OF SUBDIVISION (A) OF SECTION EIGHTY-THREE
22 HUNDRED THREE OF THE CIVIL PRACTICE LAW AND RULES, AND DIRECT RESTITU-
23 TION. WHENEVER THE COURT SHALL DETERMINE THAT A VIOLATION OF THIS
24 SECTION HAS OCCURRED, THE COURT MAY IMPOSE A CIVIL PENALTY OF NOT MORE
25 THAN TWO THOUSAND DOLLARS FOR EACH VIOLATION. IN CONNECTION WITH ANY

EXPLANATION--Matter in *ITALICS* (underscored) is new; matter in brackets
[] is old law to be omitted.

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1 SUCH PROPOSED APPLICATION, THE ATTORNEY GENERAL IS AUTHORIZED TO TAKE
2 PROOF AND MAKE A DETERMINATION OF THE RELEVANT FACTS AND TO ISSUE
3 SUBPOENAS IN ACCORDANCE WITH THE CIVIL PRACTICE LAW AND RULES.

4 (C) IN ADDITION TO ANY RIGHT OF ACTION GRANTED TO THE ATTORNEY GENERAL
5 PURSUANT TO THIS SECTION, ANY PERSON WHO HAS BEEN INJURED BY REASON OF
6 ANY VIOLATION OF THIS SECTION MAY BRING AN ACTION IN HIS OR HER OWN NAME
7 TO ENJOIN SUCH UNLAWFUL ACT OR PRACTICE, AN ACTION TO RECOVER HIS OR HER
8 ACTUAL DAMAGES OR ONE THOUSAND DOLLARS, WHICHEVER IS GREATER, OR BOTH
9 SUCH ACTIONS. THE COURT MAY, IN ITS DISCRETION, AWARD THE PREVAILING
10 PLAINTIFF IN SUCH ACTION AN ADDITIONAL AWARD NOT TO EXCEED FIVE THOUSAND
11 DOLLARS, IF THE COURT FINDS THE DEFENDANT WILLFULLY VIOLATED THE
12 PROVISIONS OF THIS SECTION. THE COURT MAY AWARD REASONABLE ATTORNEYS'
13 FEES TO A PREVAILING PLAINTIFF.

14 S 2. This act shall take effect on the one hundred eightieth day after
15 it shall have become a law.