

STATE OF NEW YORK

3050

2017-2018 Regular Sessions

IN ASSEMBLY

January 25, 2017

Introduced by M. of A. BICHOTTE -- read once and referred to the Committee on Correction

AN ACT to amend the administrative code of the city of New York, the correction law, the criminal procedure law, the executive law and the social services law, in relation to prohibiting discrimination based on one's arrest record or criminal conviction

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

1 Section 1. Subdivisions 10 and 11 of section 8-107 of the administrative code of the city of New York, as amended by local law number 63 of
2 the city of New York for the year 2015, are amended to read as follows:

3 10. Criminal conviction; employment. (a) It shall be an unlawful
4 discriminatory practice for any employer, employment agency or agent
5 thereof to deny employment to any person or take adverse action against
6 any employee by reason of such person or employee having been convicted
7 of one or more criminal offenses, or by reason of a finding of a lack of
8 "good moral character" which is based on:

9 (i) such person or employee having been convicted of one or more criminal offenses, when such denial or adverse action is in violation of the provisions of article [twenty-three-a] ~~twenty-three-A~~ of the correction law regardless of when such conviction occurred, including if such conviction occurred while such person was employed at the job at issue; or

10 (ii) such person or employee having a final judgment of guilt entered for a felony more than ten years ago and a misdemeanor more than five years ago. These periods of time shall be measured from the date judgment was entered or the release from incarceration, whichever date is later, until the date of the adverse action in question. Criminal acts committed outside the state shall be classified as felonies or misdemeanors committed within the state based on the maximum sentence that could

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

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1 have been imposed for such conviction under the laws of such foreign
2 jurisdiction.

3 (b) For purposes of this subdivision, "employment" shall not include
4 employment as a police officer or a peace officer as defined in section
5 2.10 of the criminal procedure law.

6 (c) Pursuant to section seven hundred ~~[fifty-five]~~ fifty-six of the
7 correction law, the provisions of this subdivision shall be enforceable
8 against public agencies by a proceeding brought pursuant to article
9 seventy-eight of the ~~[Civil Practice Law and Rules]~~ civil practice law
10 and rules, and the provisions of this subdivision shall be enforceable
11 against private employers by the commission through the administrative
12 procedure provided for in this chapter or as provided in chapter five of
13 this title. For purposes of this paragraph only, the terms "public agen-
14 cy" and "private employer" shall have the meaning given such terms in
15 section seven hundred fifty of the correction law.

16 11. Arrest record; employment. It shall be an unlawful discriminatory
17 practice, unless specifically required or permitted by any other law,
18 for any person to:

19 (a) deny employment to any applicant or act adversely upon any employ-
20 ee by reason of an arrest or criminal accusation of such applicant or
21 employee when such denial or adverse action is in violation of subdivi-
22 sion ~~[16]~~ sixteen of section ~~[296]~~ two hundred ninety-six of ~~[article 15~~
23 ~~of]~~ the ~~[New York state]~~ executive law; or

24 (b) make any inquiry as defined in subdivision ten of this section in
25 writing or otherwise, regarding any arrest or criminal accusation of an
26 applicant or employee when such inquiry is in violation of subdivision
27 ~~[16]~~ sixteen of section ~~[296]~~ two hundred ninety-six of ~~[article 15 of]~~
28 the ~~[New York state]~~ executive law.

29 § 2. Subparagraph (iii) of paragraph (b) and paragraphs (d) and (e) of
30 subdivision 11-a of section 8-107 of the administrative code of the city
31 of New York, as added by local law number 63 of the city of New York for
32 the year 2015, are amended to read as follows:

33 (iii) after giving the applicant the inquiry and analysis in writing
34 pursuant to subparagraphs (i) and (ii) of this paragraph, allows the
35 applicant a reasonable time to respond, which shall be no less than
36 ~~[three]~~ seven business days and during this time, holds the position
37 open for the applicant.

38 (d) An applicant shall not be required to respond to any inquiry or
39 statement that violates paragraph (a) of this subdivision and any
40 refusal to respond to such inquiry or statement shall not disqualify an
41 applicant from the prospective employment. Nothing in this paragraph
42 shall prohibit an applicant from voluntarily disclosing information
43 pertaining to his or her criminal history.

44 (e) This subdivision shall not apply to any actions taken by an
45 employer or agent thereof pursuant to any state, federal or local law
46 that requires criminal background checks for employment purposes or bars
47 employment based on criminal history. For purposes of this paragraph
48 federal law shall include rules or regulations promulgated by a self-re-
49 gulatory organization as defined in section 3(a)(26) of the securities
50 exchange act of 1934, as amended. A person who is required to perform a
51 criminal background check pursuant to federal, state or local law may
52 inform the applicant that the prospective license, permit, or employment
53 is subject to a background check and that the person is prohibited by
54 law from licensing, permitting, or employing individuals with certain
55 criminal convictions, though such prohibition may be lifted by a certif-

1 icate of relief from disabilities or certificate of good conduct under
2 article twenty-three of the correction law.

3 § 3. Section 8-102 of the administrative code of the city of New York
4 is amended by adding a new subdivision 33 to read as follows:

5 33. "Criminal offense" means any offense as defined in section 55.10
6 of the penal law.

7 § 4. Subdivisions 2 and 5 of section 750 of the correction law, as
8 added by chapter 931 of the laws of 1976, are amended and a new subdivi-
9 sion 6 is added to read as follows:

10 (2) "Private employer" means any person, company, corporation, labor
11 organization or association which employs [~~ten~~] four or more persons.

12 (5) "Employment" means any occupation, vocation or employment, or any
13 form of vocational or educational training. Provided, however, that
14 "employment" shall not, for the purposes of this article, include
15 [~~membership in any law enforcement agency~~] employment as a police offi-
16 cer or a peace officer as defined in section 2.10 of the criminal proce-
17 dure law.

18 (6) "Criminal offense" means any offense as defined in section 55.10
19 of the penal law.

20 § 5. Section 751 of the correction law, as amended by chapter 284 of
21 the laws of 2007, is amended to read as follows:

22 § 751. Applicability. The provisions of this article shall apply to
23 any application by any person for a license or employment at any public
24 or private employer, who is currently charged with or who has previously
25 been convicted of one or more criminal offenses in this state or in any
26 other jurisdiction, and to any license or employment held by any person
27 whose pending arrest for or conviction of one or more criminal offenses
28 in this state or in any other jurisdiction preceded such employment or
29 granting of a license, and to any license or employment held by any
30 person whose pending arrest for or conviction of one or more criminal
31 offenses in this state or in any other jurisdiction occurred during the
32 period of such employment or granting of a license, except where a
33 mandatory forfeiture, disability or bar to employment is imposed by law,
34 and has not been removed by an executive pardon, certificate of relief
35 from disabilities or certificate of good conduct. Nothing in this arti-
36 cle shall be construed to affect any right an employer may have with
37 respect to an intentional misrepresentation in connection with an appli-
38 cation for employment made by a prospective employee or previously made
39 by a current employee.

40 § 6. Section 752 of the correction law, as amended by chapter 284 of
41 the laws of 2007, is amended to read as follows:

42 § 752. Unfair discrimination against persons [~~previously~~] charged with
43 or convicted of one or more criminal offenses prohibited. No application
44 for any license or employment, and no employment or license held by an
45 individual, to which the provisions of this article are applicable,
46 shall be denied or acted upon adversely by reason of the individual's
47 having been charged with one or more offenses or having been [~~previous-~~
48 ~~ly~~] convicted of one or more criminal offenses, or by reason of a find-
49 ing of lack of "good moral character" when such finding is based upon
50 the fact that the individual has [~~previously~~] been charged with or
51 convicted of one or more criminal offenses, unless:

52 (1) there is a direct relationship between one or more of the [~~previ-~~
53 ~~ous~~] criminal offenses and the specific license or employment sought or
54 held by the individual; [~~or~~] and

55 (2) the issuance or continuation of the license or the granting or
56 continuation of the employment would involve an unreasonable risk to

1 property or to the safety or welfare of specific individuals or the
2 general public.
3 § 7. The article heading of article 23-A of the correction law, as
4 added by chapter 931 of the laws of 1976, is amended to read as follows:

5 LICENSURE AND EMPLOYMENT OF PERSONS [~~PREVIOUSLY~~]
6 CONVICTED OF ONE OR MORE CRIMINAL OFFENSES

7 § 8. The section heading and subdivision 1 of section 753 of the
8 correction law, as added by chapter 931 of the laws of 1976, paragraph
9 (b) of subdivision 1 as amended by chapter 284 of the laws of 2007, are
10 amended to read as follows:

11 Factors to be considered concerning a [~~previous~~] criminal charge or
12 conviction; presumption. 1. In making a determination pursuant to
13 section seven hundred fifty-two of this chapter, the public agency or
14 private employer shall consider the following factors:

15 (a) The public policy of this state, as expressed in this act, to
16 encourage the licensure and employment of persons [~~previously~~] charged
17 with or convicted of one or more criminal offenses.

18 (b) The specific duties and responsibilities necessarily related to
19 the license or employment sought or held by the person.

20 (c) The bearing, if any, the criminal offense or offenses for which
21 the person was [~~previously~~] charged with or convicted will have on his
22 fitness or ability to perform one or more such duties or responsibil-
23 ities.

24 (d) The time which has elapsed since the occurrence of the criminal
25 offense or offenses.

26 (e) The age of the person at the time of occurrence of the criminal
27 offense or offenses.

28 (f) The seriousness of the offense or offenses.

29 (g) Any information produced by the person, or produced on his behalf,
30 in regard to his rehabilitation and good conduct.

31 (h) The legitimate interest of the public agency or private employer
32 in protecting property, and the safety and welfare of specific individ-
33 uals or the general public.

34 § 9. Section 753 of the correction law is amended by adding a new
35 subdivision 3 to read as follows:

36 3. A presumption of rehabilitation in regard to an offense or offenses
37 previously committed shall exist:

38 (a) with regard to one or more previous felony convictions, when the
39 person so convicted has not been convicted of any additional crimes in
40 the ten years following entry of judgment or release from jail or pris-
41 on, whichever date is latest; and

42 (b) with regard to one or more previous misdemeanor convictions, when
43 the person so convicted has not been convicted of any additional crimes
44 in the five years following entry of judgment or release from jail or
45 prison, whichever date is latest.

46 § 10. Section 754 of the correction law, as added by chapter 931 of
47 the laws of 1976, is amended to read as follows:

48 § 754. Written statement upon denial of license or employment or has
49 been subject to adverse employment action. At the request of any person
50 [~~previously~~] charged with or convicted of one or more criminal offenses
51 who has been denied a license or employment, a public agency or private
52 employer shall provide, within thirty days of a request, a written
53 statement setting forth the reasons for such denial or adverse employ-
54 ment action.

1 § 11. The correction law is amended by adding a new section 755 to
2 read as follows:

3 § 755. Arrest and conviction records; employer inquiries. 1. It shall
4 be an unlawful discriminatory practice for any employer, employment
5 agency or agent thereof to:

6 (a) Declare, print or circulate or cause to be declared, printed or
7 circulated any solicitation, advertisement or publication, which
8 expresses, directly or indirectly, any limitation, or specification in
9 employment based on a person's arrest or criminal conviction; or

10 (b) Make any inquiry or statement related to the pending arrest or
11 criminal conviction record of any person who is in the process of apply-
12 ing for employment with such employer or agent thereof until after such
13 employer or agent thereof has extended a conditional offer of employment
14 to the applicant.

15 (c) For purposes of this section:

16 (1) with respect to an applicant for temporary employment at a tempo-
17 rary help firm as such term is defined by subdivision five of section
18 nine hundred sixteen of the labor law, an offer to be placed in the
19 temporary help firm's general candidate pool shall constitute a condi-
20 tional offer of employment;

21 (2) "any inquiry" means any question communicated to an applicant in
22 writing or otherwise, or any searches of publicly available records or
23 consumer reports that are conducted for the purpose of obtaining an
24 applicant's criminal background information; and

25 (3) "any statement" means a statement communicated in writing or
26 otherwise to the applicant for purposes of obtaining an applicant's
27 criminal background information regarding: (i) an arrest record; (ii) a
28 conviction record; or (iii) a criminal background check.

29 2. After extending an applicant a conditional offer of employment, an
30 employer, employment agency or agent thereof may inquire about the
31 applicant's arrest or conviction record if before taking any adverse
32 employment action based on such inquiry, the employer, employment agency
33 or agent thereof:

34 (a) provides a written copy of the inquiry to the applicant in a
35 manner to be determined by the division of criminal justice services,
36 and advises the applicant that he or she may submit any available
37 evidence of rehabilitation or good conduct since the offense in ques-
38 tion, which shall be considered in the analysis performed under this
39 article;

40 (b) performs an analysis of the applicant under this article and
41 provides a written copy of such analysis to the applicant in a manner to
42 be determined by the division of criminal justice services, and advises
43 the applicant that he or she may submit any available evidence of reha-
44 bilitation or good conduct since the offense in question, which shall be
45 considered in the analysis performed under this article, which shall
46 include but not be limited to supporting documents that formed the basis
47 for an adverse action based on such analysis and the employer's or
48 employment agency's reasons for taking any adverse action against such
49 applicant; and

50 (c) after giving the applicant the inquiry and analysis in writing
51 pursuant to paragraphs (a) and (b) of this subdivision, allows the
52 applicant a reasonable time to respond, which shall be no less than
53 seven business days and during this time, holds the position open for
54 the applicant.

55 3. Nothing in this section shall prevent an employer, employment agen-
56 cy or agent thereof from taking adverse action against any employee or

1 denying employment to any applicant for reasons other than such employee
2 or applicant's arrest or criminal conviction record.

3 4. An applicant shall not be required to respond to any inquiry or
4 statement that violates subdivision one of this section and any refusal
5 to respond to such inquiry or statement or any response in the negative
6 to such inquiry shall not disqualify an applicant from the prospective
7 employment.

8 5. This section shall not apply to any actions taken by an employer or
9 agent thereof that are required pursuant to any state, federal or local
10 law that requires criminal background checks for employment purposes or
11 bans employment based on criminal history. For purposes of this para-
12 graph federal law shall include rules or regulations promulgated by a
13 self-regulatory organization as defined in section 3(a)(26) of the secu-
14 rities exchange act of 1934, as amended. A person who is required to
15 perform a criminal background check pursuant to federal, state or local
16 law may inform the applicant that the prospective license, permit, or
17 employment is subject to a background check and that the person is
18 prohibited by law from licensing, permitting, or employing individuals
19 with certain criminal convictions, though such prohibition may be lifted
20 by a certificate of relief from disabilities or certificate of good
21 conduct under article twenty-three of this chapter.

22 6. This section shall not apply to any actions taken by an employer or
23 agent thereof with regard to an applicant for employment:

24 (a) as a police officer or peace officer, as defined in subdivisions
25 thirty-three and thirty-four of section 1.20 of the criminal procedure
26 law; or

27 (b) in a position that involves law enforcement, is susceptible to
28 bribery or other corruption, as determined by the state police or other
29 agency selected by the governor, or entails the provision of services to
30 or safeguarding of persons who, because of age, disability, infirmity or
31 other condition, are vulnerable to abuse, as determined by the Justice
32 Center for Persons with Special Needs or other agency selected by the
33 governor. If an employer takes adverse action against any applicant for
34 such position based on the applicant's arrest or criminal conviction
35 record, it shall still provide a written copy of such analysis performed
36 under this article to the applicant in a form and manner to be deter-
37 mined by the division.

38 7. The provisions of this section shall be enforceable against public
39 agencies and against private employers by a proceeding brought pursuant
40 to article fifteen of the executive law. For purposes of this subdivi-
41 sion only, the terms "public agency" and "private employer" shall have
42 the meaning given such terms in section seven hundred fifty of this
43 article.

44 § 12. Section 755 of the correction law, as added by chapter 931 of
45 the laws of 1976, is renumbered 756 and amended to read as follows:

46 § 756. Enforcement. [~~1. In relation to actions by public agencies, the~~
47 ~~provisions of this article shall be enforceable by a proceeding brought~~
48 ~~pursuant to article seventy-eight of the civil practice law and rules.~~

49 ~~2. In relation to actions by private employers, the]~~ The provisions of
50 this article shall be enforceable by the division of human rights pursu-
51 ant to the powers and procedures set forth in article fifteen of the
52 executive law, and, concurrently, by the New York city commission on
53 human rights.

54 § 13. Subdivision 8 of section 170.55 of the criminal procedure law,
55 as added by chapter 134 of the laws of 1982 and renumbered by chapter
56 683 of the laws of 1990, is amended to read as follows:

1 8. (a) The granting of an adjournment in contemplation of dismissal
2 shall not be deemed to be a conviction or an admission of guilt. No
3 person shall suffer any disability or forfeiture as a result of such an
4 order. Upon the dismissal of the accusatory instrument pursuant to this
5 section, the arrest and prosecution shall be deemed a nullity and the
6 defendant shall be restored, in contemplation of law, to the status he
7 occupied before his arrest and prosecution.

8 (b) For purposes of employment and licensing, the granting of an
9 adjournment in contemplation of dismissal shall be considered a termi-
10 nation of the matter in the defendant's favor and no adverse employment
11 action may be based on a case that has been adjourned in contemplation
12 of dismissal.

13 § 14. Section 170.56 of the criminal procedure law is amended by
14 adding a new subdivision 5 to read as follows:

15 5. For purposes of employment and licensing, the granting of an
16 adjournment in contemplation of dismissal shall be considered a termi-
17 nation of the matter in the defendant's favor and no adverse employment
18 action may be based on a case that has been adjourned in contemplation
19 of dismissal.

20 § 15. Subdivision 16 of section 296 of the executive law, as separate-
21 ly amended by section 3 of part N and section 14 of part AAA of chapter
22 56 of the laws of 2009, is amended to read as follows:

23 16. (a) It shall be an unlawful discriminatory practice, unless
24 specifically required or permitted by statute, for any person, agency,
25 bureau, corporation or association, including the state and any politi-
26 cal subdivision thereof, to make any inquiry about, whether in any
27 form of application or otherwise, or to act upon adversely to the indi-
28 vidual involved, any arrest or criminal accusation of such individual
29 not then pending against that individual which was followed by a termi-
30 nation of that criminal action or proceeding in favor of such individ-
31 ual, as defined in subdivision two of section 160.50 of the criminal
32 procedure law, or by a youthful offender adjudication, as defined in
33 subdivision one of section 720.35 of the criminal procedure law, or by a
34 conviction for a violation sealed pursuant to section 160.55 of the
35 criminal procedure law or by a conviction which is sealed pursuant to
36 section 160.58 of the criminal procedure law, in connection with the
37 licensing, employment or providing of credit or insurance to such indi-
38 vidual, or by the granting of an adjournment in contemplation of
39 dismissal pursuant to article one hundred seventy of the criminal proce-
40 dure law; provided, further, that no person shall be required to divulge
41 information pertaining to any arrest or criminal accusation of such
42 individual not then pending against that individual which was followed
43 by a termination of that criminal action or proceeding in favor of such
44 individual, as defined in subdivision two of section 160.50 of the crim-
45 inal procedure law, or by a youthful offender adjudication, as defined
46 in subdivision one of section 720.35 of the criminal procedure law, or
47 by a conviction for a violation sealed pursuant to section 160.55 of the
48 criminal procedure law, or by a conviction which is sealed pursuant to
49 section 160.58 of the criminal procedure law, or by the granting of an
50 adjournment in contemplation of dismissal pursuant to article one
51 hundred seventy of the criminal procedure law. The provisions of this
52 subdivision shall not apply to the licensing activities of governmental
53 bodies in relation to the regulation of guns, firearms and other deadly
54 weapons or in relation to an application for employment as a police
55 officer or peace officer as those terms are defined in subdivisions
56 thirty-three and thirty-four of section 1.20 of the criminal procedure

1 law; provided further that the provisions of this subdivision shall not
2 apply to an application for employment or membership in any law enforce-
3 ment agency with respect to any arrest or criminal accusation which was
4 followed by a youthful offender adjudication, as defined in subdivision
5 one of section 720.35 of the criminal procedure law, or by a conviction
6 for a violation sealed pursuant to section 160.55 of the criminal proce-
7 dure law, or by a conviction which is sealed pursuant to section 160.58
8 of the criminal procedure law, or by the granting of an adjournment in
9 contemplation of dismissal pursuant to article one hundred seventy of
10 the criminal procedure law.

11 (b) Any person subjected to an inquiry concerning any arrest or crimi-
12 nal accusation in violation of the provisions of this section shall be
13 entitled to respond in the negative to such question if responding
14 otherwise would require disclosures relating to a case that has been
15 sealed or otherwise terminated in favor of the person, and such negative
16 response, even if technically false, may not be used as a basis for
17 adverse employment action.

18 § 16. Subdivision 7 of section 390-e of the social services law, as
19 added by chapter 459 of the laws of 2006, is amended to read as follows:

20 7. Upon the request of any person [~~previously~~] charged with or
21 convicted of one or more criminal offenses who has been denied employ-
22 ment pursuant to subdivision six of this section, the mentoring program
23 shall provide, within thirty days of such request, a written statement
24 setting forth the reasons for such denial. Any such person denied
25 employment pursuant to subdivision six of this section shall be afforded
26 the opportunities for enforcement available pursuant to section seven
27 hundred [~~fifty-five~~] fifty-six of the correction law.

28 § 17. This act shall take effect on the ninetieth day after it shall
29 have become a law.