

STATE OF NEW YORK

2611

2019-2020 Regular Sessions

IN ASSEMBLY

January 24, 2019

Introduced by M. of A. DINOWITZ, L. ROSENTHAL, CRESPO, BUCHWALD, WEPRIN,
M. G. MILLER, RODRIGUEZ, OTIS, ABINANTI, SEAWRIGHT, SOLAGES -- Multi-
Sponsored by -- M. of A. JAFFEE, PERRY -- read once and referred to
the Committee on Consumer Affairs and Protection

AN ACT to amend the general business law, in relation to prohibiting the
disclosure or use of a person's consumer credit history to an employ-
er, labor organization, employment agency or agent thereof for
purposes of employment decisions

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

1 Section 1. Section 380-a of the general business law is amended by
2 adding a new subdivision (u) to read as follows:

3 (u) The term "consumer credit history" means an individual's credit
4 worthiness, credit standing, credit capacity or payment history, as
5 indicated by:

6 (1) a consumer credit report;

7 (2) credit score; or

8 (3) information an employer obtains directly from the individual
9 regarding (i) details about credit accounts, including the individual's
10 number of credit accounts, late or missed payments, charged-off debts,
11 items in collections, credit limit or prior credit report inquiries, or
12 (ii) bankruptcies, judgments or liens.

13 A consumer credit report shall include any written or other communi-
14 cation of any information by a consumer reporting agency that bears on a
15 consumer's creditworthiness, credit standing, credit capacity or credit
16 history.

17 § 2. Subdivision (d) of section 380-b of the general business law is
18 relettered subdivision (f) and two new subdivisions (d) and (e) are
19 added to read as follows:

20 (d) (1) Except as provided in this subdivision, it shall be an unlaw-
21 ful discriminatory practice for an employer, labor organization, employ-

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

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1 ment agency or any agent thereof to request or to use, and a violation
2 of this article for any person to disclose, for employment purposes the
3 consumer credit history of an applicant for employment or employee, or
4 otherwise discriminate against an applicant or employee with regard to
5 hiring, compensation, or the terms, conditions or privileges of employ-
6 ment based on the consumer credit history of the applicant or employee.

7 (2) Paragraph one of this subdivision shall not apply to:

8 (i) an employer, or agent thereof, that is required by state or feder-
9 al law or regulations or by a self-regulatory organization as defined in
10 section 3(a)(26) of the securities exchange act of 1934, as amended to
11 use an individual's consumer credit history for employment purposes;

12 (ii) persons applying for positions as or employed:

13 (A) as peace officers or police officers, as those terms are defined
14 in subdivisions thirty-three and thirty-four of section 1.20 of the
15 criminal procedure law, respectively, or in a position with a law
16 enforcement or investigative function in a law enforcement agency;

17 (B) in a position in which an employee is required to be bonded under
18 local, state or federal law;

19 (C) in a position in which an employee is required to possess security
20 clearance under federal law or the law of any state;

21 (D) in a non-clerical position having regular access to trade secrets,
22 intelligence information or national security information;

23 (E) in a position: (I) having access to third party, consumer or
24 employer funds or assets valued at ten thousand dollars or more; or (II)
25 that involves a fiduciary responsibility to the employer with the
26 authority to enter financial agreements or initiate, modify or approve
27 payments, valued at ten thousand dollars or more on behalf of the
28 employer; or

29 (F) in a position with regular duties that allow the employee to
30 design, monitor, access, provision access and/or modify (I) systems,
31 applications or databases containing confidential employer and/or
32 customer data; or (II) digital security systems established to prevent
33 the unauthorized use of the employer's or client's networks or data-
34 bases.

35 (3) Paragraph one of this subdivision shall not be construed to affect
36 the obligations of persons required by state or local law relating to
37 disclosures by public employees of conflicts of interest.

38 (4) As used in this subdivision:

39 (i) The term "intelligence information" means records and data
40 compiled for the purpose of criminal investigation or counterterrorism,
41 including records and data relating to the order or security of a
42 correctional facility, reports of informants, investigators or other
43 persons, or from any type of surveillance associated with an identifi-
44 able individual, or investigation or analysis of potential terrorist
45 threats.

46 (ii) The term "national security information" means any knowledge
47 relating to the national defense or foreign relations of the United
48 States, regardless of its physical form or characteristics, that is
49 owned by, produced by or for, or is under the control of the United
50 States government and is defined as such by the United States government
51 and its agencies and departments.

52 (iii) The term "trade secrets" means information that: (A) derives
53 independent economic value, actual or potential, from not being general-
54 ly known to, and not being readily ascertainable by proper means by
55 other persons who can obtain economic value from its disclosure or use;
56 (B) is the subject of efforts that are reasonable under the circum-

stances to maintain its secrecy; and (C) can reasonably be said to be the end product of significant innovation.

The term "trade secrets" does not include general proprietary company information such as handbooks and policies. The term "regular access to trade secrets" does not include access to or the use of client, customer or mailing lists.

(5) Nothing in this subdivision shall preclude an employer from requesting or receiving consumer credit history information pursuant to a lawful subpoena, court order or law enforcement investigation.

(e) (1) Except as otherwise provided in this subdivision, it shall be an unlawful discriminatory practice for any state or municipal agency to request or use, and a violation of this article for any person to disclose, for licensing or permitting purposes information contained in the consumer credit history of an applicant, licensee or permittee for licensing or permitting purposes.

(2) Paragraph one of this subdivision shall not apply to an agency required by state or federal law or regulations to use an individual's consumer credit history for licensing or permitting purposes.

(3) Paragraph one of this subdivision shall not be construed to affect the ability of an agency to consider an applicant's, licensee's, registrant's or permittee's failure to pay any tax, fine, penalty or fee for which liability has been admitted by the person liable therefor, or for which judgment has been entered by a court or administrative tribunal of competent jurisdiction, or any tax for which a government agency has issued a warrant, or a lien or levy on property.

(4) Nothing in this subdivision shall preclude a licensing agency from requesting, receiving, or using consumer credit history information obtained pursuant to a lawful subpoena, court order or law enforcement investigation.

§ 3. The division of human rights shall request information from state and local agencies and non-governmental employers regarding the agencies' and employers' use of the exemptions established in subdivision (d) of section 380-b of the general business law for purposes of hiring and employment. Within two years of the effective date of this act, the division of human rights shall submit to the legislature a report concerning the results of such request and any relevant feedback from agencies and employers.

§ 4. This act shall take effect on the one hundred twentieth day after it shall have become a law.