

STATE OF NEW YORK

2611--A

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 -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

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 employer, labor organization, employment agency or agent thereof for purposes of employment decisions

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

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

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

(1) a consumer credit report;

(2) credit score; or

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

A consumer credit report shall include any written or other communication of any information by a consumer reporting agency that bears on a consumer's creditworthiness, credit standing, credit capacity or credit history.

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

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

LBD01243-04-9

(d) (1) Except as provided in this subdivision, it shall be an unlawful discriminatory practice for an employer, labor organization, employment agency or any agent thereof to request or to use, and a violation of this article for any person to disclose, for employment purposes the consumer credit history of an applicant for employment or employee, or otherwise discriminate against an applicant or employee with regard to hiring, compensation, or the terms, conditions or privileges of employment based on the consumer credit history of the applicant or employee.

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

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

(ii) persons applying for positions as or employed:

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

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

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

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

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

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

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

(4) As used in this subdivision:

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

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

(iii) The term "trade secrets" means information that: (A) derives independent economic value, actual or potential, from not being generally known to, and not being readily ascertainable by proper means by

1 other persons who can obtain economic value from its disclosure or use;
2 (B) is the subject of efforts that are reasonable under the circum-
3 stances to maintain its secrecy; and (C) can reasonably be said to be
4 the end product of significant innovation.

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

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

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

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

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

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

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

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