

STATE OF NEW YORK

8504--A

2019-2020 Regular Sessions

IN ASSEMBLY

August 7, 2019

Introduced by M. of A. PERRY -- read once and referred to the Committee on Correction -- recommitted to the Committee on Correction in accordance with Assembly Rule 3, sec. 2 -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

AN ACT to amend the correction law, the general obligations law and the civil rights law, in relation to enacting the "second chance act"

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

1 Section 1. This act shall be known and may be cited as the "second
2 chance act".
3 § 2. Legislative findings and intent. The legislature hereby finds
4 that notwithstanding moral and ethical upbringing, individuals from all
5 status and places in life are predisposed to making wrong decisions that
6 carry consequences detrimental to such person's best interest. The
7 legislature further finds and agrees with the general consensus that, as
8 humans we are not infallible and are all subject to making errors and
9 mistakes at various stages in our lives. The legislature also finds that
10 the adoption of public policy that embraces and provides opportunities
11 for forgiveness and redemption, and also allows for those who make
12 errors to have the right to a second chance, is in the best interest and
13 the overall good and positive benefit to our great state. Therefore, it
14 is the intent of the legislature to provide with this law a right and a
15 process through which such person, shall be allowed the opportunity to
16 explain the circumstances which led to such person being convicted of a
17 crime, and rather than automatically being dismissed from his or her
18 job, for there to be a process which provides for the reasonable review
19 of the facts and a reasonable consideration for the extension of
20 forgiveness and a second chance which would allow such person to hold
21 and continue in such employment without loss of income, wages or other
22 benefits commensurate with the position.

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

LBD11000-15-0

§ 3. The article heading of article 23-A of the correction law, as added by chapter 931 of the laws of 1976, is amended to read as follows:

LICENSURE AND EMPLOYMENT OF PERSONS CONVICTED OF OR
PREVIOUSLY CONVICTED OF ONE OR MORE CRIMINAL OFFENSES

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

§ 752. Unfair discrimination against persons convicted or previously convicted of one or more criminal offenses prohibited. No application for any license or employment, and no employment or license held by an individual, to which the provisions of this article are applicable, shall be denied or acted upon adversely by reason of the ~~[individual's]~~ individual being convicted of one or more criminal offenses or having been previously convicted of one or more criminal offenses, or by reason of a finding of lack of "good moral character" when such finding is based upon the fact that the individual has been or has previously been convicted of one or more criminal offenses, unless:

(1) there is a direct relationship between one or more of the previous criminal offenses and the specific license or employment sought or held by the individual; or

(2) the issuance or continuation of the license or the granting or continuation of the employment would involve an unreasonable risk to property or to the safety or welfare of specific individuals or the general public.

§ 5. Subdivision 1 of section 753 of the correction law, as added by chapter 931 of the laws of 1976, paragraph (b) as amended by chapter 284 of the laws of 2007, is amended and a new subdivision 3 is added to read as follows:

1. In making a determination pursuant to section seven hundred fifty-two of this ~~[chapter]~~ article, the public agency or private employer shall consider the following factors:

(a) The public policy of this state, as expressed in this act, to encourage the licensure and employment of persons previously convicted of one or more criminal offenses.

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

(c) The bearing, if any, the criminal offense or offenses for which the person was previously convicted will have on his or her fitness or ability to perform one or more such duties or responsibilities.

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

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

(f) The seriousness of the offense or offenses.

(g) Any information produced by the person, or produced on his or her behalf, in regard to the circumstances of the conviction and his or her rehabilitation and good conduct.

(h) The legitimate interest of the public agency or private employer in protecting property, and the safety and welfare of specific individuals or the general public.

3. Each public agency or private employer shall adopt a policy that requires the public agency or private employer to provide the person with an opportunity to submit an explanation of the facts surrounding the offense and conviction and any other information the person deems relevant to the issue prior to making a determination pursuant to subdivisions one and two of section seven hundred fifty-two of this article. Nothing in this subdivision shall prohibit a public agency, private

1 employer or corporate entity authorized to conduct business in this
2 state from imposing sanctions upon a person convicted of or previously
3 convicted of a crime in accordance with the regulations, policies and
4 practices of the public agency or private employer.

5 § 6. The general obligations law is amended by adding a new section
6 5-338 to read as follows:

7 § 5-338. Agreements including termination due to the conviction of a
8 party void and unenforceable. 1. Every covenant, agreement or under-
9 standing between a governmental entity or a business entity and an
10 individual or group enabling such individual or group to carry out spec-
11 ified commercial activities, including but not limited to providing a
12 broadcasting service or acting as an agent for the entity, which
13 includes a clause allowing for the termination of the covenant, agree-
14 ment or understanding upon a conviction of a party shall be deemed to be
15 void as against public policy and wholly unenforceable.

16 2. All covenants, agreements or understandings between a governmental
17 entity or a business entity and an individual or group enabling such
18 individual or group to carry out specified commercial activities,
19 including but not limited to providing a broadcasting service or acting
20 as an agent for the entity, shall include the right to an opportunity to
21 submit an explanation of the facts surrounding any conviction or alleged
22 offense as well as any other information the party deems relevant to the
23 conviction or alleged offense prior to any party terminating a business
24 contract or contract of employment due to a conviction or alleged
25 offense.

26 3. Nothing in this section shall prohibit a governmental entity or
27 business entity from imposing sanctions upon a person convicted or
28 previously convicted of a crime in accordance with the regulations,
29 policies and practices of the governmental entity or business entity.

30 4. If review of the facts shall find that in the history of the exist-
31 ence of the corporate entity, a person holding a similar license or
32 agreement to do business in the name of the corporate entity, who was
33 convicted of a felony or any offense for which the corporate entity
34 would have claimed the right to terminate the business relationship or
35 permit to act under the name of the corporation, but such person was
36 allowed by the corporate entity to continue to hold and exercise such
37 authority to do business, and the corporate entity, solely at its
38 discretion, took no action to terminate such agreement, such person's
39 right to a reasonable review of the facts and reasonable consideration
40 for the extension of forgiveness and a second chance pursuant to section
41 seventy-nine-p of the civil rights law shall be decided in favor of the
42 applicant unless a prior such extension had been granted.

43 § 7. The civil rights law is amended by adding a new section 79-p to
44 read as follows:

45 § 79-p. Right to a reasonable review of facts and a reasonable consid-
46 eration for the extension of forgiveness and a second chance. No person
47 or entity shall terminate, cancel or refuse to renew any contract based
48 on an individual being convicted of one or more criminal offenses with-
49 out such individual being given an opportunity to submit an explanation
50 of the facts surrounding any conviction or alleged offense as well as
51 any other information the individual deems relevant to the conviction or
52 alleged offense and provided a reasonable review of the facts and a
53 reasonable consideration for the extension of forgiveness and a second
54 chance.

55 § 8. This act shall take effect on the sixtieth day after it shall
56 have become a law.