

STATE OF NEW YORK

8504--B

2019-2020 Regular Sessions

IN ASSEMBLY

August 7, 2019

Introduced by M. of A. PERRY, WEPRIN -- 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 -- again reported from said committee with amendments, 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

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

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1 and continue in such employment without loss of income, wages or other
2 benefits commensurate with the position.

3 § 3. 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 CONVICTED OF OR
6 PREVIOUSLY CONVICTED OF ONE OR MORE CRIMINAL OFFENSES

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

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

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

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

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

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

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

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

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

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

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

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

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

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

52 3. Each public agency or private business entity or corporation shall
53 adopt a policy that requires the public agency or private business
54 entity or corporation to provide the convicted or previously convicted
55 person with an opportunity to submit an explanation of the facts
56 surrounding the offense and conviction and any other information such

1 person deems relevant to the issue, prior to making a determination
2 pursuant to subdivisions one and two of section seven hundred fifty-two
3 of this article. Nothing in this subdivision shall prohibit a
4 public agency, private business entity or corporation duly authorized
5 to conduct business in this state from imposing sanctions upon a
6 person convicted of or previously convicted of a crime in accordance
7 with the regulations, policies and practices of the public agency or
8 private employer.

9 § 6. The general obligations law is amended by adding a new section
10 5-338 to read as follows:

11 § 5-338. Agreements including termination due to the conviction of a
12 party void and unenforceable. 1. Every covenant, agreement or under-
13 standing between a governmental entity or grantor private business enti-
14 ty or corporation and a person or persons enabling such person or
15 persons to carry out specified commercial activities, including but
16 not limited to providing a broadcasting service or acting as an
17 agent for the governmental entity or grantor private business or
18 corporation, which includes a clause allowing for the termination of
19 the covenant, agreement or understanding upon a conviction of such
20 person or persons shall be deemed to be void as against public policy
21 and wholly unenforceable.

22 2. All covenants, agreements or understandings between a governmental
23 entity or grantor private business entity or corporation and a person
24 or persons enabling such person or persons to carry out specified
25 commercial activities, including but not limited to providing a broad-
26 casting service or acting as an agent for the governmental entity or
27 grantor private business or corporation, shall include and extend to
28 such person or persons the right to an opportunity to submit an explana-
29 tion of the facts surrounding any conviction or alleged offense as well
30 as any other information the party deems relevant to the conviction or
31 alleged offense prior to any party terminating a business contract or
32 contract of employment due to a conviction or alleged offense.

33 3. Nothing in this section shall prohibit a governmental entity or
34 grantor private business entity or corporation from imposing sanc-
35 tions upon a person or persons convicted or previously convicted of a
36 crime in accordance with the regulations, policies and practices of
37 the governmental entity or grantor private business entity or corpo-
38 ration. Such sanctions shall not be of a duration that would in effect
39 terminate the viability of the affiliated business.

40 4. If a review of the facts shall find that in the history of the
41 existence of the grantor private business entity or corporation, a
42 person or persons holding a similar license or agreement to do business
43 in the name of the grantor private business entity or corporation, who
44 while holding such license or prior to being granted such license, was
45 convicted of a felony or any offense for which the grantor private busi-
46 ness entity or corporation could have claimed and exercised the right to
47 terminate the business relationship or permit to act under the name of
48 the grantor private business entity or corporation, but such grantor
49 private business entity or corporation, in exercise of its discretion,
50 allowed such person or persons to acquire or continue to hold and exer-
51 cise such license and authority to do business, and the grantor
52 private business entity or corporation took no action to terminate such
53 agreement, and the grantor private business entity or corporation deter-
54 mined not to provide an extension of forgiveness and a second chance,
55 the grantor private business entity or corporation shall state why it
56 determined not to grant such second chance to the applicant and the

1 burden of proof will be on such grantor private business entity or
2 corporation to demonstrate with substantive and convincing proof how the
3 extension of forgiveness and a second chance would be detrimental to the
4 interest of the grantor private business entity or corporation.

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

7 § 79-p. Right to a reasonable review of facts and a reasonable consid-
8 eration for the extension of forgiveness and a second chance. No person
9 or entity shall terminate, cancel or refuse to renew any contract based
10 on an individual being convicted of one or more criminal offenses with-
11 out such individual being given an opportunity to submit an explanation
12 of the facts surrounding any conviction or alleged offense as well as
13 any other information the individual deems relevant to the conviction or
14 alleged offense and provided a reasonable review of the facts and a
15 reasonable consideration for the extension of forgiveness and a second
16 chance.

17 § 8. This act shall take effect immediately.