S T A T E O F N E W Y O R K

3436

2009-2010 Regular Sessions

I N A S S E M B L Y

January 27, 2009

Introduced by M. of A. CLARK -- read once and referred to the Committee on Governmental Operations

AN ACT to amend the executive law, in relation to authorizing the commissioner of general services to fingerprint and process state and national criminal history checks on employees of contractors performing work on state premises

THE PEOPLE OF THE STATE OF NEW YORK, REPRESENTED IN SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

Section 1. Section 203 of the executive law is amended by adding a fourth undesignated paragraph to read as follows:

NOTWITHSTANDING ANY OTHER PROVISION OF LAW, THE COMMISSIONER OR HIS OR HER DESIGNEE IS AUTHORIZED TO REQUIRE THE FINGERPRINTING OF PERSONS EMPLOYED ON, IN OR AT ANY FACILITY OWNED, LEASED, OR OPERATED BY THE STATE, OR ANY FACILITY AT WHICH OFFICIAL STATE BUSINESS IS CONDUCTED ON A REGULAR BASIS, PROVIDED, HOWEVER, THAT THE COMMISSIONER SHALL BE AUTHORIZED TO REQUIRE THE FINGERPRINTING OF SUCH PERSONS ONLY IN INSTANCES WHERE SUCH PERSONS WILL BE GIVEN ACCESS TO AREAS WITHIN SUCH FACILITIES THAT (A) ARE SECURED FOR THE PURPOSE OF CONTROLLING GENERAL PUBLIC ACCESS, OR (B) CONTAIN INFORMATION OF A CONFIDENTIAL NATURE AND THE FACILITY CANNOT BE ADEQUATELY CONTROLLED TO ENSURE THE SECURITY OF SUCH INFORMATION. PROVIDED, HOWEVER, THAT THE COMMISSIONER SHALL NOT REQUIRE THE FINGERPRINTING OF PERSONS EMPLOYED AT ANY FACILITY UNDER THE JURISDICTION AND CONTROL OF ANOTHER STATE AGENCY, STATE DEPARTMENT, PUBLIC AUTHORITY OR PUBLIC BENEFIT CORPORATION ABSENT THE WRITTEN REQUEST OF THE HEAD OF THE SUBJECT AGENCY, DEPARTMENT, AUTHORITY OR CORPORATION. SUCH FINGERPRINTS MAY BE SUBMITTED TO THE DIVISION OF CRIMINAL JUSTICE SERVICES AND THE FEDERAL BUREAU OF INVESTIGATION FOR STATE AND NATIONAL CRIMINAL HISTORY RECORD CHECKS. FOR PURPOSES OF THIS PARAGRAPH, THE TERM "EMPLOYED" SHALL MEAN THE PROVISION OF SERVICES AS A CONTRACTOR, INDEPENDENT CONTRACTOR, SUBCONTRACTOR OR CONSULTANT AND INCLUDES ALL EMPLOYEES OF SUCH CONTRACTORS, INDEPENDENT CONTRACTORS,

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

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SUBCONTRACTORS AND CONSULTANTS; THE TERM APPLIES REGARDLESS OF WHETHER SUCH PERSONS RECEIVE COMPENSATION FOR THEIR SERVICES AND THE TERM "INFORMATION OF A CONFIDENTIAL NATURE" SHALL MEAN:

(1) INFORMATION OR MATERIALS THAT ARE SPECIFICALLY EXEMPTED FROM DISCLOSURE BY STATE OR FEDERAL STATUTE;

(2) INFORMATION OR MATERIALS THAT ARE MAINTAINED AND KEPT IN THE ORDINARY COURSE OF STATE BUSINESS THAT IF DISCLOSED WOULD CONSTITUTE AN UNWARRANTED INVASION OF PERSONAL PRIVACY, INCLUDING: (I) EMPLOYMENT, MEDICAL OR CREDIT HISTORIES OR PERSONAL REFERENCES OF APPLICANTS FOR EMPLOYMENT, (II) ITEMS INVOLVING MEDICAL OR PERSONAL RECORDS OF A CLIENT OR PATIENT IN A MEDICAL FACILITY, (III) INFORMATION OF PERSONAL NATURE WHEN DISCLOSURE WOULD RESULT IN ECONOMIC OR PERSONAL HARDSHIP TO THE SUBJECT PARTY, OR (IV) INFORMATION REPORTED IN CONFIDENCE TO AN AGENCY;

(3) INFORMATION OR MATERIALS THAT IF DISCLOSED WOULD IMPAIR PRESENT OR IMMINENT CONTRACT AWARDS OR COLLECTIVE BARGAINING NEGOTIATIONS;

(4) INFORMATION OR MATERIALS THAT CONSIST OF TRADE SECRETS OR ARE SUBMITTED TO AN AGENCY BY A COMMERCIAL ENTERPRISE OR ARE DERIVED FROM INFORMATION OBTAINED FROM A COMMERCIAL ENTERPRISE AND WHICH, IF DISCLOSED, WOULD CAUSE SUBSTANTIAL INJURY TO THE COMPETITIVE POSITION OF THE SUBJECT ENTERPRISE;

(5) INFORMATION OR MATERIALS THAT ARE COMPILED FOR LAW ENFORCEMENT PURPOSES;

(6) INFORMATION OR MATERIALS THAT, IF DISCLOSED, WOULD ENDANGER THE LIFE OR SAFETY OF ANY PERSON;

(7) INFORMATION OR MATERIALS THAT HAVE BEEN PREPARED BY STATE EMPLOYEES AND ARE USED TO INFLUENCE THE DECISION MAKING OF ELECTED OR APPOINTED STATE OFFICIALS;

(8) INFORMATION OR MATERIALS THAT ARE EXAMINATION QUESTIONS OR ANSWERS WHICH ARE REQUESTED PRIOR TO THE FINAL ADMINISTRATION OF SUCH QUESTIONS; OR

(9) INFORMATION OR MATERIALS THAT CONSIST OF COMPUTER ACCESS CODES.

S 2. This act shall take effect immediately.