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2009-2010 Regular Sessions

I N A S S E M B L Y

February 13, 2009

Introduced by M. of A. AUBRY, WRIGHT, BENJAMIN, GREENE, GOTTFRIED,
CAMARA, BOYLAND, V. LOPEZ, MILLMAN, JAFFEE, KAVANAGH, O'DONNELL --
Multi-Sponsored by -- M. of A. DINOWITZ, GLICK, HEASTIE, HEVESI,
JOHN, MAISEL, McENENY, PRETLOW, REILLY, SCHIMEL, WEISENBERG -- read
once and referred to the Committee on Correction

AN ACT to amend the correction law and the executive law, in relation to
establishing that it is an unlawful discriminatory practice for
prospective employers to make certain inquiries relating to criminal
convictions

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

1 Section 1. Subdivision 3 of section 750 of the correction law, as
2 amended by chapter 284 of the laws of 2007, is amended to read as
3 follows:
4 (3) "Direct relationship" means that THERE IS AN IMMEDIATE AND
5 SUBSTANTIAL CONNECTION BETWEEN the nature of [criminal conduct] THE
6 CRIME for which the person was convicted [has a direct bearing on his
7 fitness or ability to perform one or more of] AND the duties or respon-
8 sibilities necessarily related to the license, opportunity, or job in
9 question AND SUCH CONNECTION WOULD CREATE AN UNREASONABLE RISK TO PROP-
10 ERTY OR TO THE SAFETY OR WELFARE OF SPECIFIC INDIVIDUALS OR THE GENERAL
11 PUBLIC UPON THE ISSUANCE OR CONTINUATION OF A LICENSE OR THE GRANTING OR
12 CONTINUATION OF EMPLOYMENT OF SUCH PERSON.
13 S 2. Section 752 of the correction law, as amended by chapter 284 of
14 the laws of 2007, is amended to read as follows:
15 S 752. Unfair discrimination against persons previously convicted of
16 one or more criminal offenses prohibited. 1. No application for any
17 license or employment, and no employment or license held by an individ-
18 ual, to which the provisions of this article are applicable, shall be
19 denied or acted upon adversely by reason of the individual's having been
20 previously convicted of one or more criminal offenses, or by reason of a

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

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1 finding of lack of "good moral character" when such finding is based
2 upon the fact that the individual has previously been convicted of one
3 or more criminal offenses, unless[:

4 (1)] there is a direct relationship between one or more of the previ-
5 ous criminal offenses and the specific license or employment sought or
6 held by the individual[; or

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

11 2. NO PUBLIC OR PRIVATE EMPLOYER TO WHICH THE PROVISIONS OF THIS
12 ARTICLE ARE APPLICABLE, UNLESS SPECIFICALLY REQUIRED OR PERMITTED BY
13 STATUTE, SHALL MAKE ANY INQUIRY ABOUT, WHETHER IN ANY FORM OF APPLICA-
14 TION OR OTHERWISE, OR ACT UPON ADVERSELY TO THE INDIVIDUAL INVOLVED
15 BASED UPON, ANY CRIMINAL CONVICTION OF SUCH INDIVIDUAL UNLESS SUCH
16 EMPLOYER FIRST MAKES A CONDITIONAL OFFER OF EMPLOYMENT TO SUCH INDIVID-
17 UAL. SUCH CONDITIONAL OFFER OF EMPLOYMENT MAY ONLY SUBSEQUENTLY BE WITH-
18 DRAWN ON THE BASIS OF A CRIMINAL CONVICTION IN ACCORDANCE WITH THIS
19 ARTICLE WHERE SUCH CONVICTION BEARS A DIRECT RELATIONSHIP TO THE SPECIF-
20 IC POSITION BEING OFFERED.

21 S 3. Section 296 of the executive law is amended by adding a new
22 subdivision 15-a to read as follows:

23 15-A. IT SHALL BE AN UNLAWFUL DISCRIMINATORY PRACTICE, UNLESS SPECIF-
24 ICALLY REQUIRED OR PERMITTED BY STATUTE, FOR ANY PROSPECTIVE EMPLOYER,
25 INCLUDING ANY PERSON, AGENCY, BUREAU, CORPORATION OR ASSOCIATION,
26 INCLUDING THE STATE AND ANY POLITICAL SUBDIVISION THEREOF, TO MAKE ANY
27 INQUIRY ABOUT, WHETHER IN ANY FORM OF APPLICATION OR OTHERWISE, OR TO
28 ACT UPON ADVERSELY TO THE INDIVIDUAL INVOLVED BASED UPON, ANY CRIMINAL
29 CONVICTION OF SUCH INDIVIDUAL UNLESS SUCH EMPLOYER FIRST MAKES A CONDI-
30 TIONAL OFFER OF EMPLOYMENT TO SUCH INDIVIDUAL. SUCH CONDITIONAL OFFER OF
31 EMPLOYMENT MAY ONLY SUBSEQUENTLY BE WITHDRAWN ON THE BASIS OF A CRIMINAL
32 CONVICTION IN ACCORDANCE WITH ARTICLE TWENTY-THREE-A OF THE CORRECTION
33 LAW WHERE SUCH CONVICTION BEARS A DIRECT RELATIONSHIP, AS SUCH TERM IS
34 DEFINED IN SUBDIVISION THREE OF SECTION SEVEN HUNDRED FIFTY OF THE
35 CORRECTION LAW, TO THE SPECIFIC POSITION BEING OFFERED.

36 S 4. This act shall take effect on the ninetieth day after it shall
37 have become a law.