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

1327

2009-2010 Regular Sessions

I N S E N A T E

January 28, 2009

Introduced by Sens. SERRANO, ADAMS, DILAN, KRUEGER, MORAHAN, ONORATO, PERKINS, STAVISKY -- read twice and ordered printed, and when printed to be committed to the Committee on Codes

AN ACT to amend the civil rights law, in relation to regulating the collection, recording and disclosing of confidential information obtained by state employees in the course of official duties

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

Section 1. The civil rights law is amended by adding a new section 50-f to read as follows:

S 50-F. DISCLOSURE OF CONFIDENTIAL INFORMATION BY STATE EMPLOYEES. 1. DEFINITIONS. AS USED IN THIS SECTION:

A. "CONFIDENTIAL INFORMATION" MEANS ANY INFORMATION MAINTAINED OR OBTAINED BY A STATE AGENCY, OFFICER, OR EMPLOYEE CONCERNING AN INDIVIDUAL'S HEALTH OR DISABILITY STATUS, INCOME TAX RECORDS, SEXUAL ORIENTATION, STATUS AS A VICTIM OF DOMESTIC VIOLENCE, STATUS AS A CRIME VICTIM OR WITNESS, PUBLIC ASSISTANCE STATUS, IMMIGRATION STATUS, OR ANY INFORMATION THAT IS OTHERWISE PROTECTED FROM DISCLOSURE BY ANY PROVISION OF FEDERAL, STATE, OR LOCAL LAW; AND

B. "LINE WORKER" MEANS ANY PERSON EMPLOYED BY ANY STATE AGENCY WHOSE DUTIES INVOLVE CONTACT WITH THE PUBLIC.

2. PROCEDURE FOR THE DISCLOSURE OF CONFIDENTIAL INFORMATION.

A. EXCEPT AS PROVIDED IN PARAGRAPH B OF THIS SUBDIVISION, NO STATE OFFICER OR EMPLOYEE SHALL DISCLOSE CONFIDENTIAL INFORMATION TO ANYONE EXCEPT ANOTHER STATE OFFICER OR EMPLOYEE ACTING IN THE SCOPE OF HIS OR HER OFFICIAL DUTIES.

B. OTHER THAN AS PROVIDED IN PARAGRAPH A OF THIS SUBDIVISION, CONFIDENTIAL INFORMATION MAY BE DISCLOSED ONLY IF:

(I) THE OFFICER'S OR EMPLOYEE'S AGENCY IS REQUIRED BY LAW TO DISCLOSE SUCH CONFIDENTIAL INFORMATION AND PROVIDED THAT SUCH DISCLOSURE SHALL BE LIMITED TO THAT REQUIRED BY LAW; OR

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

LBD03680-01-9

(II) THE OFFICER'S OR EMPLOYEE'S AGENCY HAS BEEN AUTHORIZED, IN WRITING SIGNED BY THE INDIVIDUAL OR, IF THE INDIVIDUAL IS A MINOR OR OTHERWISE INCOMPETENT, SUCH AUTHORIZATION HAS BEEN SIGNED BY THE INDIVIDUAL'S PARENT OR LEGAL GUARDIAN, TO DISCLOSE SUCH CONFIDENTIAL INFORMATION, AND PROVIDED THAT THE DISCLOSURE SHALL BE LIMITED TO THAT AUTHORIZED IN WRITING BY THE INDIVIDUAL; OR

(III) THERE IS REASONABLE SUSPICION OR PROBABLE CAUSE TO BELIEVE THAT A PERSON IS ENGAGING IN CRIMINAL ACTIVITY AND THE DISCLOSURE OF CONFIDENTIAL INFORMATION IS NECESSARY TO COOPERATE WITH A LAW ENFORCEMENT AGENCY OR AGENCIES INVESTIGATING THAT CRIMINAL ACTIVITY; OR

(IV) SUCH CONFIDENTIAL INFORMATION IS TO BE USED BY A FEDERAL, STATE, OR LOCAL GOVERNMENT AGENCY, AND SOLELY FOR THE PURPOSE OF COMPILING STATISTICAL INFORMATION, PROVIDED THAT THE DISCLOSURE SHALL BE LIMITED TO THAT NECESSARY TO COMPILE SUCH STATISTICAL INFORMATION, AND PROVIDED FURTHER THAT THE RECIPIENT OF THE INFORMATION ENSURES, IN WRITING IN ADVANCE OF ANY DISCLOSURE, THAT THE CONFIDENTIAL INFORMATION DISCLOSED WILL NOT BE FURTHER DISCLOSED TO ANY OTHER AGENCY OR OTHER INDIVIDUAL.

3. PROCEDURE FOR THE COLLECTING AND/OR RECORDING OF CONFIDENTIAL INFORMATION. THIS SUBDIVISION SHALL APPLY TO ANY DOCUMENTATION, QUESTIONNAIRE, INTERVIEW SHEET, OR OTHER FORM USED IN RELATION TO BENEFITS OR SERVICES PROVIDED BY THE STATE.

A. NO STATE OFFICER OR EMPLOYEE SHALL MAKE INQUIRIES REGARDING CONFIDENTIAL INFORMATION OF ANY INDIVIDUAL, WHEN SUCH INDIVIDUAL, ON HIS OR HER BEHALF OR ON BEHALF OF ANOTHER, IS APPLYING FOR, OR IS RECEIVING, ANY SERVICE OR BENEFIT PROVIDED BY THE STATE, UNLESS SUCH CONFIDENTIAL INFORMATION IS SPECIFICALLY REQUIRED BY FEDERAL OR STATE LAW AS A CONDITION OF RECEIPT OF SUCH SERVICE OR BENEFIT.

B. IF CONFIDENTIAL INFORMATION IS REQUIRED BY FEDERAL OR STATE LAW AS A CONDITION OF RECEIPT OF A SERVICE OR BENEFIT PROVIDED BY THE STATE, THE STATE OFFICER OR EMPLOYEE SHALL MAKE ONLY THOSE INQUIRIES NECESSARY TO DETERMINE IF AN APPLICANT OR RECIPIENT IS QUALIFIED FOR AND OTHERWISE MEETS THE CONDITIONS FOR RECEIPT OF SUCH SERVICE OR BENEFIT.

C. NO STATE OFFICER OR EMPLOYEE SHALL COLLECT AND/OR RECORD INFORMATION REGARDING THE IMMIGRATION STATUS OF AN APPLICANT FOR, OR RECIPIENT OF, ANY SERVICE OR BENEFIT UNLESS SUCH IMMIGRATION STATUS IS REQUIRED BY FEDERAL OR STATE LAW. WHERE FEDERAL OR STATE LAW REQUIRES THE RECORDING OF SUCH CONFIDENTIAL IMMIGRATION STATUS INFORMATION, ONLY THAT INFORMATION SPECIFICALLY REQUIRED SHALL BE RECORDED.

4. DESIGNATION OF ACCESS OFFICER RESPONSIBLE FOR AUTHORIZING THE RELEASE OF CONFIDENTIAL INFORMATION. THE HEAD OR GOVERNING BODY OF EACH AGENCY SHALL DESIGNATE ONE OR MORE PERSONS WITH SUPERVISORY AUTHORITY, AND ASSIGN TO SUCH PERSONS THE FURTHER AUTHORITY TO APPROVE AND AUTHORIZE THE RELEASE OF CONFIDENTIAL INFORMATION. THE DESIGNATION SHALL INCLUDE THE NAME, SPECIFIC JOB TITLE, TELEPHONE NUMBER, AND BUSINESS ADDRESS OF EACH SUCH DESIGNATED ACCESS OFFICER. WHEN APPROVING AND AUTHORIZING THE RELEASE OF CONFIDENTIAL INFORMATION, A DESIGNATED ACCESS OFFICER SHALL SPECIFY, IN WRITING, THE SPECIFIC INFORMATION TO BE DISCLOSED, AND THE PERSONS OR ENTITIES TO WHOM SUCH DISCLOSURE SHALL BE MADE. THE DESIGNATED ACCESS OFFICER SHALL ENSURE THAT ANY DISCLOSURE IS AUTHORIZED BY LAW AND WITHIN THE LIMITS AS PROVIDED BY LAW.

5. DISCLOSURE BY LINE WORKERS OF CONFIDENTIAL INFORMATION. NO LINE WORKER EMPLOYED BY A STATE AGENCY SHALL DISCLOSE CONFIDENTIAL INFORMATION WITHOUT OBTAINING PRIOR WRITTEN APPROVAL FROM A DESIGNATED ACCESS OFFICER RESPONSIBLE FOR APPROVING AND AUTHORIZING THE RELEASE OF CONFIDENTIAL INFORMATION FOR THAT AGENCY.

6. REVIEW OF A COMPLAINT. UPON RECEIPT OF A COMPLAINT, THE STATE AGENCY SHALL DETERMINE IMMEDIATELY WHETHER THERE ARE REASONABLE GROUNDS FOR AN INVESTIGATION. SUCH INVESTIGATION SHALL BE CONDUCTED IN A MANNER PRESCRIBED IN THE REGULATIONS SET FORTH BY THE DIRECTOR OF THE STATE AGENCY OR AN AUTHORIZED REPRESENTATIVE. IF THE DIRECTOR OR AUTHORIZED REPRESENTATIVE DETERMINES THAT THE INVESTIGATION AND RESOLUTION OF SUCH COMPLAINT IS MORE SUITABLY HANDLED BY ANOTHER STATE AGENCY, THEN SUCH DIRECTOR OR AUTHORIZED REPRESENTATIVE SHALL IMMEDIATELY FORWARD SUCH COMPLAINT TO THE APPROPRIATE AGENCY. THE STATE AGENCY SHALL MAINTAIN A FILE CONCERNING SUCH COMPLAINTS THROUGH SUCH AGENCY'S COMPLETION OR ACTION THEREON. ANY STATE AGENCY RECEIVING A COMPLAINT PURSUANT TO THIS SUBDIVISION SHALL PROVIDE UPON REQUEST, WRITTEN NOTICE OF THE FINAL DETERMINATION OF OR ACTION UPON SUCH COMPLAINT.

7. VIOLATION. ANY STATE AGENCY WHICH EMPLOYS A PERSON WHO HAS BEEN CHARGED WITH THE DISCLOSURE OF CONFIDENTIAL INFORMATION IN VIOLATION OF THE PROVISIONS OF THIS ARTICLE SHALL BE SUBJECT TO A CIVIL PENALTY OF AN AMOUNT NOT TO EXCEED ONE THOUSAND DOLLARS.

8. OTHER LAWS RESPECTING CONFIDENTIALITY. NOTHING HEREIN REDUCES OR ABRIDGES ANY OTHER PROTECTION IN FEDERAL, STATE, OR LOCAL LAW RESPECTING THE CONFIDENTIALITY OF INFORMATION.

9. SEVERABILITY. IF ANY SECTION, SUBDIVISION, SENTENCE, CLAUSE, PHRASE OR OTHER PORTION OF THIS SECTION IS, FOR ANY REASON, DECLARED UNCONSTITUTIONAL OR INVALID, IN WHOLE OR IN PART, BY ANY COURT OF COMPETENT JURISDICTION, SUCH PORTION SHALL BE DEEMED SEVERABLE, AND SUCH UNCONSTITUTIONALITY OR INVALIDITY SHALL NOT AFFECT THE VALIDITY OF THE REMAINING PORTIONS OF THIS SECTION, WHICH REMAINING PORTIONS SHALL CONTINUE IN FULL FORCE AND EFFECT.

S 2. This act shall take effect immediately; provided, however, that effective immediately, the addition, amendment and/or repeal of any rule or regulation necessary for the implementation of this act on its effective date are authorized and directed to be made and completed on or before such effective date.