

4016

2009-2010 Regular Sessions

I N S E N A T E

April 7, 2009

Introduced by Sen. MORAHAN -- read twice and ordered printed, and when printed to be committed to the Committee on Children and Families

AN ACT to amend the social services law and the executive law, in relation to permitting access to conviction records by certain employers

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

1 Section 1. The social services law is amended by adding a new section
2 378-b to read as follows:
3 S 378-B. ACCESS TO CONVICTION RECORDS BY CERTAIN EMPLOYERS. 1. AN
4 EMPLOYER SHALL OBTAIN FROM THE DIVISION OF CRIMINAL JUSTICE SERVICES,
5 THE NEW YORK STATE CONVICTION RECORD OR THE FEDERAL BUREAU OF INVESTI-
6 GATION CONVICTION RECORD FOR ALL OF HIS OR HER EMPLOYEES OR PROSPECTIVE
7 EMPLOYEES, SUBJECT TO THE FOLLOWING RESTRICTIONS:
8 A. SUCH EMPLOYER SHALL DESIGNATE ONE INDIVIDUAL TO REQUEST, RECEIVE
9 AND REVIEW SUCH CONVICTION RECORD, AND ONLY SUCH DESIGNATED PERSON SHALL
10 HAVE ACCESS TO SUCH RECORD. SUCH EMPLOYER SHALL REGISTER SUCH DESIGNATED
11 INDIVIDUAL WITH THE DIVISION OF CRIMINAL JUSTICE SERVICES;
12 B. SUCH DESIGNATED AND REGISTERED INDIVIDUAL SHALL MARK SUCH
13 CONVICTION RECORD "CONFIDENTIAL" UPON RECEIPT, AND SHALL MAINTAIN AT ALL
14 TIMES SUCH CONVICTION RECORD IN A SECURE PLACE IN ORDER TO INSURE CONFIDENTIALITY. A PERSON WHO VIOLATES THE CONFIDENTIALITY REQUIRED BY THIS
15 SUBDIVISION SHALL BE GUILTY OF A CLASS A MISDEMEANOR; AND
16 C. SUCH EMPLOYER SHALL PAY THE FEE DETERMINED PURSUANT TO SUBDIVISION
17 EIGHT-A OF SECTION EIGHT HUNDRED THIRTY-SEVEN OF THE EXECUTIVE LAW FOR
18 THE RECEIPT OF A NEW YORK STATE CONVICTION RECORD AND/OR THE FEE DETERMINED PURSUANT TO THE CHILD PROTECTION ACT OF 1993 FOR THE RECEIPT OF A
19 FEDERAL BUREAU OF INVESTIGATION CONVICTION RECORD.
20 2. BEFORE REQUESTING SUCH CONVICTION RECORD FROM THE DIVISION OF CRIMINAL JUSTICE SERVICES, SUCH EMPLOYER SHALL:

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

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1 A. INFORM ANY EMPLOYEE OR PROSPECTIVE EMPLOYEE THAT A REQUEST FOR A
2 CONVICTION RECORD AND A REVIEW THEREOF IS REQUIRED IN ORDER FOR SUCH
3 EMPLOYEE TO CONTINUE IN THE SAME CAPACITY OR FOR SUCH PROSPECTIVE
4 EMPLOYMENT TO BE ACCEPTED BY SUCH EMPLOYER;

5 B. INFORM SUCH EMPLOYEE OR PROSPECTIVE EMPLOYEE THAT BEFORE SUCH
6 EMPLOYER MAKES A REQUEST FOR CONVICTION RECORDS, SUCH EMPLOYEE OR
7 PROSPECTIVE EMPLOYEE HAS THE RIGHT TO OBTAIN AND REVIEW HIS OR HER OWN
8 CONVICTION RECORD, PURSUANT TO THE PROCEDURES OF THE DIVISION OF CRIMI-
9 NAL JUSTICE SERVICES;

10 C. OBTAIN THE INFORMED SIGNATURE OF SUCH EMPLOYEE OR PROSPECTIVE
11 EMPLOYEE ON A FORM PROVIDED BY THE DIVISION OF CRIMINAL JUSTICE SERVICES
12 WHICH INDICATES THAT SUCH EMPLOYEE OR PROSPECTIVE EMPLOYEE HAS:

13 I. BEEN INFORMED OF THE RIGHT TO REVIEW HIS OR HER OWN RECORDS;
14 II. EXERCISED OR WAIVED SUCH RIGHT TO REVIEW HIS OR HER OWN RECORDS;
15 III. BEEN INFORMED OF THE REASON FOR SUCH REQUEST FOR HIS OR HER
16 CONVICTION RECORD; AND
17 IV. CONSENTED TO SUCH REQUEST; AND

18 D. OBTAIN FINGERPRINTS FROM SUCH EMPLOYEE OR PROSPECTIVE EMPLOYEE,
19 PURSUANT TO THE PROCEDURES OF THE DIVISION OF CRIMINAL JUSTICE SERVICES.

20 3. A PROSPECTIVE EMPLOYEE MAY WITHDRAW FROM THE APPLICATION PROCESS,
21 WHETHER OR NOT HE OR SHE HAS HAD ACCESS TO HIS OR HER CONVICTION RECORD
22 AND WHETHER OR NOT SUCH RECORD HAS BEEN RECEIVED BY SUCH CHAPTER, WITH-
23 OUT PREJUDICE. IF THE CONVICTION RECORD OF SUCH PROSPECTIVE EMPLOYEE HAS
24 BEEN RECEIVED BY SUCH EMPLOYER, THE PERSON DESIGNATED BY SUCH CHAPTER TO
25 HAVE ACCESS TO CONVICTION RECORDS SHALL DESTROY SUCH RECORD.

26 4. THE CONVICTION RECORD OF AN EMPLOYEE SHALL BE DESTROYED BY THE
27 PERSON DESIGNATED BY SUCH CHAPTER TO HAVE ACCESS TO CONVICTION RECORDS
28 WHEN SUCH EMPLOYEE NO LONGER IS EMPLOYED BY SUCH EMPLOYER.

29 5. THE DIVISION OF CRIMINAL JUSTICE SERVICES SHALL PROVIDE A RESPONSE
30 TO AN EMPLOYER WITHIN FIFTEEN BUSINESS DAYS OF THE RECEIPT OF ANY
31 REQUEST BY SUCH EMPLOYER FOR A NEW YORK STATE CONVICTION RECORD AND/OR
32 FEDERAL BUREAU OF INVESTIGATION CONVICTION RECORD IF:

33 A. SUCH REQUEST IS MADE BY SUCH EMPLOYER'S DESIGNATED INDIVIDUAL WHO
34 IS REGISTERED WITH THE DIVISION OF CRIMINAL JUSTICE SERVICES;

35 B. SUCH REQUEST IS ACCOMPANIED BY A FORM SIGNED BY THE EMPLOYEE OR
36 PROSPECTIVE EMPLOYEE, WHO IS THE SUBJECT OF SUCH REQUEST, CONSENTING TO
37 THE PROVISION OF SUCH RECORD; AND

38 C. SUCH REQUEST IS ACCOMPANIED BY THE EMPLOYEE'S OR PROSPECTIVE
39 EMPLOYEE'S FINGERPRINTS, OBTAINED PURSUANT TO THE PROCEDURES OF THE
40 DIVISION OF CRIMINAL JUSTICE SERVICES.

41 6. THE DIVISION OF CRIMINAL JUSTICE SERVICES SHALL, IN CONJUNCTION
42 WITH LAW ENFORCEMENT AGENCIES, PROMULGATE A LIST OF CRIMES DEEMED TO BE
43 SO VIOLENT OR DANGEROUS THAT IF AN EMPLOYEE OR PROSPECTIVE EMPLOYEE HAS
44 BEEN CONVICTED OF ANY CRIME FROM SUCH LIST, THEN AN EMPLOYER SHALL NOT
45 LET SUCH PERSON PERFORM WORK, LABOR OR SERVICES ON THE OUTSIDE OF OR IN
46 A RESIDENCE. IF AN EMPLOYER VIOLATES THE PROVISIONS OF THIS SUBDIVISION
47 HE OR SHE SHALL BE GUILTY OF A CLASS A MISDEMEANOR.

48 7. THE COMMISSIONER OF THE DIVISION OF CRIMINAL JUSTICE SERVICES SHALL
49 PROMULGATE THE RULES AND REGULATIONS NECESSARY TO IMPLEMENT THE
50 PROVISIONS OF THIS SECTION INCLUDING, BUT NOT LIMITED TO, RULES AND
51 REGULATIONS PROVIDING FOR A HEARING FOR AN EMPLOYEE OR PROSPECTIVE
52 EMPLOYEE BEFORE REPRESENTATIVES OF SUCH DIVISION AND THE OFFICE OF CHIL-
53 DREN AND FAMILY SERVICES FOR PURPOSES OF VERIFYING THE ACCURACY OF HIS
54 OR HER CONVICTION RECORD AND FOR ACCESS BY SUCH PERSONS TO PERTINENT
55 DOCUMENTS RELATED THERETO.

1 8. THE FAILURE OF AN EMPLOYER TO CONDUCT A BACKGROUND CHECK PURSUANT
2 TO SUBDIVISION ONE OF THIS SECTION SHALL RESULT IN A CIVIL PENALTY OF
3 FIVE HUNDRED DOLLARS AND/OR UP TO SIX MONTHS IN JAIL FOR A FIRST
4 OFFENSE, AND A CIVIL PENALTY OF ONE THOUSAND DOLLARS AND/OR UP TO ONE
5 YEAR IN JAIL FOR EACH SUBSEQUENT OFFENSE.

6 9. FOR PURPOSES OF THIS SECTION:

7 A. "CONVICTION RECORD" SHALL MEAN ANY RECORD MAINTAINED BY THE DIVI-
8 SION OF CRIMINAL JUSTICE SERVICES OR THE FEDERAL BUREAU OF INVESTIGATION
9 OF CONVICTIONS OF A CRIME IN VIOLATION OF THE PENAL LAW OF THIS OR ANY
10 OTHER STATE.

11 B. "EMPLOYEE" AS USED IN THIS SECTION SHALL BE ESTABLISHED BY THE
12 DIVISION OF CRIMINAL JUSTICE SERVICES AND SHALL APPLY TO ANY PERSON
13 SEEKING OR HAVING PAID EMPLOYMENT FROM AN EMPLOYER. SUCH EMPLOYEES SHALL
14 INCLUDE, BUT NOT BE LIMITED TO, LANDSCAPERS, PLUMBERS, ELECTRICIANS,
15 PAINTERS, CARPENTERS, BUILDERS AND CONTRACTORS.

16 C. "EMPLOYER" SHALL MEAN AN INDIVIDUAL OR CORPORATION WHO IS HIRED BY
17 A PERSON, WHO OWNS OR RENTS A RESIDENCE TO PERFORM WORK, LABOR OR
18 SERVICES ON THE OUTSIDE OF OR IN SUCH RESIDENCE WHO HIRES EMPLOYEES TO
19 PERFORM SUCH WORK, LABOR OR SERVICES.

20 S 2. Subdivision 8-a of section 837 of the executive law, as amended
21 by chapter 561 of the laws of 2006, is amended to read as follows:

22 8-a. Charge a fee when, pursuant to statute or the regulations of the
23 division, it conducts a search of its criminal history records and
24 returns a report thereon in connection with an application for employ-
25 ment or for a license or permit OR RETURNS A NEW YORK STATE CONVICTION
26 REPORT AND/OR A FEDERAL BUREAU OF INVESTIGATION CONVICTION REPORT THERE-
27 ON AS REQUIRED BY SECTION THREE HUNDRED SEVENTY-EIGHT-B OF THE SOCIAL
28 SERVICES LAW. The division shall adopt and may, from time to time,
29 amend a schedule of such fees which shall be in amounts determined by
30 the division to be reasonably related to the cost of conducting such
31 searches and returning reports thereon but, in no event, shall any such
32 fee exceed twenty-five dollars and an additional surcharge of fifty
33 dollars. The comptroller is hereby authorized to deposit such fees into
34 the general fund, provided, however, that the monies received by the
35 division of criminal justice services for payment of the additional
36 surcharge shall be deposited in equal amounts to the general fund and to
37 the fingerprint identification and technology account. Notwithstanding
38 the foregoing, the division shall not request or accept any fee for
39 searching its records and supplying a criminal history report pursuant
40 to section two hundred fifty-one-b of the general business law relating
41 to participating in flight instruction at any aeronautical facility,
42 flight school or institution of higher learning.

43 S 3. This act shall take effect on the one hundred twentieth day after
44 it shall have become a law; provided that any rules and regulations
45 necessary to implement the provisions of this act on its effective date
46 are authorized and directed to be promulgated on or before such effec-
47 tive date.