

1899

2009-2010 Regular Sessions

I N A S S E M B L Y

January 14, 2009

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

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:

1 Section 1. The civil rights law is amended by adding a new section
2 50-f to read as follows:
3 S 50-F. DISCLOSURE OF CONFIDENTIAL INFORMATION BY STATE EMPLOYEES. 1.
4 DEFINITIONS. AS USED IN THIS SECTION:
5 A. "CONFIDENTIAL INFORMATION" MEANS ANY INFORMATION MAINTAINED OR
6 OBTAINED BY A STATE AGENCY, OFFICER, OR EMPLOYEE CONCERNING AN INDIVID-
7 UAL'S HEALTH OR DISABILITY STATUS, INCOME TAX RECORDS, SEXUAL ORIENT-
8 TATION, STATUS AS A VICTIM OF DOMESTIC VIOLENCE, STATUS AS A CRIME
9 VICTIM OR WITNESS, PUBLIC ASSISTANCE STATUS, IMMIGRATION STATUS, OR ANY
10 INFORMATION THAT IS OTHERWISE PROTECTED FROM DISCLOSURE BY ANY PROVISION
11 OF FEDERAL, STATE, OR LOCAL LAW; AND
12 B. "LINE WORKER" MEANS ANY PERSON EMPLOYED BY ANY STATE AGENCY WHOSE
13 DUTIES INVOLVE CONTACT WITH THE PUBLIC.
14 2. PROCEDURE FOR THE DISCLOSURE OF CONFIDENTIAL INFORMATION.
15 A. EXCEPT AS PROVIDED IN PARAGRAPH B OF THIS SUBDIVISION, NO STATE
16 OFFICER OR EMPLOYEE SHALL DISCLOSE CONFIDENTIAL INFORMATION TO ANYONE
17 EXCEPT ANOTHER STATE OFFICER OR EMPLOYEE ACTING IN THE SCOPE OF HIS OR
18 HER OFFICIAL DUTIES.
19 B. OTHER THAN AS PROVIDED IN PARAGRAPH A OF THIS SUBDIVISION, CONFIDENTIAL
20 INFORMATION MAY BE DISCLOSED ONLY IF:
21 (I) THE OFFICER'S OR EMPLOYEE'S AGENCY IS REQUIRED BY LAW TO DISCLOSE
22 SUCH CONFIDENTIAL INFORMATION AND PROVIDED THAT SUCH DISCLOSURE SHALL BE
23 LIMITED TO THAT REQUIRED BY LAW; OR

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

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(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.

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

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

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

21 9. SEVERABILITY. IF ANY SECTION, SUBDIVISION, SENTENCE, CLAUSE, PHRASE
22 OR OTHER PORTION OF THIS SECTION IS, FOR ANY REASON, DECLARED UNCONSTI-
23 TUTIONAL OR INVALID, IN WHOLE OR IN PART, BY ANY COURT OF COMPETENT
24 JURISDICTION, SUCH PORTION SHALL BE DEEMED SEVERABLE, AND SUCH UNCONSTI-
25 TUTIONALITY OR INVALIDITY SHALL NOT AFFECT THE VALIDITY OF THE REMAINING
26 PORTIONS OF THIS SECTION, WHICH REMAINING PORTIONS SHALL CONTINUE IN
27 FULL FORCE AND EFFECT.

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