

3390

2009-2010 Regular Sessions

I N S E N A T E

March 18, 2009

Introduced by Sen. NOZZOLIO -- read twice and ordered printed, and when printed to be committed to the Committee on Codes

AN ACT to amend the criminal procedure law and the general municipal law, in relation to background checks for peace officers and police officers

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

1 Section 1. The criminal procedure law is amended by adding a new  
2 section 2.40 to read as follows:

3 S 2.40 BACKGROUND CHECKS.

4 1. FOR PURPOSES OF PERFORMING A THOROUGH BACKGROUND INVESTIGATION FOR  
5 APPLICANTS FOR A PROSPECTIVE PEACE OFFICER, AN EMPLOYER SHALL DISCLOSE  
6 EMPLOYMENT INFORMATION RELATING TO A CURRENT OR FORMER EMPLOYEE, UPON  
7 REQUEST OF A LAW ENFORCEMENT AGENCY, IF ALL OF THE FOLLOWING CONDITIONS  
8 ARE MET:

9 (A) THE REQUEST IS MADE IN WRITING;

10 (B) THE REQUEST IS ACCOMPANIED BY A NOTARIZED AUTHORIZATION BY THE  
11 APPLICANT RELEASING THE EMPLOYER OF LIABILITY; AND

12 (C) THE REQUEST AND THE AUTHORIZATION ARE PRESENTED TO THE EMPLOYER BY  
13 A SWORN OFFICER OR OTHER REPRESENTATIVE OF THE EMPLOYING LAW ENFORCEMENT  
14 AGENCY.

15 2. NO EMPLOYER ACTING REASONABLY AND IN GOOD FAITH SHALL BE LIABLE FOR  
16 ANY ACT OR OMISSION RELATED TO THE RELEASE OF EMPLOYMENT INFORMATION  
17 REQUIRED PURSUANT TO THIS SECTION. NOTHING IN THIS SECTION IS INTENDED  
18 TO, NOR DOES IT IN ANY WAY OR MANNER, ABROGATE OR LESSEN THE EXISTING  
19 COMMON LAW OR STATUTORY PRIVILEGES AND IMMUNITIES OF AN EMPLOYER.

20 3. FOR PURPOSES OF THIS SECTION, "EMPLOYMENT INFORMATION" INCLUDES  
21 WRITTEN INFORMATION IN CONNECTION WITH JOB APPLICATIONS, PERFORMANCE  
22 EVALUATIONS, ATTENDANCE RECORDS, DISCIPLINARY ACTIONS, ELIGIBILITY FOR  
23 REHIRE, AND OTHER INFORMATION RELEVANT TO PEACE OFFICER PERFORMANCE,

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

LBD00678-01-9

1 EXCEPT INFORMATION PROHIBITED FROM DISCLOSURE BY ANY OTHER STATE OR  
2 FEDERAL LAW OR REGULATION.

3 4. AN EMPLOYER'S REFUSAL TO DISCLOSE INFORMATION TO A LAW ENFORCEMENT  
4 AGENCY IN ACCORDANCE WITH THIS SECTION SHALL CONSTITUTE GROUNDS FOR  
5 CIVIL ACTION FOR INJUNCTIVE RELIEF REQUIRING DISCLOSURE ON THE PART OF  
6 AN EMPLOYER.

7 5. EMPLOYMENT INFORMATION DISCLOSED BY AN EMPLOYER TO AN INITIAL  
8 REQUESTING LAW ENFORCEMENT AGENCY SHALL BE DEEMED CONFIDENTIAL. HOWEVER,  
9 THE INITIAL REQUESTING LAW ENFORCEMENT AGENCY MAY DISCLOSE THIS INFORMA-  
10 TION TO ANOTHER AUTHORIZED LAW ENFORCEMENT AGENCY THAT IS ALSO CONDUCT-  
11 ING A PEACE OFFICER BACKGROUND INVESTIGATION. WHENEVER THIS INFORMATION  
12 IS DISCLOSED TO ANOTHER LAW ENFORCEMENT AGENCY, THAT AGENCY SHALL  
13 UTILIZE THE INFORMATION FOR INVESTIGATIVE LEADS ONLY AND THE INFORMATION  
14 SHALL BE INDEPENDENTLY VERIFIED BY THAT AGENCY IN ORDER TO BE USED IN  
15 DETERMINING THE SUITABILITY OF A PEACE OFFICER APPLICANT.

16 6. AN EMPLOYER MAY CHARGE REASONABLE FEES TO COVER ACTUAL COSTS  
17 INCURRED IN COPYING AND FURNISHING DOCUMENTS TO LAW ENFORCEMENT AGENCIES  
18 AS REQUIRED BY THIS SECTION.

19 S 2. The general municipal law is amended by adding a new section  
20 209-qq to read as follows:

21 S 209-qq. BACKGROUND CHECKS; POLICE OFFICERS. 1. FOR PURPOSES OF  
22 PERFORMING A THOROUGH BACKGROUND INVESTIGATION FOR APPLICANTS FOR A  
23 PROSPECTIVE POLICE OFFICER, AN EMPLOYER SHALL DISCLOSE EMPLOYMENT INFOR-  
24 MATION RELATING TO A CURRENT OR FORMER EMPLOYEE, UPON REQUEST OF A LAW  
25 ENFORCEMENT AGENCY, IF ALL OF THE FOLLOWING CONDITIONS ARE MET:

26 (A) THE REQUEST IS MADE IN WRITING;

27 (B) THE REQUEST IS ACCOMPANIED BY A NOTARIZED AUTHORIZATION BY THE  
28 APPLICANT RELEASING THE EMPLOYER OF LIABILITY; AND

29 (C) THE REQUEST AND THE AUTHORIZATION ARE PRESENTED TO THE EMPLOYER BY  
30 A SWORN OFFICER OR OTHER REPRESENTATIVE OF THE EMPLOYING LAW ENFORCEMENT  
31 AGENCY.

32 2. NO EMPLOYER ACTING REASONABLY AND IN GOOD FAITH SHALL BE LIABLE FOR  
33 ANY ACT OR OMISSION RELATED TO THE RELEASE OF EMPLOYMENT INFORMATION  
34 REQUIRED PURSUANT TO THIS SECTION. NOTHING IN THIS SECTION IS INTENDED  
35 TO, NOR DOES IT IN ANY WAY OR MANNER, ABROGATE OR LESSEN THE EXISTING  
36 COMMON LAW OR STATUTORY PRIVILEGES AND IMMUNITIES OF AN EMPLOYER.

37 3. FOR PURPOSES OF THIS SECTION, "EMPLOYMENT INFORMATION" INCLUDES  
38 WRITTEN INFORMATION IN CONNECTION WITH JOB APPLICATION, PERFORMANCE  
39 EVALUATIONS, ATTENDANCE RECORDS, DISCIPLINARY ACTIONS, ELIGIBILITY FOR  
40 REHIRE, AND OTHER INFORMATION RELEVANT TO POLICE OFFICER PERFORMANCE,  
41 EXCEPT INFORMATION PROHIBITED FROM DISCLOSURE BY ANY OTHER STATE OR  
42 FEDERAL LAW OR REGULATION.

43 4. AN EMPLOYER'S REFUSAL TO DISCLOSE INFORMATION TO A LAW ENFORCEMENT  
44 AGENCY IN ACCORDANCE WITH THIS SECTION SHALL CONSTITUTE GROUNDS FOR  
45 CIVIL ACTION FOR INJUNCTIVE RELIEF REQUIRING DISCLOSURE ON THE PART OF  
46 AN EMPLOYER.

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48 REQUESTING LAW ENFORCEMENT AGENCY SHALL BE DEEMED CONFIDENTIAL. HOWEVER,  
49 THE INITIAL REQUESTING LAW ENFORCEMENT AGENCY MAY DISCLOSE THIS INFORMA-  
50 TION TO ANOTHER AUTHORIZED LAW ENFORCEMENT AGENCY THAT IS ALSO CONDUCT-  
51 ING A POLICE OFFICER BACKGROUND INVESTIGATION. WHENEVER THIS INFORMATION  
52 IS DISCLOSED TO ANOTHER LAW ENFORCEMENT AGENCY, THAT AGENCY SHALL  
53 UTILIZE THE INFORMATION FOR INVESTIGATIVE LEADS ONLY AND THE INFORMATION  
54 SHALL BE INDEPENDENTLY VERIFIED BY THAT AGENCY IN ORDER TO BE USED IN  
55 DETERMINING THE SUITABILITY OF A POLICE OFFICER APPLICANT.

1       6. AN EMPLOYER MAY CHARGE REASONABLE FEES TO COVER ACTUAL COSTS  
2 INCURRED IN COPYING AND FURNISHING DOCUMENTS TO LAW ENFORCEMENT AGENCIES  
3 AS REQUIRED BY THIS SECTION.  
4       S 3. This act shall take effect on the one hundred twentieth day after  
5 it shall have become a law.