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

3037

2011-2012 Regular Sessions

I N A S S E M B L Y

January 21, 2011

Introduced by M. of A. MORELLE, OAKS -- read once and referred 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:

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

S 2.40 BACKGROUND CHECKS.

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

(A) THE REQUEST IS MADE IN WRITING;

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

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

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

3. FOR PURPOSES OF THIS SECTION, "EMPLOYMENT INFORMATION" INCLUDES WRITTEN INFORMATION IN CONNECTION WITH JOB APPLICATIONS, PERFORMANCE EVALUATIONS, ATTENDANCE RECORDS, DISCIPLINARY ACTIONS, ELIGIBILITY FOR 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.

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

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

5. EMPLOYMENT INFORMATION DISCLOSED BY AN EMPLOYER TO AN INITIAL REQUESTING LAW ENFORCEMENT AGENCY SHALL BE DEEMED CONFIDENTIAL. HOWEVER, THE INITIAL REQUESTING LAW ENFORCEMENT AGENCY MAY DISCLOSE THIS INFORMATION TO ANOTHER AUTHORIZED LAW ENFORCEMENT AGENCY THAT IS ALSO CONDUCTING A PEACE OFFICER BACKGROUND INVESTIGATION. WHENEVER THIS INFORMATION IS DISCLOSED TO ANOTHER LAW ENFORCEMENT AGENCY, THAT AGENCY SHALL UTILIZE THE INFORMATION FOR INVESTIGATIVE LEADS ONLY AND THE INFORMATION SHALL BE INDEPENDENTLY VERIFIED BY THAT AGENCY IN ORDER TO BE USED IN DETERMINING THE SUITABILITY OF A PEACE OFFICER APPLICANT.

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

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

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

(A) THE REQUEST IS MADE IN WRITING;

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

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

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

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

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

5. EMPLOYMENT INFORMATION DISCLOSED BY AN EMPLOYER TO AN INITIAL REQUESTING LAW ENFORCEMENT AGENCY SHALL BE DEEMED CONFIDENTIAL. HOWEVER, THE INITIAL REQUESTING LAW ENFORCEMENT AGENCY MAY DISCLOSE THIS INFORMATION TO ANOTHER AUTHORIZED LAW ENFORCEMENT AGENCY THAT IS ALSO CONDUCTING A POLICE OFFICER BACKGROUND INVESTIGATION. WHENEVER THIS INFORMATION IS DISCLOSED TO ANOTHER LAW ENFORCEMENT AGENCY, THAT AGENCY SHALL UTILIZE THE INFORMATION FOR INVESTIGATIVE LEADS ONLY AND THE INFORMATION SHALL BE INDEPENDENTLY VERIFIED BY THAT AGENCY IN ORDER TO BE USED IN DETERMINING THE SUITABILITY OF A POLICE OFFICER APPLICANT.

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

S 3. This act shall take effect on the one hundred twentieth day after it shall have become a law.