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

8070--B

2011-2012 Regular Sessions

I N A S S E M B L Y

May 27, 2011

Introduced by M. of A. STEVENSON, DINOWITZ, COLTON, JAFFEE, M. MILLER, P. RIVERA, CRESPO -- Multi-Sponsored by -- M. of A. CERETTO, CROUCH, GIBSON, HIKIND, MILLMAN, WRIGHT -- read once and referred to the Committee on Consumer Affairs and Protection -- recommitted to the Committee on Consumer Affairs and Protection in accordance with Assembly Rule 3, sec. 2 -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee -- reported and referred to the Committee on Codes -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

AN ACT to amend the general business law and the labor law, in relation to the use of credit history for employment purposes

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

Section 1. Short title. This act shall be known and may be cited as the "credit privacy in employment act".

S 2. Paragraph 3 of subdivision (a) of section 380-b of the general business law, as amended by chapter 797 of the laws of 1984, is amended to read as follows:

(3) To a person whom it has reason to believe intends to use the information (i) in connection with a credit transaction involving the consumer on whom the information is to be furnished and involving the extension of credit to, or review or collection of an account of, the consumer, or (ii) for employment purposes, SUBJECT TO THE PROVISIONS OF SECTION THREE HUNDRED EIGHTY-U OF THIS ARTICLE or (iii) in connection with the underwriting of insurance involving the consumer, or (iv) in connection with a determination of the consumer's eligibility for a license or other benefit granted by a governmental instrumentality required by law to consider an applicant's financial responsibility or status, or (v) to a person in connection with a business transaction involving the consumer where the user has a legitimate business need for

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

LBD11204-04-2

such information, or (vi) in connection with the rental or lease of a residence.

S 3. Section 380-m of the general business law, as amended by chapter 279 of the laws of 2008, is amended to read as follows:

S 380-m. Civil liability for negligent noncompliance. Any consumer reporting agency or user of information who or which is negligent in failing to comply with any requirement imposed under this article, other than a violation of section three hundred eighty-t OR THREE HUNDRED EIGHTY-U of this article, with respect to any consumer is liable to that consumer in an amount equal to the sum of:

(a) Any actual damages sustained by the consumer as a result of the failure;

(b) In the case of any successful action to enforce any liability under this section, the costs of the action together with reasonable attorney's fees as determined by the court.

S 4. Section 380-u of the general business law, as relettered by chapter 63 of the laws of 2006, is renumbered section 380-v and a new section 380-u is added to read as follows:

S 380-U. USE OF CREDIT HISTORY FOR EMPLOYMENT PURPOSES. (A) NO EMPLOYER, EMPLOYMENT AGENCY, OR LICENSING AGENCY, OR AGENT, REPRESENTATIVE OR DESIGNEE THEREOF, SHALL:

(1) USE INFORMATION IN THE CREDIT HISTORY OF A JOB APPLICANT OR EMPLOYEE IN CONNECTION WITH OR AS A CRITERION FOR EMPLOYMENT DECISIONS RELATED TO HIRING, TERMINATION, PROMOTION, DEMOTION, DISCIPLINE, COMPENSATION, OR THE TERMS, CONDITIONS OR PRIVILEGES OF EMPLOYMENT; OR

(2) REQUEST THE JOB APPLICANT'S OR EMPLOYEE'S CREDIT HISTORY FOR SUCH PURPOSE.

(B) THE PROVISIONS OF SUBDIVISION (A) OF THIS SECTION SHALL NOT APPLY TO THE EMPLOYERS OF LAW ENFORCEMENT OFFICERS OR IF THE EMPLOYER IS REQUIRED BY STATE OR FEDERAL LAW TO USE INDIVIDUAL CREDIT HISTORY FOR EMPLOYMENT PURPOSES.

(C) AS USED IN THIS SECTION, "CREDIT HISTORY" MEANS ANY WRITTEN OR OTHER COMMUNICATION OF ANY INFORMATION BY A CONSUMER REPORTING AGENCY THAT BEARS ON A CONSUMER'S CREDIT WORTHINESS, CREDIT STANDING OR CREDIT CAPACITY.

(D) (1) WHEREVER THERE SHALL BE A VIOLATION OF THIS SECTION, AN APPLICATION MAY BE MADE BY THE ATTORNEY GENERAL IN THE NAME OF THE PEOPLE OF THE STATE OF NEW YORK TO A COURT OR JUSTICE HAVING JURISDICTION BY A SPECIAL PROCEEDING TO ISSUE AN INJUNCTION, AND UPON NOTICE TO THE DEFENDANT OF NOT LESS THAN FIVE DAYS, TO ENJOIN OR RESTRAIN THE CONTINUANCE OF SUCH VIOLATION; AND IF IT SHALL APPEAR TO THE SATISFACTION OF THE COURT OR JUSTICE THAT THE DEFENDANT HAS, IN FACT, VIOLATED THIS SECTION, AN INJUNCTION MAY BE ISSUED BY SUCH COURT OR JUSTICE, ENJOINING AND RESTRAINING ANY FURTHER VIOLATION, WITHOUT REQUIRING PROOF THAT ANY PERSON HAS, IN FACT, BEEN INJURED OR DAMAGED THEREBY. IN ANY SUCH PROCEEDING, THE COURT MAY MAKE ALLOWANCES TO THE ATTORNEY GENERAL AS PROVIDED IN PARAGRAPH SIX OF SUBDIVISION (A) OF SECTION EIGHTY-THREE HUNDRED THREE OF THE CIVIL PRACTICE LAW AND RULES, AND DIRECT RESTITUTION. WHENEVER THE COURT SHALL DETERMINE THAT A VIOLATION OF THIS SECTION HAS OCCURRED, THE COURT MAY IMPOSE A CIVIL PENALTY OF NOT MORE THAN TWO THOUSAND DOLLARS FOR EACH VIOLATION. IN CONNECTION WITH ANY SUCH PROPOSED APPLICATION, THE ATTORNEY GENERAL IS AUTHORIZED TO TAKE PROOF AND MAKE A DETERMINATION OF THE RELEVANT FACTS AND TO ISSUE SUBPOENAS IN ACCORDANCE WITH THE CIVIL PRACTICE LAW AND RULES.

(2) ANY PERSON INJURED BY A VIOLATION OF THIS SECTION MAY BRING AN ACTION IN HIS OR HER OWN NAME TO ENJOIN SUCH UNLAWFUL ACT OR PRACTICE,

AN ACTION TO RECOVER HIS OR HER ACTUAL DAMAGES OR THREE THOUSAND FIVE HUNDRED DOLLARS, WHICHEVER IS GREATER, OR BOTH SUCH ACTIONS. THE COURT MAY, IN ITS DISCRETION, INCREASE THE AWARD OF DAMAGES TO AN AMOUNT NOT TO EXCEED THREE TIMES THE ACTUAL DAMAGES UP TO TEN THOUSAND DOLLARS, IF THE COURT FINDS THE DEFENDANT WILLFULLY OR KNOWINGLY VIOLATED THIS ARTICLE. IN THE CASE OF ANY SUCCESSFUL ACTION TO ENFORCE THE FOREGOING LIABILITY, THE COURT MAY AWARD THE COSTS OF THE ACTION TOGETHER WITH REASONABLE ATTORNEY'S FEES.

(E) A CONSUMER MAY FILE A COMPLAINT ALLEGING A VIOLATION OF THE PROVISIONS OF THIS SUBDIVISION WITH THE DEPARTMENT OF LABOR PURSUANT TO SECTION TWO HUNDRED NINETEEN-D OF THE LABOR LAW.

S 5. Subdivision (d) of section 380-c of the general business law, as added by chapter 867 of the laws of 1977, is amended to read as follows:

(d) If a person applying for credit, insurance, or employment refuses to authorize the procurement or preparation of an investigative consumer report, the prospective creditor, insurer or employer may decline to grant credit, insurance or employment on the grounds that the applicant refused to execute such authorization; PROVIDED, HOWEVER, THAT AN EMPLOYER SHALL NOT REFUSE TO HIRE A PROSPECTIVE EMPLOYEE ON THE GROUNDS THAT THE PROSPECTIVE EMPLOYEE REFUSES TO AUTHORIZE THE PROCUREMENT OF INFORMATION TO WHICH THE EMPLOYER IS NOT ENTITLED PURSUANT TO SECTION THREE HUNDRED EIGHTY-U OF THIS ARTICLE.

S 6. Section 380-i of the general business law is amended by adding a new subdivision (d) to read as follows:

(D) IN USING A CONSUMER REPORT OR INVESTIGATIVE CONSUMER REPORT, WHERE THE REPORT CONTAINS INFORMATION BEARING ON THE CONSUMER'S CREDITWORTHINESS, CREDIT STANDING OR CREDIT CAPACITY, AN EMPLOYER, OR AGENT, REPRESENTATIVE OR DESIGNEE THEREOF BEFORE TAKING ANY ADVERSE ACTION BASED IN WHOLE OR PART ON THE REPORT, SHALL PROVIDE TO THE JOB APPLICANT OR EMPLOYEE:

(1) THE NAME, ADDRESS, AND TELEPHONE NUMBER OF THE CONSUMER REPORTING AGENCY PROVIDING THE REPORT;

(2) A DESCRIPTION OF THE CONSUMER'S RIGHTS UNDER SECTION THREE HUNDRED EIGHTY-B OF THIS ARTICLE; AND

(3) A REASONABLE OPPORTUNITY TO RESPOND TO ANY INFORMATION IN THE REPORT THAT IS DISPUTED BY THE CONSUMER.

S 7. The labor law is amended by adding a new section 219-d to read as follows:

S 219-D. FILING OF COMPLAINT. ANY EMPLOYEE OR PROSPECTIVE EMPLOYEE MAY FILE WITH THE COMMISSIONER A COMPLAINT REGARDING AN ALLEGED VIOLATION OF SECTION THREE HUNDRED EIGHTY-U OF THE GENERAL BUSINESS LAW FOR AN INVESTIGATION OF SUCH COMPLAINT AND STATEMENT SETTING THE APPROPRIATE REMEDY, IF ANY.

S 8. This act shall take effect on the one hundred eightieth day after it shall have become a law.