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

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2011-2012 Regular Sessions

I N  A S S E M B L Y

January 18, 2011

Introduced by M. of A. DESTITO, GALEF, MARKEY, BENEDETTO -- Multi-Sponsored by -- M. of A. REILICH -- read once and referred to the Committee on Governmental Operations

AN ACT to amend the civil rights law, in relation to employer reference immunity

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

Section 1. The civil rights law is amended by adding a new section 79-o to read as follows:

S 79-O. EMPLOYER REFERENCE IMMUNITY. 1. FOR THE PURPOSES OF THIS SECTION, THE FOLLOWING TERMS SHALL HAVE THE FOLLOWING MEANINGS:

(A) "EMPLOYEE" MEANS AN INDIVIDUAL WHO AS A VOLUNTEER OR FOR COMPENSATION PROVIDES LABOR IN A NURSING HOME OR OTHER ELDER CARE FACILITY.

(B) "EMPLOYER" MEANS A NURSING HOME OR OTHER ELDER CARE FACILITY WHO EMPLOYS AN INDIVIDUAL FOR COMPENSATION OR WHO SUPERVISES AN INDIVIDUAL PROVIDING LABOR AS A VOLUNTEER.

(C) "PROSPECTIVE EMPLOYER" MEANS A NURSING HOME OR OTHER ELDER CARE FACILITY TO WHOM AN EMPLOYEE OR FORMER EMPLOYEE HAS SUBMITTED AN APPLICATION FOR EMPLOYMENT.

2. A NURSING HOME OR OTHER ELDER CARE FACILITY, MAY DISCLOSE TO AN EMPLOYEE OR THAT INDIVIDUAL'S PROSPECTIVE EMPLOYER INFORMATION RELATING TO THE INDIVIDUAL'S JOB PERFORMANCE THAT IS DOCUMENTED IN THE INDIVIDUAL'S PERSONNEL FILE UPON THE REQUEST OF THE INDIVIDUAL OR HIS OR HER PROSPECTIVE EMPLOYER. AN EMPLOYER WHO DISCLOSES INFORMATION UNDER THIS SECTION IN GOOD FAITH IS IMMUNE FROM CIVIL LIABILITY FOR THE DISCLOSURE. AN EMPLOYER IS PRESUMED TO BE ACTING IN GOOD FAITH AT THE TIME OF A DISCLOSURE UNDER THIS SECTION UNLESS A PREPONDERANCE OF THE EVIDENCE ESTABLISHES ONE OR MORE OF THE FOLLOWING:

(A) THAT THE EMPLOYER KNEW THE INFORMATION DISCLOSED WAS FALSE OR MISLEADING,

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

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(B) THAT THE EMPLOYER DISCLOSED THE INFORMATION WITH A RECKLESS DISREGARD FOR THE TRUTH,

(C) THAT THE DISCLOSURE WAS SPECIFICALLY PROHIBITED BY A STATE OR FEDERAL STATUTE.

S 2. This act shall take effect immediately.