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

3809

2011-2012 Regular Sessions

I N A S S E M B L Y

January 27, 2011

Introduced by M. of A. AUBRY, WRIGHT, GOTTFRIED, CAMARA, BOYLAND, V. LOPEZ, MILLMAN, JAFFEE, KAVANAGH, O'DONNELL, ROBINSON, JEFFRIES -- Multi-Sponsored by -- M. of A. CLARK, DINOWITZ, GLICK, HEASTIE, HEVESI, MAISEL, McENENY, PEOPLES-STOKES, PRETLOW, REILLY, SCHIMEL, WEISENBERG -- read once and referred to the Committee on Correction

AN ACT to amend the correction law and the executive law, in relation to establishing that it is an unlawful discriminatory practice for prospective employers to make certain inquiries relating to criminal convictions

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

Section 1. Subdivision 3 of section 750 of the correction law, as amended by chapter 284 of the laws of 2007, is amended to read as follows:

(3) "Direct relationship" means that THERE IS AN IMMEDIATE AND SUBSTANTIAL CONNECTION BETWEEN the nature of [criminal conduct] THE CRIME for which the person was convicted [has a direct bearing on his fitness or ability to perform one or more of] AND the duties or responsibilities necessarily related to the license, opportunity, or job in question AND SUCH CONNECTION WOULD CREATE AN UNREASONABLE RISK TO PROPERTY OR TO THE SAFETY OR WELFARE OF SPECIFIC INDIVIDUALS OR THE GENERAL PUBLIC UPON THE ISSUANCE OR CONTINUATION OF A LICENSE OR THE GRANTING OR CONTINUATION OF EMPLOYMENT OF SUCH PERSON.

S 2. Section 752 of the correction law, as amended by chapter 284 of the laws of 2007, is amended to read as follows:

S 752. Unfair discrimination against persons previously convicted of one or more criminal offenses prohibited. 1. No application for any license or employment, and no employment or license held by an individual, to which the provisions of this article are applicable, shall be denied or acted upon adversely by reason of the individual's having been previously convicted of one or more criminal offenses, or by reason of a

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

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finding of lack of "good moral character" when such finding is based upon the fact that the individual has previously been convicted of one or more criminal offenses, unless[:

(1)] there is a direct relationship between one or more of the previous criminal offenses and the specific license or employment sought or held by the individual[; or

(2) the issuance or continuation of the license or the granting or continuation of the employment would involve an unreasonable risk to property or to the safety or welfare of specific individuals or the general public].

2. NO PUBLIC OR PRIVATE EMPLOYER TO WHICH THE PROVISIONS OF THIS ARTICLE ARE APPLICABLE, UNLESS SPECIFICALLY REQUIRED OR PERMITTED BY STATUTE, SHALL MAKE ANY INQUIRY ABOUT, WHETHER IN ANY FORM OF APPLICATION OR OTHERWISE, OR ACT UPON ADVERSELY TO THE INDIVIDUAL INVOLVED BASED UPON, ANY CRIMINAL CONVICTION OF SUCH INDIVIDUAL UNLESS SUCH EMPLOYER FIRST MAKES A CONDITIONAL OFFER OF EMPLOYMENT TO SUCH INDIVIDUAL. SUCH CONDITIONAL OFFER OF EMPLOYMENT MAY ONLY SUBSEQUENTLY BE WITHDRAWN ON THE BASIS OF A CRIMINAL CONVICTION IN ACCORDANCE WITH THIS ARTICLE WHERE SUCH CONVICTION BEARS A DIRECT RELATIONSHIP TO THE SPECIFIC POSITION BEING OFFERED.

S 3. Section 296 of the executive law is amended by adding a new subdivision 15-a to read as follows:

15-A. IT SHALL BE AN UNLAWFUL DISCRIMINATORY PRACTICE, UNLESS SPECIFICALLY REQUIRED OR PERMITTED BY STATUTE, FOR ANY PROSPECTIVE EMPLOYER, INCLUDING ANY PERSON, AGENCY, BUREAU, CORPORATION OR ASSOCIATION, INCLUDING THE STATE AND ANY POLITICAL SUBDIVISION THEREOF, TO MAKE ANY INQUIRY ABOUT, WHETHER IN ANY FORM OF APPLICATION OR OTHERWISE, OR TO ACT UPON ADVERSELY TO THE INDIVIDUAL INVOLVED BASED UPON, ANY CRIMINAL CONVICTION OF SUCH INDIVIDUAL UNLESS SUCH EMPLOYER FIRST MAKES A CONDITIONAL OFFER OF EMPLOYMENT TO SUCH INDIVIDUAL. SUCH CONDITIONAL OFFER OF EMPLOYMENT MAY ONLY SUBSEQUENTLY BE WITHDRAWN ON THE BASIS OF A CRIMINAL CONVICTION IN ACCORDANCE WITH ARTICLE TWENTY-THREE-A OF THE CORRECTION LAW WHERE SUCH CONVICTION BEARS A DIRECT RELATIONSHIP, AS SUCH TERM IS DEFINED IN SUBDIVISION THREE OF SECTION SEVEN HUNDRED FIFTY OF THE CORRECTION LAW, TO THE SPECIFIC POSITION BEING OFFERED.

S 4. This act shall take effect on the ninetieth day after it shall have become a law.