

6672

2011-2012 Regular Sessions

I N A S S E M B L Y

March 24, 2011

Introduced by M. of A. STEVENSON -- read once and referred to the
Committee on Consumer Affairs and Protection

AN ACT to amend the executive law and the general business law, in
relation to prohibiting discrimination in employment decisions based
on consumer credit reports

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

1 Section 1. Section 296 of the executive law is amended by adding a new
2 subdivision 19-a to read as follows:
3 19-A. (A) EXCEPT AS PROVIDED IN PARAGRAPH (B) OF THIS SUBDIVISION, IT
4 SHALL BE AN UNLAWFUL DISCRIMINATORY PRACTICE OF ANY EMPLOYER, LABOR
5 ORGANIZATION, EMPLOYMENT AGENCY OR LICENSING AGENCY, HEREINAFTER COLLEC-
6 TIVELY REFERRED TO IN THIS SECTION AS "EMPLOYER", TO USE A CONSUMER
7 CREDIT REPORT, AS DEFINED IN SUBDIVISION (1) OF SECTION THREE HUNDRED
8 EIGHTY-A OF THE GENERAL BUSINESS LAW, AS A CRITERION IN EMPLOYMENT DECI-
9 SIONS RELATED TO HIRING, TERMINATION, PROMOTION OR DISCIPLINE.
10 (B) AN EMPLOYER MAY REQUEST AND USE A CONSUMER CREDIT REPORT AS PART
11 OF ITS DECISION-MAKING PROCESS TO HIRE, TERMINATE, PROMOTE OR DISCIPLINE
12 AN EMPLOYEE OR PROSPECTIVE EMPLOYEE WHEN THE INFORMATION CONTAINED IN
13 SUCH REPORT IS: (I) SUBSTANTIALLY JOB-RELATED TO THE POSITION, WHICH MAY
14 INCLUDE, BUT NOT BE LIMITED TO ACCESS TO MONEY, OTHER ASSETS OR CONFI-
15 DENTIAL INFORMATION; OR (II) USED WITH REGARD TO A MANAGERIAL POSITION,
16 A POSITION IN THE OFFICE OF COURT ADMINISTRATION, A POSITION WITH A LAW
17 ENFORCEMENT AGENCY OR A POSITION FOR WHICH THE INFORMATION CONTAINED IN
18 SUCH REPORT IS REQUIRED TO BE DISCLOSED OR OBTAINED BY THE EMPLOYER.
19 (C) BEFORE AN EMPLOYER MAY REQUEST OR USE A CONSUMER CREDIT REPORT
20 PURSUANT TO PARAGRAPH (B) OF THIS SUBDIVISION, THE EMPLOYEE OR PROSPEC-
21 TIVE EMPLOYEE SHALL BE GIVEN AND SIGN AN AUTHORIZATION OF CONSENT FORM
22 WHICH EXPLICITLY STATES THE SPECIFIC PURPOSE, USE AND LIMITATION OF USE
23 OF SUCH REPORT AS IT PERTAINS TO THE EMPLOYMENT POSITION SOUGHT.

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

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

4 (3) To a person whom it has reason to believe intends to use the
5 information (i) in connection with a credit transaction involving the
6 consumer on whom the information is to be furnished and involving the
7 extension of credit to, or review or collection of an account of, the
8 consumer, or (ii) for employment purposes IN ACCORDANCE WITH THE
9 PROVISIONS OF SUBDIVISION (E) OF THIS SECTION, or (iii) in connection
10 with the underwriting of insurance involving the consumer, or (iv) in
11 connection with a determination of the consumer's eligibility for a
12 license or other benefit granted by a governmental instrumentality
13 required by law to consider an applicant's financial responsibility or
14 status, or (v) to a person in connection with a business transaction
15 involving the consumer where the user has a legitimate business need for
16 such information, or (vi) in connection with the rental or lease of a
17 residence.

18 S 3. Section 380-b of the general business law is amended by adding a
19 new subdivision (e) to read as follows:

20 (E) NO EMPLOYER, AS REFERRED TO IN SUBDIVISION NINETEEN-A OF SECTION
21 TWO HUNDRED NINETY-SIX OF THE EXECUTIVE LAW, SHALL REQUEST OR USE A
22 CONSUMER CREDIT REPORT IN CONNECTION WITH ITS DECISION-MAKING PROCESS TO
23 HIRE, TERMINATE, PROMOTE OR DISCIPLINE AN EMPLOYEE OR PROSPECTIVE
24 EMPLOYEE UNLESS IT IS UTILIZED PURSUANT TO SUCH SUBDIVISION.

25 S 4. Subdivision (d) of section 380-c of the general business law, as
26 added by chapter 867 of the laws of 1977, is amended to read as follows:

27 (d) If a person applying for credit, insurance, or employment refuses
28 to authorize the procurement or preparation of an investigative consumer
29 report, the prospective creditor, insurer or employer may decline to
30 grant credit, insurance or employment on the grounds that the applicant
31 refused to execute such authorization; PROVIDED THAT AN EMPLOYER SHALL
32 NOT DETERMINE TO HIRE, TERMINATE, PROMOTE OR DISCIPLINE AN EMPLOYEE OR
33 PROSPECTIVE EMPLOYEE BASED ON THE GROUNDS THAT AN EMPLOYEE OR PROSPEC-
34 TIVE EMPLOYEE REFUSES TO AUTHORIZE THE PROCUREMENT OR PREPARATION OF A
35 CONSUMER CREDIT REPORT TO WHICH THE EMPLOYER IS NOT ENTITLED PURSUANT TO
36 SUBDIVISION (E) OF SECTION THREE HUNDRED EIGHTY-B OF THIS ARTICLE.

37 S 4. This act shall take effect on the one hundred eightieth day after
38 it shall have become a law.