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

1519

2011-2012 Regular Sessions

I N S E N A T E

January 10, 2011

Introduced by Sen. KLEIN -- read twice and ordered printed, and when printed to be committed to the Committee on Investigations and Government Operations

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 ASSEMBLY, DO ENACT AS FOLLOWS:

Section 1. Section 296 of the executive law is amended by adding a new subdivision 19-a to read as follows:

19-A. (A) EXCEPT AS PROVIDED IN PARAGRAPH (B) OF THIS SUBDIVISION, IT SHALL BE AN UNLAWFUL DISCRIMINATORY PRACTICE OF ANY EMPLOYER, LABOR ORGANIZATION, EMPLOYMENT AGENCY OR LICENSING AGENCY, HEREINAFTER COLLECTIVELY REFERRED TO IN THIS SECTION AS "EMPLOYER", TO USE A CONSUMER CREDIT REPORT, AS DEFINED IN SUBDIVISION (1) OF SECTION THREE HUNDRED EIGHTY-A OF THE GENERAL BUSINESS LAW, AS A CRITERION IN EMPLOYMENT DECISIONS RELATED TO HIRING, TERMINATION, PROMOTION OR DISCIPLINE.

(B) AN EMPLOYER MAY REQUEST AND USE A CONSUMER CREDIT REPORT AS PART OF ITS DECISION-MAKING PROCESS TO HIRE, TERMINATE, PROMOTE OR DISCIPLINE AN EMPLOYEE OR PROSPECTIVE EMPLOYEE WHEN THE INFORMATION CONTAINED IN SUCH REPORT IS: (I) SUBSTANTIALLY JOB-RELATED TO THE POSITION, WHICH MAY INCLUDE, BUT NOT BE LIMITED TO ACCESS TO MONEY, OTHER ASSETS OR CONFIDENTIAL INFORMATION; OR (II) USED WITH REGARD TO A MANAGERIAL POSITION, A POSITION IN THE OFFICE OF COURT ADMINISTRATION, A POSITION WITH A LAW ENFORCEMENT AGENCY OR A POSITION FOR WHICH THE INFORMATION CONTAINED IN SUCH REPORT IS REQUIRED TO BE DISCLOSED OR OBTAINED BY THE EMPLOYER.

(C) BEFORE AN EMPLOYER MAY REQUEST OR USE A CONSUMER CREDIT REPORT PURSUANT TO PARAGRAPH (B) OF THIS SUBDIVISION, THE EMPLOYEE OR PROSPECTIVE EMPLOYEE SHALL BE GIVEN AND SIGN AN AUTHORIZATION OF CONSENT FORM WHICH EXPLICITLY STATES THE SPECIFIC PURPOSE, USE AND LIMITATION OF USE 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.

LBD05262-01-1

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 IN ACCORDANCE WITH THE PROVISIONS OF SUBDIVISION (E) OF THIS SECTION, 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 such information, or (vi) in connection with the rental or lease of a residence.

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

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

S 4. 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 THAT AN EMPLOYER SHALL NOT DETERMINE TO HIRE, TERMINATE, PROMOTE OR DISCIPLINE AN EMPLOYEE OR PROSPECTIVE EMPLOYEE BASED ON THE GROUNDS THAT AN EMPLOYEE OR PROSPECTIVE EMPLOYEE REFUSES TO AUTHORIZE THE PROCUREMENT OR PREPARATION OF A CONSUMER CREDIT REPORT TO WHICH THE EMPLOYER IS NOT ENTITLED PURSUANT TO SUBDIVISION (E) OF SECTION THREE HUNDRED EIGHTY-B OF THIS ARTICLE.

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