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

6790--A

Cal. No. 322

2013-2014 Regular Sessions

I N A S S E M B L Y

April 18, 2013

Introduced by M. of A. BRAUNSTEIN, ABINANTI, GUNTHER, MOSLEY, MARKEY, GOTTFRIED, WEPRIN, MONTESANO, ROSENTHAL, MILLMAN, COLTON, JAFFEE, CAHILL, O'DONNELL, PEOPLES-STOKES, ROBERTS, SCARBOROUGH, STECK, RAIA, PERRY, HOOPER, MOYA, SKOUFIS, SIMOTAS, OTIS, RODRIGUEZ -- Multi-Sponsored by -- M. of A. ARROYO, BRENNAN, CLARK, COOK, CROUCH, GALEF, GLICK, JACOBS, McDONOUGH, SCHIMEL, SIMANOWITZ, STEC, TITONE, WEISENBERG -- read once and referred to the Committee on Consumer Affairs and Protection -- advanced to a third reading, amended and ordered reprinted, retaining its place on the order of third reading

AN ACT to amend the general business law, in relation to the sale and use of employment information

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

Section 1. Section 380-u of the general business law, as relettered by chapter 63 of the laws of 2006, is relettered section 380-v and a new section 380-u is added to read as follows:

S 380-U. SALE AND USE OF EMPLOYMENT INFORMATION. (A) NO CONSUMER REPORTING AGENCY OR ANY SUBSIDIARY THEREOF SHALL SELL OR RESELL, OR OFFER FOR SALE OR RESALE OR DISTRIBUTE EMPLOYMENT INFORMATION TO ANY PRINCIPAL CREDITOR, AS THAT TERM IS DEFINED IN SUBDIVISION THREE OF SECTION SIX HUNDRED OF THIS CHAPTER, OR OTHER DEBT COLLECTOR WITHOUT VERIFYING THAT SUCH SALE, RESALE, OR DISTRIBUTION WAS DISCLOSED TO THE CONSUMER TO WHOM SUCH EMPLOYMENT INFORMATION PERTAINS WITHOUT WRITTEN CONSUMER CONSENT IN A SEPARATE STAND-ALONE DOCUMENT. EMPLOYMENT INFORMATION SHALL INCLUDE, BUT NOT BE LIMITED TO, PAYROLL AND EARNINGS INFORMATION, HOURS WORKED, CONSUMER HISTORY AND HEALTH INSURANCE INFORMATION.

(B) SUCH DISCLOSURE AND CONSUMER CONSENT SHALL BE GIVEN IN A SEPARATE, STAND-ALONE DOCUMENT AND CONSENT SHALL BE LIMITED TO THE PARTICULAR USE OR TRANSACTION FOR WHICH CONSENT IS GIVEN.

(C) 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

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

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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.

(D) IN ADDITION TO ANY RIGHT OF ACTION GRANTED TO THE ATTORNEY GENERAL PURSUANT TO THIS SECTION, ANY PERSON WHO HAS BEEN INJURED BY REASON OF ANY 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 ONE THOUSAND DOLLARS, WHICHEVER IS GREATER, OR BOTH SUCH ACTIONS. THE COURT MAY, IN ITS DISCRETION, AWARD THE PREVAILING PLAINTIFF IN SUCH ACTION AN ADDITIONAL AWARD NOT TO EXCEED FIVE THOUSAND DOLLARS, IF THE COURT FINDS THE DEFENDANT WILLFULLY VIOLATED THE PROVISIONS OF THIS SECTION. THE COURT MAY AWARD REASONABLE ATTORNEYS' FEES TO A PREVAILING PLAINTIFF.

S 2. This act shall take effect on the one hundred eightieth day after it shall have become a law.