

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:

1 Section 1. Section 380-u of the general business law, as relettered
2 by chapter 63 of the laws of 2006, is relettered section 380-v and a new
3 section 380-u is added to read as follows:
4 S 380-U. SALE AND USE OF EMPLOYMENT INFORMATION. (A) NO CONSUMER
5 REPORTING AGENCY OR ANY SUBSIDIARY THEREOF SHALL SELL OR RESELL, OR
6 OFFER FOR SALE OR RESALE OR DISTRIBUTE EMPLOYMENT INFORMATION TO ANY
7 PRINCIPAL CREDITOR, AS THAT TERM IS DEFINED IN SUBDIVISION THREE OF
8 SECTION SIX HUNDRED OF THIS CHAPTER, OR OTHER DEBT COLLECTOR WITHOUT
9 VERIFYING THAT SUCH SALE, RESALE, OR DISTRIBUTION WAS DISCLOSED TO THE
10 CONSUMER TO WHOM SUCH EMPLOYMENT INFORMATION PERTAINS WITHOUT WRITTEN
11 CONSUMER CONSENT IN A SEPARATE STAND-ALONE DOCUMENT. EMPLOYMENT INFOR-
12 MATION SHALL INCLUDE, BUT NOT BE LIMITED TO, PAYROLL AND EARNINGS INFOR-
13 MATION, HOURS WORKED, CONSUMER HISTORY AND HEALTH INSURANCE INFORMATION.
14 (B) SUCH DISCLOSURE AND CONSUMER CONSENT SHALL BE GIVEN IN A SEPARATE,
15 STAND-ALONE DOCUMENT AND CONSENT SHALL BE LIMITED TO THE PARTICULAR USE
16 OR TRANSACTION FOR WHICH CONSENT IS GIVEN.
17 (C) WHEREVER THERE SHALL BE A VIOLATION OF THIS SECTION, AN APPLICA-
18 TION 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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1 THE STATE OF NEW YORK TO A COURT OR JUSTICE HAVING JURISDICTION BY A
2 SPECIAL PROCEEDING TO ISSUE AN INJUNCTION, AND UPON NOTICE TO THE
3 DEFENDANT OF NOT LESS THAN FIVE DAYS, TO ENJOIN OR RESTRAIN THE CONTIN-
4 UANCE OF SUCH VIOLATION; AND IF IT SHALL APPEAR TO THE SATISFACTION OF
5 THE COURT OR JUSTICE THAT THE DEFENDANT HAS, IN FACT, VIOLATED THIS
6 SECTION, AN INJUNCTION MAY BE ISSUED BY SUCH COURT OR JUSTICE, ENJOINING
7 AND RESTRAINING ANY FURTHER VIOLATION, WITHOUT REQUIRING PROOF THAT ANY
8 PERSON HAS, IN FACT, BEEN INJURED OR DAMAGED THEREBY. IN ANY SUCH
9 PROCEEDING, THE COURT MAY MAKE ALLOWANCES TO THE ATTORNEY GENERAL AS
10 PROVIDED IN PARAGRAPH SIX OF SUBDIVISION (A) OF SECTION EIGHTY-THREE
11 HUNDRED THREE OF THE CIVIL PRACTICE LAW AND RULES, AND DIRECT RESTITU-
12 TION. WHENEVER THE COURT SHALL DETERMINE THAT A VIOLATION OF THIS
13 SECTION HAS OCCURRED, THE COURT MAY IMPOSE A CIVIL PENALTY OF NOT MORE
14 THAN TWO THOUSAND DOLLARS FOR EACH VIOLATION. IN CONNECTION WITH ANY
15 SUCH PROPOSED APPLICATION, THE ATTORNEY GENERAL IS AUTHORIZED TO TAKE
16 PROOF AND MAKE A DETERMINATION OF THE RELEVANT FACTS AND TO ISSUE
17 SUBPOENAS IN ACCORDANCE WITH THE CIVIL PRACTICE LAW AND RULES.

18 (D) IN ADDITION TO ANY RIGHT OF ACTION GRANTED TO THE ATTORNEY GENERAL
19 PURSUANT TO THIS SECTION, ANY PERSON WHO HAS BEEN INJURED BY REASON OF
20 ANY VIOLATION OF THIS SECTION MAY BRING AN ACTION IN HIS OR HER OWN NAME
21 TO ENJOIN SUCH UNLAWFUL ACT OR PRACTICE, AN ACTION TO RECOVER HIS OR HER
22 ACTUAL DAMAGES OR ONE THOUSAND DOLLARS, WHICHEVER IS GREATER, OR BOTH
23 SUCH ACTIONS. THE COURT MAY, IN ITS DISCRETION, AWARD THE PREVAILING
24 PLAINTIFF IN SUCH ACTION AN ADDITIONAL AWARD NOT TO EXCEED FIVE THOUSAND
25 DOLLARS, IF THE COURT FINDS THE DEFENDANT WILLFULLY VIOLATED THE
26 PROVISIONS OF THIS SECTION. THE COURT MAY AWARD REASONABLE ATTORNEYS'
27 FEES TO A PREVAILING PLAINTIFF.

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