

3868--A

2013-2014 Regular Sessions

I N S E N A T E

February 25, 2013

Introduced by Sen. KLEIN -- read twice and ordered printed, and when printed to be committed to the Committee on Consumer Protection -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

AN ACT to amend the general business law and the labor law, in relation to the use of credit history for employment purposes

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

1 Section 1. Short title. This act shall be known and may be cited as
2 the "credit privacy in employment act".
3 S 2. Paragraph 3 of subdivision (a) of section 380-b of the general
4 business law, as amended by chapter 797 of the laws of 1984, is amended
5 to read as follows:
6 (3) To a person whom it has reason to believe intends to use the
7 information (i) in connection with a credit transaction involving the
8 consumer on whom the information is to be furnished and involving the
9 extension of credit to, or review or collection of an account of, the
10 consumer, or (ii) for employment purposes, SUBJECT TO THE PROVISIONS OF
11 SECTION THREE HUNDRED EIGHTY-U OF THIS ARTICLE or (iii) in connection
12 with the underwriting of insurance involving the consumer, or (iv) in
13 connection with a determination of the consumer's eligibility for a
14 license or other benefit granted by a governmental instrumentality
15 required by law to consider an applicant's financial responsibility or
16 status, or (v) to a person in connection with a business transaction
17 involving the consumer where the user has a legitimate business need for
18 such information, or (vi) in connection with the rental or lease of a
19 residence.
20 S 3. Section 380-m of the general business law, as amended by chapter
21 279 of the laws of 2008, is amended to read as follows:
22 S 380-m. Civil liability for negligent noncompliance. Any consumer
23 reporting agency or user of information who or which is negligent in

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

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1 failing to comply with any requirement imposed under this article, other
2 than a violation of section three hundred eighty-t OR THREE HUNDRED
3 EIGHTY-U of this article, with respect to any consumer is liable to that
4 consumer in an amount equal to the sum of:

5 (a) Any actual damages sustained by the consumer as a result of the
6 failure;

7 (b) In the case of any successful action to enforce any liability
8 under this section, the costs of the action together with reasonable
9 attorney's fees as determined by the court.

10 S 4. Section 380-u of the general business law, as relettered by chap-
11 ter 63 of the laws of 2006, is renumbered section 380-v and a new
12 section 380-u is added to read as follows:

13 S 380-U. USE OF CREDIT HISTORY FOR EMPLOYMENT PURPOSES. (A) NO
14 EMPLOYER, EMPLOYMENT AGENCY, OR LICENSING AGENCY, OR AGENT, REPRESENTATIVE OR DESIGNEE THEREOF, SHALL:

15 (1) USE INFORMATION IN THE CREDIT HISTORY OF A JOB APPLICANT OR
16 EMPLOYEE IN CONNECTION WITH OR AS A CRITERION FOR EMPLOYMENT DECISIONS
17 RELATED TO HIRING, TERMINATION, PROMOTION, DEMOTION, DISCIPLINE, COMPEN-
18 SATION, OR THE TERMS, CONDITIONS OR PRIVILEGES OF EMPLOYMENT; OR

19 (2) REQUEST THE JOB APPLICANT'S OR EMPLOYEE'S CREDIT HISTORY FOR SUCH
20 PURPOSE.

21 (B) THE PROVISIONS OF SUBDIVISION (A) OF THIS SECTION SHALL NOT APPLY
22 IF THE EMPLOYER IS REQUIRED BY STATE OR FEDERAL LAW TO USE INDIVIDUAL
23 CREDIT HISTORY FOR EMPLOYMENT PURPOSES.

24 (C) AS USED IN THIS SECTION, "CREDIT HISTORY" MEANS ANY WRITTEN OR
25 OTHER COMMUNICATION OF ANY INFORMATION BY A CONSUMER REPORTING AGENCY
26 THAT BEARS ON A CONSUMER'S CREDIT WORTHINESS, CREDIT STANDING OR CREDIT
27 CAPACITY.

28 (D) (1) WHEREVER THERE SHALL BE A VIOLATION OF THIS SECTION, AN APPLI-
29 CATION MAY BE MADE BY THE ATTORNEY GENERAL IN THE NAME OF THE PEOPLE OF
30 THE STATE OF NEW YORK TO A COURT OR JUSTICE HAVING JURISDICTION BY A
31 SPECIAL PROCEEDING TO ISSUE AN INJUNCTION, AND UPON NOTICE TO THE
32 DEFENDANT OF NOT LESS THAN FIVE DAYS, TO ENJOIN OR RESTRAIN THE CONTIN-
33 UANCE OF SUCH VIOLATION; AND IF IT SHALL APPEAR TO THE SATISFACTION OF
34 THE COURT OR JUSTICE THAT THE DEFENDANT HAS, IN FACT, VIOLATED THIS
35 SECTION, AN INJUNCTION MAY BE ISSUED BY SUCH COURT OR JUSTICE, ENJOINING
36 AND RESTRAINING ANY FURTHER VIOLATION, WITHOUT REQUIRING PROOF THAT ANY
37 PERSON HAS, IN FACT, BEEN INJURED OR DAMAGED THEREBY. IN ANY SUCH
38 PROCEEDING, THE COURT MAY MAKE ALLOWANCES TO THE ATTORNEY GENERAL AS
39 PROVIDED IN PARAGRAPH SIX OF SUBDIVISION (A) OF SECTION EIGHTY-THREE
40 HUNDRED THREE OF THE CIVIL PRACTICE LAW AND RULES, AND DIRECT RESTITU-
41 TION. WHENEVER THE COURT SHALL DETERMINE THAT A VIOLATION OF THIS
42 SECTION HAS OCCURRED, THE COURT MAY IMPOSE A CIVIL PENALTY OF NOT MORE
43 THAN TWO THOUSAND DOLLARS FOR EACH VIOLATION. IN CONNECTION WITH ANY
44 SUCH PROPOSED APPLICATION, THE ATTORNEY GENERAL IS AUTHORIZED TO TAKE
45 PROOF AND MAKE A DETERMINATION OF THE RELEVANT FACTS AND TO ISSUE
46 SUBPOENAS IN ACCORDANCE WITH THE CIVIL PRACTICE LAW AND RULES.

47 (2) ANY PERSON INJURED BY A VIOLATION OF THIS SECTION MAY BRING AN
48 ACTION IN HIS OR HER OWN NAME TO ENJOIN SUCH UNLAWFUL ACT OR PRACTICE,
49 AN ACTION TO RECOVER HIS OR HER ACTUAL DAMAGES OR THREE THOUSAND FIVE
50 HUNDRED DOLLARS, WHICHEVER IS GREATER, OR BOTH SUCH ACTIONS. THE COURT
51 MAY, IN ITS DISCRETION, INCREASE THE AWARD OF DAMAGES TO AN AMOUNT NOT
52 TO EXCEED THREE TIMES THE ACTUAL DAMAGES UP TO TEN THOUSAND DOLLARS, IF
53 THE COURT FINDS THE DEFENDANT WILLFULLY OR KNOWINGLY VIOLATED THIS ARTI-
54 CLE. IN THE CASE OF ANY SUCCESSFUL ACTION TO ENFORCE THE FOREGOING
55

1 LIABILITY, THE COURT MAY AWARD THE COSTS OF THE ACTION TOGETHER WITH
2 REASONABLE ATTORNEY'S FEES.

3 (E) A CONSUMER MAY FILE A COMPLAINT ALLEGING A VIOLATION OF THE
4 PROVISIONS OF THIS SUBDIVISION WITH THE DEPARTMENT OF LABOR PURSUANT TO
5 SECTION TWO HUNDRED NINETEEN-D OF THE LABOR LAW.

6 S 5. Subdivision (d) of section 380-c of the general business law, as
7 added by chapter 867 of the laws of 1977, is amended to read as follows:

8 (d) If a person applying for credit, insurance, or employment refuses
9 to authorize the procurement or preparation of an investigative consumer
10 report, the prospective creditor, insurer or employer may decline to
11 grant credit, insurance or employment on the grounds that the applicant
12 refused to execute such authorization; PROVIDED, HOWEVER, THAT AN
13 EMPLOYER SHALL NOT REFUSE TO HIRE A PROSPECTIVE EMPLOYEE ON THE GROUNDS
14 THAT THE PROSPECTIVE EMPLOYEE REFUSES TO AUTHORIZE THE PROCUREMENT OF
15 INFORMATION TO WHICH THE EMPLOYER IS NOT ENTITLED PURSUANT TO SECTION
16 THREE HUNDRED EIGHTY-U OF THIS ARTICLE.

17 S 6. Section 380-i of the general business law is amended by adding a
18 new subdivision (d) to read as follows:

19 (D) IN USING A CONSUMER REPORT OR INVESTIGATIVE CONSUMER REPORT, WHERE
20 THE REPORT CONTAINS INFORMATION BEARING ON THE CONSUMER'S CREDITWORTHI-
21 NESS, CREDIT STANDING OR CREDIT CAPACITY, AN EMPLOYER, OR AGENT, REPRE-
22 SENTATIVE OR DESIGNEE THEREOF BEFORE TAKING ANY ADVERSE ACTION BASED IN
23 WHOLE OR PART ON THE REPORT, SHALL PROVIDE TO THE JOB APPLICANT OR
24 EMPLOYEE:

25 (1) THE NAME, ADDRESS, AND TELEPHONE NUMBER OF THE CONSUMER REPORTING
26 AGENCY PROVIDING THE REPORT;

27 (2) A DESCRIPTION OF THE CONSUMER'S RIGHTS UNDER SECTION THREE HUNDRED
28 EIGHTY-B OF THIS ARTICLE; AND

29 (3) A REASONABLE OPPORTUNITY TO RESPOND TO ANY INFORMATION IN THE
30 REPORT THAT IS DISPUTED BY THE CONSUMER.

31 S 7. The labor law is amended by adding a new section 219-d to read as
32 follows:

33 S 219-D. FILING OF COMPLAINT. ANY EMPLOYEE OR PROSPECTIVE EMPLOYEE
34 MAY FILE WITH THE COMMISSIONER A COMPLAINT REGARDING AN ALLEGED
35 VIOLATION OF SECTION THREE HUNDRED EIGHTY-U OF THE GENERAL BUSINESS LAW
36 FOR AN INVESTIGATION OF SUCH COMPLAINT AND STATEMENT SETTING THE APPRO-
37 PRIATE REMEDY, IF ANY.

38 S 8. This act shall take effect on the one hundred eightieth day after
39 it shall have become a law.