

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

3868--B

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 -- 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 consumer credit reports for employment decisions

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:

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

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1 S 380-m. Civil liability for negligent noncompliance. Any consumer
2 reporting agency or user of information who or which is negligent in
3 failing to comply with any requirement imposed under this article, other
4 than a violation of section three hundred eighty-t OR THREE HUNDRED
5 EIGHTY-U of this article, with respect to any consumer is liable to that
6 consumer in an amount equal to the sum of:

7 (a) Any actual damages sustained by the consumer as a result of the
8 failure;

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

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

15 S 380-U. USE OF CONSUMER CREDIT REPORTS FOR EMPLOYMENT DECISIONS. (A)
16 NO EMPLOYER, EMPLOYMENT AGENCY, OR LICENSING AGENCY, OR AGENT, REPRESEN-
17 TATIVE OR DESIGNEE THEREOF, SHALL:

18 (1) USE INFORMATION IN THE CONSUMER CREDIT REPORT OF A JOB APPLICANT
19 OR EMPLOYEE IN CONNECTION WITH OR AS A CRITERION FOR EMPLOYMENT DECI-
20 SIONS RELATED TO HIRING, TERMINATION, PROMOTION, DEMOTION, DISCIPLINE,
21 COMPENSATION, OR THE TERMS, CONDITIONS OR PRIVILEGES OF EMPLOYMENT;

22 (2) REQUEST THE JOB APPLICANT'S OR EMPLOYEE'S CONSUMER CREDIT REPORT
23 FOR SUCH PURPOSE; OR

24 (3) REFUSE TO HIRE A JOB APPLICANT ON THE GROUND THAT HE OR SHE
25 REFUSES TO GIVE CONSENT FOR THE OBTAINMENT OF HIS OR HER CONSUMER CREDIT
26 REPORT.

27 (B) THE PROVISIONS OF SUBDIVISION (A) OF THIS SECTION SHALL NOT APPLY
28 IF THE EMPLOYER IS REQUIRED BY STATE OR FEDERAL LAW TO USE A CONSUMER
29 CREDIT REPORT FOR EMPLOYMENT DECISIONS.

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

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

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

3 (D) 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. Section 380-i of the general business law is amended by adding a
7 new subdivision (d) to read as follows:

8 (D) IN USING A CONSUMER CREDIT REPORT ANY EMPLOYER, EMPLOYMENT AGENCY,
9 LICENSING AGENCY, AGENT, REPRESENTATIVE OR DESIGNEE THEREOF, BEFORE
10 TAKING ANY ADVERSE ACTION BASED IN WHOLE OR PART ON SUCH REPORT, SHALL
11 PROVIDE TO THE JOB APPLICANT OR EMPLOYEE:

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

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

16 (3) A REASONABLE OPPORTUNITY TO RESPOND TO ANY INFORMATION IN THE
17 REPORT.

18 S 6. The labor law is amended by adding a new section 219-d to read as
19 follows:

20 S 219-D. FILING OF COMPLAINT. ANY JOB APPLICANT OR EMPLOYEE MAY FILE
21 WITH THE COMMISSIONER A COMPLAINT REGARDING AN ALLEGED VIOLATION OF
22 SECTION THREE HUNDRED EIGHTY-U OF THE GENERAL BUSINESS LAW FOR AN INVE-
23 STIGATION OF SUCH COMPLAINT AND STATEMENT SETTING THE APPROPRIATE REMEDY,
24 IF ANY.

25 S 7. This act shall take effect on the one hundred twentieth day after
26 it shall have become a law.