

3795

2015-2016 Regular Sessions

I N S E N A T E

February 17, 2015

Introduced by Sen. SANDERS -- read twice and ordered printed, and when printed to be committed to the Committee on Consumer Protection

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-v of the general business law, as relettered
2 by chapter 441 of the laws of 2014, is relettered section 380-w and a
3 new section 380-v is added to read as follows:

4 S 380-V. 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
19 THE STATE OF NEW YORK TO A COURT OR JUSTICE HAVING JURISDICTION BY A
20 SPECIAL PROCEEDING TO ISSUE AN INJUNCTION, AND UPON NOTICE TO THE
21 DEFENDANT OF NOT LESS THAN FIVE DAYS, TO ENJOIN OR RESTRAIN THE CONTIN-
22 UANCE OF SUCH VIOLATION; AND IF IT SHALL APPEAR TO THE SATISFACTION OF
23 THE COURT OR JUSTICE THAT THE DEFENDANT HAS, IN FACT, VIOLATED THIS
24 SECTION, AN INJUNCTION MAY BE ISSUED BY SUCH COURT OR JUSTICE, ENJOINING
25 AND RESTRAINING ANY FURTHER VIOLATION, WITHOUT REQUIRING PROOF THAT ANY

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

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1 PERSON HAS, IN FACT, BEEN INJURED OR DAMAGED THEREBY. IN ANY SUCH
2 PROCEEDING, THE COURT MAY MAKE ALLOWANCES TO THE ATTORNEY GENERAL AS
3 PROVIDED IN PARAGRAPH SIX OF SUBDIVISION (A) OF SECTION EIGHTY-THREE
4 HUNDRED THREE OF THE CIVIL PRACTICE LAW AND RULES, AND DIRECT RESTITU-
5 TION. WHENEVER THE COURT SHALL DETERMINE THAT A VIOLATION OF THIS
6 SECTION HAS OCCURRED, THE COURT MAY IMPOSE A CIVIL PENALTY OF NOT MORE
7 THAN TWO THOUSAND DOLLARS FOR EACH VIOLATION. IN CONNECTION WITH ANY
8 SUCH PROPOSED APPLICATION, THE ATTORNEY GENERAL IS AUTHORIZED TO TAKE
9 PROOF AND MAKE A DETERMINATION OF THE RELEVANT FACTS AND TO ISSUE
10 SUBPOENAS IN ACCORDANCE WITH THE CIVIL PRACTICE LAW AND RULES.

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

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