

STATE OF NEW YORK

5310--A

2017-2018 Regular Sessions

IN ASSEMBLY

February 7, 2017

Introduced by M. of A. DINOWITZ, ROSENTHAL, CRESPO, SKOUFIS, BUCHWALD, WEPRIN, M. G. MILLER, RODRIGUEZ, OTIS, ABINANTI, SEAWRIGHT, HARRIS -- Multi-Sponsored by -- M. of A. HIKIND, JAFFEE, PERRY, SOLAGES -- read once and referred to the Committee on Consumer Affairs and Protection -- reported and referred to the Committee on Codes -- reported and referred to the Committee on Rules -- Rules Committee discharged, bill amended, ordered reprinted as amended and recommitted to the Committee on Rules

AN ACT to amend the general business law, in relation to prohibiting the disclosure or use of a person's consumer credit history to an employer, labor organization, employment agency or agent thereof for purposes of employment decisions

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

1 Section 1. Section 380-a of the general business law is amended by
2 adding a new subdivision (u) to read as follows:

3 (u) The term "consumer credit history" means an individual's credit
4 worthiness, credit standing, credit capacity or payment history, as
5 indicated by:

6 (1) a consumer credit report;

7 (2) credit score; or

8 (3) information an employer obtains directly from the individual
9 regarding (i) details about credit accounts, including the individual's
10 number of credit accounts, late or missed payments, charged-off debts,
11 items in collections, credit limit or prior credit report inquiries, or
12 (ii) bankruptcies, judgments or liens.

13 A consumer credit report shall include any written or other communi-
14 cation of any information by a consumer reporting agency that bears on a
15 consumer's creditworthiness, credit standing, credit capacity or credit
16 history.

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

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1 § 2. Subdivision (d) of section 380-b of the general business law is
2 relettered subdivision (f) and two new subdivisions (d) and (e) are
3 added to read as follows:

4 (d) (1) Except as provided in this subdivision, it shall be an unlaw-
5 ful discriminatory practice for an employer, labor organization, employ-
6 ment agency or any agent thereof to request or to use, and a violation
7 of this article for any person to disclose, for employment purposes the
8 consumer credit history of an applicant for employment or employee, or
9 otherwise discriminate against an applicant or employee with regard to
10 hiring, compensation, or the terms, conditions or privileges of employ-
11 ment based on the consumer credit history of the applicant or employee.

12 (2) Paragraph one of this subdivision shall not apply to:

13 (i) an employer, or agent thereof, that is required by state or feder-
14 al law or regulations or by a self-regulatory organization as defined in
15 section 3(a)(26) of the securities exchange act of 1934, as amended to
16 use an individual's consumer credit history for employment purposes;

17 (ii) persons applying for positions as or employed:

18 (A) as peace officers or police officers, as those terms are defined
19 in subdivisions thirty-three and thirty-four of section 1.20 of the
20 criminal procedure law, respectively, or in a position with a law
21 enforcement or investigative function in a law enforcement agency;

22 (B) in a position in which an employee is required to be bonded under
23 local, state or federal law;

24 (C) in a position in which an employee is required to possess security
25 clearance under federal law or the law of any state;

26 (D) in a non-clerical position having regular access to trade secrets,
27 intelligence information or national security information;

28 (E) in a position: (I) having access to third party, consumer or
29 employer funds or assets valued at ten thousand dollars or more; or (II)
30 that involves a fiduciary responsibility to the employer with the
31 authority to enter financial agreements or initiate, modify or approve
32 payments, valued at ten thousand dollars or more on behalf of the
33 employer; or

34 (F) in a position with regular duties that allow the employee to
35 design, monitor, access, provision access and/or modify (I) systems,
36 applications or databases containing confidential employer and/or
37 customer data; or (II) digital security systems established to prevent
38 the unauthorized use of the employer's or client's networks or data-
39 bases.

40 (3) Paragraph one of this subdivision shall not be construed to affect
41 the obligations of persons required by state or local law relating to
42 disclosures by public employees of conflicts of interest.

43 (4) As used in this subdivision:

44 (i) The term "intelligence information" means records and data
45 compiled for the purpose of criminal investigation or counterterrorism,
46 including records and data relating to the order or security of a
47 correctional facility, reports of informants, investigators or other
48 persons, or from any type of surveillance associated with an identifi-
49 able individual, or investigation or analysis of potential terrorist
50 threats.

51 (ii) The term "national security information" means any knowledge
52 relating to the national defense or foreign relations of the United
53 States, regardless of its physical form or characteristics, that is
54 owned by, produced by or for, or is under the control of the United
55 States government and is defined as such by the United States government
56 and its agencies and departments.

1 (iii) The term "trade secrets" means information that: (A) derives
2 independent economic value, actual or potential, from not being general-
3 ly known to, and not being readily ascertainable by proper means by
4 other persons who can obtain economic value from its disclosure or use;
5 (B) is the subject of efforts that are reasonable under the circum-
6 stances to maintain its secrecy; and (C) can reasonably be said to be
7 the end product of significant innovation.

8 The term "trade secrets" does not include general proprietary company
9 information such as handbooks and policies. The term "regular access to
10 trade secrets" does not include access to or the use of client, customer
11 or mailing lists.

12 (5) Nothing in this subdivision shall preclude an employer from
13 requesting or receiving consumer credit history information pursuant to
14 a lawful subpoena, court order or law enforcement investigation.

15 (6) Paragraph one of this subdivision shall not apply to any city with
16 a population of one million or more.

17 (e) (1) Except as otherwise provided in this subdivision, it shall be
18 an unlawful discriminatory practice for any state or municipal agency to
19 request or use, and a violation of this article for any person to
20 disclose, for licensing or permitting purposes information contained in
21 the consumer credit history of an applicant, licensee or permittee for
22 licensing or permitting purposes.

23 (2) Paragraph one of this subdivision shall not apply to an agency
24 required by state or federal law or regulations to use an individual's
25 consumer credit history for licensing or permitting purposes.

26 (3) Paragraph one of this subdivision shall not be construed to affect
27 the ability of an agency to consider an applicant's, licensee's, regis-
28 trant's or permittee's failure to pay any tax, fine, penalty or fee for
29 which liability has been admitted by the person liable therefor, or for
30 which judgment has been entered by a court or administrative tribunal of
31 competent jurisdiction, or any tax for which a government agency has
32 issued a warrant, or a lien or levy on property.

33 (4) Nothing in this subdivision shall preclude a licensing agency from
34 requesting, receiving, or using consumer credit history information
35 obtained pursuant to a lawful subpoena, court order or law enforcement
36 investigation.

37 (5) Paragraph one of this subdivision shall not apply to any city with
38 a population of one million or more.

39 § 3. The division of human rights shall request information from state
40 and local agencies and non-governmental employers regarding the agen-
41 cies' and employers' use of the exemptions established in subdivision
42 (d) of section 380-b of the general business law for purposes of hiring
43 and employment. Within two years of the effective date of this act, the
44 division of human rights shall submit to the legislature a report
45 concerning the results of such request and any relevant feedback from
46 agencies and employers.

47 § 4. This act shall take effect on the one hundred twentieth day after
48 it shall have become a law.