

STATE OF NEW YORK

8043--A

IN SENATE

March 12, 2020

Introduced by Sen. PERSAUD -- read twice and ordered printed, and when printed to be committed to the Committee on Crime Victims, Crime and Correction -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

AN ACT to amend the correction law, the general obligations law and the civil rights law, in relation to enacting the "second chance act"

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

1 Section 1. This act shall be known and may be cited as the "second
2 chance act".

3 § 2. The article heading of article 23-A of the correction law, as
4 added by chapter 931 of the laws of 1976, is amended to read as follows:

LICENSURE AND EMPLOYMENT OF PERSONS [~~PREVIOUSLY~~]

CONVICTED OF ONE OR MORE CRIMINAL OFFENSES

7 § 3. Section 751 of the correction law, as amended by chapter 284 of
8 the laws of 2007, is amended to read as follows:

9 § 751. Applicability. The provisions of this article shall apply to
10 any application by any person for a license or employment at any public
11 or private employer, who has previously been convicted of one or more
12 criminal offenses in this state or in any other jurisdiction, and to any
13 license or employment held by any person whose conviction of one or more
14 criminal offenses in this state or in any other jurisdiction preceded or
15 succeeded such employment or granting of a license, except where a
16 mandatory forfeiture, disability or bar to employment is imposed by law,
17 and has not been removed by an executive pardon, certificate of relief
18 from disabilities or certificate of good conduct. Nothing in this arti-
19 cle shall be construed to affect any right an employer may have with
20 respect to an intentional misrepresentation in connection with an appli-
21 cation for employment made by a prospective employee or previously made
22 by a current employee.

23 § 4. Section 752 of the correction law, as amended by chapter 284 of
24 the laws of 2007, is amended to read as follows:

25 § 752. Unfair discrimination against persons previously convicted of
26 one or more criminal offenses prohibited. No application for any license

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

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1 or employment, and no employment or license held by an individual, to
2 which the provisions of this article are applicable, shall be denied or
3 acted upon adversely by reason of the ~~[individual's]~~ individual being
4 convicted of one or more criminal offenses or having been previously
5 convicted of one or more criminal offenses, or by reason of a finding of
6 lack of "good moral character" when such finding is based upon the fact
7 that the individual has previously been convicted of one or more criminal
8 offenses, unless:

9 (1) there is a direct relationship between one or more of the previous
10 criminal offenses and the specific license or employment sought or held
11 by the individual; or

12 (2) the issuance or continuation of the license or the granting or
13 continuation of the employment would involve an unreasonable risk to
14 property or to the safety or welfare of specific individuals or the
15 general public.

16 § 5. The correction law is amended by adding a new section 752-a to
17 read as follows:

18 § 752-a. Conviction while employed or licensed. 1. Except where
19 continued licensure or employment is prohibited by law, no person who
20 holds a license or who is employed by any public or private employer
21 shall have such license revoked or shall be denied continuation or
22 resumption of such employment by reason of such individual having been
23 convicted of one or more criminal offenses, or by reason of a finding of
24 a lack of good moral character, when such finding is based upon the fact
25 that such individual has been convicted of one or more criminal
26 offenses, unless:

27 (a) there is a direct relationship between one or more of the criminal
28 offenses and the specific license or employment held by such individual;
29 or

30 (b) continuation of the license or the continuation or resumption of
31 such employment would involve an unreasonable risk to property or to the
32 safety or welfare of specific individuals or the general public.

33 2. As used in this section, the term "convicted" shall mean a
34 conviction for a crime other than a class B violent felony as defined in
35 the penal law, or a class A or class A-II felony as defined in the penal
36 law, other than a class A or class A-II felony as defined in article two
37 hundred twenty of the penal law, or an offense in another jurisdiction
38 which includes all of the essential elements of any such crime.

39 § 6. Subdivision 1 of section 753 of the correction law, as added by
40 chapter 931 of the laws of 1976, paragraph (b) as amended by chapter 284
41 of the laws of 2007, is amended and a new subdivision 3 is added to read
42 as follows:

43 1. In making a determination pursuant to section seven hundred fifty-
44 two or section seven hundred fifty-two-a of this ~~[chapter]~~ article, the
45 public agency or private employer shall consider the following factors:

46 (a) The public policy of this state, as expressed in this act, to
47 encourage the licensure and employment of persons previously convicted
48 of one or more criminal offenses.

49 (b) The specific duties and responsibilities necessarily related to
50 the license or employment sought or held by the person.

51 (c) The bearing, if any, the criminal offense or offenses for which
52 the person was previously convicted will have on his or her fitness or
53 ability to perform one or more such duties or responsibilities.

54 (d) The time which has elapsed since the occurrence of the criminal
55 offense or offenses.

1 (e) The age of the person at the time of occurrence of the criminal
2 offense or offenses.

3 (f) The seriousness of the offense or offenses.

4 (g) Any information produced by the person, or produced on his or her
5 behalf, including in regard to his or her rehabilitation and good
6 conduct.

7 (h) The legitimate interest of the public agency or private employer
8 in protecting property, and the safety and welfare of specific individ-
9 uals or the general public.

10 3. Except where continued licensure or employment of such person is
11 prohibited by law under such circumstances, each public agency and
12 private business entity and corporation shall adopt a policy that
13 requires the public agency or private business entity or corporation
14 to provide such convicted person with an opportunity to submit an expla-
15 nation of the facts surrounding the offense and conviction and any
16 other information such person deems relevant to the issue, prior to
17 making a determination pursuant to section seven hundred fifty-two or
18 seven hundred fifty-two-a of this article. Nothing in this subdivi-
19 sion shall prohibit a public agency, private business entity or corpo-
20 ration duly authorized to conduct business in this state from imposing
21 sanctions upon a person convicted of a crime in accordance with the
22 regulations, policies and practices of the public agency or private
23 employer.

24 § 7. The general obligations law is amended by adding a new section
25 5-338 to read as follows:

26 § 5-338. Agreements concerning termination due to conviction. 1.
27 Termination. Except where continuation of such commercial activities are
28 prohibited by law under such circumstances, every covenant, agreement or
29 understanding between a governmental entity, private business entity or
30 corporation and a person or persons enabling such person or persons to
31 carry out specified commercial activities, which includes a clause
32 requiring the automatic termination of the covenant, agreement or under-
33 standing upon a conviction of such person or persons shall be deemed to
34 be void as against public policy and wholly unenforceable.

35 2. Explanation. Except where continuation of such covenants, agree-
36 ments or understandings are prohibited by law under such circumstances,
37 all covenants, agreements or understandings between a governmental
38 entity, private business entity or corporation and a person or persons
39 enabling such person or persons to carry out specified commercial
40 activities shall include and extend to such person or persons the right
41 to an opportunity to submit an explanation of the facts surrounding any
42 conviction or alleged offense as well as any other information the party
43 deems relevant to the conviction or alleged offense prior to any party
44 terminating a business contract or contract of employment due to
45 a conviction or alleged offense.

46 3. Sanctions. Nothing in this section shall prohibit a governmental
47 entity, private business entity or corporation from imposing sanc-
48 tions upon a person or persons convicted of a crime in accordance
49 with the regulations, policies and practices of the governmental enti-
50 ty, private business entity or corporation. Unless otherwise authorized
51 by law, such sanctions shall not be of a duration that would in effect
52 terminate the viability of the affiliated business.

53 4. Comparability. If a review of the facts shall find that in the
54 history of the existence of the private business entity or corporation,
55 a person or persons holding a similar license or agreement to do busi-
56 ness in the name of the private business entity or corporation, who

1 while holding such license or prior to being granted such license, was
2 convicted of a felony or any offense for which the private business
3 entity or corporation could have claimed and exercised the right to
4 terminate the business relationship or permit to act under the name of
5 the private business entity or corporation, but such private business
6 entity or corporation, in exercise of its discretion, allowed such
7 person or persons to acquire or continue to hold and exercise such
8 license and authority to do business, and the private business entity
9 or corporation took no action to terminate such agreement, and the
10 private business entity or corporation determined not to provide an
11 extension of forgiveness and a second chance, the private business enti-
12 ty or corporation shall state why it determined not to grant such second
13 chance to such person and the burden of proof shall be on such private
14 business entity or corporation to demonstrate with substantive and
15 convincing proof how such extension of forgiveness and a second chance
16 would be detrimental to the interest of the private business entity or
17 corporation.

18 § 8. The civil rights law is amended by adding a new section 79-q to
19 read as follows:

20 § 79-q. Right to a reasonable review of facts and a reasonable consid-
21 eration for the extension of forgiveness and a second chance. Except
22 where continuation of such contract is prohibited by law under such
23 circumstances, no governmental entity, private business entity or corpo-
24 ration shall terminate, cancel or refuse to renew any contract based on
25 an individual being convicted of one or more criminal offenses without
26 such individual being given an opportunity to submit an explanation of
27 the facts surrounding any conviction or alleged offense as well as any
28 other information the individual deems relevant to the conviction or
29 alleged offense and provided a reasonable review of the facts and a
30 reasonable consideration for the extension of forgiveness and a second
31 chance.

32 § 9. This act shall take effect on the sixtieth day after it shall
33 have become a law.