

# STATE OF NEW YORK

2884--B

Cal. No. 221

2019-2020 Regular Sessions

## IN SENATE

January 30, 2019

Introduced by Sens. SANDERS, CARLUCCI, GOUNARDES, KRUEGER, RAMOS, THOMAS -- 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 -- reported favorably from said committee, ordered to first and second report, ordered to a third reading, amended and ordered reprinted, retaining its place in the order of third reading

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:

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

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

(1) a consumer credit report;

(2) credit score; or

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

A consumer credit report shall include any written or other communication of any information by a consumer reporting agency that bears on a consumer's creditworthiness, credit standing, credit capacity or credit history.

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

LBD01243-07-9

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

(d) (1) Except as provided in this subdivision, it shall be an unlawful discriminatory practice for an employer, labor organization, employment agency or any agent thereof to request or to use for employment purposes the consumer credit history of an applicant for employment or employee, or otherwise discriminate against an applicant or employee with regard to hiring, compensation, or the terms, conditions or privileges of employment based on the consumer credit history of the applicant or employee.

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

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

(ii) persons applying for positions as or employed:

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

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

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

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

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

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

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

(4) As used in this subdivision:

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

(ii) The term "national security information" means any knowledge relating to the national defense or foreign relations of the United States, regardless of its physical form or characteristics, that is owned by, produced by or for, or is under the control of the United States government and is defined as such by the United States government 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     (e) (1) Except as otherwise provided in this subdivision, it shall be  
16 an unlawful discriminatory practice for any state or municipal agency to  
17 request or use for licensing or permitting purposes information  
18 contained in the consumer credit history of an applicant, licensee or  
19 permittee for licensing or permitting purposes.

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

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

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

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

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