STATE OF NEW YORK

3124

2019-2020 Regular Sessions

IN SENATE

February 4, 2019

Introduced by Sen. BIAGGI -- 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 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.

§ 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, and a violation of this article for any person to disclose, for employment purposes the

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

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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 posses 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.

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

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

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

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

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

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

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

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

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

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

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