

# 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:

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.

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

20 (d) (1) Except as provided in this subdivision, it shall be an unlaw-  
21 ful discriminatory practice for an employer, labor organization, employ-  
22 ment agency or any agent thereof to request or to use, and a violation  
23 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.

LBD01243-01-9

1 consumer credit history of an applicant for employment or employee, or  
2 otherwise discriminate against an applicant or employee with regard to  
3 hiring, compensation, or the terms, conditions or privileges of employ-  
4 ment based on the consumer credit history of the applicant or employee.

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

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

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

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

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

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

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

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

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

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

36 (4) As used in this subdivision:

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

44 (ii) The term "national security information" means any knowledge  
45 relating to the national defense or foreign relations of the United  
46 States, regardless of its physical form or characteristics, that is  
47 owned by, produced by or for, or is under the control of the United  
48 States government and is defined as such by the United States government  
49 and its agencies and departments.

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

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

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

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

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

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

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

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

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

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

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