STATE OF NEW YORK

6388

2021-2022 Regular Sessions

IN ASSEMBLY

March 16, 2021

Introduced by M. of A. DINOWITZ -- read once and referred to the Committee on Consumer Affairs and 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 (v) to read as follows:

(v) 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 (g) and three new subdivisions (d), (e) and (f) 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

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

LBD09379-01-1

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 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 as peace officers or police officers, as such 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.

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

(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 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 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 specific law enforcement investigation.

(f) This section does not annul, alter, affect or exempt any employer, labor organization, employment agency or any agent thereof subject to the provisions of this section from complying with any local law, ordinance or regulation with respect to the use of consumer credit history for employment purposes except to the extent that those laws are inconsistent with any provision of this section, and then only to the extent of such inconsistency. For purposes of this subdivision, a local law, ordinance or regulation is not inconsistent with this section if the protection such law or regulation affords an employee or job applicant is greater than the protection provided by this section.

§ 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 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. Paragraph 3 of subdivision (a) of section 380-b of the general business law, as amended by chapter 797 of the laws of 1984, is amended to read as follows:

(3) To a person whom it has reason to believe intends to use the information (i) in connection with a credit transaction involving the consumer on whom the information is to be furnished and involving the extension of credit to, or review or collection of an account of, the consumer, or (ii) [~~for employment purposes, or (iii)~~] in connection with the underwriting of insurance involving the consumer, or [~~(iv)~~] **(iii)** in connection with a determination of the consumer's eligibility for a license or other benefit granted by a governmental instrumentality required by law to consider an applicant's financial responsibility or status, or [~~(v)~~] **(iv)** to a person in connection with a business transaction involving the consumer where the user has a legitimate business need for such information, or [~~(vi)~~] **(v)** in connection with the rental or lease of a residence.

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