

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:

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

3 (v) 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 (g) and three new subdivisions (d), (e) and (f)
19 are 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 for employment
23 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.

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1 employee, or otherwise discriminate against an applicant or employee
2 with regard to hiring, compensation, or the terms, conditions or privi-
3 leges of employment based on the consumer credit history of the appli-
4 cant 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 by a self-regulatory organization as defined in section
8 3(a)(26) of the securities exchange act of 1934, as amended to use an
9 individual's consumer credit history for employment purposes;

10 (ii) persons applying for positions as or employed as peace officers
11 or police officers, as such terms are defined in subdivisions thirty-
12 three and thirty-four of section 1.20 of the criminal procedure law,
13 respectively, or in a position with a law enforcement or investigative
14 function in a law enforcement agency.

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

18 (4) Nothing in this subdivision shall preclude an employer from
19 requesting or receiving consumer credit history information pursuant to
20 a lawful subpoena, court order or specific law enforcement investi-
21 gation.

22 (e) (1) Except as otherwise provided in this subdivision, it shall be
23 an unlawful discriminatory practice for any state or municipal agency to
24 request or use for licensing or permitting purposes information
25 contained in the consumer credit history of an applicant, licensee or
26 permittee for licensing or permitting purposes.

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

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

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

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

51 § 3. The division of human rights shall request information from state
52 and local agencies and non-governmental employers regarding the agen-
53 cies' and employers' use of the exemptions established in subdivision
54 (d) of section 380-b of the general business law for purposes of hiring
55 and employment. Within two years of the effective date of this act, the
56 division of human rights shall submit to the legislature a report

1 concerning the results of such request and any relevant feedback from
2 agencies and employers.

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

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

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