STATE OF NEW YORK

338

2021-2022 Regular Sessions

IN SENATE

(Prefiled)

January 6, 2021

Introduced by Sen. PERSAUD -- read twice and ordered printed, and when printed to be committed to the Committee on Crime Victims, Crime and Correction

AN ACT to amend the correction law, the general obligations law and the civil rights law, in relation to enacting the "second chance act"

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

Section 1. This act shall be known and may be cited as the "second chance act".

§ 2. The article heading of article 23-A of the correction law, as added by chapter 931 of the laws of 1976, is amended to read as follows:

LICENSURE AND EMPLOYMENT OF PERSONS [~~PREVIOUSLY~~]
CONVICTED OF ONE OR MORE CRIMINAL OFFENSES

§ 3. Section 751 of the correction law, as amended by chapter 284 of the laws of 2007, is amended to read as follows:

§ 751. Applicability. The provisions of this article shall apply to any application by any person for a license or employment at any public or private employer, who has previously been convicted of one or more criminal offenses in this state or in any other jurisdiction, and to any license or employment held by any person whose conviction of one or more criminal offenses in this state or in any other jurisdiction preceded **or succeeded** such employment or granting of a license, except where a mandatory forfeiture, disability or bar to employment is imposed by law, and has not been removed by an executive pardon, certificate of relief from disabilities or certificate of good conduct. Nothing in this article shall be construed to affect any right an employer may have with respect to an intentional misrepresentation in connection with an application for employment made by a prospective employee or previously made by a current employee.

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

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§ 4. Section 752 of the correction law, as amended by chapter 284 of the laws of 2007, is amended to read as follows:

§ 752. Unfair discrimination against persons previously convicted of one or more criminal offenses prohibited. No application for any license or employment, and no employment or license held by an individual, to which the provisions of this article are applicable, shall be denied or acted upon adversely by reason of the [~~individual's~~] **individual being convicted of one or more criminal offenses or** having been previously convicted of one or more criminal offenses, or by reason of a finding of lack of "good moral character" when such finding is based upon the fact that the individual has previously been convicted of one or more criminal offenses, unless:

(1) there is a direct relationship between one or more of the previous criminal offenses and the specific license or employment sought or held by the individual; or

(2) the issuance or continuation of the license or the granting or continuation of the employment would involve an unreasonable risk to property or to the safety or welfare of specific individuals or the general public.

§ 5. The correction law is amended by adding a new section 752-a to read as follows:

§ 752-a. Conviction while employed or licensed. 1. Except where continued licensure or employment is prohibited by law, no person who holds a license or who is employed by any public or private employer shall have such license revoked or shall be denied continuation or resumption of such employment by reason of such individual having been convicted of one or more criminal offenses, or by reason of a finding of a lack of good moral character, when such finding is based upon the fact that such individual has been convicted of one or more criminal offenses, unless:

(a) there is a direct relationship between one or more of the criminal offenses and the specific license or employment held by such individual; or

(b) continuation of the license or the continuation or resumption of such employment would involve an unreasonable risk to property or to the safety or welfare of specific individuals or the general public.

2. As used in this section, the term "convicted" shall mean a conviction for a crime other than a class B violent felony as defined in the penal law, or a class A or class A-II felony as defined in the penal law, other than a class A or class A-II felony as defined in article two hundred twenty of the penal law, or an offense in another jurisdiction which includes all of the essential elements of any such crime.

§ 6. Subdivision 1 of section 753 of the correction law, as added by chapter 931 of the laws of 1976, paragraph (b) as amended by chapter 284 of the laws of 2007, is amended and a new subdivision 3 is added to read as follows:

1. In making a determination pursuant to section seven hundred fifty-two **or section seven hundred fifty-two-a** of this [~~chapter~~] **article**, the public agency or private employer shall consider the following factors:

(a) The public policy of this state, as expressed in this act, to encourage the licensure and employment of persons previously convicted of one or more criminal offenses.

(b) The specific duties and responsibilities necessarily related to the license or employment sought or held by the person.

(c) The bearing, if any, the criminal offense or offenses for which the person was previously convicted will have on his or her fitness or ability to perform one or more such duties or responsibilities.

(d) The time which has elapsed since the occurrence of the criminal offense or offenses.

(e) The age of the person at the time of occurrence of the criminal offense or offenses.

(f) The seriousness of the offense or offenses.

(g) Any information produced by the person, or produced on his or her behalf, including in regard to his or her rehabilitation and good conduct.

(h) The legitimate interest of the public agency or private employer in protecting property, and the safety and welfare of specific individuals or the general public.

3. Except where continued licensure or employment of such person is prohibited by law under such circumstances, each public agency and private business entity and corporation shall adopt a policy that requires the public agency or private business entity or corporation to provide such convicted person with an opportunity to submit an explanation of the facts surrounding the offense and conviction and any other information such person deems relevant to the issue, prior to making a determination pursuant to section seven hundred fifty-two or seven hundred fifty-two-a of this article. Nothing in this subdivision shall prohibit a public agency, private business entity or corporation duly authorized to conduct business in this state from imposing sanctions upon a person convicted of a crime in accordance with the regulations, policies and practices of the public agency or private employer.

§ 7. The general obligations law is amended by adding a new section 5-338 to read as follows:

§ 5-338. Agreements concerning termination due to conviction. 1. Termination. Except where continuation of such commercial activities are prohibited by law under such circumstances, every covenant, agreement or understanding between a governmental entity, private business entity or corporation and a person or persons enabling such person or persons to carry out specified commercial activities, which includes a clause requiring the automatic termination of the covenant, agreement or understanding upon a conviction of such person or persons shall be deemed to be void as against public policy and wholly unenforceable.

2. Explanation. Except where continuation of such covenants, agreements or understandings are prohibited by law under such circumstances, all covenants, agreements or understandings between a governmental entity, private business entity or corporation and a person or persons enabling such person or persons to carry out specified commercial activities shall include and extend to such person or persons the right to an opportunity to submit an explanation of the facts surrounding any conviction or alleged offense as well as any other information the party deems relevant to the conviction or alleged offense prior to any party terminating a business contract or contract of employment due to a conviction or alleged offense.

3. Sanctions. Nothing in this section shall prohibit a governmental entity, private business entity or corporation from imposing sanctions upon a person or persons convicted of a crime in accordance with the regulations, policies and practices of the governmental entity, private business entity or corporation. Unless otherwise authorized

by law, such sanctions shall not be of a duration that would in effect terminate the viability of the affiliated business.

4. Comparability. If a review of the facts shall find that in the history of the existence of the private business entity or corporation, a person or persons holding a similar license or agreement to do business in the name of the private business entity or corporation, who while holding such license or prior to being granted such license, was convicted of a felony or any offense for which the private business entity or corporation could have claimed and exercised the right to terminate the business relationship or permit to act under the name of the private business entity or corporation, but such private business entity or corporation, in exercise of its discretion, allowed such person or persons to acquire or continue to hold and exercise such license and authority to do business, and the private business entity or corporation took no action to terminate such agreement, and the private business entity or corporation determined not to provide an extension of forgiveness and a second chance, the private business entity or corporation shall state why it determined not to grant such second chance to such person and the burden of proof shall be on such private business entity or corporation to demonstrate with substantive and convincing proof how such extension of forgiveness and a second chance would be detrimental to the interest of the private business entity or corporation.

§ 8. The civil rights law is amended by adding a new section 79-q to read as follows:

§ 79-q. Right to a reasonable review of facts and a reasonable consideration for the extension of forgiveness and a second chance. Except where continuation of such contract is prohibited by law under such circumstances, no governmental entity, private business entity or corporation shall terminate, cancel or refuse to renew any contract based on an individual being convicted of one or more criminal offenses without such individual being given an opportunity to submit an explanation of the facts surrounding any conviction or alleged offense as well as any other information the individual deems relevant to the conviction or alleged offense and provided a reasonable review of the facts and a reasonable consideration for the extension of forgiveness and a second chance.

§ 9. This act shall take effect on the sixtieth day after it shall have become a law.