

STATE OF NEW YORK

779--B

2023-2024 Regular Sessions

IN ASSEMBLY

January 11, 2023

Introduced by M. of A. DINOWITZ, L. ROSENTHAL, WEPRIN, OTIS, SEAWRIGHT, REYES, TAYLOR, SAYEGH, EPSTEIN, STIRPE, HYNDMAN, STECK, COOK, GLICK, CRUZ, ZEBROWSKI, WALLACE, FALL, DARLING -- Multi-Sponsored by -- M. of A. SIMON -- read once and referred to the Committee on Consumer Affairs and Protection -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee -- reported and referred to the Committee on Rules -- again reported from said committee with amendments, ordered reprinted as amended and recommitted to said committee

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.

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

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§ 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 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;

(iii) persons in a position that is subject to background investigation by a state agency, provided, however, that the appointing agency may not use consumer credit history information for employment purposes unless the position is an appointed position in which a high degree of public trust, as defined by the commission in rules, has been reposed.

(iv) persons in a position in which an employee is required to be bonded under state or federal law;

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

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

(vii) persons in a position: (A) having signatory authority over third party funds or assets valued at ten thousand dollars or more; or (B) that involves a fiduciary responsibility to the employer with the authority to enter financial agreements valued at ten thousand dollars or more on behalf of the employer; or

(viii) persons in a position with regular duties that allow the employee to modify digital security systems established to prevent the unauthorized use of the employer's or client's networks or databases.

(3) As used in this subdivision the following terms shall have the following meanings:

(i) "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) "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; and

(iii) "trade secrets" means information that: (A) derives independent economic value, actual or potential, from not being generally known to,

1 and not being readily ascertainable by proper means by other persons who
2 can obtain economic value from its disclosure or use; (B) is the subject
3 of efforts that are reasonable under the circumstances to maintain its
4 secrecy; and (C) can reasonably be said to be the end product of signif-
5 icant innovation. The term "trade secrets" does not include general
6 proprietary company information such as handbooks and policies. The term
7 "regular access to trade secrets" does not include access to or the use
8 of client, customer or mailing lists.

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

12 (5) Paragraph one of this subdivision shall not be construed to affect
13 the obligations of persons required by state or local law relating to
14 disclosures by public employees of conflicts of interest.

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

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

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

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

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

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

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

55 (3) To a person whom it has reason to believe intends to use the
56 information (i) in connection with a credit transaction involving the

1 consumer on whom the information is to be furnished and involving the
2 extension of credit to, or review or collection of an account of, the
3 consumer, or (ii) for employment purposes, except that a consumer report
4 may be furnished for such purposes only if such report excludes informa-
5 tion that bears on a consumer's credit worthiness, credit standing,
6 credit capacity or credit history, except that such information is
7 permitted to be disseminated to employers or persons set forth in para-
8 graph two of subdivision (d) of this section, or (iii) in connection
9 with the underwriting of insurance involving the consumer, or (iv) in
10 connection with a determination of the consumer's eligibility for a
11 license or other benefit granted by a governmental instrumentality
12 required by law to consider an applicant's financial responsibility or
13 status, or (v) to a person in connection with a business transaction
14 involving the consumer where the user has a legitimate business need for
15 such information, or (vi) in connection with the rental or lease of a
16 residence.

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