

**LOCAL LAWS
OF
THE CITY OF NEW YORK
FOR THE YEAR 2015**

No. 37

Introduced by Council Members Lander, Rose, Arroyo, Chin, Dickens, Dromm, Ferreras, Garodnick, King, Koslowitz, Levin, Mendez, Richards, Van Bramer, Williams, Wills, Gentile, Gibson, Constantinides, Levine, Miller, Reynoso, Rosenthal, Torres, Menchaca, Kallos, Cornegy, Cumbo, Crowley, Johnson, Eugene, Treyger, Rodriguez, Cabrera, Espinal, Barron, Mealy, Vallone, Koo, Deutsch, Maisel, Cohen and the Public Advocate (Ms. James).

A LOCAL LAW

To amend the administrative code of the city of New York, in relation to prohibiting discrimination based on consumer credit history.

Be it enacted by the Council as follows:

Section 1. Section 8-102 of the administrative code of the city of New York is amended by adding a new subdivision 29 to read as follows:

29. The term "consumer credit history" means an individual's credit worthiness, credit standing, credit capacity, or payment history, as indicated by: (a) a consumer credit report; (b) credit score; or (c) information an employer obtains directly from the individual regarding (1) details about credit accounts, including the individual's number of credit accounts, late or missed payments, charged-off debts, items in collections, credit limit, prior credit report inquiries, or (2) 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. Section 8-107 of the administrative code of the city of New York is amended by adding a new subdivision 24 to read as follows:

24. Employment; consumer credit history. (a) Except as provided in this subdivision, it shall be an unlawful discriminatory practice for an employer, labor organization,

employment agency, or 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.

(b) Paragraph (a) of this subdivision shall not apply to:

(1) an employer, or agent thereof, that is required by state or federal law or regulations 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;

(2) persons applying for positions as or employed:

(A) as police officers or peace officers, as those 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 at the department of investigation;

(B) in a position that is subject to background investigation by the department of investigation, 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.

(C) in a position in which an employee is required to be bonded under City, state or federal law;

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

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

(F) in a position: (i) having signatory authority over third party funds or assets valued at \$10,000 or more; or (ii) that involves a fiduciary responsibility to the employer with the authority to enter financial agreements valued at \$10,000 or more on behalf of the employer.

(G) 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.

(c) Paragraph (a) of this subdivision shall not be construed to affect the obligations of persons required by section 12-110 of this code or by mayoral executive order relating to disclosures by city employees to the conflicts of interest board to report information regarding their creditors or debts, or the use of such information by government agencies for the purposes for which such information is collected.

(d) As used in this subdivision:

(1) The term "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.

(2) The term "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.

(3) The term "trade secrets" means information that: (a) derives independent economic value, actual or potential, from not being generally known to, and not being readily ascertainable by proper means by other persons who can obtain economic value from its disclosure or use; (b) is the subject of efforts that are reasonable under the circumstances to maintain its secrecy; and (c) can reasonably be said to be the end product of significant innovation. The term "trade secrets" does not include general proprietary company information such as handbooks and policies. The

term "regular access to trade secrets" does not include access to or the use of client, customer or mailing lists.

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

§ 3. Subdivision 9 of section 8-107 of the administrative code is amended by adding a new paragraph (d) to read as follows:

(d) (1) Except as otherwise provided in this paragraph, it shall be an unlawful discriminatory practice for an 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) Subparagraph (1) of this paragraph shall not apply to an agency required by state or federal law or regulations to use an individual's consumer credit history for licensing or permitting purposes.

(3) Subparagraph (1) of this paragraph 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 paragraph shall preclude a licensing agency from requesting, receiving, or using consumer credit history information obtained pursuant to a lawful subpoena, court order or law enforcement investigation.

§ 4. The commission on human rights shall request information from City agencies and non-governmental employers regarding the agencies' and employers' use of the exemptions established in subdivision 24 of section 8-107 of the administrative code for purposes of hiring and employment. Within two years of the effective date of this local law, the commission shall submit

to the council a report concerning the results of such request and any relevant feedback from agencies and employers.

§ 5. This local law shall take effect one hundred twenty days after enactment.

THE CITY OF NEW YORK, OFFICE OF THE CITY CLERK, s.s.:

I hereby certify that the foregoing is a true copy of a local law of The City of New York, passed by the Council on April 16, 2015 and approved by the Mayor on May 6, 2015.

MICHAEL M. McSWEENEY, City Clerk, Clerk of the Council.

CERTIFICATION OF CORPORATION COUNSEL

I hereby certify that the form of the enclosed local law (Local Law No. 37 of 2015, Council Int. No. 261-A of 2014) to be filed with the Secretary of State contains the correct text of the local law passed by the New York City Council and approved by the Mayor.

JEFFREY D. FRIEDLANDER, Acting Corporation Counsel.