

# McKINNEY'S 1976 SESSION LAWS OF NEW YORK

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## Volume 2

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Laws of the Regular Session

Chapters 609 to 965 (End)

Laws of the Extraordinary Session

Chapter 966 (End)

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1976 REGULAR SESSION

Ch. 931

## Criminal Offenders—Removal of Disabilities

*Memorandum relating to this chapter, see page 2458*

## CHAPTER 931

An Act to amend the correction law and the executive law, in relation to the removal of disabilities of criminal offenders and repealing certain provisions thereof relating thereto.

Approved July 27, 1976, effective Jan. 1, 1977.

Passed on message of necessity. See Const. art. IX, § 2(b)(2), and McKinney's Legislative Law, § 44.

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

Section 1. Section six-e of the correction law is hereby repealed.

§ 2. The section heading of section seven hundred two of such law, as amended by chapter three hundred forty-two of the laws of nineteen hundred seventy-two, is hereby amended to read as follows:

Certificates of relief from disabilities issued by courts

§ 3. The section heading of section seven hundred three of such law, as amended by chapter three hundred forty-two of the laws of nineteen hundred seventy-two, is hereby amended to read as follows:

Certificates of relief from disabilities issued by the board of parole

§ 4. Such law is hereby amended by adding thereto two new sections, to be sections seven hundred three-a and seven hundred three-b, to read as follows:

§ 703-a. Certificate of good conduct

1. A certificate of good conduct may be granted as provided in this section to relieve an individual of any disability, or to remove any bar to his employment, automatically imposed by law by reason of his conviction of the crime or of the offense specified therein. Such certificate may be limited to one or more enumerated disabilities or bars, or may relieve the individual of all disabilities and bars.

2. Notwithstanding any other provision of law, a conviction of a crime or of an offense specified in a certificate of good conduct shall not be deemed to be a conviction within the meaning of any provision of law that imposes, by reason of a conviction, a bar to any employment, a disability to exercise any right or a disability to apply for or to receive any license, permit or other authority or privilege, covered by the certificate.

3. A certificate of good conduct shall not, however, in any way prevent any judicial administrative, licensing or other body, board or authority from considering the conviction specified therein in accordance with the provisions of article twenty-three-a of this chapter.

§ 703-b. Issuance of certificate of good conduct

1. The state board of parole, or any three members thereof by unanimous vote, shall have the power to issue a certificate of good

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conduct to any person previously convicted of a crime in this state or in any other jurisdiction, when the board is satisfied that:

(a) The applicant has conducted himself in a manner warranting such issuance for a minimum period in accordance with the provisions of subdivision two of this section;

(b) The relief to be granted by the certificate is consistent with the rehabilitation of the applicant; and

(c) The relief to be granted is consistent with the public interest.

2. The minimum period of good conduct by the individual referred to in subdivision one of this section, shall be as follows: where the most serious crime of which the individual was convicted is a misdemeanor, the minimum period of good conduct shall be one year; where the most serious crime of which the individual was convicted is a class C, D or E felony, the minimum period of good conduct shall be three years; and, where the most serious crime of which the individual was convicted is a class B or A felony, the minimum period of good conduct shall be five years. Such minimum period of good conduct by the individual shall be measured either from the date of the payment of any fine imposed upon him or the suspension of sentence, or from the date of his unrevoked release from custody by parole, commutation or termination of his sentence. The board shall have power and it shall be its duty to investigate all persons when such application is made and to grant or deny the same within a reasonable time after the making of the application.

3. Where the board of parole has issued a certificate of good conduct, the board may at any time issue a new certificate enlarging the relief previously granted.

4. Any certificate of good conduct by the board of parole to an individual who at time of the issuance of the certificate is under the board's supervision, shall be deemed to be a temporary certificate until such time as the individual is discharged from the board's supervision, and, while temporary, such certificate may be revoked by the board for violation of the conditions of parole or release. Revocation shall be upon notice to the parolee, who shall be accorded an opportunity to explain the violation prior to decision thereon. If the certificate is not so revoked, it shall become a permanent certificate upon expiration or termination of the board's jurisdiction over the individual.

§ 5. Such law is hereby amended by adding thereto a new article, to be article twenty-three-a, to read as follows:

### ARTICLE 23-A—LICENSURE AND EMPLOYMENT OF PERSONS PREVIOUSLY CONVICTED OF ONE OR MORE CRIMINAL OFFENSES

Sec.

750. Definitions.

751. Applicability.

752. Unfair discrimination against persons previously convicted of one or more criminal offenses prohibited.

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Changes or additions in text are indicated by underline

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753. Factors to be considered concerning a previous criminal conviction; presumption.

754. Written statement upon denial of license or employment.

755. Enforcement.

§ 750. Definitions

For the purposes of this article, the following terms shall have the following meanings:

(1) "Public agency" means the state or any local subdivision thereof, or any state or local department, agency, board or commission.

(2) "Private employer" means any person, company, corporation, labor organization or association which employs ten or more persons.

(3) "Direct relationship" means that the nature of criminal conduct for which the person was convicted has a direct bearing on his fitness or ability to perform one or more of the duties or responsibilities necessarily related to the license or employment sought.

(4) "License" means any certificate, license, permit or grant of permission required by the laws of this state, its political subdivisions or instrumentalities as a condition for the lawful practice of any occupation, employment, trade, vocation, business, or profession. Provided, however, that "license" shall not, for the purposes of this article, include any license or permit to own, possess, carry, or fire any explosive, pistol, handgun, rifle, shotgun, or other firearm.

(5) "Employment" means any occupation, vocation or employment, or any form of vocational or educational training. Provided, however, that "employment" shall not, for the purposes of this article, include membership in any law enforcement agency.

§ 751. Applicability

The provisions of this article shall apply to any application by any person who has previously been convicted of one or more criminal offenses, in this state or in any other jurisdiction, to any public agency or private employer for a license or employment, 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.

§ 752. Unfair discrimination against persons previously convicted of one or more criminal offenses prohibited

No application for any license or employment, to which the provisions of this article are applicable, shall be denied by reason of the applicant's 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 applicant 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

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

### § 753. Factors to be considered concerning a previous criminal conviction; presumption

1. In making a determination pursuant to section seven hundred fifty-two of this chapter, 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.

(c) The bearing, if any, the criminal offense or offenses for which the person was previously convicted will have on his 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 behalf, in regard to his 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.

2. In making a determination pursuant to section seven hundred fifty-two of this chapter, the public agency or private employer shall also give consideration to a certificate of relief from disabilities or a certificate of good conduct issued to the applicant, which certificate shall create a presumption of rehabilitation in regard to the offense or offenses specified therein.

### § 754. Written statement upon denial of license or employment

At the request of any person previously convicted of one or more criminal offenses who has been denied a license or employment, a public agency or private employer shall provide, within thirty days of a request, a written statement setting forth the reasons for such denial.

### § 755. Enforcement

1. In relation to actions by public agencies, the provisions of this article shall be enforceable by a proceeding brought pursuant to article seventy-eight of the civil practice law and rules.<sup>1</sup>

2. In relation to actions by private employers, the provisions of this article shall be enforceable by the division of human rights pursuant to the powers and procedures set forth in article fifteen of the executive

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law,<sup>2</sup> and, concurrently, by the New York city commission on human rights.

<sup>1</sup> CPLR 2701 to 2703.

<sup>2</sup> Executive Law §§ 290 to 301.

§ 6. Section two hundred ninety-six of the executive law is hereby amended by adding thereto a new subdivision, to be subdivision fifteen, to read as follows:

15. It shall be an unlawful discriminatory practice for any person, agency, bureau, corporation or association, including the state and any political subdivision thereof, to deny any license or employment to any individual by reason of his having been convicted of one or more criminal offenses, or by reason of a finding of a lack of "good moral character" which is based upon his having been convicted of one or more criminal offenses, when such denial is in violation of the provisions of article twenty-three-a of the correction law.

§ 7. This act shall take effect on the first day of January next succeeding the date on which it shall have become a law.

Retirement and Social Security—Death Benefit,  
Option of Widow

## CHAPTER 932

An Act to amend the retirement and social security law, in relation to ordinary death benefit: option of widow.

Approved and effective July 27, 1976.

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

Section 1. The last undesignated paragraph of subdivision a of section three hundred sixty of the retirement and social security law, as amended by chapter five hundred fifty-nine of the laws of nineteen hundred sixty-seven, is hereby amended to read as follows:

An ordinary death benefit shall not be payable in any case in which an accidental death benefit is payable provided, however, that where payments made pursuant to section three hundred sixty-one of this chapter on account of an accidental death benefit, computed without reduction pursuant to section three hundred sixty-four of this article, and the reserve-for-increased-take-home-pay total less than the ordinary death benefit and the reserve-for-increased-take-home-pay that would have been computed and made payable pursuant to this section three hundred sixty in the case of ordinary death, the difference shall be paid to the beneficiary or member's estate to which the ordinary death benefit and reserve-for-increased-take-home-pay would have been paid. Provided further, that where the member would have been entitled to a service retirement benefit at the time of his death and where his death occurs on or after July first, nineteen hundred seventy-five, and where the beneficiary or beneficiaries designated to receive the accidental death benefit pursuant to section three hundred sixty-one of this chapter is the same beneficiary or beneficiaries designated by the member to receive the ordinary death benefit, then, and in that case the beneficiary or beneficiaries may elect to

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## GOVERNOR'S MEMORANDA

al railroad company. Construction of the valuation by the State Board requires completion of a five year earnings history and an inventory of system valuations of the railroad company's property. The entire procedure, however, must be preceded by a formal election by the railroad company to submit itself to the valuation process, and this election procedure generally requires at least one tax year.

On April 1, 1976, the Consolidated Rail Corporation (ConRail) became the owner and operator of most of the freight rail lines in New York State previously owned by bankrupt railroads. However, due to the requirements relating to election (Real Property Tax Law § 489-v) and the five year earnings records (Real Property Tax Law §§ 489-g, -h, -i), it will not be possible to establish ceilings for properties conveyed to ConRail without statutory amendments authorizing the use of information compiled prior to the conveyance. This bill provides the State Board with such authorization. The bill was introduced at the request of the State Board.

The Department of Transportation ("DOT") recommends approval of this bill despite serious concerns about its underlying rationale. This State's railroad assessment program must be carefully evaluated to insure it is serving legitimate public interests and is based on sound assessment practices. I am therefore directing the Commissioner of Transportation to coordinate such an evaluation with the State Board of Equalization and Assessment and the Division of Community Affairs. In addition, I am approving this bill because the vast majority of assessment rolls throughout the state are effectively closed for purposes of railroad assessments. State aid which is currently paid pursuant to State Finance Law § 54-b, cannot be paid in the absence of a certified railroad ceiling assessment. Thus, in most upstate municipalities, in the fiscal year beginning January 1, 1977, state aid under this program would be totally eliminated unless this bill is approved. I also note that this bill is effective for one year only.

The bill is approved.

Hugh L. Carey

~~1. Real Property Tax Law §§ 489-a to 489-v; §§ 489-ga to 489-ji~~

## CRIMINAL OFFENDERS—REMOVAL OF DISABILITIES

*On approving L.1976, c. 931, the Governor stated:*

*July 27, 1976*

The bill, which is part of my 1976 Legislative Program, is designed to establish reasonable procedures to prevent the unfair discrimination against former criminal offenders in regard to licensure and employment, and establish reasonable standards for the issuance of certificates of good conduct.

The bill in no way requires the hiring of former offenders, but provides reasonable standards to be applied by public agencies and private employers when considering applications by former offenders. No such standards presently exist. Under the bill, a license or employment could not be denied an individual on the basis of a previous criminal conviction, unless the criminal conduct of which he was convicted has a direct bearing upon his ability or fitness to perform one or more of the responsibilities or duties necessarily related to the license or employment sought, or unless granting the application would pose an unreasonable risk to property or the health or safety of others.

### APPROVAL OF BILLS

The bill would also make various changes in regard to certificates of good conduct, which are issued by the Parole Board to former offenders who have demonstrated their ability to lead a productive and law-abiding life. The bill would clarify the legal effect of a certificate; establish clear guidelines for the Parole Board in regard to their issuance; reduce the minimum period of good conduct required; and allow the issuance of temporary certificates to individuals on parole.

Observers of our criminal justice system agree that the key to reducing crime is a reduction in recidivism (i. e. repeated criminal conduct by the same individuals). The great expense and time involved in successfully prosecuting and incarcerating the criminal offender is largely wasted if upon the individual's return to society his willingness to assume a law-abiding and productive role is frustrated by senseless discrimination.

Providing a former offender a fair opportunity for a job is a matter of basic human fairness, as well as one of the surest ways to reduce crime.

The bill is approved.

Hugh L. Carey

### PUBLIC WORKS—REPRESENTATION OF EMPLOYEES, PREVAILING WAGE RATES

*On approving L. 1976, c. 933, the Governor stated:*

July 27, 1976

This bill would authorize employee organizations to file a single verified complaint on behalf of its members who are workmen, laborers and mechanics in a particular Civil Service title under § 220 of the Labor Law, the prevailing wage section. The provisions of the bill would apply only in New York City.

In approving this bill, I am mindful of the Court of Appeals decision in *Corrigan v. Joseph* (304 N.Y. 172, 106 N.E.2d 593) which held that municipal employees in graded positions in the competitive class of Civil Service may not have their wages determined by the prevailing wage formula and the procedure described in § 220 of the Labor Law. I am advised by officials of the City of New York that the workmen, laborers and mechanics employed by the City in particular Civil Service titles, to be covered by the provisions of this bill, occupy ungraded titles.

Approval of this bill does not therefore overrule the holding in the *Corrigan* case.

The bill is approved.

Hugh L. Carey