

Disclosure and Authorization Forms

Getting it Right and Lessons Learned

Background checks have become a ubiquitous part of employment onboarding and an increasing part of ongoing management of the risk of employee misconduct – and for good reason. Knowing your employees’ backgrounds can help screen out potential and current employees with a track record of problems which, in turn, mitigates risk to the employer, fellow employees, and customers.

Obtaining and using background checks is highly regulated by both federal and state law, including under the federal Fair Credit Reporting Act (FCRA). The failure to follow appropriate procedures and use compliant forms when obtaining and using background checks can lead to serious claims, including class actions and government investigations.

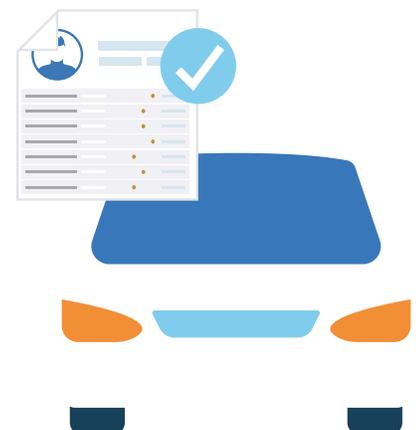
FCRA STATUTORY REQUIREMENTS

The FCRA authorizes employers to obtain and use a consumer report – such as motor vehicle history reports, criminal background checks, and/or credit reports – for employment decisions, including those related to hiring, retention, and promotion. However, before obtaining a report, the employer must make a specific disclosure in a specific form to the consumer and obtain the consumer’s written authorization to procure the report. The relevant statutory text is as follows:

- 1 | person may not procure a consumer report, or cause a consumer report to be procured, for employment purposes with respect to any consumer, unless—
 - i | a clear and conspicuous disclosure has been made in writing to the consumer at any time before the report is procured or caused to be procured, in a document that consists solely of the disclosure, that a consumer report may be obtained for employment purposes; and
 - ii | the consumer has authorized in writing (which authorization may be made on the document referred to in clause (i)) the procurement of the report by that person.

Only after these forms have been provided can an employer request a consumer report on a current or prospective employee.

“The failure to follow appropriate procedures and use compliant forms when obtaining and using background checks can lead to serious claims.”



COMMON TROUBLE SPOTS

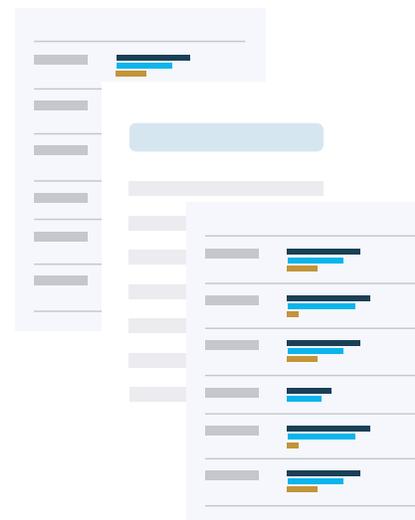
While the statutory language and accompanying requirements appear fairly straight forward, the industry continues to see employers get hit with class action lawsuits regarding non-compliant forms. These typically target issues like:

- The form contains extraneous information and, therefore, not being presented on a form that “consists solely of the disclosure”;
- The form is presented as part of a larger packet of information and disclosures and arguably, not being presented on a form that “consists solely of the disclosure”;
- The form identifies a consumer reporting agency that is different from the consumer reporting agency that will be preparing the consumer report;
- The form contains a liability release or attempts to secure authorization for the release of other information; or
- The form is buried in an electronic application and is not presented in a separate window during the electronic application process.

Additional considerations related to the consent and disclosure process also include the following, all of which can be addressed through the use of compliant forms and processes:

- “Evergreen” authorizations – i.e., obtaining consent from a consumer one time that is worded such that the employer can continue to pull background checks during the course of employment;
- State-specific disclosures that must be made in addition to the federal disclosures in certain states; and
- Specific disclosures required for specific industries.

All of these risks can be mitigated by using a compliant form.



LEGAL/FINANCIAL RISK OF NON-COMPLIANCE

The legal risk of failing to comply with these requirements of the FCRA is considerable. In 2019, a major airline settled a class action over allegedly non-compliant consent and disclosure forms. The suit alleged the forms violated the FCRA as well as California-specific statutes. The proposed settlement provided for payment of \$2.3 million to the class, which is composed of approximately 44,100 individuals. Similarly, a restaurant food supplier settled similar claims for \$2 million for what is expected to be a class of approximately 32,000

applicants who received non-compliant FCRA consent and disclosure forms.

These examples are just a few of the most recent settlements surrounding FCRA consent and disclosure forms. In previous years, other settlements reported staggering figures in the \$5 to \$6 million range. An investment of a company's resources into its compliance with the FCRA and other relevant background check statutes is unquestionably worthwhile.

¹ For example, the trucking industry has unique disclosure requirements including a disclosure for the Pre-Employment Screening Program, where reports are obtained from the Federal Motor Carrier Safety Administration's (FMCSA) Motor Carrier Management Information System (MCMIS). The Nuclear Regulatory Commission also provides that licensees may not "initiate a background investigation without the informed and signed consent of the subject individual. This consent must include authorization to share personal information with other individuals or organizations as necessary to complete the background investigation." 10 C.F.R. § 37.23.

Sample Disclosure and Authorization Form to Obtain Consumer Reports for Employment Purposes

Note to Employers - this highlighted text should be deleted before sending to employees. These sample documents should not be construed as legal advice, guidance or counsel. Employers should consult their own attorney about their compliance responsibilities under the FCRA and applicable state law. SambaSafety expressly disclaims any warranties or responsibility or damages associated with or arising out of information provided.

Disclosure

Insert Name of Company or its affiliates (“the Company”) may request one or more consumer reports or investigative consumer reports about you for employment purposes.

For explanation purposes, “consumer report” is a written, oral or other communication of any information by a consumer reporting agency bearing on your credit worthiness, credit standing, credit capacity, character, general reputation, personal characteristics, or mode of living which is used or expected to be used or collected in whole or in part for the purpose of serving as a factor in making an employment-related decision about you. Such information may include, for example, credit information, criminal history reports, or driving records.

An “investigative consumer report” is a consumer report in which information on your character, general reputation, personal characteristics, or mode of living is obtained through personal interviews with your prior employers, neighbors, friends, or associates, or with others who may have knowledge concerning any such items of information. Pursuant to section 606(b) of the Fair Credit Reporting Act, you have a right to request from Company a disclosure, upon written request within a reasonable period of time after receipt of this disclosure, regarding the nature and scope of the investigation requested.

Enclosed is a summary of your rights under the Fair Credit Reporting Act and certain other documents that may be required if you are a resident of a state that may require SambaSafety to provide you with additional information.

The Company will obtain the consumer reports and investigative consume reports from Safety Holdings, Inc. (D/B/A SambaSafety) Safety Holdings, Inc. can be contacted by mail at 8814 Horizon Blvd #100, Albuquerque, NM 87113; or phone: (888) 947-2622; or website: www.sambasafety.com.

Authorization

By signing below, I agree that have read and understand the foregoing Disclosure, and authorize the Company to obtain consumer reports or investigative consumer reports about me for employment purposes and, if I am hired or I have already been hired, from time to time while I am employed by Company without further authorization from me. I further authorize the Company to share the information in the consumer reports and investigative consumer reports with any person involved in the employment decision about me.

Applicant or Employee Signature

Applicant or Employee Printed Name

Date

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Important Additional Summary of Federal Rights and State Law Disclosures Follow

Note to Employers - this highlighted text should be deleted before sending to employees. The Fair Credit Reporting Act recognizes that a state may have its own consumer credit reporting act. It does not exempt a report user from complying with state law except and only to the extent that the law is inconsistent with the Fair Credit Reporting Act. You should be aware that certain states have restricted the use of consumer reports – usually credit reports – for employment purposes. Additionally, certain states have imposed limitations on employers asking applicants about arrests and/or convictions. Accordingly, it is essential each organization review and assess all applicable statutes, ordinances, laws and regulations that may govern and/or limit its use of consumer reports to ensure compliance with applicable state law. If you have any specific questions about any legal matter, you should consult your attorney or other legal services provider.

On following pages

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A Summary of Your Rights Under the Fair Credit Reporting Act

The federal Fair Credit Reporting Act (FCRA) promotes the accuracy, fairness, and privacy of information in the files of consumer reporting agencies. There are many types of consumer reporting agencies, including credit bureaus and specialty agencies (such as agencies that sell information about check writing histories, medical records, and rental history records). Here is a summary of your major rights under the FCRA.

- For more information, including information about additional rights, go to www.consumerfinance.gov/learnmore or write to: Consumer Financial Protection Bureau, 1700 G Street N.W., Washington, DC 20552.
- **You must be told if information in your file has been used against you.** Anyone who uses a credit report or another type of consumer report to deny your application for credit, insurance, or employment - or to take another adverse action against you - must tell you, and must give you the name, address, and phone number of the agency that provided the information.
- **You have the right to know what is in your file.** You may request and obtain all the information about you in the files of a consumer reporting agency (your “file disclosure”). You will be required to provide proper identification, which may include your Social Security number. In many cases, the disclosure will be free. You are entitled to a free file disclosure if:
 - a person has taken adverse action against you because of information in your credit report;
 - you are the victim of identity theft and place a fraud alert in your file;
 - your file contains inaccurate information as a result of fraud;
 - you are on public assistance;
 - you are unemployed but expect to apply for employment within 60 days.
- In addition, all consumers are entitled to one free disclosure every 12 months upon request from each nationwide credit bureau and from nationwide specialty consumer reporting agencies. See www.consumerfinance.gov/learnmore for additional information.
- **You have the right to ask for a credit score.** Credit scores are numerical summaries of your credit-worthiness based on information from credit bureaus. You may request a credit score from consumer reporting agencies that create scores or distribute scores used in residential real property loans, but you will have to pay for it. In some mortgage transactions, you will receive credit score information for free from the mortgage lender.
- **You have the right to dispute incomplete or inaccurate information.** If you identify information in your file that is incomplete or inaccurate, and report it to the consumer reporting agency, the agency must investigate unless your dispute is frivolous. See www.consumerfinance.gov/learnmore for an explanation of dispute procedures.

- **Consumer reporting agencies must correct or delete inaccurate, incomplete, or unverifiable information.** Inaccurate, incomplete or unverifiable information must be removed or corrected, usually within 30 days. However, a consumer reporting agency may continue to report information it has verified as accurate.
- **Consumer reporting agencies may not report outdated negative information.** In most cases, a consumer reporting agency may not report negative information that is more than seven years old, or bankruptcies that are more than 10 years old.
- **Access to your file is limited.** A consumer reporting agency may provide information about you only to people with a valid need -- usually to consider an application with a creditor, insurer, employer, landlord, or other business. The FCRA specifies those with a valid need for access.
- **You must give your consent for reports to be provided to employers.** A consumer reporting agency may not give out information about you to your employer, or a potential employer, without your written consent given to the employer. Written consent generally is not required in the trucking industry. For more information, go to www.consumerfinance.gov/learnmore.
- **You may limit “prescreened” offers of credit and insurance you get based on information in your credit report.** Unsolicited “prescreened” offers for credit and insurance must include a toll-free phone number you can call if you choose to remove your name and address from the lists these offers are based on. You may opt-out with the nationwide credit bureaus at 1-888-567-8688.
- **You may seek damages from violators.** If a consumer reporting agency, or, in some cases, a user of consumer reports or a furnisher of information to a consumer reporting agency violates the FCRA, you may be able to sue in state or federal court.
- **You have a right to place a “security freeze” on your credit report, which will prohibit a consumer reporting agency from releasing information in your credit report without your express authorization.** The security freeze is designed to prevent credit, loans, and services from being approved in your name without your consent. However, you should be aware that using a security freeze to take control over who gets access to the personal and financial information in your credit report may delay, interfere with, or prohibit the timely approval of any subsequent request or application you make regarding a new loan, credit, mortgage, or any other account involving the extension of credit. As an alternative to a security freeze, you have the right to place an initial or extended fraud alert on your credit file at no cost. An initial fraud alert is a 1-year alert that is placed on a consumer’s credit file. Upon seeing a fraud alert display on a consumer’s credit file, a business is required to take steps to verify the consumer’s identity before extending new credit. If you are a victim of identity theft, you are entitled to an extended fraud alert, which is a fraud alert lasting 7 years. A security freeze does not apply to a person or entity, or its affiliates, or collection agencies acting on behalf of the person or entity, with which you have an existing account that requests information in your credit report for the purposes of reviewing or collecting the account. Reviewing the account includes activities related to account maintenance, monitoring, credit line increases, and account upgrades and enhancements.
- **Identity theft victims and active duty military personnel have additional rights.** For more information, visit www.consumerfinance.gov/learnmore.

States may enforce the FCRA, and many states have their own consumer reporting laws. In some cases, you may have more rights under state law. For more information, contact your state or local consumer protection agency or your state Attorney General. For Information about your Federal rights contact:

1	<p>a. Banks, savings associations, and credit unions with total assets of over \$10 billion and their affiliates.</p> <p>b. Such affiliates that are not banks, savings associations, or credit unions also should list, in addition to the CFPB:</p>	<p>a. Consumer Financial Protection Bureau 1700 G Street NW Washington, DC 20552</p> <p>b. Federal Trade Commission:Consumer Response Center – FCRA Washington, DC 20580 (877) 382-4357</p>
2	<p>To the extent not included in item 1 above:</p> <p>a. National banks, federal savings associations and federal branches and federal agencies of foreign banks</p> <p>b. State member banks, branches and agencies of foreign banks (other than federal branches, federal agencies and Insured State Branches of Foreign Banks), commercial lending companies owned or controlled by foreign banks, and organizations operating under section 25 or 25A of the Federal Reserve Act</p> <p>c. Nonmember Insured Banks, Insured State Branches of Foreign Banks, and insured state savings associations</p> <p>d. Federal Credit Unions</p>	<p>a. Office of the Comptroller of the Currency Customer Assistance Group 1301 McKinney Street, Suite 3450 Houston, TX 77010-9050</p> <p>b. Federal Reserve Consumer Help Center PO Box 1200, Minneapolis, MN 55480</p> <p>c. FDIC Consumer Response Center 1100 Walnut St., Box #11, Kansas City, MO 64106</p> <p>d. National Credit Union Administration Office of Consumer Protection (OCP) Division of Consumer Compliance and Outreach (DCCO) 1775 Duke Street, Alexandria, VA 22314</p>
3	<p>Air carriers</p>	<p>Asst. General Counsel for Aviation Enforcement & Proceedings Aviation Consumer Protection Division Department of Transportation 1200 New Jersey Avenue, S.E. Washington, DC 20590</p>
4	<p>Creditors Subject to Surface Transportation Board</p>	<p>Office of Proceedings, Surface Transportation Board Department of Transportation 395 E Street, S.W., Washington, DC 20423</p>
5	<p>Creditors Subject to Packers and Stockyards Act, 1921</p>	<p>Nearest Packers and Stockyards Administration area Supervisor</p>
6	<p>Small Business Investment Companies</p>	<p>Associate Deputy Administrator for Capital Access United States Small Business Administration 409 Third Street, SW, 8th Floor, Washington, DC 20416</p>
7	<p>Brokers and Dealers</p>	<p>Securities and Exchange Commission 100 F Street, N.E. Washington, DC 20549</p>
8	<p>Federal Land Banks, Federal Land Bank Associations, Federal Intermediate Credit Banks and Production Credit Associations</p>	<p>Farm Credit Administration 1501 Farm Credit Drive, McLean, VA 22102-5090</p>
9	<p>Retailers, Finance Companies, and All Other Creditors Not Listed Above</p>	<p>FTC Regional Office for region in which the creditor operates or Federal Trade Commission:Consumer Response Center - FCRA Washington, DC 20580 (877) 382-4357</p>

California Applicants

Please take notice that an investigative consumer report may be obtained on you for employment purposes. This report may include information on your character, general reputation, personal characteristics, and mode of living. The report may extend to information such as criminal history, social security verifications, education history, driving history, and employment history. The report, if any, will be procured from SambaSafety, 8814 Horizon Blvd #100, Albuquerque, NM 87113, with a toll-free telephone number of (888) 947-2622. For information on SambaSafety's privacy practices, please see <https://www.sambasafety.com/privacy-policy-2/>.

Pursuant to § 1786.22 of the California Civil Code, you may view the file maintained on you by SambaSafety during normal business hours and on reasonable notice. You may also make a visual inspection of the file on you by appearing in person at SambaSafety's offices and by furnishing proper identification. A copy of your file shall also be available for a fee not to exceed the actual costs of duplication. In addition, you may obtain a copy of your file by certified mail if you submit a written request, with proper identification, for copies to be sent to a specific addressee. Further, you may also receive a summary of the file by telephone after providing a written request and proper identification for telephone disclosure, if the charge for the telephone call is prepaid by you or charged directly to you.

"Proper Identification" refers to information generally deemed sufficient to identify you, including documents such as a valid driver's license, social security account number, military identification card, or credit cards. SambaSafety may require additional information concerning your employment and personal or family history to verify your identity if you are unable to reasonably identify yourself with the information described above.

SambaSafety has trained personnel available to explain your file to you, including coded information, and will provide a written explanation of any coded information contained in your file.

If you appear in person, you may be accompanied by one other person of your choosing, who shall furnish reasonable identification. SambaSafety may require you to furnish a written statement granting it permission to discuss your file in that person's presence.

Please check the box if you wish to receive a copy of any report that is prepared on you.

For Massachusetts and New Jersey Applicants: If an investigative consumer report is procured on you, which commonly includes information as to a consumer's character, general reputation, personal characteristics, and mode of living, and, in this instance may include information regarding your motor vehicle records, you have the right to have a copy of that report upon request to SambaSafety, 8814 Horizon Blvd #100, Albuquerque, NM 87113, with a toll-free telephone number of (888) 947-2622.

Please check the box if you wish to receive a copy of any report that is prepared on you.

For Minnesota Applicants: A consumer report on you may be obtained or caused to be prepared. You have the right to request additional information on the nature and scope of the report by making a written request to SambaSafety, 8814 Horizon Blvd #100, Albuquerque, NM 87113, with a toll-free telephone number of (888) 947-2622. If an investigative consumer report is procured on you, it may include information obtained through personal interviews regarding your character, general reputation, personal characteristics, or mode of living.

Please check the box if you wish to receive a copy of any report that is prepared on you.

For Oklahoma Applicants: A consumer report will be procured and used for employment purposes.

Please check the box if you wish to receive a copy of any report that is prepared on you.

For New York Applicants: A consumer report and/or an investigative consumer report may be requested in connection with your application for employment. You have the right, upon a request, to be informed whether or not a consumer report was requested and, if such a report was requested, informed of the name and address of the consumer reporting agency that furnished the report. You also have the right, upon written request, to be informed whether or not an investigative consumer report was requested and, if such a report was requested, to be informed of the name and address of the consumer reporting agency to which the request was made. In addition, upon being furnished with the name and address of the consumer reporting agency, you have the right to inspect and receive a copy of such report by contacting the agency. In addition, you are also being provided with a copy of Article 23A of the correction law governing the licensure and employment of persons previously convicted of one or more criminal offenses.

For Washington Applicants: A consumer report and/or an investigative consumer report may be obtained on you for purposes of considering you for employment. This report may include information as to your character, general reputation, personal characteristics, and mode of living, whichever are applicable. You have a right to make a written request within a reasonable period of time after your receipt of this disclosure for a complete and accurate disclosure of the nature and scope of any investigative consumer report requested. You also have a right to request a written summary of the rights and remedies under the Washington Fair Credit Reporting Act.

No employer, prospective employer, or their agent may use information contained in a driving record related to the sealed juvenile record of an employee or prospective employee for any purpose unless required by federal law. The employee or prospective employee must furnish a copy of the court order sealing the juvenile record to the employer, prospective employer, or their agent.

The Company agrees to, and shall indemnify and hold harmless the state of Washington, Department of Licensing (DOL), the DOL Director, and all DOL employees from any and all suits at law or equity, and from any and all claims, demands or loss of any nature, including but not limited to all costs and attorney's fees, arising from any incorrect or improper disclosure of individual names or addresses under this "DISCLOSURE AND AUTHORIZATION FORM;" any defects in any of Company's procedures followed or omitted or arising from the failure of Company or its officers, employees, customers, contractors or agents to fulfill any of its obligations this DISCLOSURE AND AUTHORIZATION FORM; or arising in any manner from any negligent act or omission by the company or its officers, employees, customers, contractors, or agents.

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Company Certifications for State of Washington

1. Company is an employer, prospective employer, or volunteer organization of the above-named individual.
2. The information contained in the driving record obtained from DOL shall be used in accordance with the requirements and in no way violate the provisions of RCW 46.52.130. No information contained therein will be divulged, sold, assigned, or otherwise transferred to any third person or party. The driving record shall be used exclusively for the purposes stated above.

I affirm that I am a representative authorized to bind the Company.

<input type="text"/>	<input type="text"/>	<input type="text"/>
Company Name	Authorized Representative Name	Title
<input type="text"/>		
Address		
<input type="text"/>	<input type="text"/>	
Date and Place Signed	Authorized Representative Signature	

By signing below, I acknowledge that I have reviewed these state law disclosures, and I consent to, and grant permission for, the procurement of the reports discussed in the state disclosures:

<input type="text"/>	
Applicant or Employee Signature	
<input type="text"/>	<input type="text"/>
Applicant or Employee Printed Name	Date

New York Article 23-A Licensure And Employment Of Persons Previously Convicted Of One Or More Criminal Offenses

Section 750. Definitions.

751. Applicability.

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

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, opportunity, or job in question.
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 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 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.

§ 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 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.

§ 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 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 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.
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 law, and, concurrently, by the New York city commission on human rights.

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