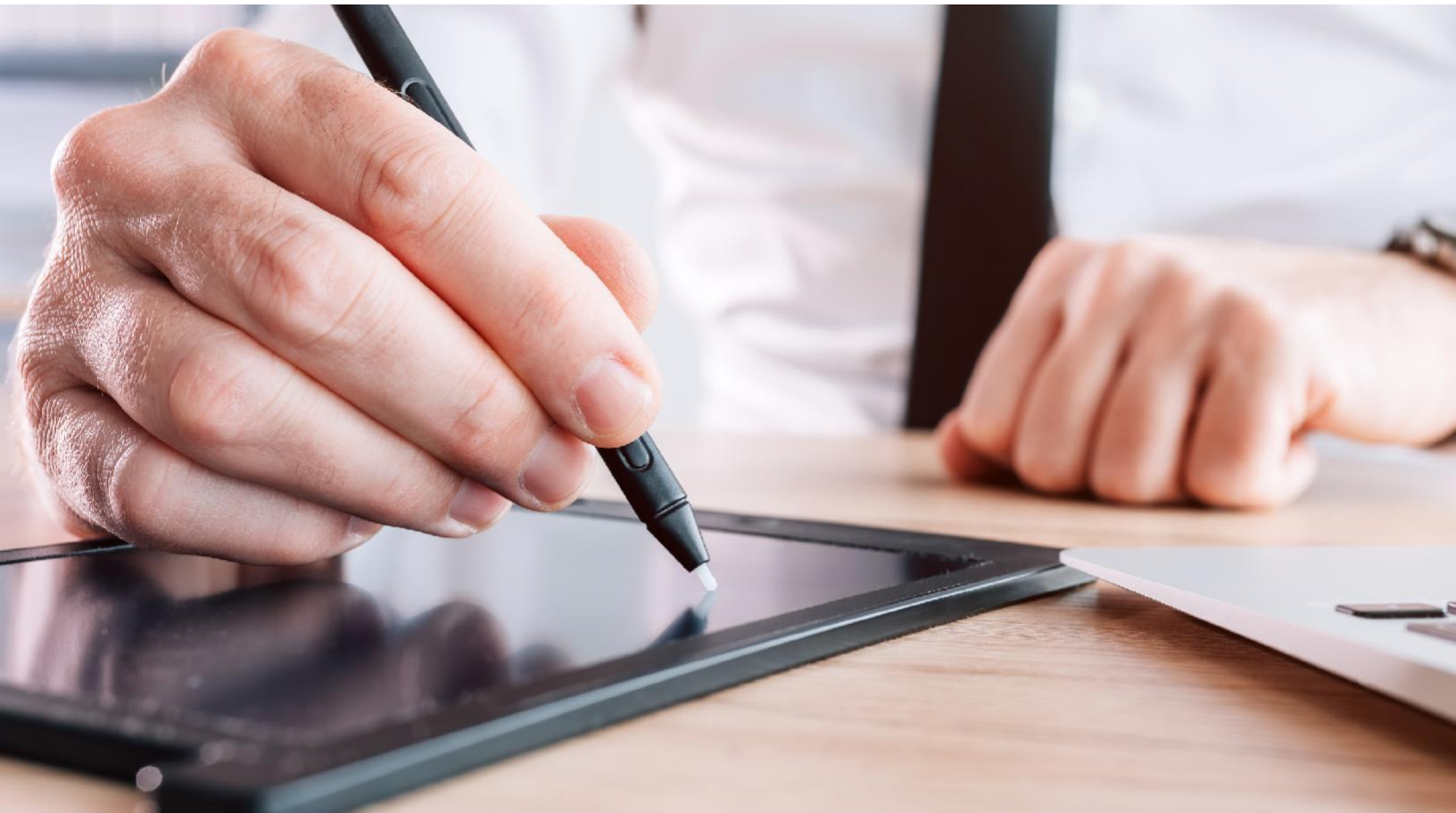


**GUIDE:**

# Disclosure and Authorization Forms

Getting it Right and Lessons Learned



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

## Background Check Compliance

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:

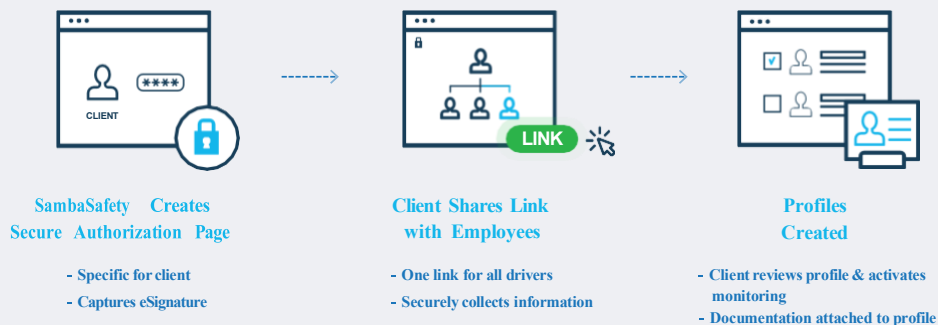
1. Person may not procure a consumer report, or cause a consumer report to be procured, for employment purposes with respect to any consumer, unless—

- 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.

## SAMBASAFETY SIMPLIFIES COMPLIANCE

While you need to know the legal requirements for background checks, you should also know that SambaSafety takes on much of this administrative burden for you. As part of your SambaSafety account, you will be provided a secure website link for your drivers to enter their license information and electronically sign the required authorizations and disclosures, including state-specific disclosures. The signed documents are then stored with the driver's profile, making it simple to maintain for your records.



Instead of chasing down signatures and manually uploading documents, SambaSafety makes it easy to:

- >
- > Collect driver information and required releases straight from the driver
- > Accelerate enrollment of drivers into monitoring
- Store compliance documents online in the driver profile

**HELPFUL LINK:**  
**Compliance Resources**

## Common Trouble Spots

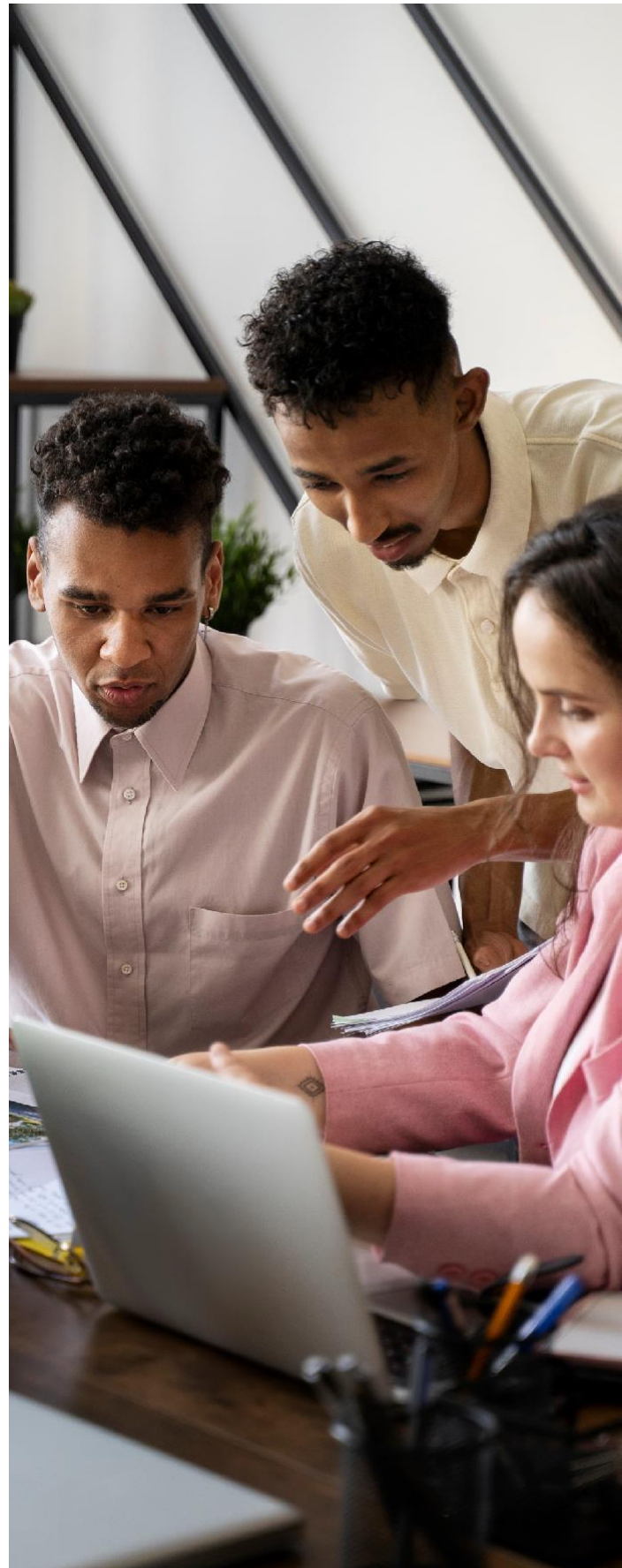
While the statutory language and accompanying requirements appear fairly straight forward, the industry continues to see employers get hit with class action lawsuits regarding non-compliant forms. These typically target issues like:

- › 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.

<sup>1</sup> 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 Forms to Obtain Consumer Reports for Employment Purposes

PLEASE READ CAREFULLY BEFORE SIGNING THE AUTHORIZATION

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. Safety Holdings, Inc. dba SambaSafety expressly disclaims any warranties or responsibility or damages associated with or arising out of information provided.

# DISCLOSURE AND CONSENT FOR ELECTRONIC TRANSACTIONS AND DISCLOSURES

This Disclosure and Agreement applies to your application for employment with [Insert Name of Company] ("Company") through Company's online application platform, as well as your dealings with Company in the future as a result of your application for employment or use of Company's online application platform (individually an "Account" and collectively "Accounts"). In this Disclosure and Agreement, the words "I," "you" and "your" refer to each person on an Account; "we," "us," and "our" refer to Company, and any of its affiliates, agents, independent contractors, designees, service providers or assignees.

Please read this document carefully and retain a copy for your reference.

**Your Legal Rights Regarding Electronic Communications:** Various laws require us to give you information in written paper form or to obtain your formal signed agreement or direction on certain matters relating to your Account. We may provide certain information to you electronically and obtain certain of your agreements or Account directions electronically, if we first provide you this Disclosure and Agreement and obtain your agreement to receive this Disclosure and Agreement and other communications electronically and to enter into agreements and submit Account directions electronically.

**Types of Electronic Communications You May Receive:** You agree and consent to receive electronically all communications, agreements, documents, notices, statements and disclosures (each a "Communication" and collectively the "Communications") that we provide in connection with your Account. Categories of communications may include, but are not limited to, the following:

- agreements and policies you agree and consent to (e.g., this Disclosure and Agreement, Privacy Policy, and Website Terms and Conditions) and updates to such agreements and policies;
- notices, receipts and confirmations related to your Account, including authorizations for consumer reports and receipt of telephonic or text outreach;
- any notices and disclosures required by state or federal law;
- any other account and transaction notices and information from us.

**Electronic Agreements and Updates:** Any Communication that you accept or agree to receive electronically or any Account update you submit to us electronically will be enforceable without your signature on a paper form.

**Paper Communications:** We will not be obligated to provide any Communication to you in paper form unless you specifically request us to do so. We may send Communications to you in paper form because we are legally required to do so or because we determine in our sole discretion that you should receive the Communication in paper rather than electronic form.

**Copies of Electronic Communications:** You may retain a copy of any electronic Communication by using your print function or saving an electronic copy for your records. If, after you receive a Communication electronically, you would like a paper copy of a Communication previously provided to you, you may request a copy during the period we retain your Account documentation by contacting us at [Insert Company Phone Number]. We will send your paper copy to you by

U.S. mail. In order for us to send you a paper copy, you must have a current mailing address on file with us. [We do not charge a fee to send you a paper copy of any electronic Communication.[A1] ]

**Withdrawal of Consent and Termination of Electronic Access to Your Account:** You can withdraw this Disclosure and Agreement by contacting Company and asking that Communications be sent to you in paper or other non-electronic form using one of the following methods:

- **Telephone :** [Insert Company Phone Number]
- **Email :** [Insert Company Email]
- **Postal Mail :** [Insert Company Address]

Your withdrawal of this Disclosure and Agreement is effective only after we have had a reasonable period of time to act upon your withdrawal.

**Your Contact Information:** If you give us an incorrect email address or fail to update or correct your email address, an electronic Communication will be deemed provided to you if we use the email address in our records for the electronic Communication. You can update your contact information by using one of the methods outlined above.

**Hardware and Software Requirements:** In order to receive access to and retain electronic Communications, you will need the following hardware and software:

- a computer, mobile device, tablet or similar device with an internet connection;
- a current web browser that includes 128-bit encryption with cookies enabled;
- a current version of a software program that can open and display PDF files (such as an Adobe Acrobat reader);
- a valid email address with email software to communicate with us electronically; and
- an installed printer or sufficient storage space to save, store, print or otherwise retain electronic Communications.

By giving your consent, you are confirming that you have access to the necessary software and hardware, and can receive, open, print, download a copy or otherwise retain a copy of any electronic Communication for your records. You are advised to retain a copy of all electronic Communications as they may not be accessible online or in paper form at a later date.

Signature

Date

## Disclosure

Insert Name of Company or its affiliates ("the Company") may request one or more motor vehicle records about you for employment purposes.

For explanation purposes, these reports may include information used as a factor in making an employment-related decision about you. Such information may include, for example, your driving records.

The Company will obtain the motor vehicle records from **Safety Holdings, Inc. dba SambaSafety**. SambaSafety can be contacted by mail at Attn: Compliance Department, P.O. Box 92890, Albuquerque, NM 87199-2890; or website: [www.sambasafety.com](http://www.sambasafety.com).

## Authorization

By signing below, I agree that have read and understand the foregoing Disclosure, and authorize the Company to obtain motor vehicle records 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 motor vehicle records with any person involved in the employment decision about me.

Applicant or Employee Signature

Applicant or Employee Printed Name

Date

## 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.

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 Safety Holdings, Inc. (dba SambaSafety) to provide you with additional information.

*Continued on following pages*

Para información en español, visite [www.consumerfinance.gov/learnmore](http://www.consumerfinance.gov/learnmore) o escribe a la Consumer Financial Protection Bureau, 1700 G Street N.W., Washington DC 20552.

## A Summary of Your Rights Under the Fair Credit Reporting Act

To access the Summary of Your Rights Under the FCRA, please see this link:  
[https://files.consumerfinance.gov/f/documents/bcfr\\_consumer-rights-summary\\_2018-09.pdf](https://files.consumerfinance.gov/f/documents/bcfr_consumer-rights-summary_2018-09.pdf)

## 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 Safety Holdings, Inc. dba SambaSafety, P.O. Box 92890, Albuquerque, NM 87199-2890; 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>.

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 Washington Drivers:

You are authorizing the release of an abstract of your full driving record to an employer or prospective employer. The party requesting this record has authorized Safety Holdings, Inc. to obtain this record on the party's behalf. Any information contained in the abstract related to an adjudication that is subject to a court order sealing the juvenile record of an employee or prospective employee may not be used by the employer or prospective employer, or an agent authorized to obtain this information on their behalf, unless required by federal regulation or law.

By signing below, the party requesting this record certifies through its authorized representative that the information is necessary for employment purposes related to driving by the individual as a condition of employment or otherwise at the direction of the employer.

Authorized Representative Signature

## **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, P.O. Box 92890, Albuquerque, NM 87199-2890, with a toll-free telephone number of (888) 947-2622.

sample

## 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, P.O. Box 92890, Albuquerque, NM 87199-2890, 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.

sample

## 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.

# 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.

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## § 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.

sample



SambaSafety is a recognized innovator and leading provider of cloud-based risk management solutions for over 15,000 organizations with automotive mobility exposure, including many on Fortune's Global 500 list. Employers and insurers benefit from SambaSafety's continuous monitoring, intuitive insights, risk reduction tools and configurable pricing solutions. Through the collection, correlation and analysis of federal, state, local and telematics data sources, our flexible, end-to-end capabilities enable businesses and insurers to better evaluate and mitigate driving risk, accelerate product development, reduce crashes and foster safer communities.

[sambasafety.com](https://sambasafety.com)