

incarceration, shall not apply to employers who are expressly permitted to inquire into an individual's criminal history for employment purposes pursuant to any federal or state law other than subsection (a), including:

1. The State or any of its branches, political subdivisions, or agencies pursuant to sections 78-2.7 and 831-3.1;
2. The department of education pursuant to section 302A-601.5;
3. The department of health with respect to employees, providers, or subcontractors in positions that place them in direct contact with clients when providing non-witnessed direct mental health services pursuant to section 321-171.5;
4. The judiciary pursuant to section 571-34;
5. The counties pursuant to section 846-2.700(b)(5), (33), (34), (35), (36), and (38);
6. Armed security services pursuant to section 261-17(b);
7. Providers of a developmental disabilities domiciliary home pursuant to section 321-15.2;
8. Private schools pursuant to sections 302C-1 and 378-3(8);
9. Financial institutions in which deposits are insured by a federal agency having jurisdiction over the financial institution pursuant to section 378-3(9);
10. Detective agencies and security guard agencies pursuant to sections 463-6(b) and 463-8(b);
11. Employers in the business of insurance pursuant to section 431:2-201.3;
12. Employers of individuals or supervisors of individuals responsible for screening passengers or property under Title 49 United States Code Section 44901 or individuals with unescorted access to an aircraft of an air carrier or foreign carrier or in a secured area of an airport in the United States pursuant to Title 49 United States Code Section 44936(a);
13. The department of human services pursuant to sections 346-97 and 352-5.5;
14. The public library system pursuant to section 302A-601.5;
15. The department of public safety pursuant to section 353C-5;
16. The board of directors of a cooperative housing corporation or the manager of a cooperative housing project pursuant to section 421I-12;
17. The board of directors of an association of owners under chapter 514A or 514B, or the manager of a condominium project pursuant to section 514A-82.1 or 514B-133; and
18. The department of health pursuant to section 321-15.2. [L 1998, c 175, § 1; am L 2003, c 95, §12; am L 2004, c 79, §5 am L 2005, c 93, Â§7; am L 2006, c 220, Â§4; am L 2008, c 28, §7; am L 2012, c 299, §11; am L 2013, c 159, §15; am L 2014, c 18, §1; am L 2015, c 190, §7]

§378-2.7 Employer inquiries into and consideration of credit history or credit report. (a)
Notwithstanding section 378-2(8):

1. Inquiry into and consideration of a prospective employee's credit history or credit report may take place only after the prospective employee has received a conditional offer of employment, which may be withdrawn if information in the credit history or credit report is directly related to a bona fide occupational qualification;
2. The prohibition against an employer's refusal to hire or employ, barring or terminating from employment, or otherwise discriminating on the basis of credit history shall not apply to employers who are expressly permitted or required to inquire into an individual's credit history for employment purposes pursuant to any federal or state law;
3. The prohibition against an employer's refusal to hire or employ, barring or terminating from employment, or otherwise discriminating on the basis of credit history shall not apply to managerial or supervisory employees; and
4. The prohibition against an employer's refusal to hire or employ, barring or terminating from employment, or otherwise discriminating on the basis of credit history shall not apply to employers that are financial institutions in which deposits are insured by a federal agency having jurisdiction over the financial institution.

(b) For the purposes of this section:

"Managerial employee" means an individual who formulates and effectuates management policies by expressing and making operative the decisions of the individual's employer.

"Supervisory employee" means an individual having authority, in the interest of the employer, to hire, transfer, suspend, lay off, recall, promote, discharge, assign, reward, or discipline other employees, or responsibility to direct them, or to adjust their grievances, or effectively to recommend such action, if in connection with the foregoing the exercise of such authority is not of a merely routine or clerical nature, but requires the use of independent judgment. [L Sp 2009, c 1, §1]

§ 378-3 Exceptions. Nothing in this part shall be deemed to:

1. Repeal or affect any law, ordinance, or government rule having the force and effect of law;
2. Prohibit or prevent the establishment and maintenance of bona fide occupational qualifications reasonably necessary to the normal operation of a particular business or enterprise, and that have a substantial relationship to the functions and responsibilities of prospective or continued employment;
3. Prohibit or prevent an employer, employment agency, or labor organization from refusing to hire, refer, or discharge any individual for reasons relating to the ability of the individual to perform the work in question;
4. Affect the operation of the terms or conditions of any bona fide retirement, pension, employee benefit, or insurance plan that is not intended to evade the purpose of this chapter; provided that this exception shall not be construed to permit any employee plan to set a maximum age requirement for hiring or a mandatory retirement age;
5. Prohibit or prevent any religious or denominational institution or organization, or any organization operated for charitable or educational purposes, that is operated, supervised, or controlled by or in connection with a religious organization, from giving preference to individuals of the same religion or denomination or from making a selection calculated to promote the religious principles for which the organization is established or maintained;
6. Conflict with or affect the application of security regulations or rules in employment established by the United States or the State;
7. Require the employer to execute unreasonable structural changes or expensive equipment alterations to accommodate the employment of a person with a disability;
8. Prohibit or prevent the department of education or private schools from considering criminal convictions in determining whether a prospective employee is suited to working in close proximity to children ;
9. Prohibit or prevent any financial institution in which deposits are insured by a federal agency having jurisdiction over the financial institution from denying employment to or discharging from employment any person who has been convicted of any criminal offense involving dishonesty or a breach of trust, unless it has the prior written consent of the federal agency having jurisdiction over the financial institution to hire or retain the person;
10. Preclude any employee from bringing a civil action for sexual harassment or sexual assault and infliction of emotional distress or invasion of privacy related thereto; provided that notwithstanding section 368-12, the commission shall issue a right to sue on a complaint filed with the commission if it determines that a civil action alleging similar facts has been filed in circuit court;
11. Require the employer to accommodate the needs of a nondisabled person associated with or related to a person with a disability in any way not required by Title I of the Americans with Disabilities Act. [L 1981, c 94, pt of § 2; am L 1984, c 85, § 4; am L 1985, c 162, § 1; am L 1990, c 257, § 3; L 1991, c 262, § 2; am L 1992, c 33, § 3 and c 275, § 1; am L 1994 c 88, § 2; am L 1997, c 365, § 2; am L 1998, c 175, § 2; ; repeal and reenactment 6/30/99, L 1997 c 365, § 4]

§ 378-4 Enforcement jurisdiction. The commission shall have jurisdiction over the subject of discriminatory practices made unlawful by this part. Any individual claiming to be aggrieved by an