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REPORTS: No

HEARINGS: No

NEWSPAPER ARTICLES: Yes

"Opportunity to Compete Act Signed into Law," wgbo.org/news, 8-11-14

"Christie signs 'ban-the-box' into law," NJBIZ, 8-12-14

"Jersey City senator's 'ban-the-box' law lauded," Jersey Journal, 8-15-14

"Jobs for ex-offenders/Sensible new law," The Press of Atlantic City, 8-15-14

LAW/RWH

P.L.2014, CHAPTER 32, *approved August 11, 2014*
Assembly Committee Substitute (*First Reprint*) for
Assembly, No. 1999

1 AN ACT concerning certain employment rights of persons with
2 criminal records and supplementing Title 34 of the Revised
3 Statutes.

4
5 **BE IT ENACTED** by the Senate and General Assembly of the State
6 of New Jersey:

7
8 1. This act shall be known and may be cited as “The
9 Opportunity to Compete Act.”

10
11 2. The Legislature finds and declares that:

12 a. Removing obstacles to employment for people with criminal
13 records provides economic and social opportunities to a large group
14 of people living in New Jersey, increasing the productivity, health,
15 and safety of New Jersey communities.

16 b. Criminal background checks by employers have increased
17 dramatically in recent years, with estimates of 90 percent of large
18 employers in the United States now conducting background checks
19 as part of the hiring process.

20 c. Barriers to employment based on criminal records stand to
21 affect an estimated 65 million adults in the United States with
22 criminal records.

23 d. Employment advertisements in New Jersey frequently
24 include language regarding criminal records that either explicitly
25 precludes or strongly dissuades people from applying.

26 e. Individuals with criminal records represent a group of job
27 seekers ready and able to contribute and add to the workforce.

28 f. Securing employment significantly reduces the risk of
29 recidivism for persons with criminal records.

30 g. Currently, at least 64 states, counties, and cities have
31 enacted or passed statutes, ordinances, or policies to remove
32 barriers to the employment of persons with criminal histories by
33 public and private employers.

34 h. The nation’s largest public employer, the United States
35 government, and the nation’s largest private employer have each
36 implemented their own policies removing barriers to the
37 employment of persons with criminal histories.

EXPLANATION – Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and is intended to be omitted in the law.

Matter underlined thus is new matter.

Matter enclosed in superscript numerals has been adopted as follows:

¹Senate floor amendments adopted June 26, 2014.

1 i. Numerous other major businesses and organizations have
2 voluntarily implemented their own policies removing barriers to the
3 employment of those with criminal histories.

4 j. It is the intent and purpose of “The Opportunity to Compete
5 Act” to improve the economic viability, health, and security of New
6 Jersey communities and to assist people with criminal records to
7 reintegrate into the community, become productive members of the
8 workforce, and to provide for their families and themselves.

9

10 3. As used in this act:

11 “Advertisement” means any circulation, mailing, posting, or any
12 other form of publication, utilizing any media, promoting an
13 employer or intending to alert its audience, regardless of size, to the
14 availability of any position of employment.

15 “Applicant for employment” means any person whom an
16 employer considers when identifying potential employees, through
17 any means, including, but not limited to, recruitment, solicitation,
18 or seeking personal information, or any person who requests to be
19 considered for employment by an employer, or who requests
20 information from an employer related to seeking employment, and
21 shall include any person who currently is an employee of the
22 employer.

23 “Criminal record” means information collected by criminal
24 justice agencies on individuals consisting of identifiable
25 descriptions and notations of arrests, detentions, indictments, or
26 other formal criminal charges, and any disposition arising
27 therefrom, including acquittal, sentencing, correctional supervision,
28 release or conviction, including, but not limited to, any sentence
29 arising from a verdict or plea of guilty or nolo contendere, including
30 a sentence of incarceration, a suspended sentence, a sentence of
31 probation, or a sentence of conditional discharge.

32 “Employee” ¹~~means~~ shall mean¹ a person who is hired for a
33 wage, salary, fee, or payment to perform work for an employer, but
34 excludes any person employed in the domestic service of any family
35 or person at the person’s home, any independent contractors, or any
36 directors or trustees. The term also shall include interns and
37 apprentices.

38 “Employer” means any person, company, corporation, firm,
39 labor organization, or association which has 15 or more employees
40 over 20 calendar weeks and does business, employs persons, or
41 takes applications for employment within this State, ¹~~and means~~
42 including¹ the State, any county or municipality, or any
43 instrumentality thereof. The term shall include job placement and
44 referral agencies and other employment agencies, but excludes the
45 United States or any of its departments, agencies, boards, or
46 commissions, or any employee or agent thereof.

1 “Employment” means any occupation, vocation, job, or work
2 with pay, including temporary or seasonal work, contingent work,
3 and work through the services of a temporary or other employment
4 agency; any form of vocational apprenticeship; or any internship.
5 The physical location of the prospective employment shall be in
6 whole, or substantial part, within this State.

7 “Employment application” means a form, questionnaire or
8 similar document or collection of documents that an applicant for
9 employment is required by an employer to complete.

10 “Initial employment application process” means the period
11 beginning when an applicant for employment first makes an inquiry
12 to an employer about a prospective employment position or job
13 vacancy or when an employer first makes any inquiry to an
14 applicant for employment about a prospective employment position
15 or job vacancy, and ending when an employer has conducted ¹[an]
16 a first¹ interview ¹[and determined the applicant is qualified]¹,
17 whether in person or by any other means¹ [, and selected the] of an¹
18 applicant ¹[as the employer’s first choice to fill the position] for
19 employment¹.

20
21 4. a. Except as otherwise provided in section ¹[8] 6¹ of this
22 act:

23 (1) ¹[an] An¹ employer shall not require an applicant for
24 employment to complete any employment application that makes
25 any inquiries regarding an applicant’s criminal record during the
26 initial employment application process.

27 (2) ¹[an] An¹ employer shall not make any oral or written
28 inquiry regarding an applicant’s criminal record during the initial
29 employment application process.

30 b. Notwithstanding the provisions of subsection a. of this
31 section, if an applicant discloses any information regarding the
32 applicant’s criminal record, by voluntary oral or written disclosure,
33 during the initial employment application process, the employer
34 may make ¹[a reasonable, limited inquiry regarding only the
35 criminal history disclosed.

36 c. An employer may inquire into and consider the criminal
37 history of an applicant after the employer has conducted an
38 interview, determined the applicant to be qualified, and selected the
39 applicant as the employer’s first choice to fill the position.

40 d.] inquiries regarding the applicant’s criminal record during the
41 initial employment application process.

42 c.¹ Nothing set forth in this section shall be construed to prohibit
43 an employer from requiring an applicant for employment to
44 complete an employment application that makes any inquiries
45 regarding an applicant’s criminal record after the initial
46 employment application process has concluded or from making any

1 oral or written inquiries regarding an applicant's criminal record
2 after the initial employment application process has concluded. The
3 provisions of this section shall not preclude an employer from
4 refusing to hire an applicant for employment based upon the
5 applicant's criminal record, 'unless the criminal record or relevant
6 portion thereof has been expunged or erased through executive
7 pardon.¹ provided that such refusal is consistent with ¹sections 5
8 and 6 of this act as well as any¹ other applicable laws, rules and
9 regulations.

10

11 ¹5.a. An employer shall not be permitted to consider when
12 making an employment decision, or require any applicant to disclose
13 or reveal, or to take any adverse employment action against any
14 applicant on the basis of:

15 (1) any arrest or criminal accusation made against the applicant
16 that did not result in a conviction, unless it is then pending;

17 (2) any record which has been erased or expunged or any record
18 that has been the subject of an executive pardon unless such records
19 are explicitly made relevant for the position by a federal or State
20 law, rule, or regulation;

21 (3) a conviction for a disorderly persons offense or a conviction
22 for conduct from another state which, if committed in this State,
23 would constitute a disorderly persons offense, where the date of
24 sentence or the release from any period of incarceration resulting
25 therefrom, whichever date is later, occurred five or more years prior
26 to the date of the application for employment, unless the applicant
27 was subsequently convicted of a crime or disorderly persons; or

28 (4) a conviction for a crime of the first through fourth degree or
29 a conviction for conduct from another state which, if committed in
30 this State, would constitute a crime of the first through fourth
31 degree, where the date of sentence or the release from any period of
32 incarceration resulting therefrom, whichever date is later, occurred
33 ten or more years prior to the date of the application for
34 employment, unless the applicant was subsequently convicted of
35 a crime or disorderly persons.

36 b. Notwithstanding paragraphs (3) and (4) of subsection a. of
37 this section, an employer may inquire about and consider when
38 making an employment decision convictions for the following
39 crimes regardless of the date of sentence or the release from
40 incarceration:

41 (1) criminal homicide, including murder, manslaughter, and
42 death by auto, as defined by N.J.S.2C:11-2;

43 (2) attempted murder as defined by N.J.S.2C:5-1 and
44 N.J.S.2C:11-3;

45 (3) arson and arson-related offenses as defined by N.J.S.2C:17-
46 1;

47 (4) sex offenses as defined by subsection b. of section 2 of

- 1 P.L.1994, c.133 (C.2C:7-2);
- 2 (5) robbery as defined by N.J.S.2C:15-1;
- 3 (6) kidnapping as defined by N.J.S.2C:13-1;
- 4 (7) human trafficking as defined by section 1 of P.L.2005, c.77
- 5 (C.2C:13-8);
- 6 (8) possession of weapons during commission of certain
- 7 crimes as defined by section 1 of P.L.1998, c.26 (C.2C:39-4.1);
- 8 (9) burglary as defined by N.J.S.2C:18-2;
- 9 (10) aggravated assault as defined by N.J.S.2C:12-1;
- 10 (11) any crime listed in 18 U.S.C. Chapter 113B – Terrorism,
- 11 and any crime listed in the "September 11th, 2001 Anti-Terrorism
- 12 Act," P.L.2002, c.26 (C.2C:38-1 et seq); and
- 13 (12) any offenses of a nature substantially similar to an offense
- 14 set forth in paragraphs (1) through (11) of this subsection b.
- 15 committed in another jurisdiction, regardless of when they
- 16 occurred.】¹

17

18 ¹【6.a. In reasonably evaluating an applicant for a position for

19 which a criminal history inquiry is conducted pursuant to this act,

20 the employer also shall collectively consider additional factors,

21 including but not limited to:

- 22 (1) any information, if provided to the employer by or on
- 23 behalf of the applicant, pertaining to the accuracy of the criminal
- 24 record in question;
- 25 (2) any information, if provided to the employer by or on
- 26 behalf of the applicant, pertaining to the degree of rehabilitation and
- 27 good conduct;
- 28 (3) the nature of the offense and how long ago it occurred;
- 29 (4) the duties and settings of the job sought or held.

30 b. An employer who has any questions or concerns relating to

31 the applicant's criminal history and suitability for the position

32 sought or held based on a criminal history inquiry shall make a good

33 faith effort to discuss with the applicant these questions or concerns

34 and, while the position remains open, consider any information

35 provided by the applicant.】¹

36

37 ¹【7.】5.¹ Unless otherwise permitted or required by law, an

38 employer shall not knowingly or purposefully publish, or cause to

39 be published, any advertisement that solicits applicants for

40 employment where that advertisement explicitly provides that the

41 employer will not consider any applicant who has been arrested or

42 convicted of one or more crimes or offenses. The provisions of this

43 section shall not apply to any advertisement that solicits applicants

44 for a position in law enforcement, corrections, the judiciary,

45 homeland security, or emergency management, or any other

46 employment position where a criminal history record background

47 check is required by law, rule or regulation, or where an arrest or

1 conviction by the person for one or more crimes or offenses would
2 or may preclude the person from holding such employment as
3 required by any law, rule or regulation, or where any law, rule, or
4 regulation restricts an employer's ability to engage in specified
5 business activities based on the criminal records of its employees.
6 Nothing set forth in this section shall be construed as prohibiting an
7 employer from publishing, or causing to be published, an
8 advertisement that contains any provision setting forth any other
9 qualifications for employment, as permitted by law, including, but
10 not limited to, the holding of a current and valid professional or
11 occupational license, certificate, registration, permit or other
12 credential, or a minimum level of education, training or
13 professional, occupational, or field experience.
14

15 ¹~~8.~~ 6.¹ The provisions of ¹subsection a. of section 4 of¹ this act
16 shall not ¹~~apply~~ prohibit an employer from requiring an applicant
17 for employment to complete an employment application that makes
18 any inquiries regarding an applicant's criminal record during the
19 initial employment application process or from making any oral or
20 written inquiries regarding an applicant's criminal record during the
21 initial employment application process¹ if:

22 a. The employment sought or being considered is for a position
23 in law enforcement, corrections, the judiciary, homeland security or
24 emergency management;

25 b. The employment sought or being considered is for a position
26 where a criminal history record background check is required by
27 law, rule or regulation, or where an arrest or conviction by the
28 person for one or more crimes or offenses would or may preclude
29 the person from holding ¹~~that~~ such¹ employment as required by
30 any law, rule or regulation, or where any law, rule, or regulation
31 restricts an employer's ability to engage in specified business
32 activities based on the criminal records of its employees¹ ~~],~~ except
33 that any adverse employment decision regarding a position
34 subject to this exemption that is based on a criminal history
35 outside of the enumerated offenses or time periods of the applicable
36 federal or State law, regulation, or rule shall remain subject to
37 section 6 of this act¹; or

38 c. The employment sought or being considered is for a position
39 designated by the employer to be part of a program or systematic
40 effort designed predominantly or exclusively to encourage the
41 employment of persons who have been arrested or convicted of one
42 or more crimes or offenses.
43

44 ¹~~9.~~ 7.¹ a. The governing body of a county or municipality
45 shall not adopt any ordinance, resolution, law, rule or regulation
46 regarding criminal histories in the employment context, except for
47 ordinances adopted to regulate ¹~~county or~~ municipal operations.

1 b. The provisions of this act shall preempt any ordinance,
2 resolution, law, rule or regulation adopted by the governing body of
3 a county or municipality prior to the effective date of this act
4 regarding criminal histories in the employment context, except for
5 ordinances adopted to regulate ¹‘[county or]’¹ municipal operations.
6

7 ¹‘[10. a. No employer shall be found liable based on the
8 exclusion from consideration of the portions of an applicant’s or
9 employee’s criminal record deemed outside the scope of
10 consideration by section 5 of this act.

11 b. In negligent hiring or negligent retention claims based in
12 whole or part on an employee’s criminal record, no employer shall
13 be found liable unless the employer’s hiring decision is found to
14 have been grossly negligent.

15 c. ¹‘[8.]’¹ The penalties set forth in section ¹‘[11.]’¹ of this act shall
16 be the sole remedy provided for violations of this act. Nothing set
17 forth in this act shall be construed as creating or establishing a
18 standard of care or duty for employers with respect to any law other
19 than this act. Evidence that an employer has violated, or is alleged
20 to have violated, the provisions of this act, shall not be admissible
21 in any legal proceeding with respect to any law or claim other than
22 a proceeding to enforce the provisions of this act. Nothing set forth
23 in this act shall be construed as creating, establishing or authorizing
24 a private cause of action by an aggrieved person against an
25 employer who has violated, or is alleged to have violated, the
26 provisions of this act.
27

28 ¹‘[11.]’¹ 9.¹ Any employer who violates this act shall be liable for
29 a civil penalty in an amount not to exceed \$1,000 for the first
30 violation, \$5,000 for the second violation, and \$10,000 for each
31 subsequent violation collectible by the Commissioner of Labor and
32 Workforce Development in a summary proceeding pursuant to the
33 “Penalty Enforcement Law of 1999,” P.L.1999, c.274 (C.2A:58-10
34 et seq.).
35

36 ¹‘[12.]’¹ 10.¹ This act shall take effect the first day of the seventh
37 month next following the date of enactment, but the Commissioner
38 of Labor and Workforce Development may take any anticipatory
39 administrative action in advance as shall be necessary for the
40 implementation of this act.
41
42
43

44
45 “The Opportunity to Compete Act;” establishes certain
46 employment rights for persons with criminal record.

ASSEMBLY, No. 1999

STATE OF NEW JERSEY 216th LEGISLATURE

PRE-FILED FOR INTRODUCTION IN THE 2014 SESSION

Sponsored by:

Assemblywoman BONNIE WATSON COLEMAN

District 15 (Hunterdon and Mercer)

Assemblyman JERRY GREEN

District 22 (Middlesex, Somerset and Union)

Assemblywoman L. GRACE SPENCER

District 29 (Essex)

Assemblyman BENJIE E. WIMBERLY

District 35 (Bergen and Passaic)

Assemblywoman SHAVONDA E. SUMTER

District 35 (Bergen and Passaic)

Co-Sponsored by:

**Assemblywomen Jasey, Tucker, Assemblymen Garcia, Giblin, Gusciora
and Wilson**

SYNOPSIS

“The Opportunity to Compete Act;” establishes certain employment rights for persons with criminal histories.

CURRENT VERSION OF TEXT

Introduced Pending Technical Review by Legislative Counsel



(Sponsorship Updated As Of: 5/23/2014)

1 AN ACT concerning employment rights of persons with criminal
2 histories and supplementing Title 10 of the Revised Statutes.

3

4 **BE IT ENACTED** by the Senate and General Assembly of the State
5 of New Jersey:

6

7 1. This act shall be known and may be cited as “The
8 Opportunity to Compete Act.”

9

10 2. The Legislature finds and declares that:

11 a. Removing obstacles to employment for people with criminal
12 records provides economic and social opportunities to a large group
13 of people living in New Jersey, increasing the productivity, health,
14 and safety of New Jersey communities.

15 b. Criminal background checks by employers have increased
16 dramatically in recent years, with estimates of 90 percent of large
17 employers in the United States now conducting background checks
18 as part of the hiring process.

19 c. Commercially-run criminal background checks commonly
20 contain errors and inaccuracies and even Federal Bureau of
21 Investigation (FBI) background checks are out of date 50 percent of
22 the time.

23 d. Barriers to employment based on criminal records stand to
24 affect an estimated 65 million adults in the United States with
25 criminal records.

26 e. Employment advertisements in New Jersey frequently
27 include language regarding criminal records that either explicitly
28 precludes or strongly dissuades people from applying.

29 f. Individuals with criminal records represent a group of job
30 seekers ready and able to contribute and add to the workforce.

31 g. Research has shown that many individuals with criminal
32 histories pose no greater risk of future criminality than do people
33 with no criminal history and are equally qualified, reliable, and
34 trustworthy candidates for employment.

35 h. Securing employment significantly reduces the risk of
36 recidivism.

37 i. It is the intent and purpose of “The Opportunity to Compete
38 Act” to improve the economic viability, health, and security of New
39 Jersey communities and to assist people with conviction histories to
40 reintegrate into the community and to provide for their families and
41 themselves.

42 j. Currently, at least 64 states, counties, and cities have
43 enacted or passed statutes, ordinances, or policies to remove
44 barriers to the employment of persons with criminal histories by
45 public and private employers.

46 k. The nation’s largest public employer, the United States
47 government, and the nation’s largest private employer, Wal-Mart

1 Stores, Inc., have each implemented their own policies removing
2 barriers to the employment of persons with criminal histories.

3 1. Numerous other major businesses and organizations have
4 voluntarily implemented their own policies removing barriers to the
5 employment of those with criminal histories.

6

7 3. As used in this act:

8 “Adverse employment decision” means the revocation of a
9 conditional offer of employment from a candidate, the termination
10 of employment, or the demotion of an employee.

11 “Advertisement” means any circulation, mailing, posting, or any
12 other form of publication, utilizing any media, promoting the
13 employer or intending to alert its audience, regardless of size, to the
14 availability of any position of employment.

15 “Application process” means the period beginning when the
16 candidate inquires about the employment being sought and ending
17 when an employer has extended a conditional offer of employment
18 to the candidate.

19 “Candidate” means any person whom an employer considers
20 when identifying potential employees, through any means,
21 including, but not limited to, recruitment, solicitation, or seeking
22 personal information, or any person who requests to be considered
23 for employment by an employer, or who requests information from
24 an employer related to seeking employment, and shall include any
25 person who currently is an employee of the employer.

26 “Conditional offer of employment” means an offer of
27 employment that is contingent only upon a criminal history inquiry.

28 “Conviction” means any sentence arising from a verdict or plea
29 of guilty or nolo contendere, including a sentence of incarceration, a
30 suspended sentence, a sentence of probation, or a sentence of
31 conditional discharge.

32 “Criminal Record Consideration Form” means the written,
33 standardized form set forth in section 17 of this act.

34 “Employee” shall mean a person who is hired for a wage, salary,
35 fee, or payment to perform work for an employer, but excludes any
36 person employed in the domestic service of any family or person at
37 the person’s home, any independent contractors, or any directors or
38 trustees. The term also shall include interns and apprentices.

39 “Employer” means any person, company, corporation, firm,
40 labor organization, or association which has 15 or more employees
41 over 20 calendar weeks and does business, employs persons, or
42 takes applications for employment within this State, including the
43 State, any county, municipality, or any instrumentality thereof. The
44 term shall include job placement and referral agencies and other
45 employment agencies, but exclude the United States or any of its
46 departments, agencies, boards, or commissions, or any employee or
47 agent thereof.

1 “Employment” means any occupation, vocation, job, or work
2 with pay, including temporary or seasonal work, contingent work,
3 and work through the services of a temporary or other employment
4 agency, or any form of vocational apprenticeship, or any internship.
5 The physical location of the prospective employment must be in
6 whole, or substantial part, within this State.

7 “Filled the position” means an offer of employment has been
8 both extended and accepted by another candidate.

9 “Inquiry” means any direct or indirect conduct intended to gather
10 information from or about a candidate or employee, using any mode
11 of communication, including but not limited to application forms,
12 interviews, and criminal history inquiries.

13 “Law enforcement agency” means any public agency, any police
14 force, department or division within the State of New Jersey, or any
15 county or municipality thereof, which is empowered by statute to
16 act for the detection, investigation, arrest, or conviction of persons
17 violating the criminal laws of this State.

18 “Law enforcement officer” means any person who is employed
19 as a member of any State, county or municipal law enforcement
20 agency, department, or division of those governments who is
21 statutorily empowered to act for the detection, investigation, arrest,
22 or conviction of persons violating the criminal laws of this State
23 and statutorily required to successfully complete a training course
24 approved by, or certified as being substantially equivalent to such
25 an approved course, by the Police Training Commission pursuant to
26 P.L.1961, c.56 (C.52:17B-66 et seq.).

27 “Notice of Rights” means the written, standardized form set forth
28 in section 18 of this act.

29 “Otherwise qualified” means any candidate who meets all other
30 criteria for a position.

31 “Pre-application inquiry” shall mean any inquiry in connection
32 with any decision regarding employment that precedes the
33 application process, including, but not limited to, any recruitment of
34 candidates, attempts to identify candidates, or solicitation of
35 candidates.

36 “Type 1 violation” means either an initial violation of this act or
37 a violation that is not preceded by another violation within the
38 previous three years. All actions within the application process for
39 the same position shall together be considered a single Type 1
40 violation, notwithstanding that each would otherwise constitute a
41 violation on its own.

42 “Type 2 violation” means any violation of this act that is
43 preceded by another violation within the previous three years. Each
44 action that would constitute a Type 2 violation of this act shall
45 constitute a separate Type 2 violation.

- 1 4. a. An employer shall not conduct any pre-application inquiry
2 regarding any person's criminal history in connection with any
3 decision regarding employment.
- 4 b. An employer shall not make any inquiry regarding a
5 candidate's criminal history during the application process.
- 6 c. Inquiry into and consideration of the criminal history of a
7 candidate may take place after the candidate has been found
8 otherwise qualified and has received a conditional offer of
9 employment.
- 10 d. Notwithstanding subsections a., b., and c. of this section, if a
11 candidate discloses any information regarding the candidate's
12 criminal history by voluntary oral or written disclosure, the
13 employer may consider the disclosed criminal history pursuant to
14 section 5 of this act. In the event of a voluntary disclosure, the
15 employer also may make a reasonable, limited inquiry about only
16 the criminal history disclosed.
- 17 e. Any information obtained regarding a candidate's criminal
18 history, whether obtained through an inquiry or by any means other
19 than voluntary oral or written disclosure pursuant to subsection d.
20 of this section, shall not be considered in making an employment
21 determination until after a conditional offer has been made.
- 22 f. Prior to conducting any criminal history inquiry concerning
23 a candidate, the employer shall provide standard written notification
24 advising that, upon the written consent of the candidate, the
25 employer will conduct a criminal history inquiry and provide to the
26 candidate a copy of the Notice of Rights as set fourth in section 18
27 of this act. If the candidate declines to consent to a criminal history
28 inquiry, the employer may withdraw the conditional offer of
29 employment.
- 30
- 31 5. Except as provided in section 6 of this act, an employer shall
32 be permitted to consider, in connection with any decision regarding
33 employment, the following convictions and charges:
- 34 a. A conviction for any crime of the first through fourth degree
35 not specified in subsection d. or a conviction for conduct from
36 another jurisdiction which, if committed in this State, would
37 constitute a crime of the first through fourth degree, for 10 years
38 following release from custody or from the date of sentence if the
39 person was not sentenced to a term of confinement;
- 40 b. A conviction for a disorderly persons offense or a conviction
41 for conduct from another state which, if committed in this State,
42 would constitute a disorderly persons offense, for five years
43 following release from custody or from the date of sentence if the
44 person was not sentenced to a term of confinement;
- 45 c. Any pending criminal charges, which shall include cases that
46 have been continued without a finding until such time as the case is
47 dismissed; and

- 1 d. Convictions for:
- 2 (1) Criminal homicide, including murder, manslaughter, and
3 death by auto, as defined by N.J.S.2C:11-2;
- 4 (2) Attempted murder as defined by N.J.S.2C:5-1 and
5 N.J.S.2C:11-3;
- 6 (3) Arson and arson-related offenses as defined by N.J.S.2C:17-
7 1;
- 8 (4) Sex offenses as defined by subsection b. of section 2 of
9 P.L.1994, c.133 (C.2C:7-2);
- 10 (5) Robbery as defined by N.J.S.2C:15-1;
- 11 (6) Kidnapping as defined by N.J.S.2C:13-1;
- 12 (7) Human trafficking as defined by section 1 of P.L.2005, c.77
13 (C.2C:13-8);
- 14 (8) Possession of weapons during commission of certain crimes
15 as defined by section 1 of P.L.1998, c.26 (C.2C:39-4.1);
- 16 (9) Burglary in the second degree as defined by N.J.S.2C:18-2;
- 17 (10) Aggravated assault in the second or third degree as defined
18 by N.J.S.2C:12-1;
- 19 (11) Any crime listed in 18 U.S.C. Chapter 113B – Terrorism (18
20 U.S.C. s.2331 et seq.), and any crime listed in the "September 11th,
21 2001 Anti-Terrorism Act," P.L.2002, c.26 (C.2C:38-1 et seq.); and
- 22 (12) Any offenses of a nature substantially similar to an offense
23 set forth in paragraphs (1) through (11) of this subsection d.
24 committed in another jurisdiction, regardless of when they
25 occurred.
- 26
- 27 6. An employer shall not be permitted to consider when making
28 an employment decision, or require any candidate to disclose or
29 reveal, or to take any adverse action against any candidate on the
30 basis of:
- 31 a. Any arrest or criminal accusation made against the
32 candidate, which is not then pending against that person or which
33 did not result in a conviction;
- 34 b. Any record which has been erased or expunged, or any
35 record that has been the subject of an executive pardon, or any
36 record that has been otherwise legally nullified; or
- 37 c. Any adjudication of delinquency of a juvenile, any violation
38 of a municipal ordinance, or any record which has been sealed.
- 39
- 40 7. If any part of the candidate's criminal history may be
41 considered pursuant to section 5 of this act, then all prior disorderly
42 persons convictions and indictable offenses, or, if from any other
43 jurisdiction, convictions for conduct which, if committed in this
44 State, would constitute a disorderly persons conviction or indictable
45 offense, may be considered by the employer unless deemed
46 impermissible pursuant to section 6 of this act.

1 8. a. In reasonably evaluating a candidate for a position for
2 which a criminal history inquiry is conducted pursuant to this act,
3 the employer also shall collectively consider additional factors,
4 including but not limited to:

5 (1) any information, if provided to the employer by or on behalf
6 of the candidate, pertaining to the degree of rehabilitation and good
7 conduct, including a certificate of rehabilitation issued by any state
8 or federal agency, which includes, but is not limited to, certificates
9 issued pursuant to section 1 of P.L.2007, c.327 (C.2A:168A-7);

10 (2) any information, if provided to the employer by or on behalf
11 of the candidate, pertaining to the accuracy of the criminal record in
12 question;

13 (3) the amount of time that has elapsed since the conviction or
14 release from custody;

15 (4) the nature of and circumstances surrounding the crime or
16 crimes; and

17 (5) the duties and settings of the job sought or held.

18 b. If an employer makes an adverse employment decision after
19 conducting a criminal history inquiry, the employer shall certify in
20 writing its reasonable consideration of the factors set forth in
21 subsection a. of this section using the Criminal Record
22 Consideration Form set forth in section 17 of this act.

23
24 9. a. An employer who has any questions or concerns relating
25 to the candidate's criminal history and suitability for the position
26 sought or held based on a criminal history inquiry shall make a
27 good faith effort to discuss with the candidate these questions or
28 concerns and provide the candidate with an opportunity to explain
29 and contextualize any crime or offense, provide evidence of
30 rehabilitation, and rebut any inaccuracies in the criminal history.

31 b. An employer who makes an adverse employment decision
32 after complying with the requirements of subsection a. of this
33 section shall provide to the candidate in one package by registered
34 mail:

35 (1) written notification of the adverse employment decision;

36 (2) a copy of the results of the criminal history inquiry; and

37 (3) a completed copy of the Criminal Record Consideration
38 Form as set forth in section 17 of this act.

39
40 10. a. A candidate who receives an adverse employment
41 decision may, within 10 business days after receipt of the
42 documents required under subsection b. of section 9 of this act,
43 provide additional information or evidence to the employer related
44 to the accuracy or relevance of the results of the criminal history
45 inquiry, including information pertaining to any of the factors listed
46 in subsection a. of section 8 of this act. An employer may hold the

1 position open for a candidate but is not required to wait for the
2 response before filling the position.

3 b. If the employer receives additional information pursuant to
4 subsection a. of this section and has not yet filled the position at the
5 time of receipt, the employer shall consider the additional
6 information provided by the candidate.

7 c. An employer who maintains an adverse employment
8 decision after considering any additional information provided by
9 the candidate pursuant to subsections a. and b. of this section shall,
10 within 45 business days of receipt of the additional information,
11 provide the candidate with a written notice of final decision.

12

13 11. An employer shall keep on file for three years from the date
14 of completion a copy of the Criminal Records Consideration Form
15 completed pursuant to subsection b. of section 8 of this act.

16

17 12. The provisions of this act shall not apply to the following:

18 a. Any employment decision concerning a law enforcement
19 officer or a candidate for a position as a law enforcement officer;

20 b. When any federal or State law, regulation, or rule holds that
21 persons with criminal records are or may be deemed ineligible to
22 fill the position at issue, including but not limited to P.L.1999,
23 c.432 (C.15A:3A-1 et seq.), regarding nonprofit youth serving
24 organizations, or when any federal or State law, regulation, or rule
25 restricts an employer's ability to engage in specified business
26 activities based on the criminal records of its employees, except that
27 any adverse employment decision regarding a position subject to
28 this exemption that is based on a criminal history outside of the
29 enumerated offenses or time periods of the applicable federal or
30 State law, regulation, or rule, shall remain subject to subsection a.
31 of section 8 of this act; and

32 c. Any position designated by the employer to be part of a
33 program or systematic effort designed predominantly or exclusively
34 to encourage the employment of those with criminal histories.

35 It is the intent of the Legislature that the exemptions under this
36 section be narrowly construed.

37

38 13. a. Excepting any provision of any other federal or State law,
39 regulation, or rule that expressly requires or expressly permits the
40 consideration of criminal histories in employment decisions, or
41 when any federal or State law, regulation, or rule restricts an
42 employer's ability to engage in specified business activities based
43 on the criminal records of its employees, any and all use or
44 consideration of a candidate's or employee's criminal history by an
45 employer or prospective employer shall be conducted solely and
46 exclusively in accordance with the provisions of this act.

1 b. It is the intent of the Legislature to preclude and preempt,
2 for as long as this act shall remain in effect, any and all present or
3 future laws regarding the use of criminal histories in employment
4 decisions promulgated by any local government in this State.

5
6 14. a. No employer shall be found liable based on the exclusion
7 from consideration of the portions of a candidate's or employee's
8 criminal record deemed outside the scope of inquiry by sections 5
9 and 6 of this act.

10 b. In negligent hiring or negligent retention claims based in
11 whole or part on an employee's criminal record, no employer shall
12 be found liable unless the employer's hiring decision is found to
13 have been grossly negligent.

14 c. This act shall not be actionable by private parties.

15
16 15. a. In connection with any employment position, it shall be
17 unlawful for an employer to produce or disseminate any
18 advertisement or posting that directly or indirectly references the
19 use or consideration of an applicant's criminal history, except that
20 nothing in this section shall preclude the expression of statutory,
21 regulatory, or rule-based eligibility restrictions applicable to the
22 position as described in subsections a. and b. of section 12 of this
23 act, so long as that expression is limited to the specified offenses
24 and time periods established by law.

25 b. In any action against an employer under this section, any
26 advertisement or posting shall be presumptive evidence that the
27 employer authorized the advertisement or posting.

28
29 16. a. The Division on Civil Rights in the Department of Law
30 and Public Safety shall enforce the provisions of this act. Any
31 complaint shall be filed with the Division on Civil Rights within
32 180 days of the alleged violation.

33 b. An employer who violates the provisions of this act shall be
34 liable for a civil penalty as follows:

35 (1) for an employer with 15 to 24 employees at the time of the
36 violation:

37 (a) a Type 1 violation shall be subject to a fine of up to \$500;

38 (b) a Type 2 violation shall be subject to a fine of up to \$750;

39 (2) for an employer with 25 to 74 employees at the time of the
40 violation:

41 (a) a Type 1 violation shall be subject to a fine of up to \$1,000;

42 (b) a Type 2 violation shall be subject to a fine of up to \$1,500;

43 (3) for employers with 75 to 149 employees at the time of the
44 violation:

45 (a) a Type 1 violation shall be subject to a fine of up to \$2,000;

46 (b) a Type 2 violation shall be subject to a fine of up to \$2,500;

- 1 (4) for employers with 150 to 249 employees at the time of the
2 violation:
- 3 (a) a Type 1 violation shall be subject to a fine of up to \$3,000;
4 (b) a Type 2 violation shall be subject to a fine of up to \$4,500;
5 and
- 6 (5) for employers with 250 or more employees at the time of the
7 violation:
- 8 (a) a Type 1 violation shall be subject to a fine of up to \$5,000
9 (b) a Type 2 violation shall be subject to a fine of up to \$7,500.
- 10 c. The penalty prescribed in this section shall be collected and
11 enforced by summary proceedings under the "Penalty Enforcement
12 Law of 1999," P.L.1999, c.274 (C.2A:58-10 et seq.).
- 13 d. Good faith shall be a valid defense to an employer's initial
14 Type 1 violation.

1 17. The Criminal Record Consideration Form shall appear as
2 follows:

3 In compliance with "The New Jersey Opportunity to Compete Act," this
4 form must be completed after any adverse employment decision is made
5 based on the results of a criminal history inquiry, unless the decision was
6 made in accordance with any other federal or State law, regulation, or rule, or
7 the criminal history information was voluntarily disclosed prior to receiving
8 a conditional offer of employment. Upon receipt of this form, the candidate
9 or employee may dispute the results of the criminal history inquiry or
10 respond with additional information within 10 business days, and the
11 employer may, but need not hold the job open during this time.

12
13 Employers must keep a copy of this form in their records for three years from
14 the date of completion.

15
16 **Candidate/Employee Name (Print):**
17 _____

18
19 1. Has an adverse employment decision been made pertaining to the
20 candidate or employee? An adverse employment decision may be the
21 revocation of the conditional offer of employment (pertaining to either an
22 external applicant or an internal promotional candidate), the termination of
23 the employment, or the demotion of an employee.

24
25 Yes No

26
27 2. Was a criminal history inquiry conducted on this candidate or
28 employee?

29
30 Yes No

31
32 3. Were the results of this criminal history inquiry the reason for the
33 adverse employment decision?

34
35 Yes No

36
37 4. Was consideration given to any information, if provided by the
38 candidate, pertaining to the degree of rehabilitation and good conduct or
39 inaccuracies in the criminal history?

40
41 Yes No N/A

42
43 5. Was consideration given to the amount of time that has passed since
44 the conviction or release from custody?

45
46 Yes No

47
48 6. Was the particular nature of the criminal record evaluated as it
49 relates to the duties and setting of the job?

50
51 Yes No

52
53 **Employer Name (Print):**
54 _____

55
56 **Employer Signature:**
57 _____

58
59 **Date:** _____
60
61

1 18. The Notice of Rights shall appear as follows:
2

3 **What happens when my criminal record is checked by an**
4 **employer?**
5

6 “The New Jersey Opportunity to Compete Act” requires that
7 employers follow certain procedures when asking about your criminal
8 history. Any inquiry into your criminal history must occur after the
9 employer has given you a conditional offer of employment, unless any
10 federal or State law, regulation, or rule requires or permits the
11 consideration of certain criminal convictions when making employment
12 decisions.
13

14 In connection with any decision regarding employment, an employer
15 may not consider:

- 16 1. Convictions for indictable offenses (which are like “felonies”) in
17 New Jersey (or similar crimes from other places) for which you were
18 sentenced or released from custody (whichever is more recent) more than
19 10 years ago;
- 20 2. Convictions for a disorderly persons offenses (which are like
21 “misdemeanors”) in New Jersey (or similar crimes from other places) for
22 which you were sentenced or released from custody (whichever is more
23 recent) more than five years ago;
- 24 3. Arrests that are not still pending;
- 25 4. Any records which have been erased, expunged, pardoned, or
26 otherwise legally nullified; or
- 27 5. Any juvenile adjudications of delinquency, any municipal
28 ordinance violations, or any records which have been sealed.
29

30 However, if you have received a criminal sentence or been released
31 from custody for an indictable offense within the past 10 years or for a
32 disorderly persons offense within the past five years, an employer is
33 allowed to consider all of your criminal convictions, no matter how old.
34 Additionally, if you have ever been convicted of criminal homicide
35 (which includes murder and manslaughter), attempted murder, an arson-
36 related offense, a sex offense requiring registry, robbery, kidnapping,
37 human trafficking, certain weapons offenses, burglary, aggravated assault,
38 or a terrorism-related offense, then an employer may consider these
39 convictions no matter when they occurred and any other convictions you
40 may have.
41

42 If an employer asks about your criminal history, the employer also
43 must consider these factors:

- 44 1. Information that you provide about your rehabilitation and good
45 conduct, including any government-issued certificates of rehabilitation;
- 46 2. Information that you provide related to any inaccuracies in your
47 criminal record;
- 48 3. How much time has passed since the conviction or release from
49 custody; and
- 50 4. How the criminal history relates to your suitability for the job.
51

1 If the employer has any questions or concerns about your criminal
2 history, the employer must first make a good faith effort to discuss with
3 you any such questions or concerns your history may have raised. If the
4 employer then withdraws your conditional offer or makes any other
5 adverse employment decision, you will receive a copy of the results of the
6 criminal history inquiry and a completed Criminal Record Consideration
7 Form notifying you of the employer's consideration of your criminal
8 history.

9 You will have 10 BUSINESS DAYS to respond to the employer. In
10 your response you may: (1) challenge the accuracy of the results of the
11 criminal history inquiry and (2) present additional evidence of
12 rehabilitation or other information for the employer to consider. An
13 employer may hold the position open but is not required to do so.

14
15 If you believe that the employer has not followed these procedures,
16 please call the Department of Law and Public Safety, Division on Civil
17 Rights at 609-292-4605.

18
19 19. Section 13 of this act shall take effect the first day of the
20 first month next following the date of enactment, and the remainder
21 of this act shall take effect on the first day of the seventh month
22 next following the date of enactment. The Director of the Division
23 on Civil Rights may take any anticipatory administrative action in
24 advance as shall be necessary for the implementation of this act.

25
26
27 STATEMENT

28
29 This bill, entitled "The Opportunity to Compete Act,"
30 supplements the State's civil rights law to provide persons with
31 criminal histories certain protections when seeking employment.

32 Specifically, this bill prohibits an employer from conducting a
33 criminal background check on job candidates during the pre-
34 application and application process. Under the bill, the application
35 process begins when a candidate inquires about employment and
36 ends when a employer has extended a conditional offer of
37 employment. The pre-application period precedes the application
38 period and includes recruitment and solicitation of candidates.

39 Once a candidate has been found to be qualified and has received
40 a conditional offer of employment, an employer is authorized to
41 inquire about and consider a candidate's criminal history. Before an
42 inquiry into the candidate's criminal history is made, the employer
43 must provide the candidate written notice of the inquiry and obtain
44 the candidate's consent to it. The candidate also shall be provided
45 with a written "Notice of Rights" outlining the protections that the
46 candidate is entitled to under the committee substitute.

47 The bill authorizes an employer to consider in its employment
48 decision convictions for certain serious crimes regardless of when
49 the crime occurred. These crimes include murder or attempted

1 murder, arson, a sex offense for which the offender served time in
2 State prison and is required to register as a sex offender, robbery,
3 kidnapping, human trafficking, possession of weapons, burglary,
4 aggravated assault, and terrorism. An employer may only consider
5 other crimes of the first through fourth degree if the crime was
6 committed within the last 10 years. An employer also may consider
7 convictions for a disorderly persons offense that occurred within the
8 last five years and pending criminal charges until the case is
9 dismissed. The bill further provides that if any of the candidate's
10 criminal history is subject to consideration by the employer due to
11 the fact that it occurred within 10 years for crimes of the first
12 through fourth degree, or five years for disorderly persons offenses,
13 then the employer may also consider any prior criminal history
14 regardless of when it occurred.

15 Under the bill, when making an employment decision, an
16 employer may not consider or require any candidate to disclose or
17 reveal any arrest or criminal accusation made against the candidate
18 which is not then pending against that person or which did not
19 result in a conviction. Records which have been erased or
20 expunged, records of an executive pardon, or legally nullified
21 records may not be considered by an employer, nor may the
22 employer consider an adjudication of delinquency of a juvenile, any
23 violation of a municipal ordinance, or any record which has been
24 sealed.

25 When an employer is deciding whether to hire a candidate, the
26 employer must consider the results of any criminal history inquiry
27 in combination with such as factors as: (1) any information, if
28 provided to the employer by or on behalf of the candidate,
29 pertaining to the degree of the candidate's rehabilitation and good
30 conduct, including any certificate of rehabilitation issued by any
31 State or federal agency; (2) any information, if provided to the
32 employer by or on behalf of the candidate, pertaining to the
33 accuracy of the criminal record; (3) the amount of time that has
34 elapsed since the conviction or release from custody; (4) the nature
35 and circumstances surrounding the crime or crimes; and (5) the
36 duties and settings of the job sought or held. The reasonable
37 consideration of these factors is to be documented by the employer
38 through the use of the form known as the Criminal Record
39 Consideration Form.

40 The bill requires employers to make a good faith effort to discuss
41 with the candidate any questions or concerns related to the
42 candidate's criminal history and provide the candidate with an
43 opportunity to explain and contextualize any crime or offense,
44 provide evidence of rehabilitation, and rebut any inaccuracies in the
45 criminal history.

46 If an employer makes an adverse employment decision, such as
47 rescinding an offer of employment, after a discussion of a

1 candidate's criminal history, the employer must provide the
2 candidate in one package by registered mail: (1) written
3 notification of the adverse employment decision; 2) a copy of the
4 results of the criminal history inquiry; and (3) a completed copy of
5 the Criminal Record Consideration Form.

6 A candidate who received an adverse employment decision has
7 10 business days after receipt of this written information to provide
8 evidence to the employer related to the accuracy and relevance of
9 the results of the criminal history inquiry. An employer may, but is
10 not required to, hold the position open for the candidate. An
11 employer who maintains an adverse employment decision after
12 considering any additional information provided by the candidate is
13 required to provide to the candidate a written notice of the final
14 decision within 45 days of receipt of the additional information.

15 The bill provides that nothing provided therein is actionable by
16 private parties. Employers are subject to civil fines for failure to
17 comply with the provisions of the bill ranging from \$500 to \$7,500
18 depending on the number of employees the employer has and
19 whether the employer has committed previous violations.

ASSEMBLY BUDGET COMMITTEE

STATEMENT TO

ASSEMBLY COMMITTEE SUBSTITUTE FOR ASSEMBLY, No. 1999

STATE OF NEW JERSEY

DATED: JUNE 24, 2014

The Assembly Budget Committee reports favorably an Assembly Committee Substitute for Assembly Bill No. 1999.

This Assembly Committee Substitute, entitled “The Opportunity to Compete Act,” provides individuals who have a criminal record with certain protections when they seek employment.

The substitute prohibits employers from inquiring, either orally or in writing, about a candidate’s criminal record and from requiring a candidate to complete an application that makes such inquiries during the initial employment application process. “Initial employment application process” is defined in the bill as the period beginning when an applicant for employment first makes an inquiry to an employer about a prospective employment position or job vacancy or when an employer first makes any inquiry to an applicant for employment about a prospective employment position or job vacancy, and ending when an employer has conducted an interview and determined the applicant is qualified, whether in person or by any other means, and selected the applicant as the employer’s first choice to fill the position.

The substitute does not permit an employer to make oral or written inquiries concerning a candidate’s criminal record until the initial employment application process has concluded, except that the employer may make inquiries during the application process about any aspect of a candidate’s criminal record that the candidate voluntarily discloses. Employers are not precluded under the substitute from refusing to hire a candidate for employment based upon the candidate’s criminal record, provided that the refusal is consistent with the provisions of the substitute.

The substitute also prohibits an employer from knowingly or purposefully publishing an advertisement soliciting candidates for employment which states that the employer will not consider a candidate who has been arrested for or convicted of a crime or offense. The substitute’s restrictions regarding employer inquiries and advertising do not apply if: (1) the position is in law enforcement, corrections, the judiciary, homeland, security or emergency management; (2) a criminal history record background check is required for the position by law; (3) the position, by law, precludes

employment of a person with an arrest for or a conviction of a crime or offense; (4) the employer is restricted from specified business activities based on the criminal record of its employees; or (5) the employment sought or being considered is for a position designated by the employer to be part of a program or systematic effort designed predominantly or exclusively to encourage the employment of persons who have been arrested for or convicted of crimes or offenses.

An employer who violates the provisions of this substitute is liable for a civil penalty of up to \$1,000 for the first violation, \$5,000 for the second violation, and \$10,000 for each subsequent violation. The substitute does not create or establish a standard of care or duty for employers with respect to any law. Evidence that an employer has violated the bill's provisions is not admissible in any other legal proceeding. Further, the substitute does not create, establish, or authorize a private cause of action by an aggrieved person against an employer who has violated the bill's provisions.

The substitute prohibits the governing body of a county or municipality from adopting any ordinance, resolution, law, rule or regulation regarding criminal histories in the employment context, except for ordinances adopted to regulate county or municipal operations. The substitute's provisions preempt any ordinance, resolution, law, rule or regulation in effect prior to the substitute's effective date regarding criminal histories in the employment context, except for ordinances adopted to regulate county or municipal operations.

The substitute takes effect on the first day of the seventh month next following the date of enactment, but permits the Commissioner of Labor and Workforce Development to take anticipatory administrative actions.

FISCAL IMPACT:

This substitute bill was not certified as requiring a fiscal note.

STATEMENT TO

**ASSEMBLY COMMITTEE SUBSTITUTE FOR
ASSEMBLY, No. 1999**

with Senate Floor Amendments
(Proposed by Senator CUNNINGHAM)

ADOPTED: JUNE 26, 2014

These Senate amendments:

1. Permit an employer to make inquiries regarding a job applicant's criminal record after the conclusion of the initial application process, which is defined as ending when the employer has conducted a first interview of the applicant, instead of permitting the employer to make those inquiries only after selecting the applicant as the employer's first choice to fill the position;

2. Permit an employer to make any inquiry about an applicant's criminal record during the initial application process, if the applicant voluntarily discloses any information about the applicant's criminal record, instead of restricting such inquiry to a reasonable, limited inquiry regarding the specific disclosure;

3. Eliminate from the bill, after the conclusion of the initial application process, all restrictions upon what information an employer may request from, or consider in an employment decision about, an applicant regarding the applicant's criminal record, including information about offenses which occurred longer ago than specified periods of time, information about minor nonviolent offenses and information about arrests or accusations without convictions, except that the employer may not consider a record that has been expunged or erased through executive pardon;

4. Eliminate the bill's requirement that an employer consider, and discuss in good faith with an applicant, information regarding the accuracy of criminal record information, the degree of rehabilitation or good conduct of the applicant, the nature of the offense and how long ago it occurred, the duties and setting of the job, and other information provided by the applicant; and

5. Provide that the exception from preemption of local ordinances regarding criminal record inquiries for local governmental operations applies to the operations of municipalities, but not the operations of counties.

SENATE, No. 2124

STATE OF NEW JERSEY 216th LEGISLATURE

INTRODUCED JUNE 2, 2014

Sponsored by:

Senator SANDRA B. CUNNINGHAM

District 31 (Hudson)

Senator RAYMOND J. LESNIAK

District 20 (Union)

Senator M. TERESA RUIZ

District 29 (Essex)

Co-Sponsored by:

Senator Pou

SYNOPSIS

“The Opportunity to Compete Act;” establishes certain employment rights for persons with criminal record.

CURRENT VERSION OF TEXT

As introduced.



1 AN ACT concerning certain employment rights of persons with
2 criminal records and supplementing Title 34 of the Revised
3 Statutes.

4

5 **BE IT ENACTED** *by the Senate and General Assembly of the State*
6 *of New Jersey:*

7

8 1. This act shall be known and may be cited as “The
9 Opportunity to Compete Act.”

10

11 2. The Legislature finds and declares that:

12 a. Removing obstacles to employment for people with criminal
13 records provides economic and social opportunities to a large group
14 of people living in New Jersey, increasing the productivity, health,
15 and safety of New Jersey communities.

16 b. Criminal background checks by employers have increased
17 dramatically in recent years, with estimates of 90 percent of large
18 employers in the United States now conducting background checks
19 as part of the hiring process.

20 c. Barriers to employment based on criminal records stand to
21 affect an estimated 65 million adults in the United States with
22 criminal records.

23 d. Employment advertisements in New Jersey frequently include
24 language regarding criminal records that either explicitly precludes
25 or strongly dissuades people from applying.

26 e. Individuals with criminal records represent a group of job
27 seekers ready and able to contribute and add to the workforce.

28 f. Securing employment significantly reduces the risk of
29 recidivism for persons with criminal records.

30 g. Currently, at least 64 states, counties, and cities have enacted
31 or passed statutes, ordinances, or policies to remove barriers to the
32 employment of persons with criminal histories by public and private
33 employers.

34 h. The nation’s largest public employer, the United States
35 government, and the nation’s largest private employer, Wal-Mart
36 Stores, Inc., have each implemented their own policies removing
37 barriers to the employment of persons with criminal histories.

38 i. Numerous other major businesses and organizations have
39 voluntarily implemented their own policies removing barriers to the
40 employment of those with criminal histories.

41 j. It is the intent and purpose of “The Opportunity to Compete
42 Act” to improve the economic viability, health, and security of New
43 Jersey communities and to assist people with criminal records to
44 reintegrate into the community, become productive members of the
45 workforce, and to provide for their families and themselves.

46

47 3. As used in this act:

48 “Advertisement” means any circulation, mailing, posting, or any
49 other form of publication, utilizing any media, promoting an

1 employer or intending to alert its audience, regardless of size, to the
2 availability of any position of employment.

3 “Applicant for employment” means any person whom an
4 employer considers when identifying potential employees, through
5 any means, including, but not limited to, recruitment, solicitation,
6 or seeking personal information, or any person who requests to be
7 considered for employment by an employer, or who requests
8 information from an employer related to seeking employment, and
9 shall include any person who currently is an employee of the
10 employer.

11 “Criminal record” means information collected by criminal
12 justice agencies on individuals consisting of identifiable
13 descriptions and notations of arrests, detentions, indictments, or
14 other formal criminal charges, and any disposition arising
15 therefrom, including acquittal, sentencing, correctional supervision,
16 release or conviction, including, but not limited to, any sentence
17 arising from a verdict or plea of guilty or nolo contendere, including
18 a sentence of incarceration, a suspended sentence, a sentence of
19 probation, or a sentence of conditional discharge.

20 “Employee” shall mean a person who is hired for a wage, salary,
21 fee, or payment to perform work for an employer, but excludes any
22 person employed in the domestic service of any family or person at
23 the person’s home, any independent contractors, or any directors or
24 trustees. The term also shall include interns and apprentices.

25 “Employer” means any person, company, corporation, firm,
26 labor organization, or association which has 15 or more employees
27 over 20 calendar weeks and does business, employs persons, or
28 takes applications for employment within this State, including the
29 State, any county or municipality, or any instrumentality thereof.
30 The term shall include job placement and referral agencies and
31 other employment agencies, but excludes the United States or any
32 of its departments, agencies, boards, or commissions, or any
33 employee or agent thereof.

34 “Employment” means any occupation, vocation, job, or work
35 with pay, including temporary or seasonal work, contingent work,
36 and work through the services of a temporary or other employment
37 agency; any form of vocational apprenticeship; or any internship.
38 The physical location of the prospective employment shall be in
39 whole, or substantial part, within this State.

40 “Employment application” means a form, questionnaire or
41 similar document or collection of documents that an applicant for
42 employment is required by an employer to complete.

43 “Initial employment application process” means the period
44 beginning when an applicant for employment first makes an inquiry
45 to an employer about a prospective employment position or job
46 vacancy or when an employer first makes any inquiry to an
47 applicant for employment about a prospective employment position
48 or job vacancy, and ending when an employer has conducted a first

1 interview, whether in person or by any other means, of an applicant
2 for employment.

3

4 4. a. Except as otherwise provided in section 6 of this act:

5 (1) An employer shall not require an applicant for employment
6 to complete any employment application that makes any inquiries
7 regarding an applicant's criminal record during the initial
8 employment application process.

9 (2) An employer shall not make any oral or written inquiry
10 regarding an applicant's criminal record during the initial
11 employment application process.

12 b. Notwithstanding the provisions of subsection a. of this
13 section, if an applicant discloses any information regarding the
14 applicant's criminal record, by voluntary oral or written disclosure,
15 during the initial employment application process, the employer
16 may make inquiries regarding the applicant's criminal record during
17 the initial employment application process.

18 c. Nothing set forth in this section shall be construed to prohibit
19 an employer from requiring an applicant for employment to
20 complete an employment application that makes any inquiries
21 regarding an applicant's criminal record after the initial
22 employment application process has concluded or from making any
23 oral or written inquiries regarding an applicant's criminal record
24 after the initial employment application process has concluded. The
25 provisions of this section shall not preclude an employer from
26 refusing to hire an applicant for employment based upon the
27 applicant's criminal record, unless the criminal record or relevant
28 portion thereof has been expunged or erased through executive
29 pardon, provided that such refusal is consistent with other
30 applicable laws, rules and regulations.

31

32 5. a. Unless otherwise permitted or required by law, an
33 employer shall not knowingly or purposefully publish, or cause to
34 be published, any advertisement that solicits applicants for
35 employment where that advertisement explicitly provides that the
36 employer will not consider any applicant who has been arrested or
37 convicted of one or more crimes or offenses. The provisions of this
38 section shall not apply to any advertisement that solicits applicants
39 for a position in law enforcement, corrections, the judiciary,
40 homeland security, or emergency management, or any other
41 employment position where a criminal history record background
42 check is required by law, rule or regulation, or where an arrest or
43 conviction by the person for one or more crimes or offenses would
44 or may preclude the person from holding such employment as
45 required by any law, rule or regulation, or where any law, rule, or
46 regulation restricts an employer's ability to engage in specified
47 business activities based on the criminal records of its employees.
48 Nothing set forth in this section shall be construed as prohibiting an
49 employer from publishing, or causing to be published, an

1 advertisement that contains any provision setting forth any other
2 qualifications for employment, as permitted by law, including, but
3 not limited to, the holding of a current and valid professional or
4 occupational license, certificate, registration, permit or other
5 credential, or a minimum level of education, training or
6 professional, occupational, or field experience.

7 b. Except where a criminal history record background check is
8 required by any law, rule or regulation, an employer who knowingly
9 or purposefully publishes, or causes to be published, any
10 advertisement that solicits applicants for employment where the
11 advertisement explicitly provides that the applicant will be required
12 to submit to a criminal history record background check shall cause
13 the following to be stated in the advertisement: “New Jersey law
14 prohibits employers from considering the criminal records of
15 applicants for employment under certain circumstances.”
16

17 6. The provisions of subsection a. of section 4 of this act shall
18 not prohibit an employer from requiring an applicant for
19 employment to complete an employment application that makes any
20 inquiries regarding an applicant’s criminal record during the initial
21 employment application process or from making any oral or written
22 inquiries regarding an applicant’s criminal record during the initial
23 employment application process if:

24 a. The employment sought or being considered is for a position
25 in law enforcement, corrections, the judiciary, homeland security or
26 emergency management;

27 b. The employment sought or being considered is for a position
28 where a criminal history record background check is required by
29 law, rule or regulation, or where an arrest or conviction by the
30 person for one or more crimes or offenses would or may preclude
31 the person from holding such employment as required by any law,
32 rule or regulation, or where any law, rule, or regulation restricts an
33 employer’s ability to engage in specified business activities based
34 on the criminal records of its employees; or

35 c. The employment sought or being considered is for a position
36 designated by the employer to be part of a program or systematic
37 effort designed predominantly or exclusively to encourage the
38 employment of persons who have been arrested or convicted of one
39 or more crimes or offenses.
40

41 7. a. The governing body of a county or municipality shall not
42 adopt any ordinance, resolution, law, rule or regulation that
43 conflicts with the provisions of this act.

44 b. The provisions of this act shall preempt any ordinance,
45 resolution, law, rule or regulation adopted by the governing body of
46 a county or municipality prior to the effective date of this act that
47 conflicts with the provisions of this act.

1 8. The penalties set forth in section 9 of this act shall be the sole
2 remedy provided for violations of this act. Nothing set forth in this
3 act shall be construed as creating or establishing a standard of care
4 or duty for employers with respect to any law other than this act.
5 Evidence that an employer has violated, or is alleged to have
6 violated, the provisions of this act, shall not be admissible in any
7 legal proceeding with respect to any law or claim other than a
8 proceeding to enforce the provisions of this act. Nothing set forth
9 in this act shall be construed as creating, establishing or authorizing
10 a private cause of action by an aggrieved person against an
11 employer who has violated, or is alleged to have violated, the
12 provisions of this act.

13

14 9. Any employer who violates this act shall be liable for a civil
15 penalty in an amount not to exceed \$1,000 for the first violation,
16 \$5,000 for the second violation, and \$10,000 for each subsequent
17 violation collectible by the Commissioner of Labor and Workforce
18 Development in a summary proceeding pursuant to the "Penalty
19 Enforcement Law of 1999," P.L.1999, c.274 (C.2A:58-10 et seq.).

20

21 10. This act shall take effect the first day of the seventh month
22 next following the date of enactment, but the Commissioner of
23 Labor and Workforce Development may take any anticipatory
24 administrative action in advance as shall be necessary for the
25 implementation of this act.

26

27

28

STATEMENT

29

30 This bill, entitled "The Opportunity to Compete Act," provides
31 job applicants who have a criminal record with certain protections
32 when they seek employment.

33 The bill specifically prohibits employers from inquiring, either
34 orally or in writing, about a job applicant's criminal record and
35 from requiring a job applicant to complete an application that
36 makes such inquiries during the initial employment application
37 process. "Initial employment application process" is defined in the
38 bill as the period beginning when an applicant for employment first
39 makes an inquiry to an employer about a prospective employment
40 position or job vacancy or when an employer first makes any
41 inquiry to an applicant for employment about a prospective
42 employment position or job vacancy. The initial employment
43 application process ends when an employer has conducted a first
44 interview of the applicant, whether in person or by other means.

45 An employer is authorized under the bill to make inquiries
46 during the initial employment application process about a job
47 applicant's criminal record if the applicant, either orally or in
48 writing, voluntarily discloses such information. An employer is
49 also authorized to make oral or written inquiries concerning an

1 applicant's criminal record or require the applicant to complete an
2 employment application making such inquiries after the initial
3 employment application process has concluded. Employers are not
4 precluded under the bill from refusing to hire an applicant for
5 employment based upon the applicant's criminal record as long as
6 the refusal is consistent with other applicable laws, rules and
7 regulations.

8 An employer also is authorized under the bill to make inquiries
9 during the initial employment application process about an
10 applicant's criminal record if: (1) the position is in law
11 enforcement, corrections, the judiciary, homeland, security or
12 emergency management; (2) a criminal history record background
13 check is required for the position by law; (3) the position, by law,
14 precludes employment of a person with an arrest for or a conviction
15 of a crime or offense; (4) the employer is restricted from specified
16 business activities based on the criminal record of its employees; or
17 (5) the employment sought or being considered is for a position
18 designated by the employer to be part of a program or systematic
19 effort designed predominantly or exclusively to encourage the
20 employment of persons who have been arrested for or convicted of
21 crimes or offenses.

22 The bill also prohibits an employer from knowingly or
23 purposefully publishing an advertisement soliciting applicants for
24 employment which states that the employer will not consider an
25 applicant who has been arrested for or convicted of a crime or
26 offense. The bill makes exceptions for advertisements for (1) law
27 enforcement, judicial, homeland security, and emergency
28 management positions; (2) positions for which a background check
29 is required by law; (3) positions which by law preclude employment
30 of a person with an arrest for or a conviction of a crime or offense;
31 and (4) positions with an employer which is restricted from
32 specified business activities based on the criminal record of its
33 employees.

34 An employer who violates the provisions of this bill is liable for
35 a civil penalty of up to \$1,000 for the first violation, \$5,000 for the
36 second violation, and \$10,000 for each subsequent violation. The
37 bill does not create or establish a standard of care or duty for
38 employers with respect to any law. Evidence that an employer has
39 violated the bill's provisions are not admissible in any other legal
40 proceeding. Further, the bill does not create, establish, or authorize
41 a private cause of action by an aggrieved person against an
42 employer who has violated the bill's provisions.

43 Finally, the bill prohibits the governing body of a county or
44 municipality from adopting any ordinance, resolution, law, rule or
45 regulation that conflicts with the bill's provisions. Further, the
46 bill's provisions preempt any ordinance, resolution, law, rule or
47 regulation in effect prior to the bill's effective date that conflicts
48 with its provisions.

SENATE BUDGET AND APPROPRIATIONS COMMITTEE

STATEMENT TO

SENATE, No. 2124

with committee amendments

STATE OF NEW JERSEY

DATED: JUNE 5, 2014

The Senate Budget and Appropriations Committee reports favorably Senate Bill No. 2124, with committee amendments.

As amended, the bill, entitled “The Opportunity to Compete Act,” provides job applicants who have a criminal record with certain protections when they seek employment.

The bill specifically prohibits employers from inquiring, either orally or in writing, about a job applicant’s criminal record and from requiring a job applicant to complete an application that makes such inquiries during the initial employment application process. “Initial employment application process” is defined in the bill as the period beginning when an applicant for employment first makes an inquiry to an employer about a prospective employment position or job vacancy or when an employer first makes any inquiry to an applicant for employment about a prospective employment position or job vacancy. The initial employment application process ends when an employer has conducted a first interview of the applicant, whether in person or by other means.

An employer is authorized under the bill to make inquiries during the initial employment application process about a job applicant’s criminal record if the applicant, either orally or in writing, voluntarily discloses such information. An employer is also authorized to make oral or written inquiries concerning an applicant’s criminal record or require the applicant to complete an employment application making such inquiries after the initial employment application process has concluded. Employers are not precluded under the bill from refusing to hire an applicant for employment based upon the applicant’s criminal record as long as the refusal is consistent with other applicable laws, rules and regulations.

An employer also is authorized under the bill to make inquiries during the initial employment application process about an applicant’s criminal record if: (1) the position is in law enforcement, corrections, the judiciary, homeland, security or emergency management; (2) a criminal history record background check is required for the position by law; (3) the position, by law, precludes employment of a person with an arrest for or a conviction of a crime or offense; (4) the employer is restricted from specified business activities based on the

criminal record of its employees; or (5) the employment sought or being considered is for a position designated by the employer to be part of a program or systematic effort designed predominantly or exclusively to encourage the employment of persons who have been arrested for or convicted of crimes or offenses.

The bill also prohibits an employer from knowingly or purposefully publishing an advertisement soliciting applicants for employment which states that the employer will not consider an applicant who has been arrested for or convicted of a crime or offense. The bill makes exceptions for advertisements for (1) law enforcement, judicial, homeland security, and emergency management positions; (2) positions for which a background check is required by law; (3) positions which by law preclude employment of a person with an arrest for or a conviction of a crime or offense; and (4) positions with an employer that is restricted from specified business activities based on the criminal record of its employees.

An employer who violates the provisions of this bill is liable for a civil penalty of up to \$1,000 for the first violation, \$5,000 for the second violation, and \$10,000 for each subsequent violation. The bill does not create or establish a standard of care or duty for employers with respect to any law. Evidence that an employer has violated the amended bill's provisions is not admissible in any other legal proceeding. Further, the bill does not create, establish, or authorize a private cause of action by an aggrieved person against an employer who has violated the bill's provisions.

Finally, the bill prohibits the governing body of a county or municipality from adopting any ordinance, resolution, law, rule or regulation that conflicts with the bill's provisions. The bill's provisions preempt any ordinance, resolution, law, rule or regulation in effect prior to the bill's effective date that conflicts with its provisions.

The bill takes effect on the first day of the seventh month next following the date of enactment, but permits the Commissioner of Labor and Workforce Development to take anticipatory administrative actions.

COMMITTEE AMENDMENTS:

The committee amendments clarify the findings and declarations section of the bill. Additionally, the amendments delete a provision that would have required employers, in certain circumstances, to include in any published advertisement soliciting applicants for employment the following statement: "New Jersey law prohibits employers from considering the criminal records of applicants for employment under certain circumstances."

FISCAL IMPACT:

The bill has not been certified as requiring a fiscal note.

STATEMENT TO
[First Reprint]
SENATE, No. 2124

with Senate Floor Amendments
(Proposed by Senator CUNNINGHAM)

ADOPTED: JUNE 23, 2014

Senate Bill No. 2124 (1R), entitled “The Opportunity to Compete Act,” prohibits employers from inquiring about a job applicant’s criminal record and from requiring a job applicant to complete an application that makes such inquiries during the initial employment application process.

Under the bill, a governing body of a county or municipality is prohibited from adopting any ordinance, resolution, law, rule or regulation that conflicts with the bill’s provisions and any ordinance, resolution, law, rule or regulation in effect prior to the bill’s effective date that conflicts with the bill’s provisions would be preempted.

Under these Senate amendments, county or municipal governing bodies are prohibited from adopting ordinances, resolutions, laws, rules or regulations regarding criminal histories in the employment context, except for ordinances adopted to regulate municipal operations. Further, any ordinance, resolution, law, rule or regulation adopted by the county or municipal governing body prior to the effective date of the bill regarding criminal histories in the employment context, except for ordinances adopted to regulate municipal operations, would be preempted.