

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.

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

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

1. This act shall be known and may be cited as “The Opportunity to Compete Act.”
2. The Legislature finds and declares that:
 - a. Removing obstacles to employment for people with criminal records provides economic and social opportunities to a large group of people living in New Jersey, increasing the productivity, health, and safety of New Jersey communities.
 - b. Criminal background checks by employers have increased dramatically in recent years, with

estimates of 90 percent of large employers in the United States now conducting background checks as part of the hiring process.

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

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

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

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

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

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

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

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

3. As used in this act:

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

"Applicant for employment" means any person whom an employer considers when identifying potential employees, through any means, including, but not limited to, recruitment, solicitation, or seeking personal information, or any person who requests to be considered for employment by an employer, or who requests information from an employer related to seeking employment, and shall include any person who currently is an employee of the employer.

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

“Employee” shall mean a person who is hired for a wage, salary, fee, or payment to perform work for an employer, but excludes any person employed in the domestic service of any family or person at the person’s home, any independent contractors, or any directors or trustees. The term also shall include interns and apprentices. “Employer” means any person, company, corporation, firm, labor organization, or association which has 15 or more employees over 20 calendar weeks and does business, employs persons, or takes applications for employment within this State, including the State, any county or municipality, or any instrumentality thereof. The term shall include job placement and referral agencies and other employment agencies, but excludes the United States or any of its departments, agencies, boards, or commissions, or any employee or agent thereof.

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

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

“Initial employment application process” means 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 a first interview, whether in person or by any other means, of an applicant for employment.

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

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

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

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

c. Nothing set forth in this section shall be construed to prohibit an employer from requiring an applicant for employment to complete an employment application that makes any inquiries regarding an applicant’s criminal record after the initial employment application process has concluded or from making any oral or written inquiries regarding an applicant’s criminal record after the initial employment application process has concluded. The provisions of this section shall not preclude an employer from refusing to hire an applicant for employment based upon the applicant’s criminal record, unless the criminal record or revelant portion thereof has been expunged or erased through

executive pardon, provided that such refusal is consistent with other applicable laws, rules and regulations.

5. a. Unless otherwise permitted or required by law, an employer shall not knowingly or purposefully publish, or cause to be published, any advertisement that solicits applicants for employment where that advertisement explicitly provides that the employer will not consider any applicant who has been arrested or convicted of one or more crimes or offenses. The provisions of this section shall not apply to any advertisement that solicits applicants for a position in law enforcement, corrections, the judiciary, homeland security, or emergency management, or any other employment position where a criminal history record background check is required by law, rule or regulation, or where an arrest or conviction by the person for one or more crimes or offenses would or may preclude the person from holding such employment as required by any law, rule or regulation, or where any law, rule, or regulation restricts an employer's ability to engage in specified business activities based on the criminal records of its employees. Nothing set forth in this section shall be construed as prohibiting an employer from publishing, or causing to be published, an advertisement that contains any provision setting forth any other qualifications for employment, as permitted by law, including, but not limited to, the holding of a current and valid professional or occupational license, certificate, registration, permit or other credential, or a minimum level of education, training or professional, occupational, or field experience.

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

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

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

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

employees; or

c. 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 or convicted of one or more crimes or offenses.

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

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

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

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

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

STATEMENT

This 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 which 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 bill’s provisions are 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. Further, 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.