

# ASSEMBLY, No. 3837

## STATE OF NEW JERSEY 215th LEGISLATURE

INTRODUCED FEBRUARY 14, 2013

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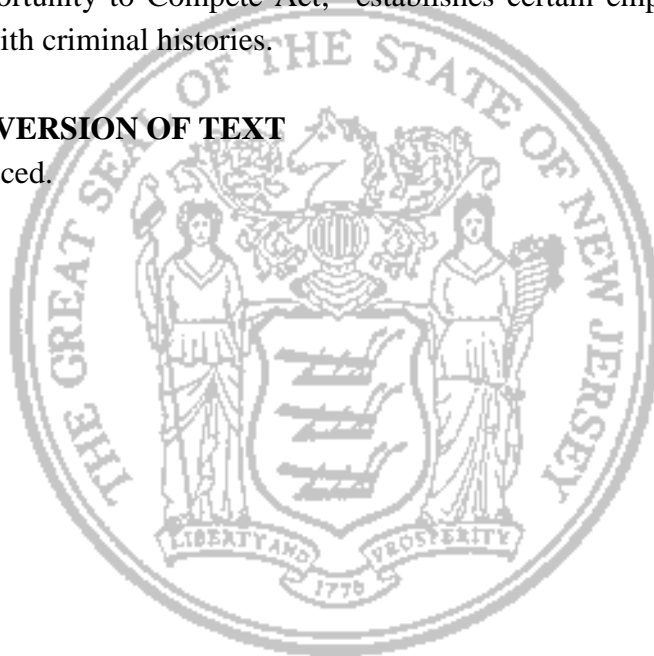
**Assemblywoman Jasey**

**SYNOPSIS**

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

**CURRENT VERSION OF TEXT**

As introduced.



**(Sponsorship Updated As Of: 12/17/2013)**

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 “The  
8 Opportunity to Compete Act.”

9

10 2. The Legislature finds and declares that:

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

15 b. Criminal background checks by employers have increased  
16 dramatically in recent years, with estimates of ninety percent of  
17 large employers in the United States now conducting background  
18 checks 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21 Investigation (FBI) background checks are out of date 50 percent of  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. Barriers to employment based on criminal records  
27 disproportionately exclude racial and ethnic minorities.

28 f. Employment advertisements in New Jersey frequently  
29 include language regarding criminal records that either explicitly  
30 preclude or strongly dissuade people from applying.

31 g. Individuals with criminal records represent a group of job  
32 seekers ready and able to contribute to the workforce.

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

37 i. Securing employment significantly reduces the risk of  
38 recidivism.

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

44 k. Currently, at least 50 states, counties, and cities have  
45 enacted or passed statutes, ordinances, or policies to remove  
46 barriers to the employment of persons with criminal histories by  
47 public and private employers.

1       1. At least six of New Jersey’s sixteen largest employers have  
2 implemented their own company-wide policies removing barriers to  
3 the employment of persons with criminal histories.

4       m. The nation’s largest public employer, the United States  
5 federal government, and the nation’s largest private employer, Wal-  
6 Mart Stores, Inc., have each implemented their own policies  
7 removing barriers to the employment of persons with criminal  
8 histories.

9       n. Numerous other major businesses and organizations have  
10 voluntarily implemented their own policies removing barriers to the  
11 employment of those with criminal histories, including, among others,  
12 British Petroleum, Exxon Mobil, McDonald’s, Microsoft, Procter &  
13 Gamble, Royal Dutch Shell, Staples, Starbucks, and Target.

14

15       3. As used in this act:

16       “Adverse employment decision” shall include, but not be limited  
17 to, the refusal, rescission, or revocation of the offer of a position or  
18 termination of employment.

19       “Advertisement” means any circulation, mailing, posting, or any  
20 other form of publication, utilizing any media, promoting the  
21 employer or intending to alert its audience, regardless of size, to the  
22 availability of any position of employment.

23       “Applicant Criminal Record Consideration Form” means the  
24 following written standardized form:

25

26 **Applicant Criminal Record Consideration Form**

27 In compliance with the New Jersey Opportunity to Compete Act, any  
28 employer who withdraws a conditional offer of employment after conducting  
29 a criminal history inquiry on an applicant must provide the applicant with a  
30 copy of the results of the criminal history inquiry and a completed copy of  
31 this form after first having a discussion with the candidate. Once the  
32 candidate has received appropriate notice from a prospective employer of a  
33 withdrawn offer because of the results of a criminal history inquiry, that  
34 candidate can dispute the results of the criminal history inquiry or respond  
35 with additional information for consideration within 10 business days,  
36 though the employer may go ahead and fill the job during that time. If any  
37 additional information is received in that 10-day period and the employer has  
38 not yet filled the position, the employer must fill out Part B of this form and  
39 provide it to the candidate.

40 Employers must keep a copy of this form in their records for three years from  
41 the date of completion.

42 **Part A.**

43 1. What position does the candidate seek or employee hold?

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1	2. What are the duties of that position?
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9	3. What crime(s), present in the candidate's criminal history, were relevant,
10	either individually or collectively, to the decision to revoke the conditional
11	offer?
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22	4. How much time has elapsed since the crime(s) or release from custody?
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30	5. What information did the candidate provide during your conversation?
31	How did this information relate to the candidate's suitability for the position
32	in question? Did the applicant or employee provide evidence of rehabilitation
33	or inaccuracies in the criminal record? Evidence of rehabilitation tends to
34	show that the candidate has changed his or her life for the better. This may
35	include obtaining a certificate of rehabilitation, living a drug or alcohol free
36	life, completing a substance abuse program, regular employment, a stable
37	family life, volunteering in the community or mentoring youth, etc.
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48	6. Briefly explain, in light of the above questions, the decision for
49	withdrawing the conditional offer of employment.
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1 **Part B.** Only to be completed if: (a) the candidate has provided additional  
2 information pertaining to rehabilitation or inaccuracies in the criminal record  
3 within ten (10) business days of his or her receipt of the notice of an adverse  
4 employment decision and (b) if the employer has not already filled the  
5 position at the time the employer receives the additional information.  
6 What additional evidence has the candidate provided? Did the applicant or  
7 employee provide evidence of rehabilitation or inaccuracies in the criminal  
8 record? In light of this additional information, please explain the decision to  
9 maintain the revocation of the condition offer or to terminate employment.  
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24 Employer Name (Print): \_\_\_\_\_  
25 Employer Signature: \_\_\_\_\_  
26 Date: \_\_\_\_\_  
27 \_\_\_\_\_

28  
29 “Application process” means the period beginning when the  
30 candidate inquires about the employment being sought and ending  
31 when an employer has extended a conditional offer of employment  
32 to the candidate.  
33 “Candidate” means any person whom an employer considers  
34 when identifying potential employees, through any means,  
35 including, but not limited to, recruitment, solicitation, or seeking  
36 personal information, or any person who requests to be considered  
37 for employment by an employer, or who requests information from  
38 an employer related to seeking employment and shall include any  
39 person who currently is an employee of the employer.  
40 “Conditional offer of employment” means an offer of  
41 employment that is dependent on the successful completion of  
42 certain conditions, including, but not limited to, a criminal history  
43 inquiry, medical examination, and drug test.  
44 “Conviction” means any sentence arising from a verdict or plea  
45 of guilty or nolo contendere, including a sentence of incarceration, a  
46 suspended sentence, a sentence of probation, or a sentence of  
47 conditional discharge.  
48 “Employee” shall mean a person who is hired for a wage, salary,  
49 fee, or payment to perform work for an employer, or who works  
50 without compensation for, on average, fifteen or more hours per  
51 week, but excludes any person employed in the domestic service of  
52 any family or person at the person’s home.  
53 “Employer” means any person, company, corporation, firm,  
54 labor organization, or association which has five or more employees

1 and does business, employs persons, or takes applications for  
2 employment within this State, including by the State, any county,  
3 municipality, or any instrumentality thereof. The term shall include  
4 job placement and referral agencies and other employment  
5 agencies, but exclude the United States or any of its political  
6 subdivisions.

7 “Employment” means any occupation, vocation, job, or work  
8 with pay, including temporary or seasonal work, contracted work,  
9 contingent work, and work through the services of a temporary or  
10 other employment agency, or any form of vocational or educational  
11 training with pay, or any work without pay that is done for, on  
12 average, fifteen or more hours per week. The physical location of  
13 the prospective employment must be in whole, or substantial part,  
14 within this State.

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

17 “Inquiry” means any direct or indirect conduct intended to gather  
18 information from or about an applicant, candidate, or employee,  
19 using any mode of communication, including but not limited to  
20 application forms, interviews, and criminal history inquiries.

21 “Notice of Rights” means the following written standardized  
22 form:

23

24 **What happens when my criminal record is checked by an**  
25 **employer?**

26 New Jersey’s Opportunity to Compete Act requires that employers  
27 follow certain procedures when asking about your criminal history. Any  
28 inquiry into your criminal history must occur after the employer has given  
29 you a conditional offer of employment.

30 New Jersey’s Opportunity to Compete Act does not apply when any  
31 federal or State law or regulation explicitly requires or permits the  
32 consideration of specific criminal convictions when making employment  
33 decisions.

34 In connection with any decision regarding employment, an employer  
35 may not consider:

36 Convictions for most crimes of the first through fourth degree in New  
37 Jersey or a substantially similar crime committed in another jurisdiction,  
38 for which you were sentenced or released from custody more than ten  
39 years ago;

40 Convictions for a disorderly persons offense in New Jersey or a  
41 substantially similar offense committed in another jurisdiction for which  
42 you were sentenced or released from custody more than five years ago;

43 Arrests that are not pending;

44 Any records which have been erased, expunged, or are the subject of  
45 an executive pardon, or otherwise have been legally nullified; or

46 Any juvenile adjudication of delinquency, any municipal ordinance  
47 violations or any records which have been sealed.

1        However, if you have received a criminal sentence or been released  
2 from custody for a crime of the first through fourth degree within the past  
3 ten years or for a disorderly persons offense within the past five years, an  
4 employer is allowed to consider all of your criminal convictions.  
5 Additionally, if you have ever been convicted of murder, attempted  
6 murder, an arson-related offense, a sex offense requiring registry, or a  
7 terrorism-related offense, then an employer may consider that conviction  
8 no matter when it occurred.

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

11        Information about your rehabilitation and good conduct, including but  
12 not limited to any government-issued certificates of rehabilitation;

13        Information related to any inaccuracies in your criminal record;

14        How much time has elapsed since the crime or offense and release  
15 from custody; and

16        How the criminal record relates to your suitability as an employee.

17        If the employer has any questions or concerns about your criminal  
18 history, the employer must first make a good faith effort to discuss with  
19 you any such questions or concerns your record may have raised. If the  
20 employer then withdraws your conditional offer or makes any other  
21 adverse employment decision, you will receive a copy of the results of the  
22 criminal history inquiry and written notice of the employer's reasons for  
23 revoking the conditional offer.

24        You will have 10 BUSINESS DAYS to respond to the employer. In your  
25 response you may: (1) challenge the accuracy of the results of the  
26 criminal history inquiry and (2) present additional evidence of  
27 rehabilitation or other factors that the employer must consider. An  
28 employer may hold the position open but is not required to wait for your  
29 response.

30        An employer may not ask about your criminal history before you have  
31 been given a conditional offer of employment and may not advertise  
32 restrictions based on criminal history unless those restrictions are  
33 mandated by state or federal law.

34        If an employer asks about your criminal history, that information must  
35 remain confidential.

36        If you believe that the employer has not followed these procedures,  
37 please call the Office of the Attorney General, Division on Civil Rights at  
38 609-292-4605.

39  
40        "Otherwise qualified" means any candidate who meets all other  
41 criteria for a position.

42        "Pre-application inquiry" shall mean any inquiry in connection  
43 with any decision regarding employment that precedes the  
44 application process, including, but not limited to, any recruitment of  
45 candidates, attempts to identify candidates, or solicitation of  
46 candidates.

47        "Type 1 violation" means either an initial violation of this act or  
48 a violation that is not preceded by another violation within the  
49 previous three years. All actions within the application process for  
50 the same position shall together be considered a single Type 1

1 violation, notwithstanding that each would otherwise constitute a  
2 violation on its own.

3 “Type 2 violation” means any violation of this act that is  
4 preceded by another violation within the previous three years. Each  
5 action that would constitute a Type 2 violation of this act shall  
6 constitute a separate Type 2 violation.

7

8 4. a. An employer shall not conduct any pre-application  
9 inquiry regarding any person’s criminal history in connection with  
10 any decision regarding employment.

11 b. An employer shall not make any inquiry regarding a  
12 candidate’s criminal history during the application process.

13 c. Inquiry into and consideration of the criminal history of a  
14 candidate may take place after the candidate has been found  
15 otherwise qualified and has received a conditional offer of  
16 employment.

17 d. Notwithstanding subsections a. and b. of this section, if a  
18 candidate discloses any information regarding the candidate’s  
19 criminal history by unsolicited voluntary oral or written disclosure,  
20 the employer may consider the disclosed criminal history.

21 e. Any information obtained regarding a candidate’s criminal  
22 history, whether obtained through an inquiry or by any means other  
23 than voluntary oral or written disclosure pursuant to subsection d.  
24 of this section, shall not be considered in making an employment  
25 determination until after a conditional offer has been made.

26 f. Prior to conducting any criminal history inquiry concerning  
27 a candidate, the employer shall provide standard written notification  
28 advising that, upon the written consent of the candidate, the  
29 employer will conduct a criminal history inquiry and provide to the  
30 candidate a Notice of Rights.

31

32 5. An employer shall be permitted to consider in connection  
33 with any decision regarding employment:

34 a. A conviction of murder or attempt to commit murder  
35 pursuant to N.J.S.2C:11-1; arson pursuant to N.J.S.2C:17-1; a sex  
36 offense requiring registration pursuant to subsection b. of section 2  
37 of P.L.1994, c.133 (C.2C:7-2) that is punishable by a term of  
38 imprisonment in a State correctional facility; and terrorism pursuant  
39 to P.L.2002, c.26 (C:2C:38-1 et seq.) regardless of when the  
40 conviction occurred;

41 b. A conviction of any crime of the first through fourth degree  
42 not specified in subsection a. or conduct which, if committed in  
43 another jurisdiction would constitute a crime in this State, for 10  
44 years following release from custody or from the date of sentence if  
45 the person was not sentenced to a term of confinement except as  
46 provided in section 6 of this act;

47 c. A conviction of a disorderly persons offense, or conduct  
48 which, if committed in another jurisdiction would constitute a



1 disorderly persons offense in this State, for five years following  
2 release from custody or from the date of sentence if the person was  
3 not sentenced to a term of confinement; and

4 d. Any pending criminal charges, which shall include cases that  
5 have been continued without a finding until such time as the case is  
6 dismissed.

7

8 6. An employer shall not be permitted to consider when making  
9 an employment decision, or require any candidate to disclose or  
10 reveal, or to take any adverse action against any candidate on the  
11 basis of:

12 a. any arrest or criminal accusation made against the candidate,  
13 which is not then pending against that person or which did not  
14 result in a conviction;

15 b. any record which has been erased or expunged, or any  
16 record of an executive pardon, or other record legally nullified; or

17 c. any adjudication of delinquency of a juvenile, any violation  
18 of a municipal ordinance, or any record which has been sealed.

19

20 7. a. In evaluating a candidate for a position for which a  
21 criminal history inquiry is conducted pursuant to this act, the  
22 employer also shall consider additional factors, including but not  
23 limited to:

24 (1) any information, if provided, pertaining to the degree of  
25 rehabilitation and good conduct, including a certificate of  
26 rehabilitation issued by any State or federal agency, which includes,  
27 but is not limited to, certificates issued pursuant to section 1 of  
28 P.L.2007, c.327 (C.2A:168A-7);

29 (2) the accuracy of the criminal record in question produced by  
30 the candidate, or produced on behalf of the candidate, to the  
31 employer;

32 (3) the amount of time that has elapsed since the conviction or  
33 release from custody; and

34 (4) the nature and circumstances surrounding the crime and its  
35 relationship to the duties of the position sought or held.

36 b. Employers shall document in writing their reasonable  
37 consideration of the factors set forth in subsection a. of this section.

38 c. Employers shall use the Applicant Criminal Record  
39 Consideration Form, which specifies how an employer shall  
40 consider the above factors in reaching an adverse employment  
41 decision and how to document that decision.

42

43 8. a. An employer who has any questions or concerns relating  
44 to the candidate's criminal history and suitability for the position  
45 sought or held based on a criminal history inquiry shall make a  
46 good faith effort to discuss with the candidate these questions or  
47 concerns and provide the candidate an opportunity to explain and

1 contextualize any crime or offense, provide evidence of  
2 rehabilitation, and rebut any inaccuracies in the criminal history.

3 b. An employer who makes an adverse employment decision  
4 after the complying with the requirements of subsection a. of this  
5 section shall provide the candidate in one package by registered  
6 mail:

- 7 (1) written notification of the adverse employment decision;
- 8 (2) a copy of the results of the criminal history inquiry;
- 9 (3) a completed copy of the Applicant Criminal Record  
10 Consideration form provided for in subsection c. of section 6 of this  
11 act; and
- 12 (4) a second copy of the Notice of Rights.

13

14 9. a. A candidate who receives an adverse employment  
15 decision may, within ten business days after receipt of the notices  
16 required under subsection b. of section 7 of this act, provide  
17 additional information and evidence to the employer related to the  
18 accuracy and relevance of the results of the criminal history inquiry,  
19 including information pertaining to any of the factors listed in  
20 subsection a. of section 7 of this act. An employer may hold the  
21 position open for a candidate but shall not be required to wait for  
22 the response before filling the position.

23 b. If the employer receives additional information pursuant to  
24 subsection a. of this section and has not yet filled the position at the  
25 time of receipt, the employer shall consider the additional  
26 information provided by the candidate.

27 c. An employer who maintains an adverse employment  
28 decision after considering any additional information provided by  
29 the candidate pursuant to subsection a. of this section shall:

30 (1) complete Part B of the Applicant Criminal Record  
31 Consideration Form; and

32 (2) within 45 business days of receipt of the additional  
33 information, provide the candidate with a second copy of the  
34 Applicant Criminal Record Consideration Form, as supplemented  
35 pursuant to paragraph (1) of subsection c. of this section, and a  
36 written notice of final decision.

37

38 10. a. In connection with any decision regarding employment,  
39 any information obtained by an employer that pertains to a  
40 candidate's criminal history shall:

- 41 (1) remain confidential;
- 42 (2) only be shared with individuals that the employer has  
43 determined to have a need to know the contents for the purpose of  
44 evaluating or supervising candidates in a manner consistent with  
45 this act;
- 46 (3) not be used, distributed, or disseminated by the employer for  
47 any use other than those permitted under this act; and

1 (4) not be used, distributed, or disseminated by the employer to  
2 any other entity or individual, except as required by law.

3 b. Nothing in this section shall be construed to prevent an  
4 employer from keeping the entirety of an employee's criminal  
5 record in the employee's confidential employee file.

6  
7 11. An employer shall keep on file for three years from the date  
8 of completion a copy of the Applicant Criminal Records  
9 Consideration Form completed pursuant to subsection c. of section  
10 7 of this act and, if applicable, a copy of the supplemental Applicant  
11 Criminal Records Consideration Form completed pursuant to  
12 subsection b. of section 8 of this act.

13  
14 12. a. This act shall not apply:

15 (1) When any federal or State law or regulation requires or  
16 permits the consideration of a candidate's criminal history for the  
17 purposes of employment or prohibits individuals with a specific  
18 type of criminal history from obtaining a specific type of  
19 employment, provided the exemption is limited to those offenses or  
20 types of offenses that federal or State law or regulation requires or  
21 permits the employer to consider; and

22 (2) To any position designated by the employer to participate in  
23 a program or obligation designed specifically to encourage the  
24 employment of persons with criminal histories.

25 b. It is the intent of the Legislature that the exemptions under  
26 this section be narrowly construed.

27  
28 13. a. Excepting any provision of any other federal or State law  
29 or regulation that expressly requires or expressly permits the  
30 consideration of criminal histories in employment decisions, any  
31 and all use or consideration of an applicant's or employee's  
32 criminal history by an employer or prospective employer shall be  
33 conducted solely and exclusively in accordance with the provisions  
34 of this act.

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

39  
40 14. An employer shall be found liable under the doctrine of  
41 negligent hiring based solely on the exclusion from consideration of  
42 the portions of a candidate's criminal record deemed outside the  
43 scope of inquiry established under section 5 of this act.

44  
45 15. a. In connection with any position for employment, it shall  
46 be unlawful for any employer to produce or disseminate any  
47 advertisement that expresses, directly or indirectly, any limitation  
48 on eligibility for employment arising from a candidate's criminal

1 history unless those limitations are mandated by federal or State  
2 law. In any action against an employer under this section, any such  
3 advertisement shall be presumptive evidence that the employer  
4 authorized the advertisement.

5 b. In connection with any position for employment, it shall be  
6 unlawful for any employer to produce or disseminate any  
7 advertisement that expresses, directly or indirectly, that final  
8 employment is contingent upon a criminal background check,  
9 regardless of the employer's use or consideration of criminal  
10 histories in employment decisions.

11

12 16. a. The Division on Civil Rights in the Office of the  
13 Attorney General shall enforce the provisions of this act.

14 b. An employer who violates the provisions of this act shall be  
15 liable to a civil penalty as follows:

16 (1) for an employer with five to 24 employees at the time of the  
17 violation:

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

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

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

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

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

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

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

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

28 (4) for employers with 150 to 249 employees at the time of the  
29 violation:

30 (a) a Type 1 violation shall be subject to a fine of up to \$3,000;

31 (b) a Type 2 violation shall be subject to a fine of up to \$4,500;

32 and

33 (5) for employers with 250 or more employees at the time of the  
34 violation:

35 (a) a Type 1 violation shall be subject to a fine of up to \$5,000;

36 (b) a Type 2 violation shall be subject to a fine of up to \$7,500.

37 c. The penalty prescribed in this section shall be collected and  
38 enforced by summary proceedings under the "Penalty Enforcement  
39 Law of 1999," P.L.1999, c.274 (C.2A:58-10 et seq.).

40

41 17. This act shall take effect on the first day of the seventh  
42 month following enactment but the Director of the Division on  
43 Civil Rights may take such anticipatory administrative action in  
44 advance thereof as shall be necessary for the implementation of this  
45 act.

## STATEMENT

1

2

3 This bill, entitled "The Opportunity to Compete Act," would  
4 supplement the State's civil rights law to provide persons with  
5 criminal histories certain protections while seeking employment.

6 Specifically, this bill would prohibit an employer from  
7 conducting a criminal background check on job candidates during  
8 the pre-application and application process. Under the bill, the  
9 application process begins when a candidate inquires about  
10 employment and ends when a employer has extended a conditional  
11 offer of employment. The pre-application period precedes the  
12 application period and includes recruitment and solicitation of  
13 candidates.

14 Once a candidate has been found to be qualified and has received  
15 a conditional offer of employment, an employer is authorized to  
16 inquire about and consider a candidate's criminal history. Before  
17 an inquiry into the candidate's criminal history is made, the  
18 employer must provide the candidate written notice of the inquiry  
19 and obtain the candidate's consent to it. The candidate also shall be  
20 provided with a written "Notice of Rights" outlining the protections  
21 that the candidate is entitled to under the bill.

22 The bill authorizes an employer to consider in its employment  
23 decision convictions for certain serious crimes regardless of when  
24 the crime occurred. These crimes include murder or attempted  
25 murder, arson, a sex offense for which the offender served time in  
26 State prison and is required to register as a sex offender, and  
27 terrorism. An employer may only consider other crimes of the first  
28 through fourth degree if the crime was committed within the last 10  
29 years. An employer also may consider convictions for a disorderly  
30 persons offense that occurred within the last five years and pending  
31 criminal charges until the case is dismissed.

32 Under the bill, when making an employment decision, an  
33 employer may not consider or require any candidate to disclose or  
34 reveal any arrest or criminal accusation made against the candidate  
35 which is not then pending against that person or which did not  
36 result in a conviction. Records which have been erased or  
37 expunged, records of an executive pardon, or legally nullified  
38 records may not be considered by an employer, nor may the  
39 employer consider a adjudication of delinquency of a juvenile, any  
40 violation of a municipal ordinance, or any record which has been  
41 sealed.

42 When an employer is deciding whether to hire a candidate, the  
43 employer must consider the results of any criminal history inquiry  
44 in combination with such as factors as: (1) the degree of the  
45 candidate's rehabilitation and good conduct, including any  
46 certificate of rehabilitation issued by any State or federal agency;  
47 (2) the accuracy of the criminal record; (3) the amount of time that  
48 has elapsed since the conviction or release from custody; and (4)

1 the nature and circumstances surrounding the crime and its  
2 relationship to the duties of the position sought or held. The  
3 reasonable consideration of these factors are to be documented in  
4 writing by the employer through the use of a written standardized  
5 form known as an Applicant Criminal Record Consideration Form.

6 The bill requires employers to make a good faith effort to discuss  
7 with the candidate any questions or concerns related to the  
8 candidate's criminal history and provide the candidate an  
9 opportunity to explain and contextualize any crime or offense,  
10 provide evidence of rehabilitation, and rebut any inaccuracies in the  
11 criminal history.

12 If an employer makes an adverse employment decision, such as  
13 rescinding an offer of employment, after a discussion of a  
14 candidate's criminal history, the employer must provide the  
15 candidate in one package by registered mail: (1) written  
16 notification of the adverse employment decision; 2) a copy of the  
17 results of the criminal history inquiry; (3) a completed copy of the  
18 Applicant Criminal Record Consideration Form, and (4) a second  
19 copy of the Notice of Rights.

20 A candidate who received an adverse employment decision has  
21 ten business days after receipt of this written information to provide  
22 evidence to the employer related to the accuracy and relevance of  
23 the results of the criminal history inquiry. An employer may, but is  
24 not required to, hold the position open for the candidate. An  
25 employer who maintains an adverse employment decision after  
26 considering any additional information provided by the candidate is  
27 required to complete an additional section of the Applicant Criminal  
28 Record Consideration Form, and within 45 days provide this to the  
29 candidate along with written notice of the final decision.

30 Employers are subject to civil fines for failure to comply with  
31 the provisions of the bill ranging from \$500 to \$7,500 depending on  
32 the number of employees the employer has and whether the  
33 employer has committed previous violations.