

[Second Reprint]

**SENATE, No. 2124**

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**STATE OF NEW JERSEY**  
**216th LEGISLATURE**

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INTRODUCED JUNE 2, 2014

**Sponsored by:**

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**District 31 (Hudson)**

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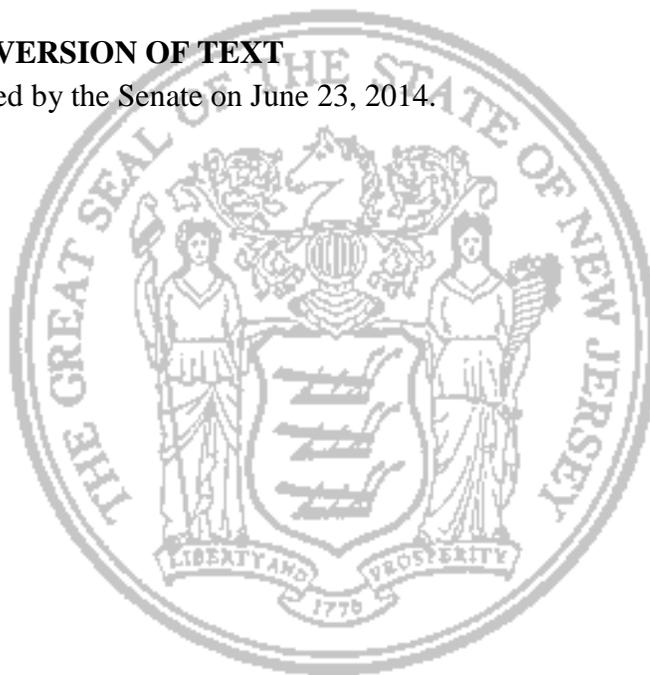
**Senators Pou and Norcross**

**SYNOPSIS**

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

**CURRENT VERSION OF TEXT**

As amended by the Senate on June 23, 2014.



**(Sponsorship Updated As Of: 6/6/2014)**

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 <sup>1</sup>**W**, Wal-Mart  
36 Stores, Inc.,<sup>1</sup> 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

**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:

<sup>1</sup>Senate SBA committee amendments adopted June 5, 2014.

<sup>2</sup>Senate floor amendments adopted June 23, 2014.

1 reintegrate into the community, become productive members of the  
2 workforce, and to provide for their families and themselves.

3

4 3. As used in this act:

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

9 “Applicant for employment” means any person whom an  
10 employer considers when identifying potential employees, through  
11 any means, including, but not limited to, recruitment, solicitation,  
12 or seeking personal information, or any person who requests to be  
13 considered for employment by an employer, or who requests  
14 information from an employer related to seeking employment, and  
15 shall include any person who currently is an employee of the  
16 employer.

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

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

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

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

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

1 “Initial employment application process” means the period  
2 beginning when an applicant for employment first makes an inquiry  
3 to an employer about a prospective employment position or job  
4 vacancy or when an employer first makes any inquiry to an  
5 applicant for employment about a prospective employment position  
6 or job vacancy, and ending when an employer has conducted a first  
7 interview, whether in person or by any other means, of an applicant  
8 for employment.

9

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

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

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

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

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

37

38 5. **1[a.]** Unless otherwise permitted or required by law, an  
39 employer shall not knowingly or purposefully publish, or cause to  
40 be published, any advertisement that solicits applicants for  
41 employment where that advertisement explicitly provides that the  
42 employer will not consider any applicant who has been arrested or  
43 convicted of one or more crimes or offenses. The provisions of this  
44 section shall not apply to any advertisement that solicits applicants  
45 for a position in law enforcement, corrections, the judiciary,  
46 homeland security, or emergency management, or any other  
47 employment position where a criminal history record background  
48 check is required by law, rule or regulation, or where an arrest or  
49 conviction by the person for one or more crimes or offenses would

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

13 <sup>1</sup>¶b. Except where a criminal history record background check is  
14 required by any law, rule or regulation, an employer who knowingly  
15 or purposefully publishes, or causes to be published, any  
16 advertisement that solicits applicants for employment where the  
17 advertisement explicitly provides that the applicant will be required  
18 to submit to a criminal history record background check shall cause  
19 the following to be stated in the advertisement: "New Jersey law  
20 prohibits employers from considering the criminal records of  
21 applicants for employment under certain circumstances."¶<sup>1</sup>

22  
23 6. The provisions of subsection a. of section 4 of this act shall  
24 not prohibit an employer from requiring an applicant for  
25 employment to complete an employment application that makes any  
26 inquiries regarding an applicant's criminal record during the initial  
27 employment application process or from making any oral or written  
28 inquiries regarding an applicant's criminal record during the initial  
29 employment application process if:

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

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

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

46

47 7. a. The governing body of a county or municipality shall not  
48 adopt any ordinance, resolution, law, rule or regulation <sup>2</sup>¶that

1 conflicts with the provisions of this act<sup>1</sup> regarding criminal  
2 histories in the employment context, except for ordinances adopted  
3 to regulate municipal operations<sup>2</sup>.

4 b. The provisions of this act shall preempt any ordinance,  
5 resolution, law, rule or regulation adopted by the governing body of  
6 a county or municipality prior to the effective date of this act <sup>2</sup>[that  
7 conflicts with the provisions of this act<sup>1</sup> regarding criminal  
8 histories in the employment context, except for ordinances adopted  
9 to regulate municipal operations<sup>2</sup>.

10

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

23

24 9. Any employer who violates this act shall be liable for a civil  
25 penalty in an amount not to exceed \$1,000 for the first violation,  
26 \$5,000 for the second violation, and \$10,000 for each subsequent  
27 violation collectible by the Commissioner of Labor and Workforce  
28 Development in a summary proceeding pursuant to the "Penalty  
29 Enforcement Law of 1999," P.L.1999, c.274 (C.2A:58-10 et seq.).

30

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