

# 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21 Investigation (FBI) background checks are out of date 50 percent of  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.