

SENATE, No. 2222

STATE OF NEW JERSEY

INTRODUCED JUNE 26, 1997

By Senator BENNETT

1 AN ACT concerning criminal history record background checks and  
2 supplementing Title 45 of the Revised Statutes.

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

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7 1. For the purposes of this act:

8 "Criminal history record background check" means a determination  
9 of whether a person has a criminal record by cross-referencing that  
10 person's name and fingerprints with those on file with the Federal  
11 Bureau of Investigation, Identification Division and the State Bureau  
12 of Identification in the Division of State Police.

13 "Director" means the Director of the Division of Consumer Affairs  
14 in the Department of Law and Public Safety.

15 "Division" means the Division of Consumer Affairs in the  
16 Department of Law and Public Safety.

17 "Martial arts" means any of several arts of self-defense or combat,  
18 including, but not limited to, aikado, jiu-jitsu, judo, karate, kung fu  
19 and taekwondo.

20 "Martial arts academy" or "academy" means a private center, club,  
21 dojo, facility, gym, institute, school, studio or similar entity engaged  
22 in the business of providing instruction or training in the martial arts  
23 in exchange for a fee or other consideration.

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25 2. a. The division shall initiate criminal history record background  
26 checks of present and prospective owners, managers or employees of  
27 martial arts academies who have regular contact with minors as  
28 provided in this act.

29 b. No person shall own, operate, manage or be employed by a  
30 martial arts academy in a position involving regular contact with a  
31 minor unless the division certifies that the person has no criminal  
32 history record of a conviction for an offense enumerated in subsection  
33 c. of this section.

34 c. A person subject to subsection b. of this section whose criminal  
35 history record background check reveals a conviction for any of the  
36 following crimes and offenses shall be disqualified from owning,  
37 operating, managing or being employed by a martial arts academy in

1 a position involving regular contact with minors:

2 (1) If the conviction was in New Jersey, for a crime or disorderly  
3 persons offense:

4 (a) involving danger to the person, meaning those crimes and  
5 disorderly persons offenses set forth in N.J.S.2C:11-1 et seq.,  
6 N.J.S.2C:12-1 et seq., N.J.S.2C:13-1 et seq., N.J.S.2C:14-1 et seq. or  
7 N.J.S.2C:15-1 et seq.; or

8 (b) against the family, children or incompetents, meaning those  
9 crimes and disorderly persons offenses set forth in N.J.S.2C:24-1 et  
10 seq. or N.J.S.2C:25-1 et seq.; or

11 (c) involving theft as set forth in chapter 20 of Title 2C of the New  
12 Jersey Statutes; or

13 (d) involving any controlled dangerous substance or analog as set  
14 forth in chapter 35 of Title 2C of the New Jersey Statutes except  
15 paragraph (4) of subsection a. of N.J.S.2C:35-10.

16 (2) If the conviction was in any other state or jurisdiction, for  
17 conduct constituting any of the crimes or disorderly persons offenses  
18 described in paragraph (1) of this subsection.

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20 3. a. Every owner or prospective owner of a martial arts academy  
21 shall apply to the director to be certified as qualified to own the  
22 academy.

23 b. Every owner of a martial arts academy shall apply to the director  
24 to have certified as qualified any person who will be employed to  
25 manage the academy or serve in a position that involves regular  
26 contact with a minor.

27 c. The owner of a martial arts academy shall apply to the director,  
28 within 90 days of the effective date of this act, for the certifications of  
29 persons managing or employed by the academy in a position involving  
30 regular contact with minors.

31 d. An application for certification shall be accompanied by the fee  
32 required to perform a criminal history record background check.

33 e. A martial arts academy shall retain a copy of the certification of  
34 persons subject to certification under this act. The certifications shall  
35 be made available upon request to interested members of the public.

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37 4. a. The director is authorized to exchange fingerprint data with  
38 and receive criminal history record information from the Federal  
39 Bureau of Investigation, Identification Section, the Division of State  
40 Police, and such other law enforcement agencies and jurisdictions as  
41 may be necessary for the purposes of this act.

42 b. The Division of State Police in the Department of Law and  
43 Public Safety, upon the request of the director, shall conduct a  
44 criminal history record background check requested by the director in  
45 accordance with the provisions of this act. The check shall be  
46 performed only upon certification by the director that the person has

1 consented in writing to the check.

2 For the purpose of conducting the criminal history record  
3 background check, the State Police shall examine its own files and  
4 arrange for a similar examination of federal criminal records. The  
5 information obtained as a result of any such check shall be forwarded  
6 to the director.

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8 5. a. The division shall not initiate a criminal history record  
9 background check pursuant to this act without the written consent of  
10 the person. The consent required under this section shall be in a  
11 manner and form prescribed by the director and shall include, but not  
12 be limited to, the signature, name, address and fingerprints of the  
13 person.

14 b. Upon receiving the results of a criminal history record  
15 background check, the director shall promptly notify any person who  
16 has not been convicted of a disqualifying offense. Along with that  
17 notice, the director shall forward a certification stating that the person  
18 has been subjected to a criminal history record background check and  
19 that the check has not revealed any record that the person has been  
20 convicted of a disqualifying offense. The certificate shall be in a form  
21 and contain any additional information as the director may prescribe  
22 by rule and regulation.

23 c. The director shall promptly notify a person whose criminal  
24 history record background check reveals a disqualifying criminal  
25 conviction of the results of the background check. The person shall  
26 have 30 days from the receipt of that notice to petition the director for  
27 a review and cite reasons substantiating the review. If the person  
28 successfully challenges the accuracy of the criminal history record  
29 information indicating a criminal conviction or the person  
30 demonstrates affirmatively to the director clear and convincing  
31 evidence of rehabilitation, the director may issue a certificate  
32 indicating that the person has not been convicted of a crime.

33 In determining whether the rehabilitation of a person has been  
34 affirmatively demonstrated, the director shall consider:

- 35 (1) The nature and seriousness of the offense;  
36 (2) The circumstances under which the offense occurred;  
37 (3) The date of the offense;  
38 (4) The age of the person when the offense was committed;  
39 (5) Whether the offense was repeated;  
40 (6) Social conditions which may have contributed to the offense;

41 and

42 (7) Any evidence of rehabilitation, including good conduct in the  
43 community; counseling, psychological or psychiatric treatment;  
44 additional academic or vocational training; or personal  
45 recommendations.

46 d. In the case of an employee of a martial arts academy, a copy of

1 the notification required under subsections b. or c. of this section also  
2 shall be forwarded to the owner or manager of the academy.

3 e. The director shall not certify a person subject to the provisions  
4 of this act who refuses to consent to, or cooperate in, the securing of  
5 a criminal history record background check.

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7 6. a. The division shall act as a clearinghouse for the collection  
8 and dissemination of information obtained as a result of conducting  
9 criminal history record background checks pursuant to this act. The  
10 dissemination of such information shall be consistent with the purposes  
11 of this act and in accordance with rules and regulations promulgated  
12 by the director.

13 b. The division shall develop and undertake a public education  
14 program designed to inform the citizens of this State of the provisions  
15 of this act. A component of this program shall be the establishment  
16 and maintenance of a file of certifications granted by the director in  
17 accordance with the provisions of this act. The certifications shall be  
18 made available to interested members of the public upon request. The  
19 program shall also publicize those martial arts academies which are in  
20 compliance with the provisions of this act.

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22 7. a. The division may require martial arts academies operating in  
23 this State to register with the division and to pay an annual registration  
24 fee sufficient to defray the cost of administering this act.

25 b. A person who violates any provision of this act shall be fined  
26 \$200 for the first offense and \$500 for each subsequent offense.  
27 Penalties shall be collected by summary proceedings pursuant to "the  
28 penalty enforcement law," N.J.S. 2A:58-1 et seq., and shall be used to  
29 fund enforcement of this act.

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31 8. The director, pursuant to the provisions of the "Administrative  
32 Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.), shall  
33 promulgate and enforce rules and regulations to effectuate the  
34 purposes of this act.

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36 9. This act shall take effect on the first day of the seventh month  
37 following enactment, except that section 8 shall take effect  
38 immediately.

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41 **STATEMENT**

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43 This bill is designed to protect children from being victimized at the  
44 hands of unscrupulous martial arts instructors and trainers with  
45 criminal pasts by requiring criminal background checks on owners,  
46 managers and employees of martial arts academies who have regular

1 contact with minors. The background check would entail cross-  
2 referencing a person's name and fingerprints against those in the  
3 criminal records on file with the Federal Bureau of Investigation,  
4 Identification Division and the State Bureau of Identification in the  
5 Division of State Police.

6 A "martial arts academy" is defined by the bill as a private club,  
7 center, dojo, facility, gym, institute, school, studio or similar entity  
8 engaged in the business of providing instruction or training in the  
9 martial arts in exchange for a fee or other consideration. The bill  
10 defines "martial arts" as any of several arts of self-defense or combat,  
11 including, but not limited to, aikado, jiu-jitsu, judo, karate, kung fu  
12 and taekwondo.

13 Specifically, the bill would require the Director of Consumer Affairs  
14 in the Department of Law and Public Safety to conduct criminal  
15 history record background checks of current and prospective owners,  
16 managers and employees of martial arts academies who have regular  
17 contact with minors. Persons subject to the criminal history record  
18 background check are to be certified by the director as qualified to  
19 serve in their positions in the academy if the background check  
20 indicates that the person has not been convicted in New Jersey or  
21 another jurisdiction of a crime or disorderly offense: (1) involving  
22 danger to another person, such as criminal homicide, assault, reckless  
23 endangerment, terroristic threats, stalking, kidnapping, sexual offenses  
24 and robbery; (2) against the family, children or incompetents, including  
25 bigamy, endangering the welfare of children, incompetents, the elderly  
26 or the disabled, willful nonsupport, unlawful adoption or domestic  
27 violence; (3) involving theft; and (4) involving a controlled dangerous  
28 substance.

29 Owners would be required to apply to the director for certification  
30 on their own behalf and on behalf of current and prospective managers  
31 or employees subject to the certification requirement. Applications for  
32 certification are to be accompanied by a fee sufficient to cover the  
33 costs associated with performing the check. Copies of the  
34 certifications are to be kept on file in the academy and be made  
35 available to interested members of the public upon request.

36 The bill would authorize the director to receive criminal history  
37 information and exchange fingerprint data with law enforcement  
38 agencies. The director, however, is prohibited from initiating a  
39 criminal history record background check without the person's written  
40 consent to the check. The consent form would include, at a minimum,  
41 the person's name, signature, address and fingerprints.

42 Once a background check has been completed, the director must  
43 notify the subject of the check of the results. If the director notifies  
44 the person that the background check has not revealed a disqualifying  
45 crime, the director is also required to issue a certificate to that person.  
46 If the director notifies the person that the background check indicates

1 a disqualifying crime, the person has 30 days from the date of  
2 notification to appeal the finding on the grounds that it is inaccurate  
3 or the person has been successfully rehabilitated.

4 In determining whether a person has been rehabilitated, the director  
5 is to consider: (1) the nature and responsibility of the position which  
6 the convicted person would hold or has held; (2) the nature and  
7 seriousness of the offense committed; (3) the circumstances under  
8 which the offense occurred; (4) the date of the offense; (5) the age of  
9 the person when the offense was committed; (6) whether the offense  
10 was an isolated or repeated incident; (7) any social conditions which  
11 may have contributed to the offense; and (8) any evidence of  
12 rehabilitation, including good conduct in prison or the community,  
13 counseling or psychiatric treatment received, acquisition of additional  
14 academic or vocational schooling, successful participation in  
15 correctional work-release programs or the recommendation of those  
16 who have had the person under their supervision.

17 The bill directs the division to act as a clearinghouse for the  
18 collection and dissemination of information relating to criminal history  
19 record background checks required by the bill. The division is also  
20 responsible for educating the public concerning this act, maintaining  
21 and making available to the public a file of the certifications which  
22 have been granted under the act and publicizing those academies which  
23 are in compliance with the act.

24 The director is authorized by the bill to require martial arts  
25 academies to register with the division and pay an annual registration  
26 fee to cover the costs associated with the administration of the act.  
27 A person who violates any provision of the act is to be fined \$200 for  
28 the first offense and \$500 for each subsequent offense. The penalties  
29 are to be dedicated to enforcing the act.

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35 Requires criminal history record background checks for martial arts  
owners, managers and certain employees.