

P.L.2014, CHAPTER 32, *approved August 11, 2014*  
Assembly Committee Substitute (*First Reprint*) for  
Assembly, No. 1999

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 have each  
36 implemented their own policies removing barriers to the  
37 employment of persons with criminal histories.

**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 floor amendments adopted June 26, 2014.**

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

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

9

10 3. As used in this act:

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

15 “Applicant for employment” means any person whom an  
16 employer considers when identifying potential employees, through  
17 any means, including, but not limited to, recruitment, solicitation,  
18 or seeking personal information, or any person who requests to be  
19 considered for employment by an employer, or who requests  
20 information from an employer related to seeking employment, and  
21 shall include any person who currently is an employee of the  
22 employer.

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

32 “Employee” <sup>1</sup>~~means~~ shall mean<sup>1</sup> a person who is hired for a  
33 wage, salary, fee, or payment to perform work for an employer, but  
34 excludes any person employed in the domestic service of any family  
35 or person at the person’s home, any independent contractors, or any  
36 directors or trustees. The term also shall include interns and  
37 apprentices.

38 “Employer” means any person, company, corporation, firm,  
39 labor organization, or association which has 15 or more employees  
40 over 20 calendar weeks and does business, employs persons, or  
41 takes applications for employment within this State, <sup>1</sup>~~and means~~  
42 including<sup>1</sup> the State, any county or municipality, or any  
43 instrumentality thereof. The term shall include job placement and  
44 referral agencies and other employment agencies, but excludes the  
45 United States or any of its departments, agencies, boards, or  
46 commissions, or any employee or 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; any form of vocational apprenticeship; or any internship.  
5 The physical location of the prospective employment shall be in  
6 whole, or substantial part, within this State.

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

10       “Initial employment application process” means the period  
11 beginning when an applicant for employment first makes an inquiry  
12 to an employer about a prospective employment position or job  
13 vacancy or when an employer first makes any inquiry to an  
14 applicant for employment about a prospective employment position  
15 or job vacancy, and ending when an employer has conducted <sup>1</sup>an  
16 a first<sup>1</sup> interview <sup>1</sup>and determined the applicant is qualified<sup>1</sup>,  
17 whether in person or by any other means<sup>1</sup>, and selected the <sup>1</sup>of an<sup>1</sup>  
18 applicant <sup>1</sup>as the employer’s first choice to fill the position<sup>1</sup> for  
19 employment<sup>1</sup>.

20  
21       4. a. Except as otherwise provided in section <sup>1</sup>8<sup>1</sup> 6<sup>1</sup> of this  
22 act:

23       (1) <sup>1</sup>an An<sup>1</sup> employer shall not require an applicant for  
24 employment to complete any employment application that makes  
25 any inquiries regarding an applicant’s criminal record during the  
26 initial employment application process.

27       (2) <sup>1</sup>an An<sup>1</sup> employer shall not make any oral or written  
28 inquiry regarding an applicant’s criminal record during the initial  
29 employment application process.

30       b. Notwithstanding the provisions of subsection a. of this  
31 section, if an applicant discloses any information regarding the  
32 applicant’s criminal record, by voluntary oral or written disclosure,  
33 during the initial employment application process, the employer  
34 may make <sup>1</sup>a reasonable, limited inquiry regarding only the  
35 criminal history disclosed.

36       c. An employer may inquire into and consider the criminal  
37 history of an applicant after the employer has conducted an  
38 interview, determined the applicant to be qualified, and selected the  
39 applicant as the employer’s first choice to fill the position.

40       d. inquiries regarding the applicant’s criminal record during the  
41 initial employment application process.

42       c.<sup>1</sup> Nothing set forth in this section shall be construed to prohibit  
43 an employer from requiring an applicant for employment to  
44 complete an employment application that makes any inquiries  
45 regarding an applicant’s criminal record after the initial  
46 employment application process has concluded or from making any

1 oral or written inquiries regarding an applicant's criminal record  
2 after the initial employment application process has concluded. The  
3 provisions of this section shall not preclude an employer from  
4 refusing to hire an applicant for employment based upon the  
5 applicant's criminal record, 'unless the criminal record or relevant  
6 portion thereof has been expunged or erased through executive  
7 pardon.<sup>1</sup> provided that such refusal is consistent with <sup>1</sup>sections 5  
8 and 6 of this act as well as any<sup>1</sup> other applicable laws, rules and  
9 regulations.

10

11 <sup>1</sup>5.a. An employer shall not be permitted to consider when  
12 making an employment decision, or require any applicant to disclose  
13 or reveal, or to take any adverse employment action against any  
14 applicant on the basis of:

15 (1) any arrest or criminal accusation made against the applicant  
16 that did not result in a conviction, unless it is then pending;

17 (2) any record which has been erased or expunged or any record  
18 that has been the subject of an executive pardon unless such records  
19 are explicitly made relevant for the position by a federal or State  
20 law, rule, or regulation;

21 (3) a conviction for a disorderly persons offense or a conviction  
22 for conduct from another state which, if committed in this State,  
23 would constitute a disorderly persons offense, where the date of  
24 sentence or the release from any period of incarceration resulting  
25 therefrom, whichever date is later, occurred five or more years prior  
26 to the date of the application for employment, unless the applicant  
27 was subsequently convicted of a crime or disorderly persons; or

28 (4) a conviction for a crime of the first through fourth degree or  
29 a conviction for conduct from another state which, if committed in  
30 this State, would constitute a crime of the first through fourth  
31 degree, where the date of sentence or the release from any period of  
32 incarceration resulting therefrom, whichever date is later, occurred  
33 ten or more years prior to the date of the application for  
34 employment, unless the applicant was subsequently convicted of  
35 a crime or disorderly persons.

36 b. Notwithstanding paragraphs (3) and (4) of subsection a. of  
37 this section, an employer may inquire about and consider when  
38 making an employment decision convictions for the following  
39 crimes regardless of the date of sentence or the release from  
40 incarceration:

41 (1) criminal homicide, including murder, manslaughter, and  
42 death by auto, as defined by N.J.S.2C:11-2;

43 (2) attempted murder as defined by N.J.S.2C:5-1 and  
44 N.J.S.2C:11-3;

45 (3) arson and arson-related offenses as defined by N.J.S.2C:17-  
46 1;

47 (4) sex offenses as defined by subsection b. of section 2 of

- 1 P.L.1994, c.133 (C.2C:7-2);
- 2 (5) robbery as defined by N.J.S.2C:15-1;
- 3 (6) kidnapping as defined by N.J.S.2C:13-1;
- 4 (7) human trafficking as defined by section 1 of P.L.2005, c.77
- 5 (C.2C:13-8);
- 6 (8) possession of weapons during commission of certain
- 7 crimes as defined by section 1 of P.L.1998, c.26 (C.2C:39-4.1);
- 8 (9) burglary as defined by N.J.S.2C:18-2;
- 9 (10) aggravated assault as defined by N.J.S.2C:12-1;
- 10 (11) any crime listed in 18 U.S.C. Chapter 113B – Terrorism,
- 11 and any crime listed in the "September 11th, 2001 Anti-Terrorism
- 12 Act," P.L.2002, c.26 (C.2C:38-1 et seq); and
- 13 (12) any offenses of a nature substantially similar to an offense
- 14 set forth in paragraphs (1) through (11) of this subsection b.
- 15 committed in another jurisdiction, regardless of when they
- 16 occurred.】<sup>1</sup>

17

18 <sup>1</sup>【6.a. In reasonably evaluating an applicant for a position for

19 which a criminal history inquiry is conducted pursuant to this act,

20 the employer also shall collectively consider additional factors,

21 including but not limited to:

- 22 (1) any information, if provided to the employer by or on
- 23 behalf of the applicant, pertaining to the accuracy of the criminal
- 24 record in question;
- 25 (2) any information, if provided to the employer by or on
- 26 behalf of the applicant, pertaining to the degree of rehabilitation and
- 27 good conduct;
- 28 (3) the nature of the offense and how long ago it occurred;
- 29 (4) the duties and settings of the job sought or held.

30 b. An employer who has any questions or concerns relating to

31 the applicant's criminal history and suitability for the position

32 sought or held based on a criminal history inquiry shall make a good

33 faith effort to discuss with the applicant these questions or concerns

34 and, while the position remains open, consider any information

35 provided by the applicant.】<sup>1</sup>

36

37 <sup>1</sup>【7.】5.<sup>1</sup> Unless otherwise permitted or required by law, an

38 employer shall not knowingly or purposefully publish, or cause to

39 be published, any advertisement that solicits applicants for

40 employment where that advertisement explicitly provides that the

41 employer will not consider any applicant who has been arrested or

42 convicted of one or more crimes or offenses. The provisions of this

43 section shall not apply to any advertisement that solicits applicants

44 for a position in law enforcement, corrections, the judiciary,

45 homeland security, or emergency management, or any other

46 employment position where a criminal history record background

47 check is required by law, rule or regulation, or where an arrest or

1 conviction by the person for one or more crimes or offenses would  
2 or may preclude the person from holding such employment as  
3 required by any law, rule or regulation, or where any law, rule, or  
4 regulation restricts an employer's ability to engage in specified  
5 business activities based on the criminal records of its employees.  
6 Nothing set forth in this section shall be construed as prohibiting an  
7 employer from publishing, or causing to be published, an  
8 advertisement that contains any provision setting forth any other  
9 qualifications for employment, as permitted by law, including, but  
10 not limited to, the holding of a current and valid professional or  
11 occupational license, certificate, registration, permit or other  
12 credential, or a minimum level of education, training or  
13 professional, occupational, or field experience.  
14

15 <sup>1</sup>~~8.~~ 6.<sup>1</sup> The provisions of <sup>1</sup>subsection a. of section 4 of<sup>1</sup> this act  
16 shall not <sup>1</sup>~~apply~~ prohibit an employer from requiring an applicant  
17 for employment to complete an employment application that makes  
18 any inquiries regarding an applicant's criminal record during the  
19 initial employment application process or from making any oral or  
20 written inquiries regarding an applicant's criminal record during the  
21 initial employment application process<sup>1</sup> if:

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

25 b. The employment sought or being considered is for a position  
26 where a criminal history record background check is required by  
27 law, rule or regulation, or where an arrest or conviction by the  
28 person for one or more crimes or offenses would or may preclude  
29 the person from holding <sup>1</sup>~~that~~ such<sup>1</sup> employment as required by  
30 any law, rule or regulation, or where any law, rule, or regulation  
31 restricts an employer's ability to engage in specified business  
32 activities based on the criminal records of its employees<sup>1</sup> ~~],~~ except  
33 that any adverse employment decision regarding a position  
34 subject to this exemption that is based on a criminal history  
35 outside of the enumerated offenses or time periods of the applicable  
36 federal or State law, regulation, or rule shall remain subject to  
37 section 6 of this act<sup>1</sup>; or

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

44 <sup>1</sup>~~9.~~ 7.<sup>1</sup> a. The governing body of a county or municipality  
45 shall not adopt any ordinance, resolution, law, rule or regulation  
46 regarding criminal histories in the employment context, except for  
47 ordinances adopted to regulate <sup>1</sup>~~county or~~<sup>1</sup> municipal operations.

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

7       <sup>1</sup>‘[10. a. No employer shall be found liable based on the  
8 exclusion from consideration of the portions of an applicant’s or  
9 employee’s criminal record deemed outside the scope of  
10 consideration by section 5 of this act.

11       b. In negligent hiring or negligent retention claims based in  
12 whole or part on an employee’s criminal record, no employer shall  
13 be found liable unless the employer’s hiring decision is found to  
14 have been grossly negligent.

15       c. <sup>1</sup>‘[8.]’<sup>1</sup> The penalties set forth in section <sup>1</sup>‘[11.]’<sup>1</sup> of this act shall  
16 be the sole remedy provided for violations of this act. Nothing set  
17 forth in this act shall be construed as creating or establishing a  
18 standard of care or duty for employers with respect to any law other  
19 than this act. Evidence that an employer has violated, or is alleged  
20 to have violated, the provisions of this act, shall not be admissible  
21 in any legal proceeding with respect to any law or claim other than  
22 a proceeding to enforce the provisions of this act. Nothing set forth  
23 in this act shall be construed as creating, establishing or authorizing  
24 a private cause of action by an aggrieved person against an  
25 employer who has violated, or is alleged to have violated, the  
26 provisions of this act.  
27

28       <sup>1</sup>‘[11.]’<sup>1</sup> 9.<sup>1</sup> Any employer who violates this act shall be liable for  
29 a civil penalty in an amount not to exceed \$1,000 for the first  
30 violation, \$5,000 for the second violation, and \$10,000 for each  
31 subsequent violation collectible by the Commissioner of Labor and  
32 Workforce Development in a summary proceeding pursuant to the  
33 “Penalty Enforcement Law of 1999,” P.L.1999, c.274 (C.2A:58-10  
34 et seq.).  
35

36       <sup>1</sup>‘[12.]’<sup>1</sup> 10.<sup>1</sup> This act shall take effect the first day of the seventh  
37 month next following the date of enactment, but the Commissioner  
38 of Labor and Workforce Development may take any anticipatory  
39 administrative action in advance as shall be necessary for the  
40 implementation of this act.  
41  
42  
43

44  
45       “The Opportunity to Compete Act;” establishes certain  
46 employment rights for persons with criminal record.