

SENATE, No. 1484

STATE OF NEW JERSEY 216th LEGISLATURE

INTRODUCED FEBRUARY 24, 2014

Sponsored by:

Senator SANDRA B. CUNNINGHAM

District 31 (Hudson)

Senator M. TERESA RUIZ

District 29 (Essex)

Co-Sponsored by:

Senators Pou, Gill, Lesniak, Stack, Weinberg and Norcross

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: 6/6/2014)

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21 Investigation (FBI) background checks are out of date 50 percent of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
2 inquiry regarding any person's criminal history in connection with
3 any 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
- 48 d. Convictions for:

- 1 (1) Criminal homicide, including murder, manslaughter, and
2 death by auto, as defined by N.J.S.2C:11-2;
 - 3 (2) Attempted murder as defined by N.J.S.2C:5-1 and
4 N.J.S.2C:11-3;
 - 5 (3) Arson and arson-related offenses as defined by N.J.S.2C:17-
6 1;
 - 7 (4) Sex offenses as defined by subsection b. of section 2 of
8 P.L.1994, c.133 (C.2C:7-2);
 - 9 (5) Robbery as defined by N.J.S.2C:15-1;
 - 10 (6) Kidnapping as defined by N.J.S.2C:13-1;
 - 11 (7) Human trafficking as defined by section 1 of P.L.2005, c.77
12 (C.2C:13-8);
 - 13 (8) Possession of weapons during commission of certain crimes
14 as defined by section 1 of P.L.1998, c.26 (C.2C:39-4.1);
 - 15 (9) Burglary in the second degree as defined by N.J.S.2C:18-2;
 - 16 (10) Aggravated assault in the second or third degree as defined
17 by N.J.S.2C:12-1;
 - 18 (11) Any crime listed in 18 U.S.C. Chapter 113B – Terrorism (18
19 U.S.C. s.2331 et seq.), and any crime listed in the "September 11th,
20 2001 Anti-Terrorism Act," P.L.2002, c.26 (C.2C:38-1 et seq.); and
 - 21 (12) Any offenses of a nature substantially similar to an offense
22 set forth in paragraphs (1) through (11) of this subsection d.
23 committed in another jurisdiction, regardless of when they
24 occurred.
- 25
- 26 6. An employer shall not be permitted to consider when making
27 an employment decision, or require any candidate to disclose or
28 reveal, or to take any adverse action against any candidate on the
29 basis of:
 - 30 a. Any arrest or criminal accusation made against the
31 candidate, which is not then pending against that person or which
32 did not result in a conviction;
 - 33 b. Any record which has been erased or expunged, or any
34 record that has been the subject of an executive pardon, or any
35 record that has been otherwise legally nullified; or
 - 36 c. Any adjudication of delinquency of a juvenile, any violation
37 of a municipal ordinance, or any record which has been sealed.
- 38
- 39 7. If any part of the candidate's criminal history may be
40 considered pursuant to section 5 of this act, then all prior disorderly
41 persons convictions and indictable offenses, or, if from any other
42 jurisdiction, convictions for conduct which, if committed in this
43 State, would constitute a disorderly persons conviction or indictable
44 offense, may be considered by the employer unless deemed
45 impermissible pursuant to section 6 of this act.
- 46
- 47 8. a. In reasonably evaluating a candidate for a position for
48 which a criminal history inquiry is conducted pursuant to this act,

1 the employer also shall collectively consider additional factors,
2 including but not limited to:

3 (1) any information, if provided to the employer by or on behalf
4 of the candidate, pertaining to the degree of rehabilitation and good
5 conduct, including a certificate of rehabilitation issued by any state
6 or federal agency, which includes, but is not limited to, certificates
7 issued pursuant to section 1 of P.L.2007, c.327 (C.2A:168A-7);

8 (2) any information, if provided to the employer by or on behalf
9 of the candidate, pertaining to the accuracy of the criminal record in
10 question;

11 (3) the amount of time that has elapsed since the conviction or
12 release from custody;

13 (4) the nature of and circumstances surrounding the crime or
14 crimes; and

15 (5) the duties and settings of the job sought or held.

16 b. If an employer makes an adverse employment decision after
17 conducting a criminal history inquiry, the employer shall certify in
18 writing its reasonable consideration of the factors set forth in
19 subsection a. of this section using the Criminal Record
20 Consideration Form set forth in section 17 of this act.

21

22 9. a. An employer who has any questions or concerns relating
23 to the candidate's criminal history and suitability for the position
24 sought or held based on a criminal history inquiry shall make a
25 good faith effort to discuss with the candidate these questions or
26 concerns and provide the candidate with an opportunity to explain
27 and contextualize any crime or offense, provide evidence of
28 rehabilitation, and rebut any inaccuracies in the criminal history.

29 b. An employer who makes an adverse employment decision
30 after complying with the requirements of subsection a. of this
31 section shall provide to the candidate in one package by registered
32 mail:

33 (1) written notification of the adverse employment decision;

34 (2) a copy of the results of the criminal history inquiry; and

35 (3) a completed copy of the Criminal Record Consideration
36 Form as set forth in section 17 of this act.

37

38 10. a. A candidate who receives an adverse employment
39 decision may, within 10 business days after receipt of the
40 documents required under subsection b. of section 9 of this act,
41 provide additional information or evidence to the employer related
42 to the accuracy or relevance of the results of the criminal history
43 inquiry, including information pertaining to any of the factors listed
44 in subsection a. of section 8 of this act. An employer may hold the
45 position open for a candidate but is not required to wait for the
46 response before filling the position.

47 b. If the employer receives additional information pursuant to
48 subsection a. of this section and has not yet filled the position at the

1 time of receipt, the employer shall consider the additional
2 information provided by the candidate.

3 c. An employer who maintains an adverse employment
4 decision after considering any additional information provided by
5 the candidate pursuant to subsections a. and b. of this section shall,
6 within 45 business days of receipt of the additional information,
7 provide the candidate with a written notice of final decision.

8

9 11. An employer shall keep on file for three years from the date
10 of completion a copy of the Criminal Records Consideration Form
11 completed pursuant to subsection b. of section 8 of this act.

12

13 12. The provisions of this act shall not apply to the following:

14 a. Any employment decision concerning a law enforcement
15 officer or a candidate for a position as a law enforcement officer;

16 b. When any federal or State law, regulation, or rule holds that
17 persons with criminal records are or may be deemed ineligible to
18 fill the position at issue, including but not limited to P.L.1999,
19 c.432 (C.15A:3A-1 et seq.), regarding nonprofit youth serving
20 organizations, or when any federal or State law, regulation, or rule
21 restricts an employer's ability to engage in specified business
22 activities based on the criminal records of its employees, except that
23 any adverse employment decision regarding a position subject to
24 this exemption that is based on a criminal history outside of the
25 enumerated offenses or time periods of the applicable federal or
26 State law, regulation, or rule, shall remain subject to subsection a.
27 of section 8 of this act; and

28 c. Any position designated by the employer to be part of a
29 program or systematic effort designed predominantly or exclusively
30 to encourage the employment of those with criminal histories.

31 It is the intent of the Legislature that the exemptions under this
32 section be narrowly construed.

33

34 13. a. Excepting any provision of any other federal or State law,
35 regulation, or rule that expressly requires or expressly permits the
36 consideration of criminal histories in employment decisions, or
37 when any federal or State law, regulation, or rule restricts an
38 employer's ability to engage in specified business activities based
39 on the criminal records of its employees, any and all use or
40 consideration of a candidate's or employee's criminal history by an
41 employer or prospective employer shall be conducted solely and
42 exclusively in accordance with the provisions of this act.

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

1 14. a. No employer shall be found liable based on the exclusion
2 from consideration of the portions of a candidate's or employee's
3 criminal record deemed outside the scope of inquiry by sections 5
4 and 6 of this act.

5 b. In negligent hiring or negligent retention claims based in
6 whole or part on an employee's criminal record, no employer shall
7 be found liable unless the employer's hiring decision is found to
8 have been grossly negligent.

9 c. This act shall not be actionable by private parties.
10

11 15. a. In connection with any employment position, it shall be
12 unlawful for an employer to produce or disseminate any
13 advertisement or posting that directly or indirectly references the
14 use or consideration of an applicant's criminal history, except that
15 nothing in this section shall preclude the expression of statutory,
16 regulatory, or rule-based eligibility restrictions applicable to the
17 position as described in subsections a. and b. of section 12 of this
18 act, so long as that expression is limited to the specified offenses
19 and time periods established by law.

20 b. In any action against an employer under this section, any
21 advertisement or posting shall be presumptive evidence that the
22 employer authorized the advertisement or posting.
23

24 16. a. The Division on Civil Rights in the Department of Law
25 and Public Safety shall enforce the provisions of this act. Any
26 complaint shall be filed with the Division on Civil Rights within
27 180 days of the alleged violation.

28 b. An employer who violates the provisions of this act shall be
29 liable for a civil penalty as follows:

30 (1) for an employer with 15 to 24 employees at the time of the
31 violation:

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

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

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

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

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

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

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

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

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

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

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

46 and

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

- 1 (a) a Type 1 violation shall be subject to a fine of up to \$5,000
- 2 (b) a Type 2 violation shall be subject to a fine of up to \$7,500.
- 3 c. The penalty prescribed in this section shall be collected and
- 4 enforced by summary proceedings under the "Penalty Enforcement
- 5 Law of 1999," P.L.1999, c.274 (C.2A:58-10 et seq.).
- 6 d. Good faith shall be a valid defense to an employer's initial
- 7 Type 1 violation.

8
9 17. The Criminal Record Consideration Form shall appear as
10 follows:

11 In compliance with "The New Jersey Opportunity to Compete Act," this
12 form must be completed after any adverse employment decision is made
13 based on the results of a criminal history inquiry, unless the decision was
14 made in accordance with any other federal or State law, regulation, or rule, or
15 the criminal history information was voluntarily disclosed prior to receiving
16 a conditional offer of employment. Upon receipt of this form, the candidate
17 or employee may dispute the results of the criminal history inquiry or
18 respond with additional information within 10 business days, and the
19 employer may, but need not hold the job open during this time.

20
21 Employers must keep a copy of this form in their records for three years from
22 the date of completion.

23
24 **Candidate/Employee Name (Print):**

25 _____
26
27 1. Has an adverse employment decision been made pertaining to the
28 candidate or employee? An adverse employment decision may be the
29 revocation of the conditional offer of employment (pertaining to either an
30 external applicant or an internal promotional candidate), the termination of
31 the employment, or the demotion of an employee.

32
33 Yes No

34
35 2. Was a criminal history inquiry conducted on this candidate or
36 employee?

37
38 Yes No

39
40 3. Were the results of this criminal history inquiry the reason for the
41 adverse employment decision?

42
43 Yes No

44
45 4. Was consideration given to any information, if provided by the
46 candidate, pertaining to the degree of rehabilitation and good conduct or
47 inaccuracies in the criminal history?

48
49 Yes No N/A

50
51 5. Was consideration given to the amount of time that has passed since
52 the conviction or release from custody?

53
54 Yes No

55
56 6. Was the particular nature of the criminal record evaluated as it
57 relates to the duties and setting of the job?

58
59 Yes No
60

1	Employer Name (Print):
2	_____
3	
4	Employer Signature:
5	_____
6	
7	
8	Date: _____
9	

10 18. The Notice of Rights shall appear as follows:

11

12	What happens when my criminal record is checked by an
13	employer?
14	
15	“The New Jersey Opportunity to Compete Act” requires that
16	employers follow certain procedures when asking about your criminal
17	history. Any inquiry into your criminal history must occur after the
18	employer has given you a conditional offer of employment, unless any
19	federal or State law, regulation, or rule requires or permits the
20	consideration of certain criminal convictions when making employment
21	decisions.
22	
23	In connection with any decision regarding employment, an employer
24	may not consider:
25	1. Convictions for indictable offenses (which are like “felonies”) in
26	New Jersey (or similar crimes from other places) for which you were
27	sentenced or released from custody (whichever is more recent) more than
28	10 years ago;
29	2. Convictions for a disorderly persons offenses (which are like
30	“misdemeanors”) in New Jersey (or similar crimes from other places) for
31	which you were sentenced or released from custody (whichever is more
32	recent) more than five years ago;
33	3. Arrests that are not still pending;
34	4. Any records which have been erased, expunged, pardoned, or
35	otherwise legally nullified; or
36	5. Any juvenile adjudications of delinquency, any municipal
37	ordinance violations, or any records which have been sealed.
38	
39	However, if you have received a criminal sentence or been released
40	from custody for an indictable offense within the past 10 years or for a
41	disorderly persons offense within the past five years, an employer is
42	allowed to consider all of your criminal convictions, no matter how old.
43	Additionally, if you have ever been convicted of criminal homicide
44	(which includes murder and manslaughter), attempted murder, an arson-
45	related offense, a sex offense requiring registry, robbery, kidnapping,
46	human trafficking, certain weapons offenses, burglary, aggravated assault,
47	or a terrorism-related offense, then an employer may consider these
48	convictions no matter when they occurred and any other convictions you
49	may have.
50	
51	If an employer asks about your criminal history, the employer also
52	must consider these factors:

- 1 1. Information that you provide about your rehabilitation and good
- 2 conduct, including any government-issued certificates of rehabilitation;
- 3 2. Information that you provide related to any inaccuracies in your
- 4 criminal record;
- 5 3. How much time has passed since the conviction or release from
- 6 custody; and
- 7 4. How the criminal history relates to your suitability for the job.

8
9 If the employer has any questions or concerns about your criminal
10 history, the employer must first make a good faith effort to discuss with
11 you any such questions or concerns your history may have raised. If the
12 employer then withdraws your conditional offer or makes any other
13 adverse employment decision, you will receive a copy of the results of the
14 criminal history inquiry and a completed Criminal Record Consideration
15 Form notifying you of the employer's consideration of your criminal
16 history.

17 You will have 10 BUSINESS DAYS to respond to the employer. In
18 your response you may: (1) challenge the accuracy of the results of the
19 criminal history inquiry and (2) present additional evidence of
20 rehabilitation or other information for the employer to consider. An
21 employer may hold the position open but is not required to do so.

22
23 If you believe that the employer has not followed these procedures,
24 please call the Department of Law and Public Safety, Division on Civil
25 Rights at 609-292-4605.

26
27 19. Section 13 of this act shall take effect the first day of the
28 first month next following the date of enactment, and the remainder
29 of this act shall take effect on the first day of the seventh month
30 next following the date of enactment. The Director of the Division
31 on Civil Rights may take any anticipatory administrative action in
32 advance as shall be necessary for the implementation of this act.

33
34
35 **STATEMENT**

36
37 This bill, entitled "The Opportunity to Compete Act,"
38 supplements the State's civil rights law to provide persons with
39 criminal histories certain protections when seeking employment.

40 Specifically, this bill prohibits an employer from conducting a
41 criminal background check on job candidates during the pre-
42 application and application process. Under the bill, the application
43 process begins when a candidate inquires about employment and
44 ends when a employer has extended a conditional offer of
45 employment. The pre-application period precedes the application
46 period and includes recruitment and solicitation of candidates.

47 Once a candidate has been found to be qualified and has received
48 a conditional offer of employment, an employer is authorized to
49 inquire about and consider a candidate's criminal history. Before an
50 inquiry into the candidate's criminal history is made, the employer

1 must provide the candidate written notice of the inquiry and obtain
2 the candidate's consent to it. The candidate also shall be provided
3 with a written "Notice of Rights" outlining the protections that the
4 candidate is entitled to under the committee substitute.

5 The bill authorizes an employer to consider in its employment
6 decision convictions for certain serious crimes regardless of when
7 the crime occurred. These crimes include murder or attempted
8 murder, arson, a sex offense for which the offender served time in
9 State prison and is required to register as a sex offender, robbery,
10 kidnapping, human trafficking, possession of weapons, burglary,
11 aggravated assault, and terrorism. An employer may only consider
12 other crimes of the first through fourth degree if the crime was
13 committed within the last 10 years. An employer also may consider
14 convictions for a disorderly persons offense that occurred within the
15 last five years and pending criminal charges until the case is
16 dismissed. The bill further provides that if any of the candidate's
17 criminal history is subject to consideration by the employer due to
18 the fact that it occurred within 10 years for crimes of the first
19 through fourth degree, or five years for disorderly persons offenses,
20 then the employer may also consider any prior criminal history
21 regardless of when it occurred.

22 Under the bill, when making an employment decision, an
23 employer may not consider or require any candidate to disclose or
24 reveal any arrest or criminal accusation made against the candidate
25 which is not then pending against that person or which did not
26 result in a conviction. Records which have been erased or
27 expunged, records of an executive pardon, or legally nullified
28 records may not be considered by an employer, nor may the
29 employer consider an adjudication of delinquency of a juvenile, any
30 violation of a municipal ordinance, or any record which has been
31 sealed.

32 When an employer is deciding whether to hire a candidate, the
33 employer must consider the results of any criminal history inquiry
34 in combination with such as factors as: (1) any information, if
35 provided to the employer by or on behalf of the candidate,
36 pertaining to the degree of the candidate's rehabilitation and good
37 conduct, including any certificate of rehabilitation issued by any
38 State or federal agency; (2) any information, if provided to the
39 employer by or on behalf of the candidate, pertaining to the
40 accuracy of the criminal record; (3) the amount of time that has
41 elapsed since the conviction or release from custody; (4) the nature
42 and circumstances surrounding the crime or crimes; and (5) the
43 duties and settings of the job sought or held. The reasonable
44 consideration of these factors is to be documented by the employer
45 through the use of the form known as the Criminal Record
46 Consideration Form.

47 The bill requires employers to make a good faith effort to discuss
48 with the candidate any questions or concerns related to the

1 candidate's criminal history and provide the candidate with an
2 opportunity to explain and contextualize any crime or offense,
3 provide evidence of rehabilitation, and rebut any inaccuracies in the
4 criminal history.

5 If an employer makes an adverse employment decision, such as
6 rescinding an offer of employment, after a discussion of a
7 candidate's criminal history, the employer must provide the
8 candidate in one package by registered mail: (1) written
9 notification of the adverse employment decision; 2) a copy of the
10 results of the criminal history inquiry; and (3) a completed copy of
11 the Criminal Record Consideration Form.

12 A candidate who received an adverse employment decision has
13 10 business days after receipt of this written information to provide
14 evidence to the employer related to the accuracy and relevance of
15 the results of the criminal history inquiry. An employer may, but is
16 not required to, hold the position open for the candidate. An
17 employer who maintains an adverse employment decision after
18 considering any additional information provided by the candidate is
19 required to provide to the candidate a written notice of the final
20 decision within 45 days of receipt of the additional information.

21 The bill provides that nothing provided therein is actionable by
22 private parties. Employers are subject to civil fines for failure to
23 comply with the provisions of the bill ranging from \$500 to \$7,500
24 depending on the number of employees the employer has and
25 whether the employer has committed previous violations.