

ASSEMBLY, No. 518

STATE OF NEW JERSEY

219th LEGISLATURE

PRE-FILED FOR INTRODUCTION IN THE 2020 SESSION

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SYNOPSIS

Requires criminal history record background checks for public employees handling vital records.

CURRENT VERSION OF TEXT

Introduced Pending Technical Review by Legislative Counsel.



1 **AN ACT** requiring criminal history record background checks for
2 public employees handling vital records, supplementing Title 26
3 of the Revised Statutes and amending P.L.1997, c.100.

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

7
8 1. (New section) As used in this act:

9 "Applicant" means an applicant for employment as a vital
10 records employee.

11 "Commissioner" means the Commissioner of Health.

12 "Current employee" means a person employed as a vital records
13 employee on the effective date of this act.

14 "Employer" means a prospective or actual employer of a vital
15 records employee.

16 "Vital records" means the birth, death, fetal death, marriage and
17 domestic partnership records from which vital statistics are
18 produced, including all paper records, indices, forms, data, data
19 systems and related documents or information collected or stored in
20 the registration of vital statistics.

21 "Vital records employee" means a person who is employed,
22 whether on a full-time, part-time, permanent, temporary or
23 consulting basis, at a State, county or municipal government
24 agency, and who is authorized, as part of that person's employment
25 responsibilities, to be involved with the registration, issuance,
26 processing, storage, dissemination or confidential destruction of
27 vital records.

28 "Vital statistics" means statistics concerning births, deaths, fetal
29 deaths, marriages and domestic partnerships.

30
31 2. (New section) a. (1) An employer shall not hire an applicant
32 unless the employer first determines, consistent with the
33 requirements of this act, that no criminal history record information
34 exists on file in the Federal Bureau of Investigation, Identification
35 Division, or in the State Bureau of Identification in the Division of
36 State Police, which may disqualify the person from being employed
37 as a vital records employee.

38 (2) An employer shall require that each current employee
39 undergo a criminal history record background check no later than
40 the 90th day after the effective date of this act, as a condition of
41 retaining that person's position as a vital records employee, in the
42 same manner and for the same purpose as that provided for an
43 applicant pursuant to this section.

44 (3) Notwithstanding paragraph (2) of section a. of this section,
45 at the employer's discretion, a current employee may not be

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.

1 required to submit to a subsequent criminal history record
2 background check, if that employee was required to submit to a
3 criminal history record background check as a condition of
4 employment as a vital records employee prior to the effective date
5 of this act and is otherwise qualified for employment under the
6 provisions of this act.

7 b. An applicant or current employee shall be disqualified from
8 being employed as a vital records employee if that person's criminal
9 history record background check reveals a record of conviction of
10 any of the following crimes and offenses:

11 (1) in New Jersey, any crime or disorderly persons offense:

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

14 (b) involving forgery or fraudulent practices as set forth in
15 chapter 21 of Title 2C of the New Jersey Statutes; or

16 (c) involving any controlled dangerous substance or controlled
17 substance analog as set forth in chapter 35 of Title 2C of the New
18 Jersey Statutes except paragraph (4) of subsection a. of
19 N.J.S.2C:35-10; or

20 (2) in any other state or jurisdiction, of conduct which, if
21 committed in New Jersey, would constitute any of the crimes or
22 disorderly persons offenses described in paragraph (1) of this
23 subsection.

24 c. Notwithstanding the provisions of subsection b. of this
25 section to the contrary, no applicant or current employee shall be
26 disqualified from employment as a vital records employee on the
27 basis of any conviction disclosed by a criminal history record
28 background check performed pursuant to this act if that person has
29 affirmatively demonstrated clear and convincing evidence of the
30 person's rehabilitation to the Commissioner of Health. In
31 determining whether an applicant or current employee has
32 affirmatively demonstrated rehabilitation, the following factors
33 shall be considered:

34 (1) the nature and responsibility of the position which the
35 applicant would hold, has held or currently holds, as the case may
36 be;

37 (2) the nature and seriousness of the offense;

38 (3) the circumstances under which the offense occurred;

39 (4) the date of the offense;

40 (5) the age of the applicant when the offense was committed;

41 (6) whether the offense was an isolated or repeated incident;

42 (7) any social conditions which may have contributed to the
43 offense; and

44 (8) any evidence of rehabilitation, including good conduct in
45 prison or in the community, counseling or psychiatric treatment
46 received, acquisition of additional academic or vocational
47 schooling, successful participation in correctional work-release
48 programs, or the recommendation of those who have had the

1 applicant or current employee under their supervision.

2 d. (1) If an applicant refuses to consent to, or cooperate in, the
3 securing of a criminal history record background check, the
4 employer shall not hire that person as a vital records employee.

5 (2) If a current employee refuses to consent to, or cooperate in,
6 the securing of a criminal history record background check, the
7 employer shall terminate that person's employment as a vital
8 records employee but shall make a reasonable effort to retain that
9 person as an employee in another position within the agency that is
10 not involved with the registration, issuance, processing, storage,
11 dissemination or confidential destruction of vital records, and for
12 which the current employee is qualified.

13

14 3. (New section) a. An applicant or current employee who is
15 required to undergo a criminal history record background check
16 pursuant to section 2 of this act shall submit to the commissioner
17 that individual's name, address and fingerprints taken by a State or
18 municipal law enforcement agency or by a private entity under
19 contract with the State. The commissioner is authorized to
20 exchange fingerprint data with and receive criminal history record
21 information from the Federal Bureau of Investigation and the
22 Division of State Police for use in making the determinations
23 required pursuant to this act.

24 b. Upon receipt of the criminal history record information for
25 an applicant from the Federal Bureau of Investigation or the
26 Division of State Police, the commissioner shall immediately notify
27 the employer, who shall immediately notify the applicant or current
28 employee in writing. If the applicant or current employee is
29 disqualified from employment as a vital records employee on the
30 basis of any conviction disclosed by the criminal history record
31 background check, the conviction or convictions that constitute the
32 basis for the disqualification shall be identified in the notice to that
33 individual.

34 c. The applicant or current employee shall have 30 days from
35 the date of the written notice of disqualification to petition the
36 commissioner for a hearing on the accuracy of the applicant's or
37 current employee's criminal history record information or to
38 establish the applicant's or current employee's rehabilitation under
39 subsection c. of section 2 of this act. Upon the issuance of a final
40 decision on a petition to the commissioner, pursuant to this
41 subsection, the commissioner shall notify the applicant or current
42 employee as to whether that individual remains disqualified.

43 d. If a current employee is disqualified from employment as a
44 vital records employee on the basis of any conviction disclosed by
45 the criminal history record background check, the employer shall
46 terminate that person's employment as a vital records employee but
47 shall make a reasonable effort to retain that person as an employee
48 in another position within the agency that is not involved with the

1 registration, issuance, processing, storage, dissemination or
2 confidential destruction of vital records, and for which the current
3 employee is qualified.

4
5 4. (New section) An applicant or current employee shall be
6 required to assume the cost of the criminal history record
7 background check, unless the applicant's prospective employer or
8 current employee's employer elects to assume the cost of the
9 criminal history record background check.

10
11 5. (New section) The commissioner, pursuant to the
12 "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et
13 seq.), shall adopt rules and regulations to effectuate the purposes of
14 this act.

15
16 6. Section 14 of P.L.1997, c.100 (C.53:1-20.9a) is amended to
17 read as follows:

18 14. a. In accordance with the provisions of sections 2 through 6
19 and sections 7 through 13 of P.L.1997, c.100 (C.26:2H-83 through
20 87 and C.45:11-24.3 through 24.9) **[and]**, P.L.2002, c.104 (C.45:1-
21 28 et al.) and P.L. , c. (C.)(pending before the Legislature as
22 this bill), the Division of State Police in the Department of Law and
23 Public Safety shall conduct a criminal history record background
24 check, including a name and fingerprint identification check, of:

25 (1) each applicant for nurse aide or personal care assistant
26 certification submitted to the Department of Health and of each
27 applicant for homemaker-home health aide certification submitted
28 to the New Jersey Board of Nursing in the Division of Consumer
29 Affairs;

30 (2) each nurse aide or personal care assistant certified by the
31 Department of Health and each homemaker-home health aide
32 certified by the New Jersey Board of Nursing, as required pursuant
33 to P.L.1997, c.100 (C.26:2H-83 et al.); **[and]**

34 (3) each applicant for licensure or other authorization to engage
35 in a health care profession who is required to undergo a criminal
36 history record background check pursuant to P.L.2002, c.104
37 (C.45:1-28 et al.); and

38 (4) each applicant for employment as a vital records employee
39 and each vital records employee who is required to undergo a
40 criminal history record background check pursuant to P.L. ,
41 c. (C.) (pending before the Legislature as this bill).

42 b. For the purpose of conducting a criminal history record
43 background check pursuant to subsection a. of this section, the
44 Division of State Police shall examine its own files and arrange for
45 a similar examination by federal authorities. The division shall
46 immediately forward the information obtained as a result of
47 conducting the check to:

48 (1) the Commissioner of Health, in the case of an applicant for

1 nurse aide or personal care assistant certification or a certified nurse
2 aide or personal care assistant;

3 (2) the New Jersey Board of Nursing in the Division of
4 Consumer Affairs in the Department of Law and Public Safety, in
5 the case of an applicant for homemaker-home health aide
6 certification or a certified homemaker-home health aide; **and**

7 (3) the Director of the Division of Consumer Affairs in the
8 Department of Law and Public Safety, in the case of an applicant
9 for licensure or other authorization to practice as a health care
10 professional as defined in section 1 of P.L.2002, c.104 (C.45:1-28);
11 and

12 (4) the Commissioner of Health, in the case of an applicant for
13 employment as a vital records employee or a current employee as
14 defined in section 1 of P.L. , c. (C.) (pending before the
15 Legislature as this bill).

16 (cf: P.L.2002, c.104, s.5)

17
18 7. This act shall take effect on the 180th day after enactment,
19 but the Commissioner of Health may take such anticipatory
20 administrative action in advance as shall be necessary for the
21 implementation of the act.

22 23 24 STATEMENT

25
26 This bill requires public employees who handle vital records as a
27 condition of their employment to submit to a criminal history
28 background check.

29 Under the bill, a public employer (i.e., a State, county, or
30 municipal government agency) is required to conduct a criminal
31 history background check to determine whether an applicant has
32 committed a crime or offense which would disqualify them from
33 employment as a vital records employee. The bill also requires
34 employers to ensure that each current employee undergo a criminal
35 history record background check no later than the 90th day after the
36 effective date of the bill, as a condition of retaining employment as
37 a vital records employee. The bill provides that an employer has
38 the discretion to waive the criminal history background check for
39 employees who were required to submit to a background check as a
40 condition of employment prior to the bill's effective date, and who
41 otherwise qualify for employment under the bill's provisions.

42 The bill delineates certain crimes and offenses that would
43 disqualify an applicant or current employee from being employed as
44 a vital records employee. The crimes and offenses include theft,
45 forgery or fraudulent practice, or crimes involving any controlled
46 dangerous substances. However, no applicant or current employee
47 is to be disqualified from employment on the basis of any
48 conviction disclosed by a criminal history record background check

1 if that person has affirmatively demonstrated clear and convincing
2 evidence of rehabilitation to the Commissioner of Health.

3 If an applicant refuses to consent to a criminal history record
4 background check, the employer is not to hire that person as a vital
5 records employee. If a current employee refuses to consent to a
6 criminal history record background check, the employer is to
7 terminate that person's employment as a vital records employee, but
8 is to make a reasonable effort to retain that person as an employee
9 in another position within the agency that is unrelated to vital
10 records.

11 Upon receiving criminal history record information for an
12 applicant, the Commissioner of Health is to immediately notify the
13 employer, who is to immediately notify the applicant or current
14 employee in writing. The notice is to include any disqualifying
15 criminal history information that may have been revealed during the
16 background check.

17 The bill affords the applicant or current employee 30 days from
18 the date of the written notice of disqualification to petition the
19 commissioner for a hearing on the accuracy of the criminal history
20 record information or to establish the applicant's or current
21 employee's rehabilitation. Upon the issuance of a final decision on
22 a petition to the commissioner, the commissioner is to notify the
23 applicant or current employee as to whether that individual remains
24 disqualified.

25 An applicant or current employee is required to assume the cost
26 of the criminal history record background check, unless the
27 employer elects to assume the cost.