

# ASSEMBLY, No. 2560

## STATE OF NEW JERSEY 219th LEGISLATURE

INTRODUCED FEBRUARY 13, 2020

**Sponsored by:**

**Assemblyman DANIEL R. BENSON**

**District 14 (Mercer and Middlesex)**

**SYNOPSIS**

Debars permanently from government contracting any person convicted of certain crimes involving government contracts.

**CURRENT VERSION OF TEXT**

As introduced.



1 AN ACT barring certain persons from working on government  
2 contracts and supplementing chapter 32 of Title 52 of the  
3 Revised Statutes and chapter 21 of Title 2C of the New Jersey  
4 Statutes.

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

8  
9 1. a. A person who is convicted of a crime of the second  
10 degree under subsection a. or b. of section 97 of P.L.1999, c.440  
11 (C.2C:21-34) shall be permanently barred from:

12 (1) contracting with a contracting agency; or

13 (2) serving as a key employee of any entity that is contracting  
14 with a contracting agency or any affiliate of such an entity.

15 b. As used in this section:

16 “Affiliate” means any entity that (1) directly, indirectly, or  
17 constructively controls another entity, (2) is directly, indirectly, or  
18 constructively controlled by another entity, or (3) is subject to the  
19 control of a common entity. An entity controls another entity if it  
20 owns, directly or individually, more than 50% of the ownership  
21 interest in that entity;

22 “Contract” means a contract or agreement at or above the  
23 contracting agency’s bid threshold to procure services or any  
24 material, supplies or equipment, or for any project involving  
25 construction, renovation, or restoration;

26 “Contracting agency” means the principal departments in the  
27 Executive Branch of the State Government, and any division, board,  
28 bureau, office, commission or other instrumentality within or  
29 created by such department, or any independent State authority,  
30 commission, instrumentality or agency, or any State college or  
31 university, any county college, or any local unit;

32 “Key employee” means any natural person employed with an  
33 entity in a supervisory capacity or empowered to make  
34 discretionary decisions regarding business operations as president,  
35 vice-president, chief executive officer, chief financial officer, chief  
36 information officer, chief operating officer, director, or supervisory  
37 manager;

38 “Local unit” means any contracting unit as defined pursuant to  
39 section 2 of P.L.1971, c.198 (C.40A:11-2) and any board of  
40 education as defined pursuant to N.J.S.18A:18A-2.

41 c. Prior to awarding any contract to any person or entity, that  
42 person or entity shall provide a written certification to the  
43 contracting agency that the person or the key employees of the  
44 entity and its affiliates are not permanently debarred pursuant to  
45 subsection a. of this section. A contracting agency shall not make,  
46 negotiate, or award a contract to any person or entity that does not  
47 provide such written certification as required by this subsection.

1 d. The Department of the Treasury, in consultation with the  
2 Division of Local Government Services in the Department of  
3 Community Affairs, shall provide each contracting agency with  
4 appropriate language reflecting the obligations of contractors under  
5 this section that the contracting agency shall include in any contract  
6 document, bid specification, requests for proposals, or other  
7 documents notifying potential contractors of contract opportunities  
8 with a contracting agency.

9 e. In situations of an emergent nature, a contracting agency  
10 may enter into a contract with a person or entity, provided that the  
11 contractor agrees to provide the written certification required  
12 pursuant to subsection c. of this section within two weeks of the  
13 execution of the contract. The contracting agency shall not make  
14 final payment to the contractor until such time as the contractor  
15 provides the written certification. Failure to pay the contractor until  
16 the written certification is received shall not be grounds for the  
17 agency being liable for payment.

18 f. The requirements of this section shall not apply with regard  
19 to purchases made pursuant to sections 1 and 7 of P.L.1996, c.16  
20 (C.52:34-6.1 and C.52:34-6.2).

21  
22 2. Upon conviction of a person of a crime of the second degree  
23 under subsection a. or b. of section 97 of P.L.1999, c.440 (C.2C:21-  
24 34), the county prosecutor or Attorney General shall provide notice  
25 of that conviction to the contracting agency that awarded the  
26 government contract at issue in that conviction.

27 The county prosecutor shall notify the Attorney General of any  
28 person who is convicted of a crime of the second degree under  
29 subsection a. or b. of section 97 of P.L.1999, c.440 (C.2C:21-34).  
30 The Attorney General shall notify the State Treasurer of all relevant  
31 convictions under section 97 of P.L.1999, c.440 (C.2C:21-34) and  
32 the State Treasurer shall maintain a list of all persons who have  
33 been permanently debarred pursuant to subsection a. of section 1 of  
34 P.L. , c. (C. ) (pending before the Legislature as this bill). The  
35 list shall be made available to the public through the Internet. The  
36 contracting agency shall have the right to rely solely on the  
37 contractor's certification and the list provided by the State  
38 Treasurer.

39  
40 3. This act shall take effect on the 30th day after the date of  
41 enactment.

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43

44 STATEMENT

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46 This bill provides that any person who is convicted of a crime of  
47 the second degree under subsection a. or b. of N.J.S.A.2C:21-34  
48 will be permanently debarred from contracting, or from working as

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1 a key employee of a contractor or any affiliate that is contracting,  
2 with a government entity. These subsections involve fraudulent  
3 activity in relation to government contracts.

4 The bill requires the State Treasurer to publish and maintain a  
5 list on the Internet of permanently debarred persons. Persons or  
6 entities wishing to contract with a government entity will be  
7 required to file a written certification stating that the person or  
8 entity and any key employees are not permanently debarred  
9 pursuant to this bill. In some emergency situations, the contractor  
10 may submit the written certification after the contract has been  
11 awarded. The contracting agency will have the right to rely solely  
12 on the contractor's certification and the list provided by the State  
13 Treasurer.

14 This bill does not apply to purchases from federal supply  
15 schedules or cooperative purchasing agreements with one or more  
16 states.