

ASSEMBLY, No. 3834

STATE OF NEW JERSEY 219th LEGISLATURE

INTRODUCED MARCH 16, 2020

Sponsored by:

Assemblyman ERIK PETERSON

District 23 (Hunterdon, Somerset and Warren)

SYNOPSIS

Concerns debarment of contractors for conviction of certain computer-related crimes.

CURRENT VERSION OF TEXT

As introduced.



1 **AN ACT** concerning the debarment of contractors for conviction of
2 certain computer-related crimes and supplementing Title 52 of
3 the Revised Statutes.

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

7
8 1. a. Any contract that is negotiated and awarded pursuant to
9 any law by the State, by a public authority, commission or board, or
10 a contracting unit as defined in section 2 of P.L.1971, c.198
11 (C.40A:11-2), for the purchase or maintenance of a computer,
12 computer equipment, a computer network, computer system,
13 computer software, computer program, database entry, compilation
14 or maintenance, telecommunications devices, services or utilities, or
15 any other contract for any materials or services in which the vendor
16 may access any data or database contained in a computer, computer
17 equipment, computer storage medium, computer system or
18 computer network that belongs to or is maintained on behalf of the
19 State, a public authority, commission or board or a local contracting
20 unit, shall include a provision that the vendor shall not have been,
21 and shall not hire or employ any person or subcontractor who has
22 been, convicted or adjudicated delinquent for a violation of any
23 offense specified in P.L.1984, c.184 (C.2C:20-23 et seq.), as
24 amended and supplemented, or N.J.S.2C:21-17, or any similar
25 offense defined by the laws of this State, another state or the federal
26 government.

27 b. Every vendor shall certify that the vendor and every person
28 or subcontractor hired or employed by the vendor, or to be hired or
29 employed by the vendor, has not been convicted or adjudicated
30 delinquent for any offense that would disqualify the vendor from
31 being awarded a public contract pursuant to subsection a. of this
32 section

33 c. A court imposing a sentence or disposition, or admitting a
34 person into a supervisory treatment program pursuant to
35 N.J.S.2C:43-12 or similar law, for an offense described in
36 subsection a. of this section shall promptly notify the Division of
37 Purchase and Property in the Department of the Treasury. The
38 Director of Purchase and Property shall maintain a registry of
39 persons who have been convicted or adjudicated delinquent for an
40 offense specified in subsection a. of this section. The registry shall
41 be deemed to be a government record pursuant to P.L.1963, c.73
42 (C.47:1A-1 et seq.) and shall be consulted by vendors and by any
43 agency prior to awarding a contract. The failure of a person to be
44 listed in the registry shall not relieve that person or his employer of
45 the debarment imposed by this section.

46 d. A person debarred by this section may make application to
47 the Director of Purchase and Property to terminate the debarment
48 upon proof that the person has not committed an offense within five

1 years following conviction, or release from confinement, or
2 termination of parole or probation, whichever is later, and is
3 unlikely to commit another offense.

4 e. A person shall be deemed to have been convicted of an
5 offense if any judgment of guilt or an adjudication of delinquency
6 has been entered by a court of competent jurisdiction, whether by
7 verdict or a plea, or if the person has been admitted into a pretrial
8 intervention program pursuant to N.J.S.2C:43-12 or any similar
9 law.

10 f. A vendor subject to this section who employs any person or
11 subcontractor in violation of this section shall be in material and
12 substantial breach of the contract and shall be liable for any or all of
13 the following:

14 (1) liquidated damages in an amount not less than \$5,000 nor
15 more than \$50,000;

16 (2) a civil penalty in an amount not less than \$5,000 nor more
17 than \$50,000, as determined by the Division of Purchase and
18 Property or the Commissioner of Community Affairs; and

19 (3) ineligibility for an award of any public contract for a period
20 of three years. A vendor shall not be determined to be ineligible if
21 the vendor demonstrates by clear and convincing evidence that,
22 notwithstanding that the vendor employed all reasonable means to
23 comply with the requirements of this section, the vendor did not
24 know that an employee or subcontractor had a conviction specified
25 in subsection a. of this section. The Director of Purchase and
26 Property and the Commissioner of Community Affairs shall
27 maintain a registry of persons and vendors who have been made
28 ineligible for public contracts as specified in this subsection. The
29 registry shall be deemed to be a government record pursuant to
30 P.L.1963, c.73 (C.47:1A-1 et seq.) and shall be consulted by any
31 agency prior to awarding a contract.

32 g. The Director of Purchase and Property and the
33 Commissioner of Community Affairs shall adopt additional
34 regulations for the enforcement of this act.

35
36 2. a. Any person who is:

37 (1) awarded a contract pursuant to any law by the State, by a
38 public authority, commission or board, or a contracting unit as
39 defined in section 2 of P.L.1971, c.198 (C.40A:11-2), for the
40 purchase or maintenance of a computer, computer equipment, a
41 computer network, computer system, computer software, computer
42 program, database entry, compilation or maintenance,
43 telecommunications devices, services or utilities, or any other
44 contract for any materials or services in which the vendor may
45 access any data or database contained in a computer, computer
46 equipment, computer storage medium, computer system or
47 computer network that belongs to or is maintained on behalf of the

1 State, a public authority, commission or board or a local contracting
2 unit; or

3 (2) a provider of electronic communication service or remote
4 computing service who does business in this State;

5 shall promptly notify the Division of Criminal Justice when there
6 is a reasonable basis to believe that the vendor has been the victim
7 of, or the vendor's property or facilities have been used to commit,
8 any computer criminal activity as defined in P.L.1984, c.184
9 (C.2C:20-23 et seq.), as amended or supplemented, or any similar
10 offense defined by the laws of this State, another state or the federal
11 government. Notification may be made by use of a toll-free
12 telephone hotline, the Internet or any other means designated by the
13 Attorney General for receiving reports of computer criminal
14 activity.

15 b. Every governmental agency or unit of this State, including
16 any political subdivision, county or local government, shall
17 promptly notify the Division of Criminal Justice when there is a
18 reasonable basis to believe that the governmental agency or unit,
19 political subdivision, county or local government has been the
20 victim of, or its property or facilities have been used to commit, any
21 computer criminal activity defined in P.L.1984, c.184 (C.2C:20-23
22 et seq.), as amended or supplemented, or any substantially similar
23 offense defined by the laws of this State, another state or the federal
24 government.

25 c. A violation of subsection a. of this section by a vendor shall
26 be a material and substantial breach of the public contract. The
27 Attorney General may bring an action in the Superior Court for the
28 award of damages and the imposition of civil penalties. Upon
29 determining that any vendor or provider of electronic
30 communication service or remote computing service has violated
31 subsection a. of this section, the court may enter a judgment for any
32 or all of the following:

33 (1) liquidated damages in an amount not less than \$5,000 nor
34 more than \$50,000;

35 (2) a civil penalty in an amount not less than \$5,000 nor more
36 than \$50,000;

37 (3) ineligibility for an award of any public contract for a period
38 of three years;

39 (4) suspension or revocation of a license, franchise, certificates
40 of incorporation, or privilege to do business in this State; and

41 (5) such other remedies as the court deems just, including
42 injunctive relief.

43 d. Each separate violation of this section shall constitute a
44 distinct violation and a separate sanction shall be imposed for each
45 such violation.

46 e. The Attorney General shall adopt additional regulations for
47 the enforcement of this section.

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f. As used in this section, the terms "electronic communication service" and "remote computing service" shall have the same meaning as in section 2 of P.L.1968, c.409 (C.2A:156A-2), but shall be limited to those corporations, businesses or persons that provide such services to the public.

6 g. A provider of electronic communication services or remote
7 computing services, including any employees, officers and agents,
8 who makes any report pursuant to this section shall be immune
9 from civil liability arising from such notification.

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11 3. This act shall take effect immediately.

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14 STATEMENT

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16 This bill provides for the debarment from performing public
17 computer contracts of persons convicted of certain computer-related
18 crimes. In addition, the bill requires public entities, as well as a
19 vendor performing public computer-related contracts, to report
20 certain computer criminal activity. The bill establishes monetary
21 and other penalties for noncompliance.