

ASSEMBLY, No. 3805

STATE OF NEW JERSEY

211th LEGISLATURE

INTRODUCED FEBRUARY 14, 2005

Sponsored by:

Assemblywoman NELLIE POU

District 35 (Bergen and Passaic)

Assemblywoman JOAN M. QUIGLEY

District 32 (Bergen and Hudson)

Assemblyman JEFF VAN DREW

District 1 (Cape May, Atlantic and Cumberland)

SYNOPSIS

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

CURRENT VERSION OF TEXT

As introduced.



(Sponsorship Updated As Of: 12/13/2005)

1 AN ACT requiring criminal history record background checks for
2 public employees handling vital records, supplementing Title 26 of
3 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 records
10 employee.

11 "Commissioner" means the Commissioner of Health and Senior
12 Services.

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

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

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

22 "Vital records employee" means a person who is employed, whether
23 on a full-time, part-time, permanent, temporary or consulting basis, at
24 a State, county or municipal government agency, and who is
25 authorized, as part of that person's employment responsibilities, to be
26 involved with the registration, issuance, processing, storage,
27 dissemination or confidential destruction of 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 requirements
33 of this act, that no criminal history record information exists on file in
34 the Federal Bureau of Investigation, Identification Division, or in the
35 State Bureau of Identification in the Division of State Police, which
36 may disqualify the person from being employed as a vital records
37 employee.

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

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

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

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

8 (b) involving forgery or fraudulent practices as set forth in chapter
9 21 of Title 2C of the New Jersey Statutes; or

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

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

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

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

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

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

31 (4) the date of the offense;

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

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

34 (7) any social conditions which may have contributed to the
35 offense; and

36 (8) any evidence of rehabilitation, including good conduct in prison
37 or in the community, counseling or psychiatric treatment received,
38 acquisition of additional academic or vocational schooling, successful
39 participation in correctional work-release programs, or the
40 recommendation of those who have had the applicant or current
41 employee under their supervision.

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

45 (2) If a current employee refuses to consent to, or cooperate in, the
46 securing of a criminal history record background check, the employer

1 shall terminate that person's employment as a vital records employee
2 but shall make a reasonable effort to retain that person as an employee
3 in another position within the agency that is not involved with the
4 registration, issuance, processing, storage, dissemination or
5 confidential destruction of vital records, and for which the current
6 employee is qualified.

7
8 3. (New section) a. An applicant or current employee who is
9 required to undergo a criminal history record background check
10 pursuant to section 2 of this act shall submit to the commissioner that
11 individual's name, address and fingerprints taken by a State or
12 municipal law enforcement agency or by a private entity under
13 contract with the State. The commissioner is authorized to exchange
14 fingerprint data with and receive criminal history record information
15 from the Federal Bureau of Investigation and the Division of State
16 Police for use in making the determinations required pursuant to this
17 act.

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

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

36 d. If a current employee is disqualified from employment as a vital
37 records employee on the basis of any conviction disclosed by the
38 criminal history record background check, the employer shall terminate
39 that person's employment as a vital records employee but shall make
40 a reasonable effort to retain that person as an employee in another
41 position within the agency that is not involved with the registration,
42 issuance, processing, storage, dissemination or confidential destruction
43 of vital records, and for which the current employee is qualified.

44
45 4. (New section) An applicant or current employee shall be
46 required to assume the cost of the criminal history record background

1 check, unless the applicant's prospective employer or current
2 employee's employer elects to assume the cost of the criminal history
3 record background check.

4
5 5. The commissioner, pursuant to the "Administrative Procedure
6 Act," P.L.1968, c.410 (C.52:14B-1 et seq.), shall adopt rules and
7 regulations to effectuate the purposes of this act.

8
9 6. Section 14 of P.L.1997, c.100 (C.53:1-20.9a) is amended to
10 read as follows:

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

18 (1) each applicant for nurse aide or personal care assistant
19 certification submitted to the Department of Health and Senior
20 Services and of each applicant for homemaker-home health aide
21 certification submitted to the New Jersey Board of Nursing in the
22 Division of Consumer Affairs;

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

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

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

35 b. For the purpose of conducting a criminal history record
36 background check pursuant to subsection a. of this section, the
37 Division of State Police shall examine its own files and arrange for a
38 similar examination by federal authorities. The division shall
39 immediately forward the information obtained as a result of conducting
40 the check to:

41 (1) the Commissioner of Health and Senior Services, in the case of
42 an applicant for nurse aide or personal care assistant certification or a
43 certified nurse aide or personal care assistant;

44 (2) the New Jersey Board of Nursing in the Division of Consumer
45 Affairs in the Department of Law and Public Safety, in the case of an
46 applicant for homemaker-home health aide certification or a certified

1 homemaker-home health aide; [and]

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

7 (4) the Commissioner of Health and Senior Services, in the case of
8 an applicant for employment as a vital records employee or a current
9 employee as defined in section 1 of P.L. , c. (C.)(pending
10 before the Legislature as this bill).

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

12
13 7. This act shall take effect on the 180th day after enactment, but
14 the Commissioner of Health and Senior Services may take such
15 anticipatory administrative action in advance as shall be necessary for
16 the implementation of the act.

17 18 19 STATEMENT

20
21 This bill provides for criminal history record background checks for
22 public employees handling vital records as a condition of their
23 employment, who are termed "vital records employees" in the bill.

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

31 Specifically, the bill provides as follows:

- 32 c An employer (i.e., a State, county or municipal government agency)
33 is prohibited from hiring an applicant for employment as a vital
34 records employee without first determining that no criminal history
35 record information exists on file in the Federal Bureau of
36 Investigation (FBI) or the Division of State Police which may
37 disqualify the person from employment as a vital records employee;
38 and an employer must ensure that each current employee undergo
39 a criminal history record background check no later than the 90th
40 day after the effective date of the bill, as a condition of retaining
41 that person's position as a vital records employee, in the same
42 manner and for the same purpose as that provided for an applicant.
43 c An applicant or current employee is to be disqualified from being
44 employed as a vital records employee if that person's criminal
45 history record background check reveals a record of conviction of
46 any of the following crimes and offenses:

- 1 -- in New Jersey, any crime or disorderly persons offense:
2 (a) involving theft as set forth in chapter 20 of Title 2C of the New
3 Jersey Statutes;
4 (b) involving forgery or fraudulent practices as set forth in chapter
5 21 of Title 2C of the New Jersey Statutes; or
6 (c) involving any controlled dangerous substance or controlled
7 substance analog as set forth in chapter 35 of Title 2C of the New
8 Jersey Statutes except paragraph (4) of subsection a. of
9 N.J.S.A.2C:35-10; or
10 -- in any other state or jurisdiction, of conduct which, if committed
11 in New Jersey, would constitute any of these crimes or disorderly
12 persons offenses.
- 13 C No applicant or current employee is to be disqualified from
14 employment as a vital records employee on the basis of any
15 conviction disclosed by a criminal history record background check
16 performed pursuant to the bill if that person has affirmatively
17 demonstrated clear and convincing evidence of the person's
18 rehabilitation to the Commissioner of Health and Senior Services,
19 based upon the factors enumerated in the bill.
- 20 C If an applicant refuses to consent to, or cooperate in, the securing
21 of a criminal history record background check, the employer is not
22 to hire that person as a vital records employee; and, if a current
23 employee refuses to consent to, or cooperate in, the securing of a
24 criminal history record background check, the employer is to
25 terminate that person's employment as a vital records employee but
26 is to make a reasonable effort to retain that person as an employee
27 in another position within the agency that is not involved with the
28 registration, issuance, processing, storage, dissemination or
29 confidential destruction of vital records, and for which the current
30 employee is qualified.
- 31 C An applicant or current employee who is required to undergo a
32 criminal history record background check is to submit to the
33 commissioner that individual's name, address and fingerprints taken
34 by a State or municipal law enforcement agency or by a private
35 entity under contract with the State. The commissioner is
36 authorized to exchange fingerprint data with and receive criminal
37 history record information from the FBI and the Division of State
38 Police for use in making the determinations required pursuant to the
39 bill.
- 40 C Upon receipt of the criminal history record information for an
41 applicant from the FBI or the Division of State Police, the
42 commissioner is to immediately notify the employer, who is to
43 immediately notify the applicant or current employee in writing. If
44 the applicant or current employee is disqualified from employment
45 as a vital records employee on the basis of any conviction disclosed
46 by the criminal history record background check, the conviction or

- 1 convictions that constitute the basis for the disqualification is to be
2 identified in the notice to that individual.
- 3 C The applicant or current employee is to have 30 days from the date
4 of the written notice of disqualification to petition the commissioner
5 for a hearing on the accuracy of the applicant's or current
6 employee's criminal history record information or to establish the
7 applicant's or current employee's rehabilitation. Upon the issuance
8 of a final decision on a petition to the commissioner, the
9 commissioner is to notify the applicant or current employee as to
10 whether that individual remains disqualified.
- 11 C If a current employee is disqualified from employment as a vital
12 records employee on the basis of any conviction disclosed by the
13 criminal history record background check, the employer is to
14 terminate that person's employment as a vital records employee but
15 is to make a reasonable effort to retain the person as an employee
16 in another position within the agency that is not involved with the
17 registration, issuance, processing, storage, dissemination or
18 confidential destruction of vital records, and for which the current
19 employee is qualified.
- 20 C An applicant or current employee is required to assume the cost of
21 the criminal history record background check, unless the employer
22 elects to assume the cost.
- 23 C The bill takes effect on the 180th day after enactment, but
24 authorizes the Commissioner of Health and Senior Services to take
25 anticipatory administrative action in advance as necessary for its
26 implementation.