

# **SENATE, No. 587**

## **STATE OF NEW JERSEY**

### **211th LEGISLATURE**

PRE-FILED FOR INTRODUCTION IN THE 2004 SESSION

**Sponsored by:**

**Senator STEPHEN M. SWEENEY**

**District 3 (Salem, Cumberland and Gloucester)**

**Senator JOHN H. ADLER**

**District 6 (Camden)**

**Co-Sponsored by:**

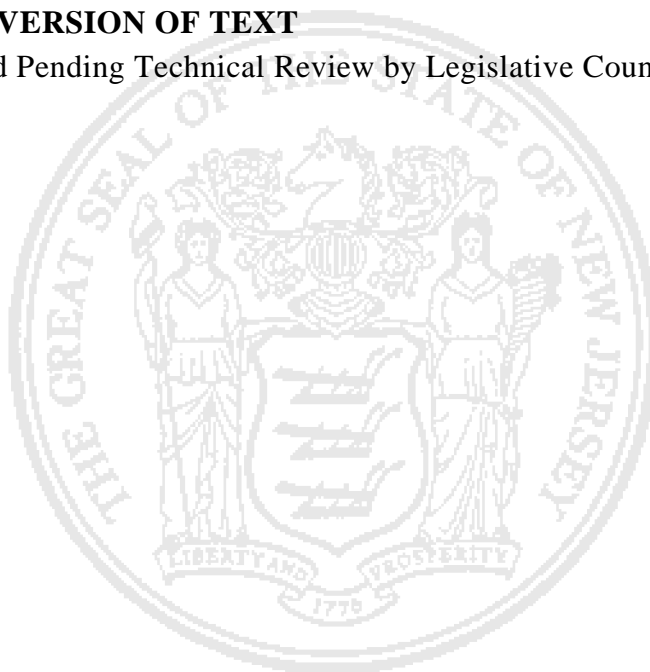
**Senators Coniglio and T.Kean**

**SYNOPSIS**

Requires independent contractors to submit to background checks to work within certain industries.

**CURRENT VERSION OF TEXT**

Introduced Pending Technical Review by Legislative Counsel.



**(Sponsorship Updated As Of: 12/9/2005)**

1 AN ACT concerning criminal history record background checks and  
2 supplementing P.L.2001, c.246 (C.App.A:9-64 et seq.).

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

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7 1. As used in this act:

8 "Applicant" means a person 18 years of age or older who is being  
9 considered for employment by an independent contractor to work in  
10 a critical position within a designated facility;

11 "Critical position" means a position with duties or responsibilities  
12 which may affect the public safety or national security as determined  
13 by the Attorney General pursuant to section 3 of this act;

14 "Designated facility" means "facility" as defined in section 3 of  
15 P.L.1985, c.403 (C.13:1K-21), except that, as used in this act,  
16 "designated facility" shall also include a research and development  
17 laboratory, which means a specially designated area used primarily for  
18 research, development, and testing activity, and not primarily involved  
19 in the production of goods for commercial sale, in which  
20 extraordinarily hazardous substances are used by or under the  
21 supervision of a technically qualified person; and

22 "Independent contractor" means a person, firm, company or  
23 organization which enters into a contract to work within, supply or  
24 deliver materials to a designated facility.

25  
26 2. The Department of Law and Public Safety shall perform criminal  
27 history record background checks on applicants to be employed by  
28 independent contractors. An independent contractor shall not hire an  
29 applicant unless it is determined that no criminal record information  
30 exists on file in the Federal Bureau of Investigation, Identification  
31 Division, or in the State Bureau of Identification in the Division of  
32 State Police which would disqualify the individual from being  
33 employed pursuant to the provisions of this act.

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35 3. The Attorney General shall determine the titles and positions  
36 which shall be designated as critical positions. These positions shall  
37 include any title or position in which the duties or responsibilities may  
38 potentially affect the public safety or national security or in which the  
39 applicant may have access to information which may potentially affect  
40 the public safety or national security. These positions may include, but  
41 are not limited to, positions involving information management,  
42 preserving and ensuring the public safety, or contractors' access to  
43 information or facilities which could be utilized to compromise the  
44 public safety and national security. The Domestic Security  
45 Preparedness Task Force established pursuant to section 4 of  
46 P.L.2001, c.246 (C.App.A:9-67) shall review the determination of the

1 Attorney General concerning the designation of critical positions.

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3 4. An applicant subject to the provisions of section 2 of this act  
4 shall submit to being fingerprinted in accordance with applicable State  
5 and federal laws, rules and regulations. An applicant who refuses to  
6 consent to, or cooperate in, the securing of a criminal history record  
7 background check shall not be considered for employment. The  
8 Department of Law and Public Safety is authorized to request and  
9 receive criminal history record information from the Federal Bureau  
10 of Investigation, Identification Section and the Division of State  
11 Police, Bureau of Identification for use in making the determinations  
12 provided for in section 2 of this act. No criminal history record  
13 background check shall be performed pursuant to this act unless the  
14 applicant shall have furnished written consent to such check. The  
15 independent contractor shall bear the cost for the applicant's criminal  
16 history record check.

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18 5. a. Upon receipt of an applicant's criminal history record  
19 information, the department shall notify the applicant, in writing, as to  
20 whether the applicant is qualified or disqualified for employment  
21 pursuant to this act. The Attorney General shall determine the basis  
22 for disqualification for a title or position. If the applicant is  
23 disqualified for employment, the conviction or convictions which  
24 constitute the basis for the disqualification shall be identified in the  
25 written notice.

26 b. An applicant shall have 20 days from the date of written notice  
27 of disqualification to file an appeal for a review on the accuracy of the  
28 criminal history record information or to establish rehabilitation  
29 pursuant to regulations promulgated by the Attorney General.

30 c. The department shall not maintain an applicant's criminal history  
31 record information submitted under this act for more than six months  
32 from the date of the final disposition of the applicant's disqualification.

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34 6. All identification credentials for an employee who was subject  
35 to a criminal history record background check pursuant to the  
36 provisions of this act shall indicate that a criminal history record  
37 background check has been performed for the employee.

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39 7. The Attorney General may promulgate regulations pursuant to  
40 the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et  
41 seq.) to effectuate the provisions of this act.

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43 8. This act shall take effect immediately.

## STATEMENT

This bill requires applicants for employment with an independent contractor, for work in critical positions within a designated facility to undergo criminal history background checks. In accordance with the provisions of this bill, designated facility means a "facility" as defined under the "Toxic Catastrophe Prevention Act" (TCPA), but also includes research and development laboratories. Critical positions within these facilities would be determined by the Attorney General, and would include any title or position in which the duties or responsibilities may potentially affect the public safety or national security, or in which the applicant may have access to information which may potentially affect the public safety or national security. Under the bill's provisions, an independent contractor may not hire an applicant unless it is determined that no criminal record information exists on file in the Federal Bureau of Investigation, Identification Division, or in the State Bureau of Identification in the Division of State Police which would disqualify the individual from being employed pursuant to the bill's provisions. The Department of Law and Public Safety would perform the background checks.

Under the bill's provisions, the Attorney General would determine the titles and positions for which a background check is to be required. The Domestic Security Preparedness Task Force would review these determinations.

The bill requires an applicant to submit to being fingerprinted in accordance with applicable State and federal laws, rules and regulations. An applicant who refuses to consent to, or cooperate in, the securing of a criminal history record background check may not be considered for employment. The department is authorized to exchange fingerprint data with and receive criminal history record information from the Federal Bureau of Investigation, Identification Section and the Division of State Police, Bureau of Identification. The applicant must consent to the background check. The bill requires independent contractors to bear the cost of the background check for the applicants.

Upon receipt of an applicant's criminal history record information, the department will notify the applicant, in writing, as to whether the individual is qualified or disqualified for employment. The Attorney General is required to determine the basis for disqualification for a title or position. If the applicant is disqualified for employment, the conviction or convictions which constitute the basis for the disqualification would be identified in the written notice.

An applicant would have 20 days from the date of written notice of disqualification to file an appeal for a review on the accuracy of the criminal history record information or to establish rehabilitation pursuant to regulations promulgated by the Attorney General. The

**S587 SWEENEY, ADLER**

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1 bill provides that the Department of Law and Public Safety may not  
2 maintain an applicant's criminal history record information submitted  
3 under this bill for more than six months from the date of the final  
4 disposition of the applicant's disqualification.