

[First Reprint]

SENATE COMMITTEE SUBSTITUTE FOR
SENATE, Nos. 462 and 1289

STATE OF NEW JERSEY
212th LEGISLATURE

ADOPTED MARCH 2, 2006

Sponsored by:

Senator STEPHEN M. SWEENEY

District 3 (Salem, Cumberland and Gloucester)

Senator JOHN H. ADLER

District 6 (Camden)

Senator BARBARA BUONO

District 18 (Middlesex)

Assemblyman JOHN J. BURZICHELLI

District 3 (Salem, Cumberland and Gloucester)

Assemblyman DOUGLAS H. FISHER

District 3 (Salem, Cumberland and Gloucester)

Assemblyman NEIL M. COHEN

District 20 (Union)

Co-Sponsored by:

Senators Coniglio, T.Kean and Sacco

SYNOPSIS

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

CURRENT VERSION OF TEXT

As amended on December 4, 2006 by the Senate pursuant to the Governor's recommendations.

(Sponsorship Updated As Of: 12/5/2006)

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

3

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

6

7 1. As used in this act:

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

12 "Critical position" means a position with duties or
13 responsibilities which may affect the public safety or national
14 security as determined by the Attorney General, in consultation
15 with 'the Director of the Office of Homeland Security and
16 Preparedness, the Commissioner of Environmental Protection, and'
17 industry representatives, pursuant to section 3 of this act;

18 "Designated facility" means "facility" as defined in section 3 of
19 P.L.1985, c.403 (C.13:1K-21) , the owner or operator of which is
20 required to submit a registration form pursuant to section 4 of
21 P.L.1985, c.403 (C.13:1K-22);

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 and whose employees have
25 physical access to a designated facility; and

26 "Industry representatives" means a group of individuals, chosen
27 by the Attorney General, 'in consultation with the Director of the
28 Office of Homeland Security and Preparedness and the
29 Commissioner of Environmental Protection' with expertise in
30 identifying critical positions which may affect public safety and
31 national security at designated facilities.

32

33 2. The Department of Law and Public Safety **'[**or a private
34 vendor approved by the department **']'** shall perform criminal history
35 record background checks on applicants 'employed by or' to be
36 employed by independent contractors in a critical position at a
37 designated facility. The department, or a private vendor approved
38 by the department, also shall perform a thorough identity
39 verification check on these applicants, to include, at a minimum, a
40 credit investigation, a Social Security number verification to detect
41 informational inconsistencies, and a cross-referencing of all
42 applicants against appropriate law enforcement advisories and terror

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.

Matter enclosed in superscript numerals has been adopted as follows:

**¹Senate amendments adopted in accordance with Governor's recommendations
December 4, 2006.**

1 watch lists ¹[. Upon application by an independent contractor, the
2 Attorney General may authorize the use of an approved private
3 vendor to conduct checks conducted by the department] ; provided,
4 however, that in no instance shall information obtained from the
5 Violent Gang and Terrorist Organization File (VGTOF) be
6 disseminated to a non-criminal justice agency or an applicant unless
7 that dissemination is authorized by the Federal Bureau of
8 Investigation and is consistent with federal laws, rules and
9 regulations¹. An independent contractor shall not ¹employ or¹ hire
10 an applicant for employment in a critical position at a designated
11 facility unless ¹[it is determined] the Attorney General determines¹
12 that no criminal record information exists on file in the Federal
13 Bureau of Investigation, Identification Division, or in the State
14 Bureau of Identification in the Division of State Police which would
15 disqualify the individual from being employed, and that the
16 applicant is not otherwise disqualified as a result of required
17 identity verification checks, performed pursuant to the provisions of
18 this act. ¹Any person who is employed on the date of enactment of
19 this act by an independent contractor and who works within a
20 designated facility in a position determined by the Attorney General
21 to be a critical position shall be permitted to serve in that capacity
22 unless and until it is determined that the applicant is disqualified
23 pursuant to this section, provided that within 30 days of the
24 Attorney General's determination that the person will be serving in
25 a critical position, an application has been submitted to the
26 Department of Law and Public Safety with the required fees for that
27 person to qualify for employment in a critical position, and the
28 person has consented to and cooperates with the securing of a
29 criminal history record background check and identity verification
30 check conducted in accordance with section 4 of this act.¹ The
31 Attorney General, in consultation with¹the Director of the Office of
32 Homeland Security and Preparedness, the Commissioner of
33 Environmental Protection, and¹industry representatives, shall
34 develop the criteria for qualification of all applicants. Criminal
35 history record background checks and all identity verification
36 checks shall be repeated for previously qualified employees at least
37 once every five years, for as long as they are employed by an
38 independent contractor in a critical position at a designated facility.

39
40 3. The Attorney General, in consultation with ¹the Director of
41 the Office of Homeland Security and Preparedness, the
42 Commissioner of Environmental Protection, and¹ industry
43 representatives, shall determine the titles and positions which shall
44 be designated as critical positions. These positions shall include
45 any title or position in which the duties or responsibilities may
46 potentially affect the public safety or national security or in which
47 the applicant may have access to information which may potentially

1 affect the public safety or national security. These positions may
2 include, but are not limited to, positions involving information
3 management, preserving and ensuring the public safety, or
4 contractors' access to information or facilities which could be
5 utilized to compromise the public safety and national security.
6 **['The Domestic Security Preparedness Task Force established**
7 **pursuant to section 4 of P.L.2001, c.246 (C.App.A:9-67) shall**
8 **review the determination of the Attorney General concerning the**
9 **designation of critical positions.】'**

10

11 4. An applicant subject to the provisions of section 2 of this act
12 shall submit to being fingerprinted in accordance with applicable
13 State and federal laws, rules and regulations. An applicant who
14 refuses to consent to, or cooperate in, the securing of a criminal
15 history record background check or identity verification checks,
16 shall not be 'retained or' considered for employment in a critical
17 position at a designated facility. The Department of Law and
18 Public Safety **['or an approved private vendor】'** is authorized to
19 exchange fingerprint data with and receive criminal history record
20 information from the Federal Bureau of Investigation, Identification
21 Section and the Division of State Police, Bureau of Identification
22 for use in making the determinations provided for in section 2 of
23 this act. No criminal history record background check or identity
24 verification checks shall be performed pursuant to this act unless
25 the applicant shall have furnished written consent to such checks.
26 The independent contractor shall bear the cost for the applicant's
27 criminal history record check and identity verification checks.

28

29 5. a. Upon receipt of an applicant's criminal history record
30 information and identity verification information, the department
31 **['or the approved private vendor】'** shall notify the **['applicant, in**
32 **writing,】** independent contractor who employs the applicant or is
33 considering the applicant for employment' as to whether the
34 applicant is qualified or disqualified for employment pursuant to
35 this act. **['The Attorney General, in consultation with industry**
36 **representatives, shall determine the basis for disqualification for a**
37 **title or position.】** The independent contractor shall notify the
38 applicant in writing of his qualification for or disqualification from
39 employment pursuant to this act.' If the applicant is disqualified for
40 employment, the reasons which constitute the basis for the
41 disqualification shall be identified in the written notice.

42 b. An applicant shall have 20 days from the date of written
43 notice of disqualification to file an appeal with the department for a
44 review of the criminal history record information or identity
45 verification information to, establish rehabilitation or to dispute the
46 accuracy of such information pursuant to regulations adopted by the
47 Attorney General.

1 c. ¹ **[**Approved private vendors shall submit a list of qualified
2 applicants, with acceptable proof of identification for each listed
3 applicant, to the Attorney General. The Attorney General shall
4 determine acceptable proofs of identification.

5 d. The department or the approved private vendor shall not
6 maintain an **An**¹ applicant's criminal history record information or
7 identity verification information submitted under this act ¹shall not
8 be maintained¹ for more than six months from the date of the final
9 disposition of the applicant's disqualification.

10
11 6. a. The Attorney General ¹, in conjunction with the
12 Commissioner of Environmental Protection,¹ shall develop a system
13 to certify applicants who have been subject to a criminal history
14 record background check and identity verification checks, and who
15 have qualified for employment in a critical position at a designated
16 facility pursuant to the provisions of this act. The Attorney General
17 shall ¹**[**issue**]** cause to be issued¹ credentials for each such qualified
18 applicant.

19 b. An independent contractor shall provide written
20 documentation to a designated facility that all employees placed in
21 critical positions have been certified, pursuant to this section.

22 ¹c. In addition to the fees imposed to cover the cost of criminal
23 history background checks and identity verification checks
24 authorized by section 4 of P.L. , c. (C.) (pending before
25 the Legislature as this bill), the Attorney General may impose a
26 reasonable fee, to be borne by the independent contractor, for each
27 applicant to cover the costs incurred by the department associated
28 with the qualification or disqualification of applicants and the
29 development, creation, and issuance of credentials for qualified
30 applicants authorized pursuant to this act.¹

31
32 7. The Attorney General shall adopt rules and regulations
33 pursuant to the "Administrative Procedure Act," P.L.1968, c.410
34 (C.52:14B-1 et seq.) to implement the provisions of this act,
35 including rules and regulations concerning access to and
36 dissemination of information obtained as a result of conducting a
37 criminal history background check and identity verification checks.

38
39 8. This act shall take effect ¹**[**immediately**]** on the 270th day
40 following enactment, except that the Attorney General, Director of
41 the Office of Homeland Security and Preparedness, and
42 Commissioner of Environmental Protection may, prior to the
43 effective date, take such anticipatory action as shall be necessary
44 for the implementation of this act.¹