

CHAPTER 73

AN ACT concerning restrictions on employment at airports and supplementing Title 6 and Title 32 of the Revised Statutes.

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

C.32:2-37 Definitions relative to airport employment restrictions; criminal history record checks.

1. a. As used in this section:

"Aircraft operator" means the holder of an operating certificate issued by the Federal Aviation Administration or a permit issued by the Civil Aeronautics Board or the federal Department of Transportation who conducts scheduled passenger, public charter or private charter flight operations in which passengers are emplaned from or deplaned into a sterile area.

"Airport" means a commercial service airport facility, conducting business pursuant to Title 14 of the Code of Federal Regulations Part 139, located wholly within this State operating pursuant to an airport security program approved by the Federal Aviation Administration.

"Airport operator" means the Port Authority of New York and New Jersey.

"Employee" means any person who provides services in the sterile area of an airport.

"Prior conviction" means a conviction under the laws of this State, another state, or the United States of an offense substantially equivalent to any crime listed in this section for which a sentence of imprisonment in excess of one year could be imposed.

"Sterile area" means that portion of an airport that provides passengers access to boarding aircraft and to which the access generally is controlled through the screening of persons and property in accordance with a security program approved by the Federal Aviation Administration.

b. An airport operator shall not employ or permit to be employed any employee who has a disqualifying conviction. An airport operator shall not employ, or permit to be employed, an employee unless it has determined, consistent with the standards of this section, that no criminal history record background information exists on file in the Federal Bureau of Investigation, Criminal Justice Information Service or the Division of State Police which would disqualify that individual from being employed. This section shall apply to all employees who are currently employed at or who are prospective employees at an airport operated by an airport operator. This section shall not apply to employees who are subject to fingerprint-based criminal history record background checks mandated by federal law or rules and regulations.

c. The airport operator shall require, for purposes of determining employment eligibility, the fingerprinting of prospective or current employees. The airport operator is authorized to receive criminal history record background information from the Division of State Police and the Federal Bureau of Investigation, Criminal Justice Information Service consistent with the provisions of Public Law 92-544, for use in determining employment eligibility. The airport operator shall:

(1) promulgate rules and regulations for the use and safeguarding of criminal history record background information received from the Division of State Police and the Federal Bureau of Investigation, Criminal Justice Information Service;

(2) develop a form to be used in connection with the submission of fingerprints that contains the specific job title held or sought, and any other information that may be relevant to consideration of the current or prospective employee; and

(3) promulgate a form to be provided to all prospective and current employees that shall inform the prospective or current employee that: (a) the airport operator is required to request that employee's criminal history record background information from the Division of State Police and the Federal Bureau of Investigation, Criminal Justice Information Service and review such information pursuant to this section; (b) the prospective or current employee has the right to obtain, review and seek correction of his criminal history record background information; and (c) the prospective or current employee shall have 14 days from the date of any written notice of disqualification to challenge the accuracy of the criminal history record background information.

d. The employee or prospective employee shall submit to the airport operator the individual's name and address and shall provide written consent to and cooperate in the securing of fingerprints taken in accordance with applicable State and federal laws, rules, regulations and standards by a State or municipal law enforcement agency or the Port Authority of New York

and New Jersey police department or other person designated by the Division of State Police, and any fees imposed by the Division of State Police and the Federal Bureau of Investigation, Criminal Justice Information Service. The airport operator is authorized to exchange fingerprint data with and receive criminal history record background information from the Federal Bureau of Investigation, Criminal Justice Information Service and the Division of State Police for use in determining the eligibility for employment of employees and prospective employees, consistent with the provisions of Public Law 92-544. The airport operator shall promptly transmit such fingerprints, the required fees and any other demographic information required by the Division of State Police to the Division of State Police and the Federal Bureau of Investigation, Criminal Justice Information Service for their full search and processing. The Division of State Police is authorized to submit the fingerprints and the appropriate fee to the Federal Bureau of Investigation, Criminal Justice Information Service for a national criminal history record background check.

The Division of State Police shall forward the criminal history record to the airport operator in a timely manner.

e. All criminal history records processed and sent to the airport operator pursuant to this section shall be confidential pursuant to the applicable federal and state laws, rules and regulations, and shall not be published or in any way disclosed to persons other than an airport operator, unless otherwise authorized by law. No cause of action against an airport operator for damages shall exist for the determination that a prospective or current employee has a disqualifying criminal conviction, or for the lawful disclosure of a disqualifying criminal conviction to an employer, when an airport operator has reasonably and in good faith relied upon the accuracy and completeness of criminal history record background information furnished to it by the Division of State Police or the Federal Bureau of Investigation, Criminal Justice Information Service. An airport operator who acts upon or discloses information pertaining to a disqualifying criminal conviction of a prospective or current employee shall be presumed to be acting in good faith unless it is shown by clear and convincing evidence that the airport operator acted with actual malice toward the person who is the subject of the information.

No cause of action against an employer for damages shall exist for acting upon information received from an airport operator that a current employee has a disqualifying criminal conviction, when the employer has reasonably and in good faith relied upon the determination made by the airport operator that the current employee has a disqualifying criminal conviction. An employer at the airport who acts upon information pertaining to a disqualifying criminal conviction of a current employee shall be presumed to be acting in good faith unless it is shown by clear and convincing evidence that the employer acted with actual malice toward the person who is the subject of the information.

f. The airport operator shall review the criminal history record of a current or prospective employee covered by this section to determine whether that employee has a disqualifying criminal conviction in his background. A disqualifying criminal conviction shall be evidenced by a criminal history record background check which reveals a conviction within the preceding 10 years of any of the following:

- (1) any crime in violation of N.J.S.2C:11-3, N.J.S.2C:11-4, N.J.S.2C:11-5 or N.J.S.2C:11-6;
- (2) any crime in violation of N.J.S.2C:12-1, N.J.S.2C:12-2 or N.J.S.2C:12-3;
- (3) any kidnaping in violation of N.J.S.2C:13-1, criminal restraint in violation of N.J.S.2C:13-2, interference with custody in violation of N.J.S.2C:13-4, criminal coercion in violation of N.J.S.2C:13-5 or luring or enticing a child in violation of section 1 of P.L.1993, c.291 (C.2C:13-6);
- (4) any aggravated sexual assault or sexual assault in violation of N.J.S.2C:14-2, or aggravated criminal sexual contact or criminal sexual contact in violation of N.J.S.2C:14-3;
- (5) any robbery in violation of N.J.S.2C:15-1 or carjacking in violation of section 1 of P.L.1993, c.221 (C.2C:15-2);
- (6) any crime of bias intimidation in violation of N.J.S.2C:16-1;
- (7) any arson or related offense in violation of N.J.S.2C:17-1, causing or risking widespread injury or damage in violation of N.J.S.2C:17-2, any crime of criminal mischief in violation of N.J.S.2C:17-3a, any crime of alteration of motor vehicle trademarks or identification numbers

in violation of section 1 of P.L.1983, c.351 (C.2C:17-6), or any violation of P.L.1983, c.480 (C.2C:17-7 et seq.);

(8) any burglary in violation of N.J.S.2C:18-2 or any crime of criminal trespass in violation of N.J.S.2C:18-3;

(9) any crime of theft in violation of chapter 20 of Title 2C of the New Jersey Statutes;

(10) any crime of forgery and fraudulent practices in violation of chapter 21 of Title 2C of the New Jersey Statutes;

(11) any crime of bribery and corrupt influence in violation of chapter 27 of Title 2C of the New Jersey Statutes;

(12) any crime in violation of N.J.S.2C:28-1, N.J.S.2C:28-2, N.J.S.2C:28-3a, N.J.S.2C:28-4a, N.J.S.2C:28-5, N.J.S.2C:28-6, N.J.S.2C:28-7 or N.J.S.2C:28-8b;

(13) any crime in violation of N.J.S.2C:29-1 or N.J.S.2C:29-8;

(14) any crime in violation of N.J.S.2C:33-1a, N.J.S.2C:33-3, N.J.S.2C:33-14 or section 1 of P.L.1991, c.335 (C.2C:33-14.1);

(15) any crime in violation of chapter 35 of Title 2C of the New Jersey Statutes;

(16) any crime in violation of chapter 36 of Title 2C of the New Jersey Statutes;

(17) any crime in violation of N.J.S.2C:39-3, N.J.S.2C:39-4, section 1 of P.L.1998, c.26 (C.2C:39-4.1), N.J.S.2C:39-5, section 1 of P.L.1983, c.229 (C.2C:39-14) or section 1 of P.L.1995, c.405 (C.2C:39-16);

(18) racketeering in violation of P.L.1981, c.167 (C.2C:41-1.1 et al.);

(19) any crime in violation of sections 2 through 5 of the "September 11th, 2001 Anti-Terrorism Act," P.L.2002, c.26 (C.2C:38-2 through 2C:38-5);

(20) any of the following federal offenses: registration violations involving aircraft not providing air transportation as defined in 49 U.S.C.s.46306; interference with air navigation as defined in 49 U.S.C.s.46308; transporting hazardous material as defined in 49 U.S.C.s.46312; aircraft piracy as defined in 49 U.S.C.s.46502; interference with flight crew members and attendants as defined in 49 U.S.C.s.46504; application of certain criminal laws to acts on aircraft as defined in 49 U.S.C.s.46506; carrying a weapon or explosive on an aircraft as defined in 49 U.S.C.s.46505; false information and threats as defined in 49 U.S.C.s.46507; lighting violations involving transporting controlled substances by aircraft not providing air transportation as defined in 49 U.S.C.s.46315; entering aircraft or airport area in violation of security requirements as defined in 49 U.S.C.s.46314; destruction of aircraft or aircraft facilities as defined in 18 U.S.C.s.32; espionage as defined in 18 U.S.C.ss.793, 794, 798, or 3077; treason, sedition and subversive activities as defined in 18 U.S.C.ss.2381, 2384 and 2385; a violation of 50 U.S.C.s.783; violence at international airports as defined in 18 U.S.C.s.37; or conspiracy or solicitation as defined in 18 U.S.C.ss. 371 and 373; or

(21) an attempt or conspiracy to commit any of the offenses specified in paragraphs (1) through (20) of this subsection.

g. Upon receipt of the criminal history record background information from the Division of State Police and Federal Bureau of Investigation, Criminal Justice Information Service for a prospective or current employee, the airport operator shall notify the prospective or current employee, in writing, of the prospective or current employee's qualification or disqualification for employment. If the prospective or current employee is disqualified, the convictions that constitute the basis for the disqualification shall be identified in the written notice to the prospective or current employee. Unless otherwise specified by law or regulation, the prospective or current employee shall have 14 days from the date of the written notice of disqualification to challenge the accuracy of the criminal history record background information. If no challenge is filed or if the determination of the accuracy of the criminal history record background information upholds the disqualification, the airport operator shall notify the employer that the prospective or current employee has been disqualified from employment. When the airport operator determines that employment in a position to which the provisions of this section apply should be terminated pursuant to this section, the current employee shall be afforded notice in writing and the right to be heard and offer proof in opposition to such determination in accordance with the rules and regulations promulgated pursuant to subsection c. of this section.

h. The Division of State Police shall promptly notify the airport operator in the event a prospective or current employee, who was the subject of a criminal history record background check conducted pursuant to subsection d. of this section, is convicted of a crime or offense in this State after the date the background check was performed. Upon receipt of such notification, the airport operator shall make a determination regarding the eligibility for employment of the prospective or current employee.

i. Every employee shall have a continuing obligation to promptly notify the employee's employer and the airport operator of any conviction of a crime punishable by more than one year in prison. The failure to so notify the employer and airport operator shall be grounds for immediate termination of employment.

j. This section shall apply to all prospective employees on the effective date thereof. Airport operators shall require the criminal history record background checks to be initiated on all current employees within 90 days of the effective date of this section.

C.6:1-100 Definitions relative to airport employment restrictions; criminal history record checks.

2. a. As used in this section:

"Aircraft operator" means the holder of an operating certificate issued by the Federal Aviation Administration or a permit issued by the Civil Aeronautics Board or the federal Department of Transportation who conducts scheduled passenger, public charter or private charter flight operations in which passengers are emplaned from or deplaned into a sterile area.

"Airport" means a commercial service airport facility conducting business pursuant to Title 14 of Code of Federal Regulations Part 139, located wholly within this State operating pursuant to an airport security program approved by the Federal Aviation Administration.

"Airport operator" means a State or local government unit, agency or public authority that operates an airport that serves an aircraft operator, except the Port Authority of New York and New Jersey.

"Employee" means any person who provides services in the sterile area of an airport.

"Prior conviction" means a conviction under the laws of this State, another state, or the United States of an offense substantially equivalent to any crime listed in this section for which a sentence of imprisonment in excess of one year could be imposed.

"Sterile area" means that portion of an airport that provides passengers access to boarding aircraft and to which the access generally is controlled through the screening of persons and property in accordance with a security program approved by the Federal Aviation Administration.

b. An airport operator shall not employ or permit to be employed any employee who has a disqualifying conviction. An airport operator shall not employ, or permit to be employed, an employee unless it has determined, consistent with the standards of this section, that no criminal history record background information exists on file in the Federal Bureau of Investigation, Criminal Justice Information Service or the Division of State Police which would disqualify that individual from being employed. This section shall apply to all employees who are currently employed at or who are prospective employees at an airport operated by an airport operator. This section shall not apply to employees who are subject to fingerprint-based criminal history record background checks mandated by federal law or rules and regulations.

c. Each airport operator shall require, for purposes of determining employment eligibility, the fingerprinting of prospective or current employees. The airport operator is authorized to receive criminal history record background information from the Division of State Police and the Federal Bureau of Investigation, Criminal Justice Information Service consistent with the provisions of Public Law 92-544, for use in determining employment eligibility. Each airport operator shall:

(1) promulgate rules and regulations for the use and safeguarding of criminal history record background information received from the Division of State Police and the Federal Bureau of Investigation, Criminal Justice Information Service;

(2) develop a form to be used in connection with the submission of fingerprints that contains the specific job title held or sought, and any other information that may be relevant to consideration of the current or prospective employee; and

(3) promulgate a form to be provided to all prospective and current employees that shall inform the prospective or current employee that: (a) the airport operator is required to request that employee's criminal history record background information from the Division of State Police and the Federal Bureau of Investigation, Criminal Justice Information Service and review such information pursuant to this section; (b) the prospective or current employee has the right to obtain, review and seek correction of his criminal history record background information; and © the prospective or current employee shall have 14 days from the date of any written notice of disqualification to challenge the accuracy of the criminal history record background information.

d. The employee or prospective employee shall submit to the airport operator the individual's name and address and shall provide written consent to and cooperate in the securing of fingerprints taken in accordance with applicable State and federal laws, rules, regulations and standards by a State or municipal law enforcement agency or other person designated by the Division of State Police, and any fees imposed by the Division of State Police and the Federal Bureau of Investigation, Criminal Justice Information Service. The airport operator is authorized to exchange fingerprint data with and receive criminal history record background information from the Federal Bureau of Investigation, Criminal Justice Information Service and the Division of State Police for use in determining the eligibility for employment of employees and prospective employees, consistent with the provisions of Public Law 92-544. The airport operator shall promptly transmit such fingerprints and the required fees to the Division of State Police and the Federal Bureau of Investigation, Criminal Justice Information Service for their full search and processing. The Division of State Police is authorized to submit the fingerprints and the appropriate fee to the Federal Bureau of Investigation, Criminal Justice Information Service for a national criminal history record background check.

The Division of State Police shall forward the criminal history record to the airport operator in a timely manner.

e. All criminal history records processed and sent to the airport operator pursuant to this section shall be confidential pursuant to the applicable federal and state laws, rules and regulations, and shall not be published or in any way disclosed to persons other than an airport operator, unless otherwise authorized by law. No cause of action against an airport operator for damages shall exist for the determination that a prospective or current employee has a disqualifying criminal conviction, or for the lawful disclosure of a disqualifying criminal conviction to an employer, when an airport operator has reasonably and in good faith relied upon the accuracy and completeness of criminal history record background information furnished to it by the Division of State Police or the Federal Bureau of Investigation, Criminal Justice Information Service. An airport operator who acts upon or discloses information pertaining to a disqualifying criminal conviction of a prospective or current employee shall be presumed to be acting in good faith unless it is shown by clear and convincing evidence that the airport operator acted with actual malice toward the person who is the subject of the information.

No cause of action against an employer for damages shall exist for acting upon information received from an airport operator that a current employee has a disqualifying criminal conviction, when the employer has reasonably and in good faith relied upon the determination made by the airport operator that the current employee has a disqualifying criminal conviction. An employer at the airport who acts upon information pertaining to a disqualifying criminal conviction of a current employee shall be presumed to be acting in good faith unless it is shown by clear and convincing evidence that the employer acted with actual malice toward the person who is the subject of the information.

f. The airport operator shall review the criminal history record of a current or prospective employee covered by this section to determine whether that employee has a disqualifying criminal conviction in his background. A disqualifying criminal conviction shall be evidenced by a criminal history record background check which reveals a conviction within the preceding 10 years of any of the following:

- (1) any crime in violation of N.J.S.2C:11-3, N.J.S.2C:11-4, N.J.S.2C:11-5 or N.J.S.2C:11-6;
- (2) any crime in violation of N.J.S.2C:12-1, N.J.S.2C:12-2 or N.J.S.2C:12-3;
- (3) any kidnaping in violation of N.J.S.2C:13-1, criminal restraint in violation of N.J.S.2C:13-2, interference with custody in violation of N.J.S.2C:13-4, criminal coercion in

violation of N.J.S.2C:13-5 or luring or enticing a child in violation of section 1 of P.L.1993, c.291 (C.2C:13-6);

(4) any aggravated sexual assault or sexual assault in violation of N.J.S.2C:14-2, or aggravated criminal sexual contact or criminal sexual contact in violation of N.J.S.2C:14-3;

(5) any robbery in violation of N.J.S.2C:15-1 or carjacking in violation of section 1 of P.L.1993, c.221 (C.2C:15-2);

(6) any crime of bias intimidation in violation of N.J.S.2C:16-1;

(7) any arson or related offense in violation of N.J.S.2C:17-1, causing or risking widespread injury or damage in violation of N.J.S.2C:17-2, any crime of criminal mischief in violation of N.J.S.2C:17-3a, any crime of alteration of motor vehicle trademarks or identification numbers in violation of section 1 of P.L.1983, c.351 (C.2C:17-6), or any violation of P.L.1983, c.480 (C.2C:17-7 et seq.);

(8) any burglary in violation of N.J.S.2C:18-2 or any crime of criminal trespass in violation of N.J.S.2C:18-3;

(9) any crime of theft in violation of chapter 20 of Title 2C of the New Jersey Statutes;

(10) any crime of forgery and fraudulent practices in violation of chapter 21 of Title 2C of the New Jersey Statutes;

(11) any crime of bribery and corrupt influence in violation of chapter 27 of Title 2C of the New Jersey Statutes;

(12) any crime in violation of N.J.S.2C:28-1, N.J.S.2C:28-2, N.J.S.2C:28-3a, N.J.S.2C:28-4a, N.J.S.2C:28-5, N.J.S.2C:28-6, N.J.S.2C:28-7 or N.J.S.2C:28-8b;

(13) any crime in violation of N.J.S.2C:29-1 or N.J.S.2C:29-8;

(14) any crime in violation of N.J.S.2C:33-1a, N.J.S.2C:33-3, N.J.S.2C:33-14 or section 1 of P.L.1991, c.335 (C.2C:33-14.1);

(15) any crime in violation of chapter 35 of Title 2C of the New Jersey Statutes;

(16) any crime in violation of chapter 36 of Title 2C of the New Jersey Statutes;

(17) any crime in violation of N.J.S.2C:39-3, N.J.S.2C:39-4, section 1 of P.L.1998, c.26 (C.2C:39-4.1), N.J.S.2C:39-5, section 1 of P.L.1983, c.229 (C.2C:39-14) or section 1 of P.L.1995, c.405 (C.2C:39-16);

(18) racketeering in violation of P.L.1981, c.167 (C.2C:41-1.1 et al.);

(19) any crime in violation of sections 2 through 5 of the "September 11th, 2001 Anti-Terrorism Act," P.L.2002, c.26 (C.2C:38-2 through 2C:38-5);

(20) any of the following federal offenses: registration violations involving aircraft not providing air transportation as defined in 49 U.S.C.s.46306; interference with air navigation as defined in 49 U.S.C.s.46308; transporting hazardous material as defined in 49 U.S.C.s.46312; aircraft piracy as defined in 49 U.S.C.s.46502; interference with flight crew members and attendants as defined in 49 U.S.C.s.46504; application of certain criminal laws to acts on aircraft as defined in 49 U.S.C.s.46506; carrying a weapon or explosive on an aircraft as defined in 49 U.S.C.s.46505; false information and threats as defined in 49 U.S.C.s.46507; lighting violations involving transporting controlled substances by aircraft not providing air transportation as defined in 49 U.S.C.s.46315; entering aircraft or airport area in violation of security requirements as defined in 49 U.S.C.s.46314; destruction of aircraft or aircraft facilities as defined in 18 U.S.C.s.32; espionage as defined in 18 U.S.C.ss.793, 794, 798, or 3077; treason, sedition and subversive activities as defined in 18 U.S.C.ss.2381, 2384 and 2385; a violation of 50 U.S.C.s.783; violence at international airports as defined in 18 U.S.C.s.37; or conspiracy or solicitation as defined in 18 U.S.C.ss. 371 and 373; or

(21) an attempt or conspiracy to commit any of the offenses specified in paragraphs (1) through (20) of this subsection.

g. Upon receipt of the criminal history record background information from the Division of State Police and Federal Bureau of Investigation, Criminal Justice Information Service for a prospective or current employee, the airport operator shall notify the prospective or current employee, in writing, of the prospective or current employee's qualification or disqualification for employment. If the prospective or current employee is disqualified, the convictions that constitute the basis for the disqualification shall be identified in the written notice to the prospective or current employee. Unless otherwise specified by law or regulation, the

prospective or current employee shall have 14 days from the date of the written notice of disqualification to challenge the accuracy of the criminal history record background information. If no challenge is filed or if the determination of the accuracy of the criminal history record background information upholds the disqualification, the airport operator shall notify the employer that the prospective or current employee has been disqualified from employment. When the airport operator determines that employment in a position to which the provisions of this section apply should be terminated pursuant to this section, the current employee shall be afforded notice in writing and the right to be heard and offer proof in opposition to such determination in accordance with the rules and regulations promulgated pursuant to subsection c. of this section.

h. The Division of State Police shall promptly notify the airport operator in the event a prospective or current employee, who was the subject of a criminal history record background check conducted pursuant to subsection d. of this section, is convicted of a crime or offense in this State after the date the background check was performed. Upon receipt of such notification, the airport operator shall make a determination regarding the eligibility for employment of the prospective or current employee.

I. Every employee shall have a continuing obligation to promptly notify the employee's employer and the airport operator of any conviction of a crime punishable by more than one year in prison. The failure to so notify the employer and airport operator shall be grounds for immediate termination of employment.

j. This section shall apply to all prospective employees on the effective date thereof. Airport operators shall require the criminal history record background checks to be initiated on all current employees within 90 days of the effective date of this section.

3. Section 1 of this act shall take effect upon the enactment into law by the State of New York of legislation having an identical effect with this section, but if the State of New York shall have already enacted such legislation, section 1 shall take effect immediately, and section 2 shall take effect on the 90th day after enactment of this act. Airport operators and the Division of State Police shall take such anticipatory administrative action in advance as shall be necessary for the implementation of this act.

Approved August 15, 2002.