

CHAPTER 101

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

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

C.App.A:9-79 Definitions relative to criminal history record background checks for certain contractors.

1. As used in this act:

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

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

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

"Independent contractor" means a person, firm, company or organization which enters into a contract to work within, supply or deliver materials to a designated facility and whose employees have physical access to a designated facility; and

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

C.App.A:9-80 Criminal history record background checks for employees of contractors in critical position at designated facility.

2. The Department of Law and Public Safety shall perform criminal history record background checks on applicants employed by or to be employed by independent contractors in a critical position at a designated facility. The department, or a private vendor approved by the department, also shall perform a thorough identity verification check on these applicants, to include, at a minimum, a credit investigation, a Social Security number verification to detect informational inconsistencies, and a cross-referencing of all applicants against appropriate law enforcement advisories and terror watch lists; provided, however, that in no instance shall information obtained from the Violent Gang and Terrorist Organization File (VGTOF) be disseminated to a non-criminal justice agency or an applicant unless that dissemination is authorized by the Federal Bureau of Investigation and is consistent with federal laws, rules and regulations. An independent contractor shall not employ or hire an applicant for employment in a critical position at a designated facility unless the Attorney General determines 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, and that the applicant is not otherwise disqualified as a result of required identity verification checks, performed pursuant to the provisions of this act. Any person who is employed on the date of enactment of this act by an independent contractor and who works within a designated facility in a position determined by the Attorney General to be a critical position shall be permitted to serve in that capacity unless and until it is determined

that the applicant is disqualified pursuant to this section, provided that within 30 days of the Attorney General's determination that the person will be serving in a critical position, an application has been submitted to the Department of Law and Public Safety with the required fees for that person to qualify for employment in a critical position, and the person has consented to and cooperates with the securing of a criminal history record background check and identity verification check conducted in accordance with section 4 of this act. The Attorney General, in consultation with the Director of the Office of Homeland Security and Preparedness, the Commissioner of Environmental Protection, and industry representatives, shall develop the criteria for qualification of all applicants. Criminal history record background checks and all identity verification checks shall be repeated for previously qualified employees at least once every five years, for as long as they are employed by an independent contractor in a critical position at a designated facility.

C.App.A:9-81 Determination of titles, positions designated as critical positions.

3. The Attorney General, in consultation with the Director of the Office of Homeland Security and Preparedness, the Commissioner of Environmental Protection, and industry representatives, shall determine the titles and positions which shall be designated as critical positions. These positions shall 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. These positions may include, but are not limited to, positions involving information management, preserving and ensuring the public safety, or contractors' access to information or facilities which could be utilized to compromise the public safety and national security.

C.App.A:9-82 Applicants to submit to fingerprinting, background checks.

4. An applicant subject to the provisions of section 2 of this act shall 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 or identity verification checks, shall not be retained or considered for employment in a critical position at a designated facility. The Department of Law and Public Safety 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 for use in making the determinations provided for in section 2 of this act. No criminal history record background check or identity verification checks shall be performed pursuant to this act unless the applicant shall have furnished written consent to such checks. The independent contractor shall bear the cost for the applicant's criminal history record check and identity verification checks.

C.App.A:9-83 Notification of qualification, disqualification of applicant; appeal; maintenance of information.

5. a. Upon receipt of an applicant's criminal history record information and identity verification information, the department shall notify the independent contractor who employs the applicant or is considering the applicant for employment as to whether the applicant is qualified or disqualified for employment pursuant to this act. The independent contractor shall notify the applicant in writing of his qualification for or disqualification from employment pursuant to this act. If the applicant is disqualified for employment, the reasons

which constitute the basis for the disqualification shall be identified in the written notice.

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

c. An applicant's criminal history record information or identity verification information submitted under this act shall not be maintained for more than six months from the date of the final disposition of the applicant's disqualification.

C.App.A:9-84 Development of system to certify applicants, issuance of credentials; fees.

6. a. The Attorney General, in conjunction with the Commissioner of Environmental Protection, shall develop a system to certify applicants who have been subject to a criminal history record background check and identity verification checks, and who have qualified for employment in a critical position at a designated facility pursuant to the provisions of this act. The Attorney General shall cause to be issued credentials for each such qualified applicant.

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

c. In addition to the fees imposed to cover the cost of criminal history background checks and identity verification checks authorized by section 4 of P.L.2006, c.101 (C.App.A:9-82), the Attorney General may impose a reasonable fee, to be borne by the independent contractor, for each applicant to cover the costs incurred by the department associated with the qualification or disqualification of applicants and the development, creation, and issuance of credentials for qualified applicants authorized pursuant to this act.

C.App.A:9-85 Rules, regulations.

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

8. This act shall take effect on the 270th day following enactment, except that the Attorney General, Director of the Office of Homeland Security and Preparedness, and Commissioner of Environmental Protection may, prior to the effective date, take such anticipatory action as shall be necessary for the implementation of this act.

Approved December 19, 2006.