

## CHAPTER 327

**AN ACT** concerning certificates suspending certain employment or occupational disabilities related to criminal conviction and supplementing Chapter 168A of Title 2A of the New Jersey Statutes.

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

C.2A:168A-7 Issuance of certificate suspending certain employment, occupational disabilities, forfeitures related to criminal conviction; definitions.

1. a. Notwithstanding any law to the contrary, a certificate may be issued in accordance with the provisions of this act that suspends certain disabilities, forfeitures or bars to employment or professional licensure or certification that apply to persons convicted of criminal offenses.

b. A certificate issued pursuant to this act shall have the effect of relieving disabilities, forfeitures or bars, except those established or required by federal law, to:

(1) public employment, as defined in this section;

(2) qualification for a license or certification to engage in the practice of a profession, occupation or business, except the practice of law; or

(3) admission to an examination to qualify for such a license or certification, except for the bar examination, or an examination for a law enforcement, homeland security, or emergency management position.

A certificate issued pursuant to this act may be limited to one or more enumerated disabilities, forfeitures or bars, or may relieve the subject of all disabilities, forfeitures or bars that may be affected by the act.

c. For purposes of this act:

(1) "Public employment" shall mean employment by a State, county, or municipal agency, but shall not include elected office, or employment in law enforcement, corrections, the judiciary, in a position related to homeland security or emergency management, or any position that has access to sensitive information that could threaten the public health, welfare, or safety.

(2) "Qualified offender" refers to a person who has one criminal conviction or who has convictions for more than one crime charged in separate counts of one indictment or accusation. Multiple convictions charged in two indictments or two accusations, or one indictment and one accusation filed in the same court prior to entry of judgment under any of them, shall be deemed to be one conviction. Convictions of crimes entered more than 10 years prior to an application for a certificate under this act shall not be considered in determining whether a person has one criminal conviction. In the case of a person seeking relief at the time of sentencing, qualified offender means a person who will have one conviction, as set forth in this paragraph, upon sentencing and issuance of the judgment of conviction.

(3) "Supervising authority" shall mean the court in the case of a person who was subject to probation or who was not required to serve a period of supervision, or the State Parole Board in the case of a person who was under parole supervision.

C.2A:168A-8 Issuance of certificate; conditions.

2. A certificate may be issued pursuant to this act as follows:

a. (1) A court, in its discretion, may issue a certificate at the time of sentencing if the applicant:

(a) is a qualified offender, who is being sentenced to a non-incarcerative sentence for a second, third or fourth degree crime;

(b) has established that a specific licensing or employment disqualification, forfeiture or bar, will apply to him, and may endanger his ability to maintain existing public employment or employment for which he has made application, or to engage in a business enterprise for which a license or certification is required;

(c) has no pending criminal charges, and there is no information presented that such a charge is imminent; and

(d) has established that the relief is consistent with the public interest.

(2) A certificate issued under this subsection shall apply only to the specific disability, forfeiture or bar that is affected, which must be specifically described in the certificate document.

b. (1) A supervising authority may issue a certificate in regard to a qualified offender who is, or had previously been, under supervision by the supervising authority if the supervising authority determines that:

(a) the applicant is convicted of a second, third or fourth degree offense and is eligible for relief under subsection c. of this section;

(b) the applicant has not been convicted of a crime since the conviction for which he is under supervision, has no pending criminal charge, and there is no information presented that such a charge is imminent;

(c) issuing the certificate will not pose a substantial risk to public safety; and

(d) issuing the certificate will assist in the successful reintegration of the offender and is consistent with the public interest.

(2) A certificate issued pursuant to this subsection may suspend disabilities, forfeitures and bars generally within the limits of this act, or only certain disabilities, forfeitures and bars, specifically named in the certificate document.

c. A qualified offender is eligible for relief under subsection b. of this section if the offender has not been convicted of:

(1) a first degree crime;

(2) an offense to which section 2 of P.L.1997, c.117 (C.2C:43-7.2) applies;

(3) a second degree offense defined in chapters 13, 14, 15, 16, 24, 27, 30, 33, 38 of Title 2C of the New Jersey Statutes;

(4) a violation of subsection a. of N.J.S.2C:24-4 or paragraph (4) of subsection b. of N.J.S.2C:24-4;

(5) a crime requiring registration pursuant to section 2 of P.L.1994, c.133 (C.2C:7-2);

(6) a crime committed against a public entity or against a public officer;

(7) a crime enumerated in subsection b. of section 2 of P.L.2007, c.49 (C.43:1-3.1) committed by a public employee, which involves or touches upon the employee's office, position or employment, such that the crime was related directly to the person's performance in, or circumstances flowing from, the specific public office or employment held by the person;

(8) any crime committed against a person 16 years of age or younger, or a disabled or handicapped person; or

(9) a conspiracy or attempt to commit any of the crimes described in this subsection.

d. (1) A supervising authority may issue a certificate in regard to a qualified offender, when three years have passed since the applicant has completed the incarcerative or

supervisory portion of his sentence, whichever is later, and the supervising authority finds that:

- (a) the applicant is eligible for such relief as defined in subsection e. of this section;
- (b) issuing the certificate does not pose a substantial risk to public safety; and
- (c) issuing the certificate will assist in the successful reintegration of the offender and is consistent with the public interest.

(2) The certificate issued pursuant to this subsection may suspend disabilities, forfeitures and bars generally within the limits of this act, or only certain disabilities, forfeitures and bars specifically named in the certificate document.

e. A qualified offender is eligible for relief under subsection d. of this section if he has remained without criminal involvement since his conviction, including that he has not subsequently been convicted of a crime, has no pending charges for any crime, and there is no information presented that such a charge is imminent; and is applying for relief from a conviction other than:

- (1) a first degree crime;
- (2) any of the offenses to which section 2 of P.L.1997, c.117 (C.2C:43-7.2) applies;
- (3) a violation of subsection a. of N.J.S.2C:24-4 or paragraph (4) of subsection b. of N.J.S.2C:24-4;
- (4) a crime requiring registration pursuant to section 2 of P.L.1994, c.133 (C.2C:7-2);
- (5) a crime enumerated in subsection b. of section 2 of P.L.2007, c.49 (C.43:1-3.1) committed by a public employee, which involves or touches upon the employee's office, position or employment, such that the crime was related directly to the person's performance in, or circumstances flowing from, the specific public office or employment held by the person;
- (6) a crime committed against a person 16 years of age or younger, or a disabled or handicapped person; or
- (7) a conspiracy or attempt to commit any offense described in this paragraph.

C.2A:168A-9 Certificate considered presumptive evidence of rehabilitation.

3. A certificate issued pursuant to this act shall be presumptive evidence of the subject's rehabilitation when considered in regard to public employment as defined in this act, or in conjunction with any licensing, or certification process to which this act applies, which in any particular case may or may not be overcome by other evidence or information. A certificate granted under this act shall not prevent any judicial, administrative, licensing or other body, board, authority or public official from relying on grounds other than the fact of the criminal conviction in exercising any discretionary authority, if any, to suspend, revoke, refuse to issue or refuse to renew any license, permit or other authority or privilege or to determine eligibility or suitability for employment.

C.2A:168A-10 Notice to prosecutor of issuance, pendency of certificate.

4. In all cases, the applicant or the supervising authority shall provide notice to the prosecutor of either the issuance of a certificate or the pendency of an application for a certificate, or both, pursuant to procedures that shall be developed and published by the supervising authority within thirty days of the effective date of this act.

C.2A:168A-11 Conditions for invalidating certificate.

5. a. A certificate granted pursuant to this act shall no longer be valid if the person who is the subject of the certificate is indicted for a first or second degree crime or convicted of a crime.

b. Upon presentation of satisfactory proof that the criminal charges or indictment have been dismissed, or of an acquittal after trial, a certificate revoked under the circumstances described in subsection a. of this section may be reinstated by the issuing entity.

c. A certificate may be revoked at any time upon application of the prosecutor or on the supervising authority's own initiative when information is received that circumstances have materially changed such that the relief would not be authorized under this act or is no longer in the public interest. The supervising authority revoking such a certificate shall notify the subject of the certificate of the revocation.

d. In addition to any other offense that may apply, a person who knowingly uses or attempts to use a revoked certificate, or a certificate that is no longer valid, in order to obtain a benefit or avoid a disqualification shall be guilty of a disorderly persons offense. For the purposes of this subsection, "uses or attempts to use," shall include knowing failure to disclose to an employer or other affected public entity the revocation or invalidity of a certificate.

C.2A:168A-12 Inapplicability to private employers.

6. This act shall not apply to private employers. A private employer may, in its sole and complete discretion, consider a certificate issued under this statute in making employment decisions. Nothing in this section shall be construed to create any right, privilege, or duty or to change any right, privilege, or duty existing under law.

C.2A:168A-13 Report to Governor, Legislature; recording system for certificates.

7. The State Parole Board and the Administrative Office of the Courts shall report to the Governor and the Legislature on or before the first day of the thirteenth month after the effective date of this act an evaluation of the effectiveness of the implementation of this act, including the number of applications received, considered and granted under the act. Entities issuing certificates shall develop a system of recording the certificates and provide information to prospective employers regarding whether a certificate has been issued or is valid.

C.2A:168A-14 Report of impact of prior criminal conviction on private employment opportunities.

8. The Department of Labor and Workforce Development shall prepare a report detailing the impact of a prior criminal conviction on private employment opportunities for ex-offenders. The department shall consult with the State Parole Board, and may consult with and seek the assistance of other executive branch agencies, municipalities, agencies and any interested parties. The report shall include identification of barriers faced by ex-offenders seeking private employment, including those set forth in law, regulation and policies of private employers. The report shall analyze the effect of the hiring policies of employers with more than 100 employees on the employment of ex-offenders. In order to encourage cooperation, identities of employers and entities contacted in the course of preparing the report shall remain confidential. The results of this study shall be reported to the Governor and the Legislature within 180 days from the effective date of this act.

C.2A:168A-15 Pardons unaffected.

9. Nothing in this act shall be deemed to alter, limit or affect the manner of applying for pardons to the Governor, and a certificate issued under this act shall not be deemed or construed to be a pardon.

C.2A:168A-16 Regulations, guidelines, rules.

10. The State Parole Board shall promulgate any regulations or issue guidelines necessary to effectuate the provisions of this act. The court may publish rules or guidelines to implement this act.

11. This act shall take effect on the first day of the seventh month after enactment, except that section 8 shall take effect immediately. State departments and agencies may take such anticipatory administrative action in advance thereof as shall be necessary for the implementation of this act.

Approved January 13, 2008.