

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 509 Session of 2017

INTRODUCED BY McCLINTON, KINSEY, SCHLOSSBERG, DAVIS, GAINNEY,  
DONATUCCI AND SCHWEYER, FEBRUARY 15, 2017

REFERRED TO COMMITTEE ON JUDICIARY, FEBRUARY 15, 2017

AN ACT

1 Amending Title 18 (Crimes and Offenses) of the Pennsylvania  
2 Consolidated Statutes, in dissemination of criminal history  
3 record information, further providing for use of records for  
4 employment.

5 The General Assembly of the Commonwealth of Pennsylvania  
6 hereby enacts as follows:

7 Section 1. Section 9125 of Title 18 of the Pennsylvania  
8 Consolidated Statutes is amended to read:

9 § 9125. Use of records for employment.

10 (a) General rule.--Whenever an employer is in receipt of  
11 information which is part of [an employment applicant's] an  
12 individual's criminal history record information file, it may  
13 use that information for the purpose of [deciding whether or not  
14 to hire the applicant] taking an adverse employment action, only  
15 in accordance with this section.

16 (b) Use of information.--Felony and misdemeanor convictions  
17 may be considered by the employer only to the extent to which  
18 they relate to the [applicant's] individual's suitability for  
19 employment in the position [for which he has applied.

1 (c) Notice.--The employer shall notify in writing the  
2 applicant if the decision not to hire the applicant is based in  
3 whole or in part on criminal history record information.];

4 (1) for which the individual has applied; or

5 (2) in which the individual is currently employed.

6 (d) Exceptions.--Notwithstanding subsection (b), an employer  
7 may not inquire about or consider the following when determining  
8 an individual's suitability for employment:

9 (1) A case with a final disposition that is not a  
10 conviction.

11 (2) A juvenile case resulting in an adjudication of  
12 delinquency.

13 (3) A conviction of a summary offense.

14 (4) A case that was expunged or pardoned.

15 (e) Initial considerations.--When determining an  
16 individual's suitability for employment, if the individual has  
17 been convicted of a felony or misdemeanor, the employer must  
18 consider the following information:

19 (1) The nature of the crime.

20 (2) The time that has passed since the offense or  
21 completion of the sentence. An offense may only be considered  
22 within seven years of the date of arrest or date of release  
23 from incarceration, whichever is later.

24 (3) The type of employment sought or currently held.

25 (f) Notice.--If the employer initially determines that an  
26 individual is not suitable for employment after evaluating the  
27 considerations under subsection (e), the employer must provide  
28 the individual with a copy of the criminal record information on  
29 which it is relying at least seven days prior to making a final  
30 decision.

1 (g) Final considerations.--Prior to making a final decision  
2 on the individual's suitability for employment, the employer  
3 must consider any information provided by the individual related  
4 to the following:

5 (1) The accuracy of the criminal record information.

6 (2) The individual's employment history before or after  
7 the offense.

8 (3) The individual's performance in the position or a  
9 similar position.

10 (4) Employment or character references.

11 (5) Evidence of rehabilitation.

12 (6) Other information that may demonstrate the  
13 individual is suitable for employment in the position.

14 (h) Powers and duties of department.--The department shall:

15 (1) Enforce and administer the provisions of this  
16 section. The department may promulgate regulations necessary  
17 to implement this section.

18 (2) Investigate credible complaints made to the  
19 department alleging a violation of this section. The  
20 following shall apply:

21 (i) The department shall have subpoena power.  
22 Application may be made to the Commonwealth Court to  
23 enforce a subpoena. Nothing in this subparagraph shall be  
24 construed to excuse an individual from producing  
25 documents and records as requested by the department  
26 under another provision of law.

27 (ii) The department shall provide a written  
28 determination at the conclusion of the investigation  
29 explaining the department's conclusion as to whether a  
30 violation of this section has occurred.

1 (i) Retaliation prohibited.--

2 (1) An employer may not:

3 (i) interfere with, restrain or deny the exercise of  
4 rights provided under this section; or

5 (ii) discharge, discriminate or take adverse action  
6 in retaliation for exercising rights protected under this  
7 section. Rights protected under this section include:

8 (A) making a complaint to or informing the  
9 department of an employer's noncompliance with this  
10 section;

11 (B) participating in investigations or  
12 proceedings; and

13 (C) informing an individual of the individual's  
14 potential rights and assisting the individual in  
15 asserting the rights.

16 (2) If an employer takes adverse action against an  
17 individual within 90 days of the individual's exercise of  
18 rights protected under this section, the act shall raise a  
19 rebuttable presumption of the employer's having done so in  
20 retaliation for the individual exercising rights protected  
21 under this section.

22 (j) Administrative penalties.--The following shall apply:

23 (1) The department shall assess the following penalties  
24 on an employer that violates this section or a regulation  
25 promulgated under this section:

26 (i) For a first offense, a fine of not less than  
27 \$1,000 nor more than \$2,500 for each violation of this  
28 section.

29 (ii) For a second or subsequent offense, a fine of  
30 not less than \$2,500 nor more than \$5,000 for each

1 violation of this section.

2 (2) The department may order an employer to take any  
3 action which the department deems necessary to correct a  
4 violation of this section.

5 (3) An action by the department under this subsection  
6 shall be subject to review under 2 Pa.C.S. Chs. 5 Subch. A  
7 (relating to practice and procedure of Commonwealth agencies)  
8 and 7 Subch. A (relating to judicial review of Commonwealth  
9 agency action).

10 (k) Civil penalties.--The department or an individual who in  
11 good faith alleges a violation of this section may institute an  
12 action in a court of competent jurisdiction against an employer.  
13 An action alleging retaliation must be instituted within two  
14 years from the date the alleged retaliation occurred. All other  
15 actions alleging a violation of this section must be instituted  
16 within one year of the alleged violation. An action under this  
17 subsection may request any of the following:

18 (1) Back pay.

19 (2) Compensatory damages.

20 (3) Punitive damages.

21 (4) Reasonable attorney fees and costs of litigation.

22 (5) Any other relief that the court deems appropriate,  
23 including instatement or reinstatement to an employment  
24 position.

25 (1) Applicability.--

26 (1) This section shall apply if a Federal law or other  
27 State law does not preclude, based on criminal history record  
28 information, an individual from an employment position.

29 (2) This section shall not apply if a Federal law or  
30 other State law precludes, based on criminal history record

1 information, an individual from an employment position.

2 (m) Definitions.--As used in this section, the following  
3 words and phrases shall have the meanings given to them in this  
4 subsection unless the context clearly indicates otherwise:

5 "Department." The Department of Labor and Industry of the  
6 Commonwealth.

7 "Individual." A job applicant, employee or contractor.

8 Section 2. This act shall take effect in 90 days.