

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 1235 Session of
2007

INTRODUCED BY J. WHITE, McCALL, EVERETT, METCALFE, SURRA,
GERGELY, SOLOBAY, COX, DALEY, DENLINGER, GIBBONS, GOODMAN,
HORNAMAN, KAUFFMAN, KORTZ, KOTIK, MAHONEY, MANDERINO,
McILHATTAN, MOYER, MUSTIO, READSHAW, SAYLOR, SCAVELLO, WALKO,
YEWIC, HESS AND ROAE, MAY 4, 2007

AS REPORTED FROM COMMITTEE ON JUDICIARY, HOUSE OF
REPRESENTATIVES, AS AMENDED, JUNE 26, 2007

AN ACT

1 Amending Title 18 (Crimes and Offenses) of the Pennsylvania
2 Consolidated Statutes, further providing for challenge to
3 criminal history records ~~and for challenge of accuracy of~~ <—
4 ~~criminal history record information.~~, FOR REVIEW OF CHALLENGE <—
5 AND FOR APPEALS.

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

8 Section 1. Sections 6111.1(e) and ~~9152(e)~~ 9152(D) AND (E) of <—
9 Title 18 of the Pennsylvania Consolidated Statutes are amended
10 to read:

11 § 6111.1. Pennsylvania State Police.

12 * * *

13 ~~(e) Challenge to records. Any person who is denied the~~ <—
14 ~~right to receive, sell, transfer, possess, carry, manufacture or~~
15 ~~purchase a firearm as a result of the procedures established by~~
16 ~~this section may challenge the accuracy of that person's~~
17 ~~criminal history, juvenile delinquency history or mental health~~

~~record pursuant to a denial by the instantaneous records check
in accordance with procedures established by the Pennsylvania
State Police. Any denial based on a conviction must be supported
by a record of the conviction from a court of competent
jurisdiction. The decision resulting from a challenge under this
subsection may be appealed to the Attorney General within 30
days of the decision by the Pennsylvania State Police. The
decision of the Attorney General may be appealed to the
Commonwealth Court in accordance with court rule.~~

~~* * *~~

(E) CHALLENGE TO RECORDS.--

(1) ANY PERSON WHO IS DENIED THE RIGHT TO RECEIVE, SELL,
TRANSFER, POSSESS, CARRY, MANUFACTURE OR PURCHASE A FIREARM
AS A RESULT OF THE PROCEDURES ESTABLISHED BY THIS SECTION MAY
CHALLENGE THE ACCURACY OF THAT PERSON'S CRIMINAL HISTORY,
JUVENILE DELINQUENCY HISTORY OR MENTAL HEALTH RECORD PURSUANT
TO A DENIAL BY THE INSTANTANEOUS RECORDS CHECK [IN ACCORDANCE
WITH PROCEDURES ESTABLISHED BY THE PENNSYLVANIA STATE POLICE.
THE DECISION RESULTING FROM A CHALLENGE UNDER THIS SUBSECTION
MAY BE APPEALED TO THE ATTORNEY GENERAL WITHIN 30 DAYS OF THE
DECISION BY THE PENNSYLVANIA STATE POLICE. THE DECISION OF
THE ATTORNEY GENERAL MAY BE APPEALED TO THE COMMONWEALTH
COURT IN ACCORDANCE WITH COURT RULE.] BY SUBMITTING A
CHALLENGE TO THE PENNSYLVANIA STATE POLICE WITHIN 30 DAYS
FROM THE DATE OF THE DENIAL.

(2) THE PENNSYLVANIA STATE POLICE SHALL CONDUCT A REVIEW
OF THE ACCURACY OF THE INFORMATION FORMING THE BASIS FOR THE
DENIAL, AND SHALL HAVE THE BURDEN OF PROVING THE ACCURACY OF
THE RECORD. WITHIN 20 DAYS AFTER RECEIVING A CHALLENGE, THE
PENNSYLVANIA STATE POLICE SHALL NOTIFY THE CHALLENGER OF THE

1 BASIS FOR THE DENIAL, INCLUDING, BUT NOT LIMITED TO, THE
2 JURISDICTION AND DOCKET NUMBER OF ANY RELEVANT COURT DECISION
3 AND PROVIDE THE CHALLENGER AN OPPORTUNITY TO PROVIDE
4 ADDITIONAL INFORMATION FOR THE PURPOSES OF THE REVIEW. THE
5 PENNSYLVANIA STATE POLICE SHALL COMMUNICATE ITS FINAL
6 DECISION TO THE CHALLENGER WITHIN 60 DAYS OF THE RECEIPT OF
7 THE CHALLENGE. THE DECISION OF THE PENNSYLVANIA STATE POLICE
8 SHALL INCLUDE ALL INFORMATION WHICH FORMED A BASIS FOR THE
9 DECISION.

10 (3) IF THE CHALLENGE IS RULED INVALID, THE PERSON SHALL
11 HAVE THE RIGHT TO APPEAL THE DECISION TO THE ATTORNEY GENERAL
12 WITHIN 30 DAYS OF THE DECISION. THE ATTORNEY GENERAL SHALL
13 CONDUCT A HEARING DE NOVO IN ACCORDANCE WITH THE
14 ADMINISTRATIVE AGENCY LAW. THE BURDEN OF PROOF SHALL BE UPON
15 THE COMMONWEALTH.

16 (4) THE DECISION OF THE ATTORNEY GENERAL MAY BE APPEALED
17 TO THE COMMONWEALTH COURT BY AN AGGRIEVED PARTY.

18 * * *

19 § 9152. Procedure.

20 * * *

21 ~~(c) Challenge of accuracy. The individual may challenge the~~ <—
22 ~~accuracy of his or her criminal history record information by~~
23 ~~specifying which portion of the record is incorrect and what the~~
24 ~~correct version should be. Any conviction must be supported by a~~
25 ~~record of the conviction from a court of competent jurisdiction.~~
26 ~~Failure to challenge any portion of the record in existence at~~
27 ~~that time will place the burden of proving the inaccuracy of any~~
28 ~~part subsequently challenged upon the individual. Information~~
29 ~~subsequently added to such record shall also be subject to~~
30 ~~review, challenge, correction or appeal.~~

1 * * *

2 (D) REVIEW OF CHALLENGE.--ALL CRIMINAL JUSTICE AGENCIES <—
3 SHALL HAVE 60 DAYS TO CONDUCT A REVIEW OF ANY CHALLENGE AND
4 SHALL HAVE THE BURDEN OF PROVING THE ACCURACY OF THE RECORD. THE
5 DECISION ON THE CHALLENGE SHALL INCLUDE ALL INFORMATION,
6 INCLUDING, BUT NOT LIMITED TO, THE JURISDICTION AND DOCKET
7 NUMBER OF ANY RELEVANT COURT DECISION WHICH FORMED A BASIS FOR
8 THE DECISION. IF THE CHALLENGE IS DEEMED VALID, THE APPROPRIATE
9 OFFICIALS MUST ENSURE THAT:

10 (1) THE CRIMINAL HISTORY RECORD INFORMATION IS
11 CORRECTED.

12 (2) A CERTIFIED AND CORRECTED COPY OF THE CRIMINAL
13 HISTORY RECORD INFORMATION IS PROVIDED TO THE INDIVIDUAL.

14 (3) PRIOR ERRONEOUS CRIMINAL HISTORY RECORD INFORMATION
15 DISSEMINATED TO CRIMINAL JUSTICE AGENCIES SHALL BE DESTROYED
16 OR RETURNED AND REPLACED WITH CORRECTED INFORMATION.

17 (4) THE INDIVIDUAL IS SUPPLIED WITH THE NAMES OF THOSE
18 NONCRIMINAL JUSTICE AGENCIES AND INDIVIDUALS WHICH HAVE
19 RECEIVED ERRONEOUS CRIMINAL HISTORY RECORD INFORMATION.

20 (E) APPEALS.--

21 (1) IF THE CHALLENGE IS RULED INVALID, AN INDIVIDUAL HAS
22 THE RIGHT TO APPEAL THE DECISION TO THE ATTORNEY GENERAL
23 WITHIN 30 DAYS OF NOTIFICATION OF THE DECISION BY THE
24 CRIMINAL JUSTICE AGENCY.

25 (2) THE ATTORNEY GENERAL SHALL [HAVE THE AUTHORITY TO
26 CONDUCT ADMINISTRATIVE APPEAL HEARINGS] CONDUCT A HEARING DE
27 NOVO IN ACCORDANCE WITH THE ADMINISTRATIVE AGENCY LAW. THE
28 BURDEN OF PROOF SHALL BE UPON THE PARTY BEARING THE BURDEN OF
29 PROOF ON THE CHALLENGE.

30 (3) THE DECISION OF THE ATTORNEY GENERAL MAY BE APPEALED

1 TO THE COMMONWEALTH COURT BY AN AGGRIEVED INDIVIDUAL.

2 Section 2. This act shall take effect immediately.