

THE GENERAL ASSEMBLY OF PENNSYLVANIA

SENATE BILL

No. 1043 Session of 2018

INTRODUCED BY GREENLEAF, LEACH, EICHELBERGER, SCAVELLO, BARTOLOTTA, LANGERHOLC, FARNESE, HAYWOOD, WHITE, HUGHES AND STREET, FEBRUARY 9, 2018

SENATOR GREENLEAF, JUDICIARY, AS AMENDED, JUNE 5, 2018

AN ACT

1 Amending Title 18 (Crimes and Offenses) of the Pennsylvania
2 Consolidated Statutes, in criminal history record
3 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] the
12 criminal history record information file of an employment
13 applicant or an employee, it may use that information for the
14 purpose of deciding whether or not to [hire the applicant] begin
15 or continue employment, only 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] suitability for employment in

1 ~~the position [for which he has] applied for or held.~~

2 (B) USE OF INFORMATION.--AN EMPLOYER MAY USE CRIMINAL <--
3 HISTORY RECORD INFORMATION RELATING TO AN EMPLOYMENT APPLICANT
4 OR AN EMPLOYEE AS FOLLOWS:

5 (1) FELONY AND MISDEMEANOR CONVICTIONS OCCURRING BEFORE
6 THE START OF EMPLOYMENT MAY BE CONSIDERED BY THE EMPLOYER
7 ONLY TO THE EXTENT TO WHICH THEY RELATE TO [THE APPLICANT'S]
8 SUITABILITY FOR EMPLOYMENT IN THE POSITION [FOR WHICH HE HAS]
9 APPLIED FOR OR HELD.

10 (2) NOTHING IN THIS SECTION SHALL INHIBIT THE ABILITY OF
11 AN EMPLOYER TO CONSIDER FELONY AND MISDEMEANOR CONVICTIONS
12 OCCURRING AFTER THE START OF EMPLOYMENT AS THE BASIS FOR AN
13 ADVERSE EMPLOYMENT ACTION FOR A PERIOD OF TWO YEARS FOLLOWING
14 THE EMPLOYER'S KNOWLEDGE OF THE CONVICTION WITHOUT REGARD TO
15 THE EMPLOYEE'S SUITABILITY FOR THE EMPLOYMENT POSITION.
16 NOTHING IN THIS SECTION SHALL INHIBIT THE ABILITY OF AN
17 EMPLOYER TO SUSPEND THE EMPLOYMENT OF AN EMPLOYEE WHO IS
18 CHARGED WITH A FELONY OR MISDEMEANOR OFFENSE UNTIL THE
19 RESOLUTION OF THE CHARGE.

20 (3) NOTHING IN THIS SECTION SHALL INHIBIT THE ABILITY OF
21 AN EMPLOYER, AT ANY TIME AND WITHOUT REGARD FOR THE
22 APPLICANT'S OR EMPLOYEE'S SUITABILITY FOR EMPLOYMENT, TO TAKE
23 AN ADVERSE EMPLOYMENT ACTION AGAINST AN EMPLOYMENT APPLICANT
24 OR EMPLOYEE WHO FAILED TO ACCURATELY AND FULLY DISCLOSE
25 CRIMINAL HISTORY RECORD INFORMATION THAT WAS LAWFULLY
26 REQUESTED BY THE EMPLOYER.

27 (4) SUITABILITY FOR EMPLOYMENT MAY BE DETERMINED BY
28 EXAMINING SUCH FACTORS AS:

29 (I) THE NATURE OF THE OFFENSE.

30 (II) CIRCUMSTANCES SURROUNDING THE OFFENSE.

1 (III) TIME ELAPSED SINCE THE OFFENSE.

2 (IV) EVIDENCE OF THE INDIVIDUAL'S REHABILITATION.

3 (V) THE NATURE AND REQUIREMENTS OF THE EMPLOYMENT
4 POSITION.

5 (c) Notice.--

6 (1) The employer shall notify in writing the applicant
7 if the decision not to hire the applicant is based in whole
8 or in part on criminal history record information.

9 (2) The employer shall notify in writing the employee if
10 an adverse employment decision is based in whole or in part
11 on criminal history record information.

12 Section 2. This act shall take effect in 30 days.