

AMENDMENTS TO HOUSE BILL NO. 1841

Sponsor: REPRESENTATIVE RABB

Printer's No. 2526

1 Amend Bill, page 1, line 1, by striking out "Providing" and
2 inserting

3 Amending Title 44 (Law and Justice) of the Pennsylvania
4 Consolidated Statutes, providing

5 Amend Bill, page 1, lines 7 through 18; pages 2 through 4,
6 lines 1 through 30; page 5, lines 1 through 23; by striking out
7 all of said lines on said pages and inserting

8 Section 1. Title 44 of the Pennsylvania Consolidated
9 Statutes is amended by adding a chapter to read:

10 CHAPTER 73

11 LAW ENFORCEMENT BACKGROUND INVESTIGATIONS

12 AND EMPLOYMENT INFORMATION

13 Sec.

14 7301. Scope of chapter.

15 7302. Definitions.

16 7303. Background investigation required.

17 7304. Disclosure of employment information.

18 7305. Refusal to disclose employment information.

19 7306. Immunity.

20 7307. Confidentiality agreements and nondisclosure.

21 7308. Maintenance of records.

22 7309. Reporting.

23 7310. Disclosure of separation.

24 7311. Hiring report.

25 7312. Regulations.

26 § 7301. Scope of chapter.

27 This chapter relates to law enforcement background
28 investigations and employment information for law enforcement
29 officers.

30 § 7302. Definitions.

31 The following words and phrases when used in this chapter
32 shall have the meanings given to them in this section unless the
33 context clearly indicates otherwise:

34 "Applicant." A person applying for employment as a law
35 enforcement officer or for a position leading to employment as a

1 law enforcement officer.

2 "Commission." The Municipal Police Officers' Education and
3 Training Commission.

4 "Employment information." Written information in connection
5 with job applications, performance evaluations, attendance
6 records, disciplinary actions and eligibility for rehire.

7 "Final and binding disciplinary action." Disciplinary action
8 in which a law enforcement officer voluntarily accepts
9 discipline or, in the case of appeal by the disciplined officer,
10 disciplinary action in which the appeal has been exhausted or
11 resolved by settlement agreement, arbitration or other dispute
12 resolution mechanism.

13 "Law enforcement agency." A law enforcement agency in this
14 Commonwealth that is the employer of a law enforcement officer.

15 "Law enforcement officer." The term shall have the same
16 meaning as the term "peace officer" under 18 Pa.C.S. § 501
17 (relating to definitions).

18 "Prospective employing law enforcement agency." A law
19 enforcement agency in this Commonwealth that is considering
20 employing a law enforcement officer.

21 "Separation records." Records required to be maintained
22 under section 7309 (relating to reporting).
23 § 7303. Background investigation required.

24 (a) General rule.--A prospective employing law enforcement
25 agency shall conduct a thorough background investigation on an
26 applicant for employment as a law enforcement officer or an
27 applicant, including a review of the applicant's employment
28 information and separation records, if applicable, in accordance
29 with this chapter, before the applicant may be employed. The
30 background investigation shall determine at a minimum whether
31 the applicant meets the standards established by the commission.

32 (b) Higher standards not precluded.--The required background
33 investigation does not prevent a law enforcement agency from
34 establishing higher standards for law enforcement employees if
35 those standards are not contrary to applicable law.

36 § 7304. Disclosure of employment information.

37 Upon request of a prospective employing law enforcement
38 agency, a law enforcement agency shall disclose or otherwise
39 make available for inspection employment information of an
40 applicant who is the subject of a background investigation under
41 this chapter. The request for disclosure of employment
42 information must be:

43 (1) in writing;

44 (2) accompanied by an original authorization and release
45 signed by the applicant; and

46 (3) signed by the chief of police or other authorized
47 representative of the prospective employing law enforcement
48 agency conducting the background investigation.

49 § 7305. Refusal to disclose employment information.

50 If a law enforcement agency refuses to disclose employment
51 information to a prospective employing law enforcement agency in

1 accordance with this chapter, the prospective employing law
2 enforcement agency may petition Commonwealth Court to issue an
3 order directing the disclosure of the employment information.
4 The petition must include a copy of the original request for
5 disclosure and the authorization and release signed by the
6 applicant.

7 § 7306. Immunity.

8 (a) General rule.--In the absence of fraud or malice, a law
9 enforcement agency is immune from civil liability for employment
10 information released to a prospective employing law enforcement
11 agency in accordance with this chapter or for any subsequent
12 publication made by the prospective employing law enforcement
13 agency or the applicant of employment information released to a
14 law enforcement agency under this chapter.

15 (b) Release in violation of chapter.--

16 (1) A law enforcement agency is not immune from civil
17 liability for employment information released in violation of
18 this chapter.

19 (2) An applicant adversely affected by the release of
20 employment information in violation of this chapter may seek
21 declarative and injunctive relief and actual and punitive
22 damages attributable to the violation in an appropriate
23 court.

24 (3) The court shall award reasonable expenses, including
25 attorney fees, court costs and compensation for loss of
26 income, to the applicant adversely affected if an action
27 under paragraph (2) results in:

28 (i) a final determination by a court in favor of the
29 law enforcement officer adversely affected; or

30 (ii) rescission of the challenged release of
31 information after suit has been filed under paragraph (2)
32 but prior to a final determination by a court.

33 § 7307. Confidentiality agreements and nondisclosure.

34 (a) When agreement exists.--If employment information is
35 subject to a confidentiality agreement between the applicant and
36 a law enforcement agency, the applicant shall disclose to the
37 prospective employing law enforcement agency the fact that a
38 confidentiality agreement exists.

39 (b) When agreement is absent and applicant authorizes
40 release.--If the applicant has authorized the release of
41 employment information without regard to a previous agreement to
42 the contrary, the law enforcement agency may disclose the
43 employment information in accordance with this chapter.

44 (c) Employment information sealed or subject to court
45 order.--If employment information is sealed or otherwise subject
46 to a nondisclosure order by a court of competent jurisdiction,
47 the law enforcement agency shall disclose to the prospective
48 employing law enforcement agency the fact that a nondisclosure
49 order exists, along with information identifying the court and
50 case number.

51 § 7308. Maintenance of records.

1 (a) General rule.--In addition to any other employment
2 information required to be maintained under current law and
3 regulation, a law enforcement agency shall maintain the
4 following separation records:

5 (1) Records of the reason or reasons for, and
6 circumstances surrounding, a separation of service for a law
7 enforcement officer on a form developed by the commission and
8 made available on its publicly accessible Internet website.

9 (2) Records of all criminal charges filed against a law
10 enforcement officer.

11 (3) Records of all civil or ethical complaints made
12 against a law enforcement officer.

13 (4) Records of the disposition of all charges and
14 complaints, including final and binding disciplinary actions,
15 taken by the law enforcement agency against a law enforcement
16 officer, including imposition of probationary or other
17 conditions related to employment.

18 (b) Review of separation records.--A law enforcement officer
19 may review a separation record upon the request of the law
20 enforcement officer on a form developed by the commission and
21 made available on the law enforcement agency's publicly
22 accessible Internet website.

23 (c) Disagreement with record accuracy.--

24 (1) If a law enforcement officer disagrees with the
25 accuracy of the contents of a separation record, the law
26 enforcement officer may request the correction or removal of
27 the portion of the record believed to be incorrect. The
28 request must be made in writing using a form developed by the
29 commission and available on the commission's publicly
30 accessible Internet website. The law enforcement agency shall
31 provide written reasons for correction or removal of a
32 portion of the record, or of the refusal to do so.

33 (2) If the law enforcement agency and the law
34 enforcement officer cannot reach an agreement on the contents
35 of the record, the law enforcement officer may submit a
36 written statement explaining the law enforcement officer's
37 position and the basis for the disagreement. The statement
38 shall be kept with and part of the separation records
39 required under this section and provided with the rest of the
40 contents of the separation records as required under section
41 7310 (relating to disclosure of separation).

42 § 7309. Reporting.

43 (a) Electronic database.--

44 (1) The commission shall establish and maintain an
45 electronic database containing the separation records.

46 (2) The database shall be accessible to all law
47 enforcement agencies in this Commonwealth.

48 (3) Except as provided under section 7311(c) (relating
49 to hiring report), separation records maintained in the
50 database shall be exempt from disclosure under the act of
51 February 14, 2008 (P.L.6, No.3), known as the Right-to-Know

1 Law.

2 (b) Procedure.--The commission shall establish a procedure
3 by which a law enforcement agency may request and review
4 separation records in the database for the purpose of employing
5 an applicant.

6 (c) Request log.--The commission shall log all requests from
7 law enforcement agencies for separation records and may not
8 disclose the name of any law enforcement officer subject to a
9 request for separation records to the public. The information
10 provided to a law enforcement agency, including a law
11 enforcement agency outside of this Commonwealth, shall be exempt
12 from disclosure under the Right-to-Know Law.

13 (d) Time period to submit.--Upon the separation of an
14 officer from a law enforcement agency, the law enforcement
15 agency shall submit the separation records to the commission
16 within 15 days of separation.

17 (e) Good faith immunity.--

18 (1) A former employing law enforcement agency that
19 submits a separation record to the database in good faith is
20 immune from civil liability for the subsequent disclosure of
21 that record from the database.

22 (2) A law enforcement agency is presumed to be acting in
23 good faith at the time of a disclosure under this chapter
24 unless a preponderance of the evidence establishes one or
25 more of the following:

26 (i) the law enforcement agency knew that the
27 separation record was false or misleading;

28 (ii) the law enforcement agency submitted the
29 separation record with a reckless disregard for the
30 truth; or

31 (iii) submission of the separation record was
32 specifically prohibited by a Federal or State law.

33 § 7310. Disclosure of separation.

34 (a) Waiver required.--

35 (1) An applicant shall provide to the prospective
36 employing law enforcement agency, upon an offer of
37 employment, a signed waiver under this section.

38 (2) The waiver shall expressly allow the prospective
39 employing law enforcement agency to contact the commission to
40 seek a copy of any separation record.

41 (3) The waiver shall consist of a form developed by the
42 commission and made available on the commission's publicly
43 accessible Internet website.

44 (4) The prospective employing law enforcement agency
45 shall provide the signed waiver to the commission.

46 (5) Upon receipt of the signed waiver, the commission
47 shall, within seven days, provide a copy of any separation
48 record relating to the applicant to the prospective employing
49 law enforcement agency or certify that no separation record
50 is in the database.

51 (b) Record of separation condition of hiring.--A prospective

1 employing law enforcement agency may not hire an applicant until
2 the prospective employing law enforcement agency receives a copy
3 of the separation record or certification of no separation
4 record from the commission.

5 § 7311. Hiring report.

6 (a) Information required to be reported.--If a prospective
7 employing law enforcement agency hires an applicant whose
8 separation records includes any of the following, the law
9 enforcement agency shall file a report with the commission that
10 indicates the prospective employing law enforcement agency's
11 reasoning and rationale for hiring the applicant:

12 (1) Final and binding disciplinary action based on any
13 of the following:

- 14 (i) excessive force;
- 15 (ii) harassment;
- 16 (iii) theft;
- 17 (iv) discrimination;
- 18 (v) sexual abuse;
- 19 (vi) sexual misconduct;
- 20 (vii) domestic violence;
- 21 (viii) coercion of a false confession;
- 22 (ix) filing a false report; or
- 23 (x) a judicial finding of dishonesty.

24 (2) A criminal conviction relating to conduct described
25 in paragraph (1).

26 (b) Electronic database of commission.--

27 (1) The hiring report shall be included in the
28 commission's electronic database.

29 (2) The hiring report shall be on a form developed by
30 the commission and made available on the commission's
31 publicly accessible Internet website.

32 (c) Subject to disclosure.--The hiring report shall be
33 subject to disclosure under the act of February 14, 2008 (P.L.6,
34 No.3), known as the Right-to-Know Law.

35 § 7312. Regulations.

36 (a) Temporary regulations.--In order to facilitate the
37 prompt implementation of this chapter, the commission shall
38 promulgate temporary regulations within six months of the
39 effective date of this section that shall expire no later than
40 two years following the publication of the temporary
41 regulations. The department shall promulgate temporary
42 regulations not subject to:

43 (1) Section 612 of the act of April 9, 1929 (P.L.177,
44 No.175), known as The Administrative Code of 1929.

45 (2) Sections 201, 202, 203, 204 and 205 of the act of
46 July 31, 1968 (P.L.769, No.240), referred to as the
47 Commonwealth Documents Law.

48 (3) Sections 204(b) and 301(10) of the act of October
49 15, 1980 (P.L.950, No.164), known as the Commonwealth
50 Attorneys Act.

51 (4) The act of June 25, 1982 (P.L.633, No.181), known as

1 the Regulatory Review Act.

2 (b) Publication.--The commission shall transmit the
3 temporary regulations to the Legislative Reference Bureau for
4 publication in the Pennsylvania Bulletin no later than six
5 months after the effective date of this section.

6 (c) Contents.--The commission shall, by regulation,
7 including temporary regulation, establish the following:

8 (1) Procedures to guarantee the confidentiality of
9 employment information and separation records.

10 (2) Procedures to guarantee the security of the database
11 established under this chapter.

12 (3) Reportable disciplinary actions and criminal conduct
13 falling within the scope of section 7311 (relating to hiring
14 report).

15 (4) Any other procedure deemed necessary by the
16 commission for implementation of this chapter.

17 Section 2. This act shall take effect as follows:

18 (1) Except as provided in paragraph (2), the addition of
19 44 Pa.C.S. Ch. 73 shall take effect in one year.

20 (2) The addition of 44 Pa.C.S. § 7312 shall take effect
21 in 60 days.

22 (3) This section shall take effect immediately.