

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 798 Session of
2011

INTRODUCED BY CREIGHTON, METCALFE, BAKER, BOBACK, BOYD,
D. COSTA, DeLUCA, EVERETT, FLECK, GABLER, GEIST, GILLEN,
GINGRICH, GOODMAN, GROVE, HARHAI, HARHART, HARRIS,
HICKERNELL, HUTCHINSON, KAUFFMAN, KNOWLES, METZGAR, MILLARD,
MILLER, MOUL, MUSTIO, O'NEILL, PERRY, PETRI, PYLE, READSHAW,
ROCK, SWANGER, J. TAYLOR, VULAKOVICH, FARRY AND COX,
FEBRUARY 23, 2011

REFERRED TO COMMITTEE ON STATE GOVERNMENT, FEBRUARY 23, 2011

AN ACT

1 Amending Title 18 (Crimes and Offenses) of the Pennsylvania
2 Consolidated Statutes, further providing for definitions;
3 providing for mandatory determination of citizenship and
4 immigration status; and further providing for use of records
5 by licensing agencies and for use of records for employment.

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

8 Section 1. The definition of "criminal history record
9 information" in section 9102 of Title 18 of the Pennsylvania

10 Consolidated Statutes is amended to read:

11 § 9102. Definitions.

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

15 * * *

16 "Criminal history record information." Information collected
17 by criminal justice agencies concerning individuals, and arising

1 from the initiation of a criminal proceeding, consisting of
2 identifiable descriptions, dates and notations of arrests,
3 indictments, citizenship or immigration status, informations or
4 other formal criminal charges and any dispositions arising
5 therefrom. The term does not include intelligence information,
6 investigative information or treatment information, including
7 medical and psychological information, or information and
8 records specified in section 9104 (relating to scope).

9 * * *

10 Section 2. Title 18 is amended by adding a section to read:
11 § 9112.1. Mandatory determination of citizenship and
12 immigration status.

13 (a) Inquiry.--An arresting authority shall inquire into the
14 citizenship and immigration status of all persons arrested for a
15 felony, misdemeanor or summary offense regardless of the
16 person's national origin, ethnicity or race, if the inquiry does
17 not significantly expand the duration of the detention. If a
18 person cannot demonstrate that the person is a citizen or
19 national of the United States, the law enforcement agent shall
20 verify with the Federal Government, under section 642(c) of the
21 Illegal Immigration Reform and Immigrant Responsibility Act of
22 1996 (Public Law 104-208, 8 U.S.C. § 1373), whether the person
23 is an alien, and if so, whether the alien is lawfully or
24 unlawfully present in the United States. The following
25 information shall be forwarded to, and in a manner and such form
26 as provided by the central repository:

27 (1) the determination of citizenship or immigration
28 status; or

29 (2) the inability to determine citizenship or
30 immigration status in cases where the determination would

1 significantly expand the duration of the detention.

2 (b) Cooperation with Federal immigration authorities.--An
3 arresting authority shall fully comply with, and to the full
4 extent permitted by law, support the enforcement of Federal law
5 prohibiting the entry into, presence or residence in the United
6 States of aliens in violation of Federal law. If an alien is
7 verified to be unlawfully present in the United States under
8 subsection (a), the arresting authority shall cooperate with any
9 request by Federal immigration authorities to detain the alien
10 or transfer the alien to the custody of the Federal Government.

11 (c) Authorization.--Pursuant to section 642 of the Illegal
12 Immigration Reform and Immigrant Responsibility Act of 1996 and
13 section 434 of the Personal Responsibility and Work Opportunity
14 Reconciliation Act of 1996 (Public Law 104-193, 8 U.S.C. §
15 1644), no arresting authority agencies may be prohibited or in
16 any way restricted from sending, receiving or maintaining
17 information regarding the immigration status, lawful or
18 unlawful, of any individual, or exchanging the information with
19 any other Federal, State or local government entity. No city,
20 county or State law enforcement agency may by ordinance,
21 official policy or informal policy, prevent its officers from
22 asking individuals their citizenship or immigration status.

23 (d) Uniform crime reporting.--Statistical information
24 concerning the citizenship and immigration status of all persons
25 arrested for a felony, misdemeanor or summary offense shall be
26 included in the Pennsylvania Uniform Crime Reporting Program and
27 published in any annual report under the act of November 29,
28 2004 (P.L.1383, No.180), known as the Uniform Crime Reporting
29 Act.

30 Section 3. Sections 9124 and 9125 of Title 18 are amended to

1 read:

2 § 9124. Use of records by licensing agencies.

3 (a) State agencies.--Except as provided by this chapter, a
4 board, commission or department of the Commonwealth, when
5 determining eligibility for licensing, certification,
6 registration or permission to engage in a trade, profession or
7 occupation, may consider [convictions] any of the following:

8 (1) Convictions of the applicant of crimes but the
9 convictions shall not preclude the issuance of a license,
10 certificate, registration or permit.

11 (2) A verification under section 9112.1(a) (relating to
12 mandatory determination of citizenship and immigration
13 status) that an applicant is unlawfully present in the United
14 States.

15 (b) Prohibited use of information.--The following
16 information shall not be used in consideration of an application
17 for a license, certificate, registration or permit:

18 (1) Records of arrest if there is no conviction of a
19 crime based on the arrest.

20 (2) Convictions which have been annulled or expunged.

21 (3) Convictions of a summary offense.

22 (4) Convictions for which the individual has received a
23 pardon from the Governor.

24 (5) Convictions which do not relate to the applicant's
25 suitability for the license, certificate, registration or
26 permit.

27 (c) State action authorized.--Boards, commissions or
28 departments of the Commonwealth authorized to license, certify,
29 register or permit the practice of trades, occupations or
30 professions may refuse to grant or renew, or may suspend or

1 revoke any license, certificate, registration or permit for the
2 following causes:

3 (1) Where the applicant has been convicted of a felony.

4 (2) Where the applicant has been convicted of a
5 misdemeanor which relates to the trade, occupation or
6 profession for which the license, certificate, registration
7 or permit is sought.

8 (3) Where it has been verified under section 9112.1(a)
9 that an applicant is unlawfully present in the United States.

10 (d) Notice.--The board, commission or department shall
11 notify the individual in writing of the reasons for a decision
12 which prohibits the applicant from practicing the trade,
13 occupation or profession if such decision is based in whole or
14 part on [conviction] any of the following:

15 (1) Conviction of any crime.

16 (2) A verification under section 9112.1(a) that an
17 applicant is unlawfully present in the United States.

18 § 9125. Use of records for employment.

19 (a) General rule.--Whenever an employer is in receipt of
20 information which is part of an employment applicant's criminal
21 history record information file, it may use that information for
22 the purpose of deciding whether or not to hire the applicant,
23 only in accordance with this section.

24 (b) Use of information.--

25 (1) Felony and misdemeanor convictions may be considered
26 by the employer only to the extent to which they relate to
27 the applicant's suitability for employment in the position
28 for which he has applied.

29 (2) Verification under section 9112.1(a) (relating to
30 mandatory determination of citizenship and immigration

1 status) that an applicant is unlawfully present in the United
2 States may be considered by the employer.

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

6 Section 4. This act shall take effect in 60 days.