

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 1841 Session of 2019

INTRODUCED BY READSHAW, KORTZ, KULIK, MILLARD, HILL-EVANS, JOHNSON-HARRELL, DeLUCA, BARRAR, A. DAVIS, CALTAGIRONE, MOUL, BOYLE, SCHWEYER, MADDEN, FITZGERALD, SCHLOSSBERG, ISAACSON, HOHENSTEIN, HOWARD, HANBIDGE, MALAGARI, ROZZI, GALLOWAY, FREEMAN, SANCHEZ, DALEY, ZABEL, PASHINSKI, COMITTA, FRANKEL, GAINNEY, GREEN, WILLIAMS, KOSIEROWSKI AND DELLOSO, SEPTEMBER 19, 2019

AS AMENDED ON SECOND CONSIDERATION, HOUSE OF REPRESENTATIVES, JUNE 23, 2020

AN ACT

1 Amending Title 44 (Law and Justice) of the Pennsylvania
2 Consolidated Statutes, providing for law enforcement
3 background investigations, for duties of the Municipal Police
4 Officers' Education and Training Commission, law enforcement
5 agencies and employers and for immunity from liability and
6 violations.

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

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

11 CHAPTER 73

12 LAW ENFORCEMENT BACKGROUND INVESTIGATIONS

13 AND EMPLOYMENT INFORMATION

14 Sec.

15 7301. Scope of chapter.

16 7302. Definitions.

17 7303. Background investigation required.

- 1 7304. Disclosure of employment information.
- 2 7305. Refusal to disclose employment information.
- 3 7306. Immunity.
- 4 7307. Confidentiality agreements and nondisclosure.
- 5 7308. Maintenance of records.
- 6 7309. Reporting.
- 7 7310. Disclosure of separation.
- 8 7311. Hiring report.
- 9 7312. Regulations.

10 § 7301. Scope of chapter.

11 This chapter relates to law enforcement background
12 investigations and employment information for law enforcement
13 officers.

14 § 7302. Definitions.

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

18 "Applicant." A person applying for employment as a law
19 enforcement officer or for a position leading to employment as a
20 law enforcement officer.

21 "Commission." The Municipal Police Officers' Education and
22 Training Commission.

23 "Employment information." Written information in connection
24 with job applications, performance evaluations, attendance
25 records, disciplinary actions and eligibility for rehire.

26 "Final and binding disciplinary action." Disciplinary action
27 in which a law enforcement officer voluntarily accepts
28 discipline or, in the case of appeal by the disciplined officer,
29 disciplinary action in which the appeal has been exhausted or
30 resolved by settlement agreement, arbitration or other dispute

1 resolution mechanism.

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

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

7 "Prospective employing law enforcement agency." A law
8 enforcement agency in this Commonwealth that is considering
9 employing a law enforcement officer.

10 "Separation records." Records required to be maintained
11 under section 7309 (relating to reporting).

12 § 7303. Background investigation required.

13 (a) General rule.--A prospective employing law enforcement
14 agency shall conduct a thorough background investigation on an
15 applicant for employment as a law enforcement officer or an <--
16 applicant, including a review of the applicant's employment
17 information and separation records, if applicable, in accordance
18 with this chapter, before the applicant may be employed. The
19 background investigation shall determine at a minimum whether
20 the applicant meets the standards established by the commission.

21 (b) Higher standards not precluded.--The required background
22 investigation does not prevent a law enforcement agency from
23 establishing higher standards for law enforcement employees if
24 those standards are not contrary to applicable law.

25 § 7304. Disclosure of employment information.

26 Upon request of a prospective employing law enforcement
27 agency, a law enforcement agency shall disclose or otherwise
28 make available for inspection employment information of an
29 applicant who is the subject of a background investigation under
30 this chapter. The request for disclosure of employment

1 information must be:

2 (1) in writing;

3 (2) accompanied by an original authorization and release
4 signed by the applicant; and

5 (3) signed by the chief of police or other authorized
6 representative of the prospective employing law enforcement
7 agency conducting the background investigation.

8 § 7305. Refusal to disclose employment information.

9 If a law enforcement agency refuses to disclose employment
10 information to a prospective employing law enforcement agency in
11 accordance with this chapter, the prospective employing law
12 enforcement agency may petition Commonwealth Court to issue an
13 order directing the disclosure of the employment information.
14 The petition must include a copy of the original request for
15 disclosure and the authorization and release signed by the
16 applicant.

17 § 7306. Immunity.

18 (a) General rule.--In the absence of fraud or malice, a law
19 enforcement agency is immune from civil liability for employment
20 information released to a prospective employing law enforcement
21 agency in accordance with this chapter or for any subsequent
22 publication made by the prospective employing law enforcement
23 agency or the applicant of employment information released to a
24 law enforcement agency under this chapter.

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

26 (1) A law enforcement agency is not immune from civil
27 liability for employment information released in violation of
28 this chapter.

29 (2) An applicant adversely affected by the release of
30 employment information in violation of this chapter may seek

1 declarative and injunctive relief and actual and punitive
2 damages attributable to the violation in an appropriate
3 court.

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

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

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

13 § 7307. Confidentiality agreements and nondisclosure.

14 (a) When agreement exists.--If employment information is
15 subject to a confidentiality agreement between the applicant and
16 a law enforcement agency, the applicant shall disclose to the
17 prospective employing law enforcement agency the fact that a
18 confidentiality agreement exists.

19 (b) When agreement is absent and applicant authorizes
20 release.--If the applicant has authorized the release of
21 employment information without regard to a previous agreement to
22 the contrary, the law enforcement agency may disclose the
23 employment information in accordance with this chapter.

24 (c) Employment information sealed or subject to court
25 order.--If employment information is sealed or otherwise subject
26 to a nondisclosure order by a court of competent jurisdiction,
27 the law enforcement agency shall disclose to the prospective
28 employing law enforcement agency the fact that a nondisclosure
29 order exists, along with information identifying the court and
30 case number.

1 § 7308. Maintenance of records.

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

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

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

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

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

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

24 (c) Disagreement with record accuracy.--

25 (1) If a law enforcement officer disagrees with the
26 accuracy of the contents of a separation record, the law
27 enforcement officer may request the correction or removal of
28 the portion of the record believed to be incorrect. The
29 request must be made in writing using a form developed by the
30 commission and available on the commission's publicly

1 accessible Internet website. The law enforcement agency shall
2 provide written reasons for correction or removal of a
3 portion of the record, or of the refusal to do so.

4 (2) If the law enforcement agency and the law
5 enforcement officer cannot reach an agreement on the contents
6 of the record, the law enforcement officer may submit a
7 written statement explaining the law enforcement officer's
8 position and the basis for the disagreement. The statement
9 shall be kept with and part of the separation records
10 required under this section and provided with the rest of the
11 contents of the separation records as required under section
12 7310 (relating to disclosure of separation).

13 § 7309. Reporting.

14 (a) Electronic database.--

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

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

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

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

28 (c) Request log.--The commission shall log all requests from
29 law enforcement agencies for separation records and may not
30 disclose the name of any law enforcement officer subject to a

1 request for separation records to the public. The information
2 provided to a law enforcement agency, including a law
3 enforcement agency outside of this Commonwealth, shall be exempt
4 from disclosure under the Right-to-Know Law.

5 (d) Time period to submit.--Upon the separation of an
6 officer from a law enforcement agency, the law enforcement
7 agency shall submit the separation records to the commission
8 within 15 days of separation.

9 (e) Good faith immunity.--

10 (1) A former employing law enforcement agency that
11 submits a separation record to the database in good faith is
12 immune from civil liability for the subsequent disclosure of
13 that record from the database.

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

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

20 (ii) the law enforcement agency submitted the
21 separation record with a reckless disregard for the
22 truth; or

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

25 § 7310. Disclosure of separation.

26 (a) Waiver required.--

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

30 (2) The waiver shall expressly allow the prospective

1 employing law enforcement agency to contact the commission to
2 seek a copy of any separation record.

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

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

8 (5) Upon receipt of the signed waiver, the commission
9 shall, within seven days, provide a copy of any separation
10 record relating to the applicant to the prospective employing
11 law enforcement agency or certify that no separation record
12 is in the database.

13 (b) Record of separation condition of hiring.--A prospective
14 employing law enforcement agency may not hire an applicant until
15 the prospective employing law enforcement agency receives a copy
16 of the separation record or certification of no separation
17 record from the commission.

18 § 7311. Hiring report.

19 (a) Information required to be reported.--If a prospective
20 employing law enforcement agency hires an applicant whose
21 separation records includes any of the following, the law
22 enforcement agency shall file a report with the commission that
23 indicates the prospective employing law enforcement agency's
24 reasoning and rationale for hiring the applicant:

25 (1) Final and binding disciplinary action based on any
26 of the following:

27 (i) excessive force;

28 (ii) harassment;

29 (iii) theft;

30 (iv) discrimination;

- 1 (v) sexual abuse;
- 2 (vi) sexual misconduct;
- 3 (vii) domestic violence;
- 4 (viii) coercion of a false confession;
- 5 (ix) filing a false report; or
- 6 (x) a judicial finding of dishonesty.

7 (2) A criminal conviction relating to conduct described
8 in paragraph (1).

9 (b) Electronic database of commission.--

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

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

15 (c) Subject to disclosure.--The hiring report shall be
16 subject to disclosure under the act of February 14, 2008 (P.L.6,
17 No.3), known as the Right-to-Know Law.
18 § 7312. Regulations.

19 (a) Temporary regulations.--In order to facilitate the
20 prompt implementation of this chapter, the commission shall
21 promulgate temporary regulations within six months of the
22 effective date of this section that shall expire no later than
23 two years following the publication of the temporary
24 regulations. The department shall promulgate temporary
25 regulations not subject to:

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

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

1 (3) Sections 204(b) and 301(10) of the act of October
2 15, 1980 (P.L.950, No.164), known as the Commonwealth
3 Attorneys Act.

4 (4) The act of June 25, 1982 (P.L.633, No.181), known as
5 the Regulatory Review Act.

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

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

12 (1) Procedures to guarantee the confidentiality of
13 employment information and separation records.

14 (2) Procedures to guarantee the security of the database
15 established under this chapter.

16 (3) Reportable disciplinary actions and criminal conduct
17 falling within the scope of section 7311 (relating to hiring
18 report).

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

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

22 (1) Except as provided in paragraph (2), the addition of
23 44 Pa.C.S. Ch. 73 shall take effect in one year.

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

26 (3) This section shall take effect immediately.