

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, ROAE, SIPTROTH AND CALTAGIRONE, MAY 4, 2007

AS AMENDED ON SECOND CONSIDERATION, HOUSE OF REPRESENTATIVES, JULY 5, 2007

AN ACT

1 Amending Title 18 (Crimes and Offenses) of the Pennsylvania
2 Consolidated Statutes, further providing FOR GRADING THE
3 OFFENSE OF IMPERSONATING A PUBLIC SERVANT, FOR EXCEPTIONS TO
4 THE PROHIBITION OF INTERCEPTION AND DISCLOSURE OF CERTAIN
5 COMMUNICATIONS, for challenge to criminal history records,
6 for review of challenge and for appeals.

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

9 Section 1. Sections 6111.1(e) and 9152(d) and (e) of Title
10 18 of the Pennsylvania Consolidated Statutes are amended to
11 read:

12 SECTION 1. SECTION 4912 OF TITLE 18 OF THE PENNSYLVANIA
13 CONSOLIDATED STATUTES IS AMENDED TO READ:

14 § 4912. IMPERSONATING A PUBLIC SERVANT.

15 (A) OFFENSES DEFINED.--A PERSON COMMITS [A MISDEMEANOR OF
16 THE SECOND DEGREE IF HE] THE OFFENSE OF IMPERSONATING A PUBLIC
17 SERVANT IF:

18 (1) THE PERSON FALSELY PRETENDS TO HOLD A POSITION IN

1 THE PUBLIC SERVICE WITH INTENT TO INDUCE ANOTHER TO SUBMIT TO  
2 SUCH PRETENDED OFFICIAL AUTHORITY OR OTHERWISE TO ACT IN  
3 RELIANCE UPON THAT PRETENSE [TO HIS PREJUDICE].

4 (2) THE PERSON FALSELY PRETENDS TO BE A MEMBER OF LAW  
5 ENFORCEMENT WITH INTENT TO INDUCE ANOTHER TO SUBMIT TO SUCH  
6 PRETENDED OFFICIAL AUTHORITY OR OTHERWISE ACT IN RELIANCE  
7 UPON THAT PRETENSE.

8 (B) GRADING.--AN OFFENSE UNDER SUBSECTION (A)(1) IS A  
9 MISDEMEANOR OF THE SECOND DEGREE. AN OFFENSE UNDER SUBSECTION  
10 (A)(2) IS A FELONY OF THE THIRD DEGREE.

11 SECTION 2. SECTION 5704 OF TITLE 18 IS AMENDED BY ADDING A  
12 PARAGRAPH TO READ:

13 § 5704. EXCEPTIONS TO PROHIBITION OF INTERCEPTION AND  
14 DISCLOSURE OF COMMUNICATIONS.

15 IT SHALL NOT BE UNLAWFUL AND NO PRIOR COURT APPROVAL SHALL BE  
16 REQUIRED UNDER THIS CHAPTER FOR:

17 \* \* \*

18 (17) A PERSON WHO IS A CONSUMER TO ELECTRONICALLY RECORD  
19 A TELEPHONE CALL FROM A DEBT COLLECTOR SO DEFINED UNDER THE  
20 ACT OF MARCH 28, 2000 (P.L.23, NO.7), KNOWN AS THE FAIR  
21 CREDIT EXTENSION UNIFORMITY ACT, WITHOUT THE CONSENT OR  
22 KNOWLEDGE OF THE DEBT COLLECTOR.

23 SECTION 3. SECTIONS 6111.1(E) AND 9152(D) AND (E) OF TITLE  
24 18 ARE AMENDED TO READ:

25 § 6111.1. Pennsylvania State Police.

26 \* \* \*

27 (e) Challenge to records.--

28 (1) Any person who is denied the right to receive, sell,  
29 transfer, possess, carry, manufacture or purchase a firearm  
30 as a result of the procedures established by this section may

1 challenge the accuracy of that person's criminal history,  
2 juvenile delinquency history or mental health record pursuant  
3 to a denial by the instantaneous records check [in accordance  
4 with procedures established by the Pennsylvania State Police.  
5 The decision resulting from a challenge under this subsection  
6 may be appealed to the Attorney General within 30 days of the  
7 decision by the Pennsylvania State Police. The decision of  
8 the Attorney General may be appealed to the Commonwealth  
9 Court in accordance with court rule.] by submitting a  
10 challenge to the Pennsylvania State Police within 30 days  
11 from the date of the denial.

12 (2) The Pennsylvania State Police shall conduct a review  
13 of the accuracy of the information forming the basis for the  
14 denial, and shall have the burden of proving the accuracy of  
15 the record. Within 20 days after receiving a challenge, the  
16 Pennsylvania State Police shall notify the challenger of the  
17 basis for the denial, including, but not limited to, the  
18 jurisdiction and docket number of any relevant court decision  
19 and provide the challenger an opportunity to provide  
20 additional information for the purposes of the review. The  
21 Pennsylvania State Police shall communicate its final  
22 decision to the challenger within 60 days of the receipt of  
23 the challenge. The decision of the Pennsylvania State Police  
24 shall include all information which formed a basis for the  
25 decision.

26 (3) If the challenge is ruled invalid, the person shall  
27 have the right to appeal the decision to the Attorney General  
28 within 30 days of the decision. The Attorney General shall  
29 conduct a hearing de novo in accordance with the  
30 Administrative Agency Law. The burden of proof shall be upon

1 the Commonwealth.

2 (4) The decision of the Attorney General may be appealed  
3 to the Commonwealth Court by an aggrieved party.

4 \* \* \*

5 § 9152. Procedure.

6 \* \* \*

7 (d) Review of challenge.--All criminal justice agencies  
8 shall have 60 days to conduct a review of any challenge and  
9 shall have the burden of proving the accuracy of the record. The  
10 decision on the challenge shall include all information,  
11 including, but not limited to, the jurisdiction and docket  
12 number of any relevant court decision which formed a basis for  
13 the decision. If the challenge is deemed valid, the appropriate  
14 officials must ensure that:

15 (1) The criminal history record information is  
16 corrected.

17 (2) A certified and corrected copy of the criminal  
18 history record information is provided to the individual.

19 (3) Prior erroneous criminal history record information  
20 disseminated to criminal justice agencies shall be destroyed  
21 or returned and replaced with corrected information.

22 (4) The individual is supplied with the names of those  
23 noncriminal justice agencies and individuals which have  
24 received erroneous criminal history record information.

25 (e) Appeals.--

26 (1) If the challenge is ruled invalid, an individual has  
27 the right to appeal the decision to the Attorney General  
28 within 30 days of notification of the decision by the  
29 criminal justice agency.

30 (2) The Attorney General shall [have the authority to

1       conduct administrative appeal hearings] conduct a hearing de  
2       novo in accordance with the Administrative Agency Law. The  
3       burden of proof shall be upon the party bearing the burden of  
4       proof on the challenge.

5               (3) The decision of the Attorney General may be appealed  
6       to the Commonwealth Court by an aggrieved individual.

7       Section ~~2~~ 4. This act shall take effect immediately.

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