

## 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, TAYLOR, VULAKOVICH, FARRY, COX, SCHRODER,  
GILLESPIE, MURT, STEPHENS, HEFFLEY, MALONEY, DAY AND TOBASH,  
FEBRUARY 23, 2011

AS REPORTED FROM COMMITTEE ON STATE GOVERNMENT, HOUSE OF  
REPRESENTATIVES, AS AMENDED, OCTOBER 26, 2011

## AN ACT

1 Amending Title 18 (Crimes and Offenses) of the Pennsylvania  
2 Consolidated Statutes, IN CRIMINAL HISTORY RECORD  
3 INFORMATION, further providing for definitions, AND providing  
4 for mandatory determination of citizenship and immigration  
5 status, and further providing for use of records by licensing  
6 agencies and for use of records for employment. ←

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

9 Section 1. The definition of "criminal history record  
10 information" in section 9102 of Title 18 of the Pennsylvania  
11 Consolidated Statutes is amended to read:

12 § 9102. Definitions.

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

16 \* \* \*

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

11 \* \* \*

12 Section 2. Title 18 is amended by adding a section to read:  
13 § 9112.1. Mandatory determination of citizenship and  
14 immigration status.

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

29 ~~(1) the determination of citizenship or immigration~~  
30 ~~status; or~~

~~(2) the inability to determine citizenship or immigration status in cases where the determination would significantly expand the duration of the detention.~~

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

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

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

Act.

~~Section 3. Sections 9124 and 9125 of Title 18 are amended to read:~~

~~§ 9124. Use of records by licensing agencies.~~

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

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

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

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

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

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

~~(3) Convictions of a summary offense.~~

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

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

~~(c) State action authorized. Boards, commissions or departments of the Commonwealth authorized to license, certify,~~

~~register or permit the practice of trades, occupations or professions may refuse to grant or renew, or may suspend or revoke any license, certificate, registration or permit for the following causes:~~

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

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

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

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

~~(1) Conviction of any crime.~~

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

~~§ 9125. Use of records for employment.~~

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

~~(b) Use of information.~~

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

~~(2) Verification under section 9112.1(a) (relating to mandatory determination of citizenship and immigration status) that an applicant is unlawfully present in the United States may be considered by the employer.~~

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

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

(A) INQUIRY.--AN ARRESTING AUTHORITY SHALL QUESTION EACH INDIVIDUAL ARRESTED FOR A FELONY, MISDEMEANOR OR SUMMARY OFFENSE ABOUT THE INDIVIDUAL'S CITIZENSHIP AND IMMIGRATION STATUS, REGARDLESS OF THE INDIVIDUAL'S NATIONAL ORIGIN, ETHNICITY OR RACE.

(B) DOCUMENTATION.--AN ARRESTING AUTHORITY SHALL DOCUMENT ALL RESPONSES UNDER SUBSECTION (A) IN THE SUBSEQUENT POLICE REPORT.

(C) AUTHORIZATION.--AN ARRESTING AUTHORITY AND AN EMPLOYEE, OFFICER OR OFFICIAL OF AN ARRESTING AUTHORITY MAY NOT, BY ORDINANCE OR OFFICIAL OR INFORMAL POLICY OF A CITY OR COUNTY OR BY AN OFFICIAL POLICY OR INFORMAL POLICY OF A STATE LAW ENFORCEMENT AGENCY, BE PROHIBITED OR RESTRICTED FROM DOING ANY OF THE FOLLOWING:

(1) SENDING TO OR RECEIVING FROM FEDERAL IMMIGRATION OFFICIALS INFORMATION REGARDING THE CITIZENSHIP OR IMMIGRATION STATUS, LAWFUL OR UNLAWFUL, OF AN INDIVIDUAL.

(2) DOING ANY OF THE FOLLOWING WITH RESPECT TO INFORMATION REGARDING THE IMMIGRATION STATUS, LAWFUL OR UNLAWFUL, OF AN INDIVIDUAL:

(I) MAINTAINING THE INFORMATION.

(II) EXCHANGING THE INFORMATION WITH OTHER FEDERAL

1           AGENCIES, COMMONWEALTH AGENCIES OR MUNICIPALITIES.

2           (3) INQUIRING ABOUT AN INDIVIDUAL'S NAME, DATE AND PLACE  
3           OF BIRTH AND IMMIGRATION STATUS.

4           (D) UNIFORM CRIME REPORTING.--STATISTICAL INFORMATION  
5           CONCERNING THE CITIZENSHIP AND IMMIGRATION STATUS OF EACH  
6           INDIVIDUAL ARRESTED FOR A FELONY, MISDEMEANOR OR SUMMARY OFFENSE  
7           SHALL BE INCLUDED IN THE PENNSYLVANIA UNIFORM CRIME REPORTING  
8           PROGRAM AND PUBLISHED IN ANY ANNUAL REPORT UNDER THE ACT OF  
9           NOVEMBER 29, 2004 (P.L.1383, NO.180), KNOWN AS THE UNIFORM CRIME  
10          REPORTING ACT.

11          SECTION 3. THIS ACT SHALL TAKE EFFECT IN 60 DAYS.