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THE GENERAL ASSEMBLY OF PENNSYLVANIA

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SENATE BILL

No. 431 Session of  
2015

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INTRODUCED BY HUGHES, TEPLITZ, FONTANA, TARTAGLIONE, GREENLEAF,  
SCHWANK, LEACH AND WILLIAMS, FEBRUARY 12, 2015

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REFERRED TO LABOR AND INDUSTRY, FEBRUARY 12, 2015

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AN ACT

1 Providing for employer prescreening and for administration of  
2 act and rulemaking authority; establishing Ex-offender  
3 Increased Access to Employment Enforcement Fund; making an  
4 appropriation; and providing for construction of act.

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

7 Section 1. Short title.

8 This act shall be known and may be cited as the Ex-offender  
9 Increased Access to Employment Act.

10 Section 2. Findings.

11 The General Assembly finds that it is in the public interest  
12 to:

13 (1) Do more to give employers in this Commonwealth  
14 access to the broadest pool of qualified applicants possible.

15 (2) Protect the civil rights of those seeking  
16 employment.

17 (3) Ensure that qualified applicants are properly  
18 considered for employment opportunities and are not  
19 prescreened or denied an employment opportunity unnecessarily

1 or unjustly.

2 Section 3. Definitions.

3 The following words and phrases when used in this act shall  
4 have the meanings given to them in this section unless the  
5 context clearly indicates otherwise:

6 "Applicant." A person pursuing employment with an employer  
7 or with or through an employment agency.

8 "Department." The Department of Labor and Industry of the  
9 Commonwealth.

10 "Employer." Any of the following:

11 (1) The Commonwealth.

12 (2) A political subdivision.

13 (3) A instrumentality of this Commonwealth or a  
14 political subdivision.

15 (4) A person or private entity that has five or more  
16 employees in the current or preceding calendar year and an  
17 agent of the entity or person.

18 "Employment." An occupation or vocation.

19 "Employment agency." A person or entity, or an agent  
20 thereof, regularly undertaking with or without compensation to  
21 procure employees for an employer or to procure for employees  
22 opportunities to work for an employer.

23 "Fund." The Ex-offender Increased Access to Employment  
24 Enforcement Fund established under section 4(c).

25 "Secretary." The Secretary of Labor and Industry of the  
26 Commonwealth.

27 Section 4. Employer prescreening.

28 (a) Prohibition.--An employer or employment agency may not  
29 inquire about or into or consider or require disclosure of the  
30 criminal record or criminal history of an applicant until:

1 (1) the applicant has been determined qualified for the  
2 position and notified that the applicant has been selected  
3 for an interview by the employer or employment agency; or

4 (2) if there is not an interview, until after a  
5 conditional offer of employment is made to the applicant by  
6 the employer or employment agency.

7 (b) Exemptions.--The requirements set forth in subsection  
8 (a) do not apply for positions where:

9 (1) employers are required to exclude applicants with  
10 certain criminal convictions from employment due to Federal  
11 or State law; or

12 (2) a standard fidelity bond or an equivalent bond is  
13 required and an applicant's conviction of one or more  
14 specified criminal offenses would disqualify the applicant  
15 from obtaining the bond, in which case an employer may  
16 include a question or otherwise inquire whether the applicant  
17 has ever been convicted of any of the offenses.

18 (c) Notification.--This section shall not prohibit an  
19 employer from notifying applicants in writing of the specific  
20 offenses that will disqualify an applicant from employment in a  
21 particular position due to Federal or State law or the  
22 employer's policy.

23 Section 5. Administration of act and rulemaking authority.

24 (a) Investigation and penalties.--The department may  
25 investigate an alleged violation of this act by an employer or  
26 employment agency. If the department finds that a violation of  
27 this act has occurred, the secretary may impose the following  
28 civil penalties:

29 (1) For a first violation, the secretary shall issue a  
30 written warning to the employer or employment agency.

1           (2) For a second violation, the secretary may impose a  
2 civil penalty of up to \$500.

3           (3) For a third or subsequent violation, the secretary  
4 may impose a civil penalty of up to \$1,500.

5           (4) A penalty imposed under paragraphs (1), (2) and (3)  
6 shall include a requirement that the employer or employment  
7 agency remedy the violation within 30 days of receipt of  
8 notice of the violation from the department. An employer or  
9 employment agency that fails to remedy a violation after  
10 receipt of notice from the department shall be subject to an  
11 additional penalty of up to \$1,500 for every 30 days that  
12 passes thereafter without compliance.

13         (b) Assessment and recovery of penalties.--Penalties under  
14 this section may be assessed by the department and recovered in  
15 a civil action brought by the department in Commonwealth Court  
16 or an administrative adjudicative proceeding.

17         (c) Fund.--The Ex-offender Increased Access to Employment  
18 Enforcement Fund is established as a special fund in the State  
19 Treasury.

20         (d) Deposit and appropriation.--The money recovered as civil  
21 penalties under this section shall be deposited into the fund.  
22 The money in the fund shall be appropriated to the department on  
23 a continuing basis and may be used only to enforce employer  
24 violations of this act.

25         (e) Administration and procedure.--The department may adopt  
26 rules necessary to administer this act and may establish an  
27 administrative procedure to adjudicate claims and issue final  
28 and binding decisions subject to the 2 Pa.C.S. (relating to  
29 administrative law and procedure).

30 Section 6. Construction of act.

1       This act may not be construed to prohibit an employer from  
2 conducting a criminal history background check on an individual  
3 after complying with the provisions of this act.

4 Section 7. Effective date.

5       This act shall take effect in 60 days.