

THE GENERAL ASSEMBLY OF PENNSYLVANIA

SENATE BILL

No. 774 Session of 2015

INTRODUCED BY KITCHEN, SCHWANK, HAYWOOD, COSTA AND WILLIAMS,  
MAY 29, 2015

REFERRED TO JUDICIARY, MAY 29, 2015

AN ACT

1 Amending Title 18 (Crimes and Offenses) of the Pennsylvania  
2 Consolidated Statutes, in criminal history record  
3 information, further providing for use of records for  
4 employment.

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

7 Section 1. Section 9125 of Title 18 of the Pennsylvania  
8 Consolidated Statutes is amended to read:

9 § 9125. Use of records for employment.

10 (a) General rule.--Whenever an employer is in receipt of  
11 information which is part of an employment applicant's or  
12 employee's criminal history record information file, it may use  
13 that information for the purpose of deciding whether or not to  
14 hire the applicant or to retain the employee, only in accordance  
15 with this section. This subsection shall not apply to law  
16 enforcement.

17 (b) Use of information.--Felony and misdemeanor convictions  
18 of an employment applicant or employee may only be considered by  
19 the employer only to the extent [to which they relate to the

1 applicant's suitability for employment in the position for which  
2 he has applied.] that:

3 (1) There is a direct relationship between one or more  
4 prior criminal convictions and the specific employment  
5 sought.

6 (2) An offer of employment would involve an unreasonable  
7 risk to property or to the safety or welfare of specific  
8 individuals or the general public.

9 (c) Factors for consideration.--In determining whether or  
10 not to deny employment to an employment applicant with criminal  
11 history record information, the employer shall consider the  
12 following factors:

13 (1) The bearing of the underlying criminal offense upon  
14 the individual's fitness or ability to perform the  
15 individual's job duties or responsibilities.

16 (2) The specific duties and responsibilities of the  
17 employment sought or held by the individual.

18 (3) The time which has elapsed since the occurrence of  
19 the criminal offense or offenses.

20 (4) The age of the individual at the time of the  
21 offense.

22 (5) The seriousness of the offense.

23 (6) Any information produced in regard to the  
24 individual's rehabilitation and good conduct.

25 (7) The employer's legitimate interest in protecting the  
26 safety and welfare of specific individuals or the general  
27 public.

28 (c.1) Exception.--Subsection (b) shall not include crimes of  
29 violence as defined under 42 Pa.C.S. § 9714(g) (relating to  
30 sentences for second and subsequent offenses).

1        [(c)] (d) Notice.--The employer shall notify in writing,  
2 within 60 days of receipt of the employment application, the  
3 applicant or employee if the decision not to hire the applicant  
4 or to retain the employee is based in whole or in part on  
5 criminal history record information.

6        (e) Good faith presumption.--In a case alleging that an  
7 employer has been negligent in hiring an applicant, retaining an  
8 employee or supervising a hiring manager, there shall be a  
9 rebuttable presumption in favor of excluding from evidence the  
10 prior incarceration or conviction of the applicant or employee  
11 if, after learning about an applicant's or employee's past  
12 criminal conviction history, the employer has evaluated the  
13 factors enumerated in subsection (c) and made a reasonable, good  
14 faith determination that the factors militate in favor of hiring  
15 the applicant or retaining the employee.

16        (f) Applicability.--This section shall only apply to an  
17 employee during the first 60-day time period from the date the  
18 employment application is received by the employer.

19        Section 2. This act shall take effect in 60 days.