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THE GENERAL ASSEMBLY OF PENNSYLVANIA

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HOUSE BILL

No. 1505 Session of  
2019

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INTRODUCED BY McCLINTON, ZABEL, SCHLOSSBERG, A. DAVIS,  
DONATUCCI, CALTAGIRONE, KINSEY, HILL-EVANS, FRANKEL, GALLOWAY  
AND DAWKINS, MAY 23, 2019

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REFERRED TO COMMITTEE ON JUDICIARY, MAY 23, 2019

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AN ACT

1 Amending Title 18 (Crimes and Offenses) of the Pennsylvania  
2 Consolidated Statutes, in dissemination of criminal history  
3 record 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] an  
12 individual's criminal history record information file, it may  
13 use that information for the purpose of [deciding whether or not  
14 to hire the applicant] taking an adverse employment action, only  
15 in accordance with this section.

16 (b) Use of information.--Felony and misdemeanor convictions  
17 may be considered by the employer only to the extent to which  
18 they relate to the [applicant's] individual's suitability for

1 employment in the position [for which he has applied.

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

5 (1) for which the individual has applied; or

6 (2) in which the individual is currently employed.

7 (d) Exceptions.--Notwithstanding subsection (b), an employer  
8 may not inquire about or consider the following when determining  
9 an individual's suitability for employment:

10 (1) A case with a final disposition that is not a  
11 conviction.

12 (2) A juvenile case resulting in an adjudication of  
13 delinquency.

14 (3) A conviction of a summary offense.

15 (4) A case that was expunged or pardoned.

16 (e) Initial considerations.--When determining an  
17 individual's suitability for employment, if the individual has  
18 been convicted of a felony or misdemeanor, the employer must  
19 consider the following information:

20 (1) The nature of the crime.

21 (2) The time that has passed since the offense or  
22 completion of the sentence. An offense may only be considered  
23 within seven years of the date of arrest or date of release  
24 from incarceration, whichever is later.

25 (3) The type of employment sought or currently held.

26 (f) Notice.--If the employer initially determines that an  
27 individual is not suitable for employment after evaluating the  
28 considerations under subsection (e), the employer must provide  
29 the individual with a copy of the criminal record information on  
30 which it is relying at least seven days prior to making a final

1 decision.

2 (g) Final considerations.--Prior to making a final decision  
3 on the individual's suitability for employment, the employer  
4 must consider any information provided by the individual related  
5 to the following:

6 (1) The accuracy of the criminal record information.

7 (2) The individual's employment history before or after  
8 the offense.

9 (3) The individual's performance in the position or a  
10 similar position.

11 (4) Employment or character references.

12 (5) Evidence of rehabilitation.

13 (6) Other information that may demonstrate the  
14 individual is suitable for employment in the position.

15 (h) Powers and duties of department.--The department shall:

16 (1) Enforce and administer the provisions of this  
17 section. The department may promulgate regulations necessary  
18 to implement this section.

19 (2) Investigate credible complaints made to the  
20 department alleging a violation of this section. The  
21 following shall apply:

22 (i) The department shall have subpoena power.  
23 Application may be made to the Commonwealth Court to  
24 enforce a subpoena. Nothing in this subparagraph shall be  
25 construed to excuse an individual from producing  
26 documents and records as requested by the department  
27 under another provision of law.

28 (ii) The department shall provide a written  
29 determination at the conclusion of the investigation  
30 explaining the department's conclusion as to whether a

1 violation of this section has occurred.

2 (i) Retaliation prohibited.--

3 (1) An employer may not:

4 (i) interfere with, restrain or deny the exercise of  
5 rights provided under this section; or

6 (ii) discharge, discriminate or take adverse action  
7 in retaliation for exercising rights protected under this  
8 section. Rights protected under this section include:

9 (A) making a complaint to or informing the  
10 department of an employer's noncompliance with this  
11 section;

12 (B) participating in investigations or  
13 proceedings; and

14 (C) informing an individual of the individual's  
15 potential rights and assisting the individual in  
16 asserting the rights.

17 (2) If an employer takes adverse action against an  
18 individual within 90 days of the individual's exercise of  
19 rights protected under this section, the act shall raise a  
20 rebuttable presumption of the employer's having done so in  
21 retaliation for the individual exercising rights protected  
22 under this section.

23 (j) Administrative penalties.--The following shall apply:

24 (1) The department shall assess the following penalties  
25 on an employer that violates this section or a regulation  
26 promulgated under this section:

27 (i) For a first offense, a fine of not less than  
28 \$1,000 nor more than \$2,500 for each violation of this  
29 section.

30 (ii) For a second or subsequent offense, a fine of

1 not less than \$2,500 nor more than \$5,000 for each  
2 violation of this section.

3 (2) The department may order an employer to take any  
4 action which the department deems necessary to correct a  
5 violation of this section.

6 (3) An action by the department under this subsection  
7 shall be subject to review under 2 Pa.C.S. Chs. 5 Subch. A  
8 (relating to practice and procedure of Commonwealth agencies)  
9 and 7 Subch. A (relating to judicial review of Commonwealth  
10 agency action).

11 (k) Civil penalties.--The department or an individual who in  
12 good faith alleges a violation of this section may institute an  
13 action in a court of competent jurisdiction against an employer.  
14 An action alleging retaliation must be instituted within two  
15 years from the date the alleged retaliation occurred. All other  
16 actions alleging a violation of this section must be instituted  
17 within one year of the alleged violation. An action under this  
18 subsection may request any of the following:

19 (1) Back pay.

20 (2) Compensatory damages.

21 (3) Punitive damages.

22 (4) Reasonable attorney fees and costs of litigation.

23 (5) Any other relief that the court deems appropriate,  
24 including instatement or reinstatement to an employment  
25 position.

26 (l) Applicability.--

27 (1) This section shall apply if a Federal law or other  
28 State law does not preclude, based on criminal history record  
29 information, an individual from an employment position.

30 (2) This section shall not apply if a Federal law or

1 other State law precludes, based on criminal history record  
2 information, an individual from an employment position.

3 (m) Definitions.--As used in this section, the following  
4 words and phrases shall have the meanings given to them in this  
5 subsection unless the context clearly indicates otherwise:

6 "Department." The Department of Labor and Industry of the  
7 Commonwealth.

8 "Individual." A job applicant, employee or contractor.

9 Section 2. This act shall take effect in 90 days.