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THE GENERAL ASSEMBLY OF PENNSYLVANIA

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HOUSE BILL

No. 378 Session of  
2021

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INTRODUCED BY A. DAVIS, SANCHEZ, DALEY, HILL-EVANS, SCHLOSSBERG,  
HOHENSTEIN, LEE, ISAACSON, DEASY, GUZMAN, O'MARA, SCHWEYER  
AND DELLOSO, FEBRUARY 3, 2021

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REFERRED TO COMMITTEE ON LABOR AND INDUSTRY, FEBRUARY 3, 2021

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AN ACT

1 Providing for a prohibition on employer prescreening of criminal  
2 records and history of job applicants; establishing the Ex-  
3 offender Increased Access to Employment Enforcement Fund; and  
4 imposing penalties.

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 individuals seeking  
16 employment.

17 (3) Ensure that qualified applicants are properly  
18 considered for employment opportunities and are not

1 prescreened or denied an employment opportunity unnecessarily  
2 or unjustly.

3 Section 3. Definitions.

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

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

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

11 "Employer." Any of the following:

12 (1) The Commonwealth.

13 (2) A political subdivision.

14 (3) An instrumentality of the Commonwealth or a  
15 political subdivision.

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

19 "Employment." An occupation or vocation.

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

24 "Fund." The Ex-offender Increased Access to Employment  
25 Enforcement Fund established under section 5(d).

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

28 Section 4. Employer prescreening.

29 (a) Prohibition.--An employer or employment agency may not  
30 inquire about, or into or consider or require disclosure of, the

1 criminal record or criminal history of an applicant until after  
2 a conditional offer of employment is made to the applicant by  
3 the employer or employment agency.

4 (b) Exemptions.--The requirement under subsection (a) does  
5 not apply for positions where:

6 (1) employers are required to exclude applicants with  
7 certain criminal convictions from employment due to Federal  
8 or State law; or

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

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

21 Section 5. Administration of act and rulemaking authority.

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

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

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

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

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

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

15          (d) Establishment of fund.--The Ex-offender Increased Access  
16          to Employment Enforcement Fund is established as a special fund  
17          in the State Treasury.

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

23          (f) Administration and procedure.--The department may  
24          promulgate regulations necessary to administer this act and may  
25          establish an administrative procedure to adjudicate claims and  
26          issue final and binding decisions subject to 2 Pa.C.S. (relating  
27          to administrative law and procedure).

28          Section 6. Construction of act.

29          This act shall not be construed to prohibit an employer from  
30          conducting a criminal history background check on an individual

1 after complying with the provisions of this act.

2 Section 7. Effective date.

3 This act shall take effect in 60 days.