



City of Philadelphia

City Council
Chief Clerk's Office
402 City Hall
Philadelphia, PA 19107

BILL NO. 110110

Introduced February 17, 2011

Councilmember Miller

**Referred to the
Committee on Public Safety**

AN ORDINANCE

Amending Title 9 of The Philadelphia Code, entitled "Regulation of Businesses, Trades and Professions," by prohibiting the unfair discrimination of individuals with criminal records past the initial application process and to establish provisions and requirements for the screening of criminal records by certain employers within the City of Philadelphia, all under certain terms and conditions.

THE COUNCIL OF THE CITY OF PHILADELPHIA HEREBY ORDAINS:

SECTION 1. Chapter 9-3000 of The Philadelphia Code is hereby amended to read as follows:

CHAPTER 9-3000. FAIR CRIMINAL RECORD SCREENING STANDARDS.

* * *

§9-3004. Prohibition Against Unfair discrimination against persons previously convicted of one or more criminal offenses.

[(1) In connection with the licensing or employment of any person, it shall be an unlawful discriminatory practice for a City or County agency or private employer to make any inquiry regarding criminal convictions. It shall further be an unlawful discriminatory practice for a City or County agency or private employer to require any person to disclose or reveal any criminal convictions made against such person.

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(a) The prohibition of such inquiries or adverse action shall not apply if such inquiries or adverse action is specifically required or permitted by any other law.]

(1) *No City or County agency or private employer shall conduct a criminal record check on an applicant for a license or employment or for a current employee or licensee unless a criminal record check is required by law or the employer has made a good faith determination that the relevant position is of such sensitivity that a criminal record report is warranted.*

(2) *The criminal record check shall be conducted through the Pennsylvania State Police or other private background check entities but not through criminal court records and may not review or make decisions based on arrests or charges that do not lead to convictions.*

(3) *Prior to conducting any criminal record check on an applicant or current employee, or making any inquiry about the criminal record of an applicant or current employee, a City or County agency or private employer must first review the qualifications of an applicant and determine that an applicant or current employee is otherwise qualified for the relevant position. Inquiry into and consideration of conviction records for prospective employees shall take place only after the prospective employee has received a conditional offer of employment which may be withdrawn if the prospective employee has a conviction record that bears a direct relationship to the applicant's suitability for the position being considered. No City or County agency or private employer shall conduct a criminal record check for an applicant or current employee who is not otherwise qualified for a relevant position with that employer.*

(4) *If, as a result of a criminal record check, the City or County agency or private employer is inclined to refuse, rescind, or revoke the offer of a position to an applicant or current employee, then the City or County agency or private employer must immediately notify the applicant or current employee of the potential adverse employment action, provide the applicant or current employee with a photocopy of the criminal record report received by the City or County agency or private employer and detail the specific parts of the criminal record report that concern the City or County agency or private employer.*

(a) *The applicant or current employee shall have 5 business days, after receipt of notice and the photocopy of the criminal record from the City or County agency or private employer, to respond to the City or County agency or private employer regarding the criminal record report. The City or County agency or private employer*

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shall provide the applicant or current employee with an opportunity to present information rebutting the accuracy and/or relevance of the criminal record report and must review any information and documentation received from the applicant or current employee prior to taking any final action with regard to the applicant or current employee.

(b) The City or County agency or private employer must document all steps taken to comply with this subsection (d).

(5) No application for any license or employment, to which the provisions of this Chapter are applicable, shall be denied by reason of the applicant or current employee having been previously convicted of one or more criminal offenses, or by reason of a finding of lack of "good moral character" when such finding is based upon the fact that the applicant or current employee has previously been convicted of one or more criminal offenses, unless:

(a) there is a direct relationship between one or more of the previous criminal offenses and the applicants suitability for the specific license or employment sought; or

(b) the issuance of the license or the granting of the employment would involve an unreasonable risk to property or to the safety or welfare of specific individuals or the general public.

§9-3005. Factors to be considered concerning a previous criminal conviction; presumption.

(1) In making a determination pursuant to Section 9-3005(5) (relating to disqualification based on criminal convictions), the City or County agency or private employer shall consider the following factors:

(a) The public policy of this City, as expressed in this Chapter, to encourage the licensure and employment of persons previously convicted of one or more criminal offenses.

(b) The specific duties and responsibilities necessarily related to the license or employment sought.

(c) The bearing, if any, the criminal offense or offenses for which the person was previously convicted will have on his fitness or ability to perform one or more such duties or responsibilities.

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(d) *The time which has elapsed since the occurrence of the criminal offense or offenses.*

(e) *The age of the person at the time of occurrence of the criminal offense or offenses.*

(f) *The seriousness of the offense or offenses.*

(g) *Any information produced by the person, or produced on his behalf, in regard to his rehabilitation and good conduct.*

(h) *The legitimate interest of the City or County agency or private employer in protecting property, and the safety and welfare of specific individuals or the general public.*

§9-3006. *Written statement upon denial of license or employment.*

At the request of any person previously convicted of one or more criminal offenses who has been denied a license or employment, a City or County agency or private employer shall provide, within thirty days of a request, a written statement setting forth the reasons for such denial.

[§9-3005.] §9-3007. Retaliation and Discrimination Prohibited.

It shall be unlawful to retaliate or discriminate against any person on account of his having claimed a violation of this Chapter.

§9-3008. Private Right of Action.

(1) A person aggrieved by a violation of this Chapter may bring an action against an employer and obtain the following remedies:

(a) Back pay for lost wages caused by the employer's or the licensing authority's violation of this Chapter.

(b) Reinstatement, compensatory damages and punitive damages, to the extent such punitive damages are permitted by law.

(c) Reasonable attorney's fees and costs.

(2) Notwithstanding any provision of this Chapter or any other ordinances to the contrary, no criminal penalties shall attach for any violation of this Chapter.

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(3) No remedy set forth in this Chapter is intended to be exclusive or a prerequisite for asserting a claim for relief to enforce any rights hereunder in a court of law.

(4) Nothing in this Chapter shall be interpreted to authorize a claim for damages against the City based upon another employer's failure to comply with this Chapter.

[§9-3006.] §9-3009. Enforcement.

(1) Each day in which an applicant, employee or licensee continues to be denied employment or a license in violation of this Chapter shall constitute a separate violation of this Chapter.

(2) Each violation of this Chapter shall constitute a "Class III" offense and any person who violates this Chapter shall be subject to a fine as set forth in §1-109(3).

[§9-3007.] §9-3010. Fair Criminal Record Screening Advisory Committee.

(1) Establishment. The City Council hereby calls upon the Mayor to establish a nine (9) person committee entitled the "Fair Criminal Record Screening Advisory Committee," the purpose of which shall be to review the implementation and effectiveness of this Chapter and to make recommendations to the Mayor and City Council regarding this Chapter.

(2) Members. The Committee shall be composed of nine (9) members, appointed by the Mayor with the consent of City Council, provided that at least two appointees shall be people with criminal records, no more than four (4) appointees shall be members of the business community and at least one appointee must be appointed to represent the office of Inspector General and one appointee must be appointed to represent the Mayor's Office of Reentry of Ex-offenders.

(3) Meetings. The Committee shall meet at least quarterly. All meetings shall be open to the public and will allow for public testimony on policies or conduct relating to this Chapter.

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Explanation:

[Brackets] indicate matter deleted.
Italics indicate new matter added.