



City of Philadelphia

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

BILL NO. 100543

Introduced September 16, 2010

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 enacting a new Chapter 9-3000, entitled "Fair Criminal Record Screening Standards," 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. Title 9 of The Philadelphia Code, entitled "Regulation of Businesses, Trades and Professions," is hereby amended by adding a new Chapter 9-3000, entitled "Fair Criminal Record Screening Standards," to read as follows:

CHAPTER 9-3000. FAIR CRIMINAL RECORD SCREENING STANDARDS.

§9-3001. Legislative Findings and Purpose.

(1) *The City Council of the City of Philadelphia finds that:*

(a) *Persons with criminal records suffer from pervasive discrimination in many areas of life – employment, housing, education, and eligibility for many forms of social benefits; and*

(b) *As of 1999, more than 71 million people nationwide had criminal records and are reported to experience lifelong discrimination because of their past convictions, and Pennsylvania has a higher corrections population than all but eight states, resulting in large numbers of people whose backgrounds include past criminal convictions and/or imprisonment; and*

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(c) Nearly 3200 people are released from the Philadelphia Prison System annually and it holds an average daily population of 8500 people – each one released burdened by and shadowed with a criminal record of some type; and

(d) The percentage of people of color convicted and incarcerated nationwide exceeds the percentage of their representation in the population as a whole, which disproportionately impacts their lives, families and communities; and

(e) Criminal background checks by employers have increased at a record rate, with 80% of large employers in the U.S. now screening their workers for criminal records (an increase of 29% since 1996); and

(f) Formerly-incarcerated people represent a group of job-seekers, ready to contribute and add to the work force; and

(g) Lack of employment is a significant cause of recidivism; people who are employed are significantly less likely to be re-arrested; and

(h) Obstacles to employment for people with criminal records and other barriers to re-entry are creating permanent members of an underclass that threatens the health of the community and undermines public safety.

(2) It is the intent and purpose of this Chapter:

(a) to assist the successful reintegration of formerly-incarcerated people back into the community by removing barriers to gainful employment after their release from prison;

(b) to ensure that, within the City of Philadelphia, just and fair measures are implemented and practiced when screening and identifying persons who may or may not have criminal records; and

(c) to enhance the health and security of the community by assisting people with criminal records to re-integrate into the community and to provide for their families and themselves.

§9-3002. Definitions.

As used in this Chapter the following terms have the following meanings:

(1) “Applicant.” Any person considered or who requests to be considered for

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employment by an employer.

(2) *“City or County agency” means the city, the county or any city or county department, agency, board or commission.*

(3) *“Conviction” shall mean any sentence arising from a plea or verdict of guilty, including a sentence of incarceration, a suspended sentence, a sentence of probation or a sentence of unconditional discharge.*

(4) *“Direct relationship” means that the nature of criminal conduct for which the person was convicted has a direct and/or specific negative bearing on a person’s fitness or ability to perform one or more of the duties or responsibilities necessarily related to the employment or license sought.*

(5) *“Employment” means any occupation, vocation, job, work for pay or employment, including temporary or seasonal work, contracted work, contingent work and work through the services of a temporary or other employment agency; or any form of vocational or educational training with or without pay. “Employment” shall not, for the purposes of this Chapter, include membership in any law enforcement agency.*

(6) *“License” means any certificate, license, permit, authorization or grant of permission required by the City as a condition for the lawful practice of any occupation, employment, trade, vocation, business, or profession. “License” shall not, for the purposes of this Chapter, include any license, authorization or permit to own, possess, carry, or fire any explosive, pistol, handgun, rifle, shotgun, or other firearm.*

(7) *“Private employer” means any person, company, corporation, labor organization or association which employs ten or more persons within the City of Philadelphia. It includes job placement and referral agencies and other employment agencies.*

§9-3003. Prohibition Against Unfair discrimination against persons previously arrested for 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 about or to take any adverse action against any person on the basis of any arrest or criminal accusation made against such person, which is not then pending against that person and which did not result in a conviction. It shall further be an unlawful discriminatory practice for a City or County agency or private employer to*

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require any person to disclose or reveal any arrest or criminal accusation made against such person which is not then pending against that person and which did not result in a conviction.

(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.

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

(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 only and not through criminal court records.

(3) Prior to conducting any criminal record check on 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 before the Employer may conduct a criminal record check. 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 shall provide the applicant or current employee with an opportunity to present

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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 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.

§9-3007. *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.*

§9-3009. 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).*

§9-3010. 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.*

SECTION 2. If any section, subsection, subdivision, paragraph, sentence, clause or phrase of this Ordinance, or the application of such provision to any person or circumstance, is for any reason held to be unconstitutional or invalid, such a decision

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shall not affect the validity of the remaining portions of this Ordinance, or the application of such provision to persons or circumstances other than those as to which it is held invalid. The City Council hereby declares that it would have passed each section, subsection, subdivision, paragraph, sentence, clause or phrase of this Ordinance irrespective of the unconstitutionality or invalidity of any section, subsection, subdivision, paragraph, sentence, clause or phrase.

SECTION 3. Section 9-3010 of this Ordinance shall become effective immediately. The remaining sections of this Ordinance shall take effect 90 days after it becomes law.

Explanation:

Italics indicate new matter added.