City of Philadelphia

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

BILL NO. 110111-A
(As Amended on Floor 3/24/2011)

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 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 9-3500, entitled "Fair Criminal Record Screening Standards," to read as follows:

CHAPTER 9-3500. FAIR CRIMINAL RECORD SCREENING STANDARDS.

§9-3501. 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

Attachment # 11

states, resulting in large numbers of people whose backgrounds include past criminal convictions and/or imprisonment; and

(c) It is estimated that approximately one-fifth of Philadelphia's population has some type of Criminal Record.

(d) 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

(e) 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

(f) Criminal background checks by employers have increased at a record rate, with a vast majority of employers in the U.S. now screening their workers for criminal records; and

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

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

(i) 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.

(j) This legislation concerns a sensitive and highly controversial subject, and should not be construed to require an employer to hire someone with a criminal record, nor to limit an employers ability to choose the most qualified and appropriate applicant for the employment opportunity at hand.

(k) This legislation is intended to give the individual with a criminal record an opportunity to be judged on his or her own merit during the submission of the application and at least until the completion of one interview.

(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 enhance the health and security of the community by assisting people with criminal records to provide for their families and themselves; and

(c) 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.

§9-3502. 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 employment by an employer.

(2) "City agency" means the City, or any City department, agency, board or commission.

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

(4) "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.

(5) "Inquiry" means any direct or indirect conduct intended to gather information, using any mode of communication.

(6) "Interview" means any direct contact by the employer with the applicant, whether in person or by telephone, to discuss the employment being sought or the applicant's qualifications.

(7) "Criminal Justice Agency" means any court, including the minor judiciary, with criminal jurisdiction or any other governmental agency, or subunit thereof, created by statute or by the State or Federal constitutions, specifically authorized to perform as its principal function the administration of criminal justice, and which allocates a substantial portion of its annual budget to such function; and agencies whose principal function relates to the administration of criminal justice, including but not limited to organized State and municipal police departments, local detention facilities, correctional facilities, probation agencies, district or prosecuting attorneys, parole boards, pardon boards, and public agencies that provide care, guidance and control to adjudicated delinquents.

(8) "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.

(9) "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.

§9-3503. 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 agency or private employer to knowingly and intentionally 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 agency or private employer to 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.

§9-3504. 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 agency or private employer to make any inquiry regarding or to require any person to disclose or reveal any criminal convictions during the application process. The application process shall begin when the applicant inquires about the employment being sought and shall end when an employer has accepted an employment application.

(2) It shall further be an unlawful discriminatory practice for a City agency or private employer to make any inquiry regarding, or to require any person to disclose or reveal any criminal convictions against such person before and during the first interview. If an employer does not conduct an interview, that employer is prohibited from making any inquiries or gathering any information regarding the applicant's criminal convictions. If the applicant voluntarily discloses any information regarding his or her criminal convictions at the interview, the employer may discuss the criminal conviction disclosed by the applicant.

§ 9-3505. Exemptions.

(1) The prohibitions of this Chapter shall not apply if the inquiries or adverse actions prohibited herein are specifically authorized by any other applicable law.

(2) The prohibitions of this Chapter shall not apply to a Criminal Justice Agency as defined herein.

(3) Nothing in this Chapter shall modify or waive the requirements and limitations on the use of criminal records in Pennsylvania pursuant to 18 Pa. C.S. §9125.

§9-3506. Enforcement.

(1) The Mayors office of Labor Standards, or such other office or agency as the Mayor shall designate, shall administer and enforce 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).

§9-3507. 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. (5) appointed by the Mayor and (4) appointed by 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 Reintegration Services for Ex-offenders (R.I.S.E.).

(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 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. This Ordinance shall take effect 90 days after it becomes law.

Explanation:

Italics indicate new matter added.