

No. 1979-47

AN ACT

HB 462

Amending Title 18 (Crimes and Offenses) of the Pennsylvania Consolidated Statutes, further providing for antique firearms and adding provisions relating to criminal history record information.

The General Assembly of the Commonwealth of Pennsylvania hereby enacts as follows:

Section 1. Section 6118 of Title 18, act of November 25, 1970 (P.L.707, No.230), known as the Pennsylvania Consolidated Statutes, is amended to read:

§ 6118. Antique firearms.

(a) General rule.—This subchapter shall not apply to antique firearms. [unsuitable for use and possessed as curiosities or ornaments.]

(b) Exception.—*Subsection (a) shall not apply to the extent that such antique firearms, reproductions or replicas of firearms are concealed weapons as provided in section 6106 (relating to firearms not to be carried without a license).*

(c) Definition.—*For the purpose of this section “antique firearm” means:*

(1) any firearm, including any firearm with a matchlock, flintlock, percussion cap or similar type of ignition system, manufactured on or before 1898; and

(2) any replica of any firearm described in paragraph (1) if such replica:

(i) is not designed or redesigned for using rim fire or conventional center fire fixed ammunition; or

(ii) uses rim fire or conventional center fire fixed ammunition which is no longer manufactured in the United States and which is not readily available in the ordinary channels of commercial trade.

Section 2. Title 18 is amended by adding a part to read:

PART III
MISCELLANEOUS PROVISIONS

Chapter

91. Criminal History Record Information

CHAPTER 91

CRIMINAL HISTORY RECORD INFORMATION

Subchapter

A. General Provisions

B. Completeness and Accuracy

C. Dissemination of Criminal History Record Information

- D. Security
- E. Audit
- F. Individual Right of Access and Review
- G. Responsibility of Attorney General
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SUBCHAPTER A GENERAL PROVISIONS

Sec.

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- 9103. Applicability.
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- 9105. Other criminal justice information.
- 9106. Prohibited information.

§ 9101. Short title of chapter.

This chapter shall be known and may be cited as the "Criminal History Record Information Act."

§ 9102. Definitions.

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

"Administration of criminal justice." The activities directly concerned with the prevention, control or reduction of crime, the apprehension, detention, pretrial release, post-trial release, prosecution, adjudication, correctional supervision or rehabilitation of accused persons or criminal offenders; criminal identification activities; or the collection, storage dissemination or usage of criminal history record information.

"Audit." The process of reviewing compliance with applicable Federal and State laws and regulations related to the privacy and security of criminal history record information.

"Central repository." The central location for the collection, compilation, maintenance and dissemination of criminal history record information by the Pennsylvania State Police.

"Criminal history record information." Information collected by criminal justice agencies concerning individuals, consisting of identifiable descriptions, dates and notations of arrests, detentions, indictments, informations or other formal charges and any dispositions arising therefrom. The term does not include intelligence information, investigative information or treatment information, including medical and psychological information, or information and records specified in section 9104 (relating to scope).

"Criminal justice agency." 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. Criminal justice agencies include, but are not limited to: organized State and municipal police departments, local detention facilities, county, regional and State correctional facilities, probation agencies, district or prosecuting attorneys, parole boards and pardon boards.

“Disposition.” Information indicating that criminal proceedings have been concluded, including information disclosing that police have elected not to refer a matter for prosecution, that a prosecuting authority has elected not to commence criminal proceedings or that a grand jury has failed to indict and disclosing the nature of the termination of the proceedings; or information disclosing that proceedings have been indefinitely postponed and also disclosing the reason for such postponement. Dispositions of criminal proceedings in the Commonwealth shall include, but not be limited to, acquittal, acquittal by reason of insanity, pretrial probation or diversion, charge dismissed, guilty plea, nolle prosequi, no information filed, nolo contendere plea, convicted, abatement, discharge under rules of the Pennsylvania Rules of Criminal Procedure, demurrer sustained, pardoned, sentence commuted, mistrial-defendant discharged, discharge from probation or parole or correctional supervision.

“Dissemination.” The oral or written transmission or disclosure of criminal history record information to individuals or agencies other than the criminal justice agency which maintains the information.

“Expunge.”

(1) To remove information so that there is no trace or indication that such information existed; or

(2) to eliminate all identifiers which may be used to trace the identity of an individual, allowing remaining data to be used for statistical purposes.

“Repository.” Any location in which criminal history record information is collected, compiled, maintained and disseminated by a criminal justice agency.

“Secondary dissemination.” The subsequent transmission or disclosure of criminal history record information received from a repository or confirmation of the existence or nonexistence of criminal history record information received from a repository.

§ 9103. Applicability.

This chapter shall apply to persons within this Commonwealth and to any agency of the Commonwealth or its political subdivisions which collects, maintains, disseminates or receives criminal history record information.

§ 9104. Scope.

(a) General rule.—Except for the provisions of Subchapter B (relating to completeness and accuracy), Subchapter D (relating to security) and

Subchapter F (relating to individual right of access and review), nothing in this chapter shall be construed to apply to:

(1) Original records of entry compiled chronologically, including, but not limited to, police blotters.

(2) Any documents, records or indices prepared or maintained by or filed in any court of this Commonwealth, including but not limited to the minor judiciary.

(3) Posters, announcements, or lists for identifying or apprehending fugitives or wanted persons.

(4) Announcements of executive clemency.

(b) Court dockets and police blotters.—Court dockets and police blotters and information contained therein shall, for the purpose of this chapter, be considered public records.

(c) Substitutes for court dockets.—Where court dockets are not maintained any reasonable substitute containing that information traditionally available in court dockets shall, for the purpose of this chapter, be considered public records.

(d) Cases in progress.—Nothing in this chapter must be interpreted to limit the disclosure by the arresting authority, a court, or other criminal justice agency having legal jurisdiction over the individual to any individual or agency of the current status of an individual involved in a criminal case in progress or for which an individual is currently in the criminal justice system so long as such information is disseminated no more than 180 days from the occurrence of any final official action by or final release from the supervision, custody or jurisdiction of that agency.

(e) Certain disclosures authorized.—Nothing in this chapter shall prohibit a criminal justice agency from disclosing an individual's prior criminal activity to an individual or agency if the information disclosed is based on records set forth in subsection (a).

(f) Noncriminal justice agencies.—Information collected by noncriminal justice agencies and individuals from the sources identified in this section shall not be considered criminal history record information. § 9105. Other criminal justice information.

Nothing in this chapter shall be construed to apply to information concerning juveniles, except as provided in section 9123 (relating to juvenile records), unless they have been adjudicated as adults, nor shall it apply to intelligence information, investigative information, treatment information, including medical and psychiatric information, caution indicator information, modus operandi information, wanted persons information, stolen property information, missing persons information, employment history information, personal history information, nor presentence investigation information. Criminal history record information maintained as a part of these records shall not be disseminated unless in compliance with the provisions of this chapter.

§ 9106. Prohibited information.

The following kinds of information shall not be collected in the central

repository nor in any automated or electronic criminal justice information system:

- (1) Intelligence information.
- (2) Investigative information.
- (3) Treatment information, including but not limited to medical or psychological information.

SUBCHAPTER B COMPLETENESS AND ACCURACY

Sec.

9111. Duties of criminal justice agencies.
9112. Mandatory fingerprinting.
9113. Disposition reporting by criminal justice agencies.
9114. Correction of inaccurate information.

§ 9111. Duties of criminal justice agencies.

It shall be the duty of every criminal justice agency within the Commonwealth to maintain complete and accurate criminal history record information and to report such information at such times and in such manner as required by the provisions of this chapter or other applicable statutes.

§ 9112. Mandatory fingerprinting.

(a) General rule.—Fingerprints of all persons arrested for a felony, misdemeanor or summary offense which becomes a misdemeanor on a second arrest after conviction of that summary offense, shall be taken by the arresting authority, and within 48 hours of the arrest, shall be forwarded to, and in a manner and such a form as provided by, the central repository.

(b) Retail theft.—Where private complaints for a felony or misdemeanor result in a conviction or offenses under section 3929 (relating to retail theft), the issuing authority shall order the defendant to submit for fingerprinting by the municipal police of the jurisdiction in which the offense allegedly was committed or, in the absence of a police department, the State Police. Fingerprints so obtained shall be forwarded immediately to the central repository.

(c) Transmittal of information.—The central repository shall transmit the criminal history record information to the criminal justice agency which submitted the fingerprint card.

§ 9113. Disposition reporting by criminal justice agencies.

(a) Reports of dispositions required.—All criminal justice agencies, including but not limited to, courts, county, regional and State correctional institutions and parole and probation agencies, shall collect and submit reports of dispositions occurring within their respective agencies for criminal history record information, within 90 days of the date of such disposition to the central repository as provided for in this section.

(b) Courts.—Courts shall collect and submit criminal court dispositions as required by the Administrative Office of Pennsylvania Courts.

(c) Correctional institutions.—County, regional and State correctional institutions shall collect and submit information regarding the admission, release and length of sentence of individuals sentenced to local and county institutions as required by the Bureau of Correction.

(d) Probation and parole offices.—County probation and parole offices shall collect and submit information relating to the length of time and charges for which an individual is placed under and released from the jurisdiction of such agency as required by the Pennsylvania Board of Probation and Parole.

(e) State agencies.—The Administrative Office of Pennsylvania Courts, the Bureau of Correction, the Pennsylvania Board of Probation and Parole and the Pennsylvania Board of Pardons shall collect and submit to the central repository such information necessary to maintain complete and accurate criminal history record information. Each State agency listed in this subsection shall submit to the central repository any reports of dispositions occurring within their respective agencies and such information reported from county and local criminal justice agencies.

§ 9114. Correction of inaccurate information.

Within 15 days of the detection of inaccurate data in a criminal history record, regardless of the manner of discovery, the criminal justice agency which reported the information shall comply with the following procedures to effect correction:

- (1) Correct its own records.
- (2) Notify all recipients, including the central repository, of the inaccurate data and the required correction.

SUBCHAPTER C DISSEMINATION OF CRIMINAL HISTORY RECORD INFORMATION

Sec.

9121. General regulations.
9122. Expungement.
9123. Juvenile records.
9124. Use of records by licensing agencies.
9125. Use of records for employment.

§ 9121. General regulations.

(a) Promulgation of dissemination regulations.—The Attorney General shall establish, in accordance with the provisions of the Commonwealth Documents Law, regulations concerning the dissemination of criminal history record information which shall distinguish between conviction and nonconviction data.

(b) Data required to be kept.—Any criminal justice agency which disseminates criminal history record information must indicate to the

recipient that the information disseminated is only that information contained in its own file, the date of the last entry, and that a summary of the Statewide criminal history record information may be obtained from the central repository.

(c) Secondary dissemination.—Except during joint criminal investigations, no secondary dissemination of criminal history record information is permitted except as provided for by this chapter.

(d) Duplication.—No duplication of criminal history record information by any criminal justice agency except for its own internal use, or by any individual receiving criminal history record information, is permitted.

(e) Return or destruction of information.—All noncriminal justice agencies or individuals or agencies receiving criminal history record information must return to the disseminating agency or destroy, in accordance with an agreement with the repository, all such information received upon completion of the specific purpose for which criminal history record information was received. Such information shall not be permanently incorporated into the files or records of the agency or individual receiving it.

(f) Notations on record.—Repositories must enter as a permanent part of an individual's criminal history record information file, a listing of all persons and agencies to whom they have disseminated that particular criminal history record information and the date and purpose for which the information was disseminated. Such listing shall be maintained separate from the record itself.

(g) Noncriminal justice officials, etc.—Any noncriminal justice official, agency or organization requesting criminal history record information prior to receipt of any such criminal history record information, must sign a contract with the repository from which it is seeking criminal history record information, agreeing to abide by the provisions of this chapter. Any such noncriminal justice official, agency or organization entering into such a contract with a repository is bound by and subject to the provisions of this chapter.

(h) Prohibition on incorporation of records.—Except as otherwise provided in this chapter, no criminal history record information acquired from repositories other than the central repository shall be permanently incorporated into the files or records of the criminal justice agency or individual and must be destroyed upon completion of the specific purpose for which such information was received.

§ 9122. Expungement.

(a) Specific proceedings.—Criminal history record information shall be expunged in a specific criminal proceeding when:

(1) no disposition has been received or, upon request for criminal history record information, no disposition has been recorded in the repository within 18 months after the date of arrest and the court of proper jurisdiction certifies to the director of the repository that no

disposition is available and no action is pending. Expungement shall not occur until the certification from the court is received and the director of the repository authorizes such expungement; or

(2) a court order requires that such nonconviction data be expunged.

(b) Generally.—Criminal history record information may be expunged when:

(1) an individual who is the subject of the information reaches 70 years of age and has been free of arrest or prosecution for ten years following final release from confinement or supervision; or

(2) an individual who is the subject of the information has been dead for three years.

(c) Maintenance of certain information required or authorized.—Notwithstanding any other provision of this chapter, the prosecuting attorney and the central repository shall, and the court may, maintain a list of the names and other criminal history record information of persons whose records are required by law or court rule to be expunged where the individual has successfully completed the conditions of any pretrial or post-trial diversion or probation program. Such information shall be used solely for the purpose of determining subsequent eligibility for such programs. Criminal history record information may be expunged as provided in subsection (b)(1) and (2). Such information shall be made available to any court upon request.

(d) Notice of expungement.—Notice of expungement shall promptly be submitted to the central repository which shall notify all criminal justice agencies which have received the criminal history record information to be expunged.

(e) Public records.—Public records listed in section 9104(a) (relating to scope) shall not be expunged.

(f) District attorney's notice.—No expungement shall be made without ten days prior notice to the district attorney of the county where the original charges were filed.

§ 9123. Juvenile records.

(a) Expungement of juvenile records.—Notwithstanding the provisions of section 9105 (relating to other criminal justice information) and except upon cause shown, expungement of records of juvenile delinquency cases wherever kept or retained shall occur after ten days notice to the district attorney, whenever the court upon its motion or upon the motion of a child or the parents or guardian finds:

(1) a complaint is filed which is not substantiated or the petition which is filed as a result of a complaint is dismissed by the court;

(2) five years have elapsed since the final discharge of the person from commitment, placement, probation or any other disposition and referral and since such final discharge, the person has not been convicted of a felony, misdemeanor or adjudicated delinquent and no proceeding is pending seeking such conviction or adjudication; or

(3) the individual is 21 years of age or older and a court orders the expungement.

(b) Notice to prosecuting attorney.—The court shall give notice of the applications for the expungement of juvenile records to the prosecuting attorney.

(c) Dependent children.—All records of children alleged to be or adjudicated dependent may be expunged upon court order after the child is 21 years of age or older.

§ 9124. Use of records by licensing agencies.

(a) State agencies.—Except as provided by this chapter, a board, commission or department of the Commonwealth, when determining eligibility for licensing, certification, registration or permission to engage in a trade, profession or occupation, may consider convictions of the applicant of crimes but the convictions shall not preclude the issuance of a license, certificate, registration or permit.

(b) Prohibited use of information.—The following information shall not be used in consideration of an application for a license, certificate, registration or permit:

- (1) Records of arrest if there is no conviction of a crime based on the arrest.
- (2) Convictions which have been annulled or expunged.
- (3) Convictions of a summary offense.
- (4) Information that the individual has received a pardon from the Governor.

(c) State action authorized.—Boards, commissions or departments of the Commonwealth authorized to license, certify, register or permit the practice of trades, occupations or professions may refuse to grant or renew, or may suspend or revoke any license, certificate, registration or permit for the following causes:

- (1) Where the applicant has been convicted of a felony.
- (2) Where the applicant has been convicted of a misdemeanor which relates to the trade, occupation or profession for which the license, certificate, registration or permit is sought.

(d) Notice.—The board, commission or department shall notify the individual in writing of the reasons for a decision which prohibits the applicant from practicing the trade, occupation or profession if such decision is based in whole or part on conviction of any crime.

§ 9125. Use of records for employment.

(a) General rule.—Whenever an employer is in receipt of information which is part of an employment applicant's criminal history record information file, it may use that information for the purpose of deciding whether or not to hire the applicant, only in accordance with this section.

(b) Use of information.—Convictions for felonies, as well as misdemeanor convictions and arrests for offenses, which relate to the applicant's suitability for employment in the position for which he has applied may be considered by the employer. Misdemeanor convictions and

arrests for offenses which do not relate to the applicant's suitability for employment in the position for which he has applied shall not be considered by the employer.

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

SUBCHAPTER D SECURITY

Sec.

9131. Security requirements for repositories.

§ 9131. Security requirements for repositories.

Every criminal justice agency collecting, storing or disseminating criminal history record information shall ensure the confidentiality and security of criminal history record information by providing that wherever such information is maintained, a criminal justice agency must:

(1) Institute procedures to reasonably protect any repository from theft, fire, sabotage, flood, wind or other natural or man-made disasters.

(2) Select, supervise and train all personnel authorized to have access to criminal history record information.

(3) Ensure that, where computerized data processing is employed, the equipment utilized for maintaining criminal history record information is solely dedicated to purposes related to the administration of criminal justice, or, if the equipment is not used solely for the administration of criminal justice, the criminal justice agency shall be accorded equal management participation in computer operations used to maintain the criminal history record information.

(4) Provide that criminal history record information maintained in a repository is disseminated upon proper validation only to those individuals and agencies authorized to receive the information by the provisions of this chapter.

SUBCHAPTER E AUDIT

Sec.

9141. Annual audit of repositories.

9142. Quality control.

§ 9141. Annual audit of repositories.

(a) Audit required.—The Attorney General shall conduct annual audits of the central repository and of a representative sample of all repositories to ensure that the provisions of this chapter are upheld.

(b) Access to records.—Persons conducting the audit shall be provided access to all records, reports and listings required to conduct an audit of criminal history record information, and all persons with access to such information or authorized to receive such information shall cooperate with and provide information requested.

(c) Contents of audit.—The audit shall contain a report of deficiencies and recommendations for the correction of such deficiencies. Upon the completion of every audit, the audited agency shall carry out the recommendations within a reasonable period of time unless the audit report is appealed to the Attorney General and the appeal is upheld.

(d) Modification of recommendations.—The Attorney General shall have the power to modify the corrective measures recommended by the audit.

§ 9142. Quality control.

Each repository shall establish effective procedures, in compliance with rules and regulations promulgated by the Attorney General, for the completeness and accuracy of criminal history record information.

SUBCHAPTER F
INDIVIDUAL RIGHT OF ACCESS AND REVIEW

Sec.

9151. Right to access and review.

9152. Procedure.

9153. Individual rights on access and review.

§ 9151. Right to access and review.

(a) General rule.—Any individual or his legal representative has the right to review, challenge, correct and appeal the accuracy and completeness of his criminal history record information.

(b) Prisoners.—Persons incarcerated in correctional facilities and institutions may authorize a correctional employee to obtain a copy of their criminal history record information for the purpose of review, challenge and appeal.

§ 9152. Procedure.

(a) Rules and regulations.—The Attorney General in cooperation with appropriate criminal justice agencies shall promulgate rules and regulations to implement this section and shall establish reasonable fees.

(b) Requests for information.—Any individual requesting to review his or her own criminal history record information shall submit proper identification to the criminal justice agency which maintains his or her record. Proper identification shall be determined by the officials of the repository where the request is made. If criminal history record information exists the individual may review a copy of such information without undue delay for the purpose of review and challenge.

(c) Challenge of accuracy.—The individual may challenge the accuracy of his or her criminal history record information by specifying which portion of the record is incorrect and what the correct version should be. Failure to challenge any portion of the record in existence at that time will place the burden of proving the inaccuracy of any part subsequently challenged upon the individual. Information subsequently added to such record shall also be subject to review, challenge, correction or appeal.

(d) Review of challenge.—All criminal justice agencies shall have 60 days to conduct a review of any challenge and shall have the burden of proving the accuracy of the record. If the challenge is deemed valid, the appropriate officials must ensure that:

(1) The criminal history record information is corrected.

(2) A certified and corrected copy of the criminal history record information is provided to the individual.

(3) Prior erroneous criminal history record information disseminated to criminal justice agencies shall be destroyed or returned and replaced with corrected information.

(4) The individual is supplied with the names of those noncriminal justice agencies and individuals which have received erroneous criminal history record information.

(e) Appeals.—

(1) If the challenge is ruled invalid, an individual has the right to appeal the decision to the Attorney General within 30 days of notification of the decision by the criminal justice agency.

(2) The Attorney General shall have the authority to conduct administrative appeal hearings in accordance with the Administrative Agency Law.

(3) The decision of the Attorney General may be appealed to the Commonwealth Court by an aggrieved individual.

§ 9153. Individual rights on access and review.

Any individual exercising his or her right to access and review under the provisions of this subchapter shall be informed when criminal history record information is made available that he or she is under no obligation to divulge such information to any person or agency.

SUBCHAPTER G RESPONSIBILITY OF ATTORNEY GENERAL

Sec.

9161. Duties of the Attorney General.

§ 9161. Duties of the Attorney General.

The Attorney General shall have the power and authority to:

(1) Establish rules and regulations for criminal history record information with respect to security, completeness, accuracy, individual access and review, quality control and audits of repositories.

(2) Establish a uniform schedule of reasonable fees for the costs of reproducing criminal history record information for individual access and review and for research or statistical purposes and access by noncriminal justice agencies.

(3) Make investigations concerning all matters touching the administration and enforcement of this chapter and the rules and regulations promulgated thereunder.

(4) Institute civil and criminal proceedings for violations of this chapter and the rules and regulations adopted thereunder.

(5) Conduct annual audits of the central repository and of a representative sample of all repositories within the Commonwealth, collecting, compiling, maintaining and disseminating criminal history record information.

(6) Appoint such employees and agents as it may deem necessary.

SUBCHAPTER H PUBLIC NOTICE

Sec.

9171. Requirements of repositories relating to public notice.

§ 9171. Requirements of repositories relating to public notice.

Repositories maintaining criminal history record information shall inform the public and post in a public place, notice of the existence, purpose, use and accessibility of the criminal history record information they maintain and the requirements of the repository for identification on individual access and review.

SUBCHAPTER I SANCTIONS

Sec.

9181. General administrative sanctions.

9182. Criminal penalties.

9183. Civil actions.

§ 9181. General administrative sanctions.

Any person, including any agency or organization, who violates the provisions of this chapter or any regulations or rules promulgated under it may:

(1) Be denied access to specified criminal history record information for such period of time as the Attorney General deems appropriate.

(2) Be subject to civil or criminal penalties or other remedies as provided for in this chapter.

(3) In the case of an employee of any agency who violates any provision of this chapter, be administratively disciplined by discharge, suspension, reduction in grade, transfer or other formal disciplinary action as the agency deems appropriate.

§ 9182. Criminal penalties.

A person employed by a government agency commits a misdemeanor of the third degree if such person:

(1) knowingly requests, obtains or seeks to obtain criminal history record information in violation of this chapter; or

(2) disseminates, maintains or uses criminal history record information knowing such dissemination, maintenance or use to be in violation of this chapter.

§ 9183. Civil actions.

(a) Injunctions.—The Attorney General or any other individual or

agency may institute an action in a court of proper jurisdiction against any person, agency or organization to enjoin any criminal justice agency, noncriminal justice agency, organization or individual violating the provisions of this chapter or to compel such agency, organization or person to comply with the provisions of this chapter.

(b) Action for damages.—

(1) Any person aggrieved by a violation of the provisions of this chapter or of the rules and regulations promulgated under this chapter, shall have the substantive right to bring an action for damages by reason of such violation in a court of competent jurisdiction.

(2) A person found by the court to have been aggrieved by a violation of this chapter or the rules or regulations promulgated under this chapter, shall be entitled to actual and real damages of not less than \$100 for each violation and to reasonable costs of litigation and attorney's fees. Exemplary and punitive damages of not less than \$1,000 nor more than \$10,000 shall be imposed for any violation of this chapter, or the rules or regulations adopted under this chapter, found to be willful.

Section 3. The act of November 26, 1978 (P.L.1274, No.305), known as the "Criminal History Record Information Act," is repealed.

Section 4. This act shall take effect as follows:

(1) Section 1 shall take effect in 60 days.

(2) Section 2 shall take effect January 1, 1980.

(3) Section 3 shall take effect immediately and shall be retroactive to July 1, 1979.

APPROVED—The 16th day of July, A. D. 1979.

DICK THORNBURGH