

THE GENERAL ASSEMBLY OF PENNSYLVANIA

SENATE BILL

No. 651 Session of
2009

INTRODUCED BY VANCE, WASHINGTON, BAKER, BRUBAKER, O'PAKE,
BOSCOLA, BROWNE, ERICKSON, FONTANA, KITCHEN, PICCOLA,
RAFFERTY, TOMLINSON, WAUGH, D. WHITE, M. WHITE, WONDERLING
AND MELLOW, MARCH 19, 2009

SENATOR VANCE, AGING AND YOUTH, AS AMENDED, JUNE 1, 2009

AN ACT

1 Amending the act of November 6, 1987 (P.L.381, No.79), entitled
2 "An act relating to the protection of the abused, neglected,
3 exploited or abandoned elderly; establishing a uniform
4 Statewide reporting and investigative system for suspected
5 abuse, neglect, exploitation or abandonment of the elderly;
6 providing protective services; providing for funding; and
7 making repeals," further providing for legislative policy,
8 for definitions, for involuntary intervention by emergency
9 court order, for information relating to prospective facility
10 personnel and for grounds for denying employment; providing
11 for certificate of employability; further providing for
12 provisional employees for limited periods; providing for
13 requirements concerning employees, for comparison study by
14 Department of Aging and for applicability relating to
15 criminal history for employees.

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

18 Section 1. Section 102 of the act of November 6, 1987
19 (P.L.381, No.79), known as the Older Adults Protective Services
20 Act, renumbered December 18, 1996 (P.L.1125, No.169), is amended
21 to read:

22 Section 102. Legislative policy.

23 It is declared the policy of the Commonwealth of Pennsylvania

1 that older adults who lack the capacity to protect themselves
2 and are at imminent risk of abuse, neglect, exploitation or
3 abandonment shall have access to and be provided with services
4 necessary to protect their health, safety and welfare. It is not
5 the purpose of this act to place restrictions upon the personal
6 liberty of incapacitated older adults, but this act should be
7 liberally construed to assure the availability of protective
8 services to all older adults in need of them. Such services
9 shall safeguard the rights of incapacitated older adults while
10 protecting them from abuse, neglect, exploitation and
11 abandonment. It is the intent of the General Assembly to provide
12 for the detection and reduction, correction or elimination of
13 abuse, neglect, exploitation and abandonment, and to establish a
14 program of protective services for older adults in need of them.

15 It is further declared the policy of the Commonwealth that
16 the conviction of any offense that involves serious physical
17 harm, a threat of serious physical harm or conduct which
18 evidences a reckless disregard for the vulnerability of care-
19 dependent populations may legitimately warrant a lifetime ban on
20 employment in facilities covered under this act. Further, for
21 facilities covered under this act, it is the policy of the
22 Commonwealth that the conviction of any offenses involving
23 misappropriation or misuse of property or convictions which
24 involved inappropriate or irresponsible behavior may
25 legitimately warrant a ban on employment.

26 Section 2. The definitions of "care," "employee,"
27 "exploitation" and "facility" in section 103 of the act, amended
28 December 18, 1996 (P.L.1125, No.169), are amended to read:
29 Section 103. Definitions.

30 The following words and phrases when used in this act shall

1 have the meanings given to them in this section unless the
2 context clearly indicates otherwise:

3 * * *

4 "Care." Services provided to meet a person's need for
5 personal care or health care[. Services may include homemaker
6 services, assistance with activities of daily living, physical
7 therapy, occupational therapy, speech therapy, medical social
8 services, home-care aide services, companion-care services,
9 private duty nursing services, respiratory therapy, intravenous
10 therapy, in-home dialysis and durable medical equipment
11 services,] which are routinely provided unsupervised and which
12 require interaction with the care-dependent person. The term
13 does not include durable medical equipment delivery.

14 * * *

15 "Employee." [An individual who is employed by a facility.
16 The term includes contract employees who have direct contact
17 with residents or unsupervised access to their personal living
18 quarters. The term includes any person who is employed or who
19 enters into a contractual relationship to provide care to a
20 care-dependent individual for monetary consideration in the
21 individual's place of residence.] An individual who has direct
22 contact with residents or unsupervised access to their living
23 quarters and is either employed by a facility or enters into a
24 contractual relationship with a facility to provide care to a
25 care-dependent individual for monetary consideration in the
26 individual's place of residence.

27 "Exploitation." An act or course of conduct by a caretaker
28 or other person, including an individual who is acting under a
29 power of attorney, against an older adult or an older adult's
30 resources, without the informed consent of the older adult or

1 with consent obtained through misrepresentation, coercion or
2 threats of force, that results in monetary, personal or other
3 benefit, gain or profit for the perpetrator or monetary or
4 personal loss to the older adult.

5 "Facility." Any of the following:

6 (1) A domiciliary care home as defined in section 2202-A
7 of the act of April 9, 1929 (P.L.177, No.175), known as The
8 Administrative Code of 1929.

9 (2) [A home health care agency.

10 (3) A long-term care nursing facility as defined in
11 section 802.1 of the act of July 19, 1979 (P.L.130, No.48),
12 known as the Health Care Facilities Act.] The following
13 entities as defined in section 802.1 of the act of July 19,
14 1979 (P.L.130, No.48), known as the Health Care Facilities
15 Act:

16 (i) A home health care agency.

17 (ii) A long-term care nursing facility.

18 (iii) A hospice.

19 (iv) A home care agency.

20 (v) A home care registry.

21 (4) An older adult daily living center as defined in
22 section 2 of the act of July 11, 1990 (P.L.499, No.118),
23 known as the Older Adult Daily Living Centers Licensing Act.

24 (5) A personal care home or assisted living residence as
25 defined in section 1001 of the act of June 13, 1967 (P.L.31,
26 No.21), known as the Public Welfare Code.

27 (6) A continuing care provider as defined in section 3
28 of the act of June 18, 1984 (P.L.391, No.82), known as the
29 Continuing-Care Provider Registration and Disclosure Act.

30 The term does not include an entity licensed by the Department

1 of Health to provide drug and alcohol addiction treatment
2 services.

3 * * *

4 Section 3. Section 307(a) and (b) of the act, amended
5 December 18, 1996 (P.L.1125, No.169), are amended to read:
6 Section 307. Involuntary intervention by emergency court order.

7 (a) Emergency petition.--[Where there was clear and
8 convincing evidence that if protective services are not
9 provided, the person to be protected is at imminent risk of
10 death or serious physical harm, the agency may petition the
11 court for an emergency order to provide the necessary services.]
12 An agency may petition a court of common pleas for an emergency
13 order to provide protective services to an older adult who is at
14 imminent risk of financial exploitation, death or serious
15 physical harm. The court of common pleas shall grant the
16 agency's petition if it finds, by a preponderance of the
17 evidence, that failure to provide protective services will place
18 the older adult at imminent risk of financial exploitation,
19 death or serious physical harm. The courts of common pleas of
20 each judicial district shall ensure that a judge or [district
21 justice] magisterial district judge is available on a 24-hour-a-
22 day, 365-day-a-year basis to accept and [decide] rule on
23 petitions for an emergency court order under this section
24 whenever the agency determines that a delay until normal court
25 hours would significantly increase the danger the older adult
26 faces.

27 (b) Limited order.--The court, after finding [clear and
28 convincing] a preponderance of evidence of the need for an
29 emergency order, shall order only such services as are necessary
30 to remove the conditions creating the established need.

1 * * *

2 Section 4. Sections 501 and 502 of the act, added December
3 18, 1996 (P.L.1125, No.169), are amended to read:

4 Section 501. Definitions.

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

8 "Applicant." An individual [who submits an application,
9 which is] being considered for employment[, to a facility.] or
10 engagement by a facility as an employee.

11 "State Police." The Pennsylvania State Police.

12 Section 502. Information relating to [prospective facility
13 personnel] applicants.

14 (a) General rule.--[A facility shall require all applicants
15 to submit with their applications, and shall require all
16 administrators and any operators who have or may have direct
17 contact with a recipient] Prior to hiring or engaging an
18 applicant, a facility shall require the applicant to submit[,]
19 the following information obtained within the preceding one-year
20 period:

21 (1) Pursuant to 18 Pa.C.S. Ch. 91 (relating to criminal
22 history record information), a report of criminal history
23 record information from the State Police or a statement from
24 the State Police that their central repository contains no
25 such information relating to [that person] the applicant. The
26 criminal history record information shall be limited to that
27 which is disseminated pursuant to 18 Pa.C.S. § 9121(b)(2)
28 (relating to general regulations).

29 (2) Where the applicant is not and for the two years
30 immediately preceding the date of application has not been a

1 resident of this Commonwealth, [administration shall require
2 the applicant to submit with the application for employment]
3 a report of Federal criminal history record information
4 pursuant to the Federal Bureau of Investigation's
5 appropriation under the Departments of State, Justice, and
6 Commerce, the Judiciary, and Related Agencies Appropriation
7 Act, 1973 (Public Law 92-544, 86 Stat. 1109). The department
8 shall be the intermediary for the purposes of this paragraph.
9 For the purposes of this paragraph, the applicant shall
10 submit a full set of fingerprints [to the State Police, which
11 shall forward them] IN A MANNER PRESCRIBED BY THE DEPARTMENT.
12 THE COMMONWEALTH SHALL SUBMIT THE FINGERPRINTS to the Federal
13 Bureau of Investigation for a national criminal history
14 record check. The information obtained from the criminal
15 record check shall be used by the department to determine the
16 applicant's eligibility. The determination shall be submitted
17 to the [administrator] facility by the applicant prior to
18 commencing employment. The [administrator] facility shall
19 insure confidentiality of the information.

20 (a.1) Additional information.--The department or the State
21 Police may require the applicant to submit additional
22 information from a court or other authority if the criminal
23 history record does not provide the disposition of a criminal
24 charge or the information needed to compare a Federal or out-of-
25 State criminal offense to Pennsylvania criminal offenses.

26 (b) Fees.--The State Police may charge the applicant a fee
27 of not more than \$10 to conduct the criminal record check
28 required under subsection (a)(1). The State Police may charge a
29 fee of not more than the established charge by the Federal
30 Bureau of Investigation for the criminal history record check

1 required under subsection (a)(2). The State Police shall develop
2 a billing system to allow facilities [and administrators] to
3 assume responsibility for the fee under this subsection. The
4 State Police shall allow facilities [or administrators] to
5 establish an account for quarterly payment.

6 Section 5. Section 503(a) of the act, amended June 9, 1997
7 (P.L.160, No.13), is amended and the section is amended by
8 adding subsections to read:

9 Section 503. Grounds for denying employment.

10 [(a) General rule.--In no case shall a facility hire an
11 applicant or retain an employee required to submit information
12 pursuant to section 502(a) if the applicant's or employee's
13 criminal history record information indicates the applicant or
14 employee has been convicted of any of the following offenses:

15 (1) An offense designated as a felony under the act of
16 April 14, 1972 (P.L.233, No.64), known as The Controlled
17 Substance, Drug, Device and Cosmetic Act.

18 (2) An offense under one or more of the following
19 provisions of 18 Pa.C.S. (relating to crimes and offenses):

20 Chapter 25 (relating to criminal homicide).

21 Section 2702 (relating to aggravated assault).

22 Section 2901 (relating to kidnapping).

23 Section 2902 (relating to unlawful restraint).

24 Section 3121 (relating to rape).

25 Section 3122.1 (relating to statutory sexual
26 assault).

27 Section 3123 (relating to involuntary deviate sexual
28 intercourse).

29 Section 3124.1 (relating to sexual assault).

30 Section 3125 (relating to aggravated indecent

assault).

Section 3126 (relating to indecent assault).

Section 3127 (relating to indecent exposure).

Section 3301 (relating to arson and related offenses).

Section 3502 (relating to burglary).

Section 3701 (relating to robbery).

A felony offense under Chapter 39 (relating to theft and related offenses) or two or more misdemeanors under Chapter 39.

Section 4101 (relating to forgery).

Section 4114 (relating to securing execution of documents by deception).

Section 4302 (relating to incest).

Section 4303 (relating to concealing death of child).

Section 4304 (relating to endangering welfare of children).

Section 4305 (relating to dealing in infant children).

Section 4952 (relating to intimidation of witnesses or victims).

Section 4953 (relating to retaliation against witness or victim).

A felony offense under section 5902(b) (relating to prostitution and related offenses).

Section 5903(c) or (d) (relating to obscene and other sexual materials and performances).

Section 6301 (relating to corruption of minors).

Section 6312 (relating to sexual abuse of children).

(3) A Federal or out-of-State offense similar in nature

to those crimes listed in paragraphs (1) and (2).]

(a.1) Lifetime bans.--In no case shall a facility hire or engage an applicant required to submit information pursuant to section 502(a) or retain an employee required to submit information pursuant to section 508, if the applicant's or employee's criminal history record information indicates the applicant or employee has been convicted of any of the following offenses:

(1) An offense under one of the following provisions of 18 Pa.C.S. (relating to crimes and offenses) which is graded as a felony:

Chapter 25 (relating to criminal homicide).

Section 2713 (relating to neglect of care-dependent person).

Section 2901 (relating to kidnapping).

Section 3121 (relating to rape).

Section 3123 (relating to involuntary deviate sexual intercourse).

Section 3124.1 (relating to sexual assault).

Section 3124.2 (relating to institutional sexual assault).

Section 3125 (relating to aggravated indecent assault).

SECTION 3126 (RELATING TO INDECENT ASSAULT).

Section 3301 (relating to arson and related offenses).

Section 4302 (relating to incest).

Section 6312 (relating to sexual abuse of children).

(2) A Federal or out-of-State offense similar in nature to any offense listed in paragraph (1).



1 (a.2) Lifetime bans with possibility of certificate of
2 employability.--Except as provided in section 503.1, a facility
3 shall not hire or engage an applicant required to submit
4 information pursuant to section 502(a) or retain an employee
5 required to submit information pursuant to section 508 if the
6 applicant's or employee's criminal history record information
7 indicates the applicant or employee has been convicted of any of
8 the following offenses:

9 (1) An offense under one of the following provisions of
10 18 Pa.C.S. which is graded as a felony:

11 Section 2702 (relating to aggravated assault).

12 Section 2709.1 (relating to stalking).

13 ~~Section 3126 (relating to indecent assault).~~ ←

14 SECTION 3122.1 (RELATING TO STATUTORY SEXUAL
15 ASSAULT). ←

16 Section 3701 (relating to robbery).

17 Section 4304 (relating to endangering welfare of
18 children).

19 (2) An offense under one of the following provisions of
20 18 Pa.C.S. which is graded as a misdemeanor:

21 Section 2713 (relating to neglect of care-dependent
22 person).

23 Section 3126.

24 (3) A Federal or out-of-State offense similar in nature
25 to any offense listed in paragraph (1) or (2).

26 (a.3) Ten-year ban.--Except as provided in section 503.1, a
27 facility shall not hire or engage an applicant required to
28 submit information pursuant to section 502(a) or retain an
29 employee required to submit information pursuant to section 508
30 if the applicant's or employee's criminal history record

1 information as supplemented under subsection (a.4) indicates the
2 applicant or employee has been convicted, within ten years
3 immediately preceding the date of the report, not including any
4 time spent in incarceration, of any of the following offenses:

5 (1) An offense graded a felony under the act of April
6 14, 1972 (P.L.233, No.64), known as The Controlled Substance,
7 Drug, Device and Cosmetic Act.

8 (2) An offense under one of the following provisions of
9 18 Pa.C.S. which is graded as a felony:

10 Section 2902 (relating to unlawful restraint).

11 ~~Section 3122.1 (relating to statutory sexual~~
12 ~~assault).~~

13 Section 3502 (relating to burglary).

14 Section 3702 (relating to robbery of motor vehicle).

15 Section 4101 (relating to forgery).

16 Section 4952 (relating to intimidation of witnesses
17 or victims).

18 Section 4953 (relating to retaliation against
19 witness, victim or party).

20 Section 5902 (relating to prostitution and related
21 offenses).

22 (3) An offense under one of the following provisions of
23 18 Pa.C.S. which is graded as a misdemeanor:

24 Chapter 25.

25 Section 2902.

26 Section 3127 (relating to indecent exposure).

27 Section 4101.

28 Section 4114 (relating to securing execution of
29 documents by deception).

30 Section 4303 (relating to concealing death of child).



1 Section 4305 (relating to dealing in infant
2 children).

3 Section 6301(a)(1) (relating to corruption of
4 minors).

5 (4) A felony offense under 18 Pa.C.S. Ch. 39 (relating
6 to theft and related offenses) or two or more misdemeanors
7 under 18 Pa.C.S. Ch. 39.

8 (5) A Federal or out-of-State offense similar to any
9 offense listed in paragraph (1), (2), (3) or (4).

10 (a.4) Duty of applicant or employee.--An applicant or
11 employee required to submit information under section 502(a) or
12 508 who has been incarcerated for an offense enumerated under
13 subsection (a.2) or (a.3) shall provide the facility with
14 documentation of time spent in incarceration and the date of
15 release from incarceration.

16 * * *

17 (d) Right of review.--An applicant or employee may review,
18 challenge and appeal the completeness or accuracy of that
19 applicant's or employee's criminal history report under 18
20 Pa.C.S. Ch. 91 (relating to criminal history record
21 information). An applicant or employee may challenge the
22 decision of the department involving the Federal criminal
23 history record by filing a petition with the department in
24 accordance with 2 Pa.C.S. (relating to administrative law and
25 procedure). An applicant or employee provisionally employed
26 under section 506 may continue to be employed pending the
27 ultimate resolution of such a challenge and any subsequent
28 appeal, unless a supersedeas or temporary injunction is entered
29 prohibiting the continued employment of the individual.

30 Section 6. The act is amended by adding a section to read:

1 Section 503.1. Certificate of employability.

2 (a) General rule.--

3 (1) An individual who would otherwise be precluded from
4 employment by a facility under section 503(a.2) may petition
5 for a certificate of employability provided that at least ten
6 years, not including any time spent in incarceration, have
7 passed since the individual's conviction of any offense
8 listed under section 503(a.2).

9 (2) An individual who would otherwise be precluded from
10 employment by a facility under section 503(a.3) may petition
11 for a certificate of employability provided that at least
12 five years, not including any time spent in incarceration,
13 have passed since the individual's conviction of any offense
14 listed under section 503(a.3).

15 (3) A certificate of employability granted under this
16 section shall be applicable to any facility subject to this
17 act. The issuance of a certificate of employability shall
18 permit an individual to seek and possibly obtain employment
19 subject to this act, but in no way guarantees that a facility
20 will offer a position to the individual.

21 (b) Petition and hearing.--An individual seeking a
22 certificate of employability shall file a petition with the
23 department. A hearing officer designated by the department shall
24 conduct a hearing on the petition in accordance with the
25 provisions of 2 Pa.C.S. (relating to administrative law and
26 procedure). The petition shall indicate whether the individual
27 requests a face-to-face hearing, which will be conducted at the
28 department's offices in Harrisburg. If not specified, the
29 hearing may be conducted by telephone or other means as
30 determined by the department.

1 (c) Determination.--

2 (1) The department shall make a written determination as
3 to whether the petitioning individual will receive a
4 certificate of employability. The department must apply the
5 criteria of this subsection in reaching its decision.

6 (2) A determination by the department shall be a final
7 agency determination with a right to appeal to the
8 Commonwealth Court.

9 (d) Evidence.--The individual petitioning for a certificate
10 of employability has the burden of proving by a preponderance of
11 the evidence the individual's fitness to work with care-
12 dependent individuals. The department's determination about the
13 individual's fitness and whether it should issue a certificate
14 of employability shall include the following factors:

15 (1) The amount of time that has elapsed since the
16 individual's last conviction of an offense listed in section
17 503 and, if applicable, proof of the individual's release
18 from incarceration.

19 (2) The length, consistency and character of the
20 individual's employment history.

21 (3) The circumstances of a section 503 offense for which
22 the individual was convicted and the nature of the
23 conviction.

24 (4) If the individual asserts that a section 503 offense
25 was related to the individual's substance abuse, whether the
26 individual has undergone substance abuse treatment, is
27 maintaining recovery and the length of time the individual
28 has been in recovery.

29 (5) Other evidence of postconviction rehabilitation,
30 including the individual's history of community service,

1 psychological counseling and character references.

2 (6) In addition to evidence presented in the petition
3 for a certificate of employability, the department may
4 consider oral or written testimony or statements, relevant to
5 the factors listed above, from:

6 (i) Licensed professionals.

7 (ii) Members of the community.

8 (iii) Public officials.

9 (iv) Former employers of the individual.

10 (v) A facility intending to hire or engage the
11 applicant.

12 (vi) Others with knowledge of the individual or
13 other evidence relevant to the petition.

14 (7) In addition to evidence presented in the petition
15 for a certificate of employability, the department ~~may~~

16 ~~consider written statements submitted by the petitioning~~
17 ~~individual that were prepared by~~ SHALL NOTIFY THE FOLLOWING

18 INDIVIDUALS ABOUT THE PROCEEDING AND THE OPPORTUNITY FOR THEM
19 TO PROVIDE A WRITTEN STATEMENT AND SHALL CONSIDER ANY WRITTEN
20 STATEMENT SUBMITTED BY THEM:

21 (i) A district attorney or other prosecutor in the
22 jurisdiction where the individual was convicted of an
23 offense listed in section 503.

24 (ii) The victim, or family members of the victim, of
25 any section 503 offense committed by the individual.

26 (e) Submission of evidence.--An individual petitioning for a
27 certificate of employability shall submit any and all written
28 evidence relevant to subsection (d) within 30 days of the
29 initial filing of the petition with the department. Any
30 submission of written evidence listed under subsection (d) after

1 this 30-day period shall be accepted by the hearing officer for
2 good cause shown.

3 (f) Determination.--The department's hearing officer shall:

4 (1) Conduct a hearing on a petition for a certificate of
5 employability within 90 days of the petition being received.

6 (2) Issue a determination within 30 days of the hearing.

7 (3) Have the authority to grant an extension of the
8 deadlines set by paragraph (1) or (2) if the petitioning
9 individual or the department shows good cause for an
10 extension.

11 (g) Rules and regulations.--The department shall establish
12 rules and regulations for the review of petitions for a
13 certificate of employability consistent with this section.
14 Copies of the rules and regulations shall be made available for
15 distribution to the public.

16 (h) Fees.--The department shall, by regulation, establish
17 reasonable fees to petition for a certificate of employability.
18 No petition shall be considered by the department unless
19 accompanied by a fee.

20 (i) Notice to applicants.--Notification of the provisions of
21 this section shall be provided by the facility in a form
22 designated by the department, to each applicant.

23 (j) Limitation of certificate of employability.--
24 Certificates of employability shall state that their only
25 purpose is to exempt successful petitioners from the criminal
26 record hiring prohibitions of this act and that they do not
27 address any other qualifications of the individual to be
28 employed in a facility or obligate facilities to hire or engage
29 a particular individual.

30 (k) Grandfathering for training purposes.--An individual who

1 is granted a certificate of employability and who has not been
2 employed in a facility within a year of the date of petition for
3 the certificate will not be exempted from any training
4 requirements imposed by law for new employees.

5 Section 7. Section 506 of the act, added December 18, 1996
6 (P.L.1125, No.169), is amended to read:

7 Section 506. Provisional [employees] employment for limited
8 periods.

9 Notwithstanding [section 502 administrators] sections 502 and
10 503, facilities may employ applicants on a provisional basis for
11 a single period not to exceed 30 days or, for applicants under
12 section 502(a)(2), a period of 90 days, if all of the following
13 conditions are met:

14 (1) The applicant has applied for the information
15 required under section 502 and the applicant provides a copy
16 of the appropriate completed request forms to the
17 [administrator] facility.

18 (2) The [administrator] facility has no knowledge of
19 information pertaining to the applicant which would
20 disqualify [him] the applicant from employment pursuant to
21 section 503, subject to 18 Pa.C.S. § 4911 (relating to
22 tampering with public records or information).

23 (3) The applicant swears or affirms in writing that [he]
24 the applicant is not disqualified from employment under
25 section 503.

26 (4) [If] Except as provided under section 503(a), if the
27 information obtained under section 502 reveals that the
28 applicant is disqualified from employment under section 503,
29 the applicant shall be immediately dismissed by the
30 [administrator] facility.

1 (5) The facility agrees to supervise applicants during
2 the provisional employment. The department shall develop
3 guidelines regarding the supervision of applicants. [For a
4 home health care agency, supervision shall include random
5 direct supervision by an employee who has been employed by
6 the facility for a period of one year.]

7 Section 8. The act is amended by adding a section to read:

8 Section 506.1. Requirements concerning employees.

9 The following shall apply:

10 (1) If the information obtained under section 502(a)
11 reveals that an employee is disqualified from employment
12 under sections 503(a.2) or (a.3), and the employee files a
13 petition for a certificate of employability pursuant to
14 section 503.1, that the employee shall either, at the option
15 of the facility, be placed on suspension without pay or
16 continue employment under appropriate supervision with no
17 unsupervised direct contact with residents until such time as
18 a certificate of employability is issued or an appeal is
19 filed. The department shall develop guidelines regarding the
20 supervision of employees under this paragraph.

21 (2) If the information obtained under section 502(a)
22 reveals that an employee is disqualified from employment
23 under section 503(a.1), or is disqualified from employment
24 under section 503(a.2) or (a.3) and fails to file a petition
25 for a certificate of employability within 30 days of
26 receiving a prohibitive hire letter from the department, the
27 employee shall be immediately dismissed.

28 (3) Except as provided in paragraph (4), if a petition
29 for a certificate of employability of an employee is denied
30 pursuant to section 503.1, the employee on suspension or

1 supervised employment shall be immediately dismissed.

2 (4) If an appeal of the denial of a certificate of
3 employability is filed by an individual on suspension or
4 supervised employment, then the facility shall have the
5 option to continue the suspension period as described in
6 paragraph (1).

7 (5) Within 60 days of the effective date of this
8 section, facilities shall provide copies of sections 503,
9 503.1 and 506.1 to all employees.

10 Section 9. Section 508 of the act, amended June 9, 1997
11 (P.L.160, No.13), is amended to read:

12 Section 508. Applicability.

13 This chapter shall apply as follows:

14 [(1) An individual who, on the effective date of this
15 chapter, has continuously for a period of one year been an
16 employee of the same facility shall be exempt from section
17 502 as a condition of continued employment.

18 (2) If an employee is not exempt under paragraph (1),
19 the employee and the facility shall comply with section 502
20 within one year of the effective date of this chapter.

21 (3) If an employee who is exempt under paragraph (1)
22 seeks employment with a different facility, the employee and
23 the facility shall comply with section 502.]

24 (3.1) (i) A facility shall, within 18 months of the
25 effective date of this paragraph, comply with sections
26 502 and 503 as a condition of continued employment for
27 each employee.

28 (ii) The facility may use criminal history record
29 information previously used to comply with sections 502
30 and 503, upon certification by the facility that:

1 (A) The employee has been continuously employed
2 by the facility since the date that the employee was
3 hired or engaged under this act.

4 (B) The facility has no knowledge that the
5 employee has been convicted of any criminal offense
6 since the date of the criminal history record
7 information on file for that employee.

8 (iii) If the facility cannot certify both conditions
9 under subparagraph (ii), it shall require the employee to
10 obtain a new criminal history record pursuant to section
11 502 before determining the employee's compliance with
12 sections 502 and 503.

13 (4) An employee who has obtained the information
14 required under section 502 or 503 may transfer to another
15 facility established and supervised by the same owner and is
16 not required to obtain additional reports before making the
17 transfer.

18 Section 10. The Secretary of Aging shall coordinate a
19 comparison study on the impact of utilizing the Pennsylvania
20 State Police criminal background check system and the Federal
21 Bureau of Investigation background check system pursuant to
22 Chapter 5 of the act. The purpose of the study shall be to
23 assess the feasibility of changing the current procedure to
24 require the Federal Bureau of Investigation check exclusively
25 for all applicants and employees or to continue the current
26 procedure of utilizing both systems, with the Pennsylvania State
27 Police check being the baseline system. Such study shall
28 include: a detailed review of the scope of the information
29 obtained through the use of each system; the rate of accuracy of
30 each system; the efficiency in terms of the turnaround time

1 associated with each system; the step-by-step process involved
2 in the completion of the checks required in each system; the
3 estimated fiscal impact to the Department of Aging and to
4 facilities associated with each system; and current information
5 regarding any advancements that have occurred with the
6 technology involving criminal background checks as well as any
7 changes that have occurred in the legal framework governing
8 background checks. No later than one year from the effective
9 date of this section, the Secretary of Aging shall report to the
10 Aging and Youth Committee of the Senate and the Aging and Older
11 Adult Services Committee of the House of Representatives the
12 results of the study.

13 Section 11. The provisions of this act are severable. If any
14 provision of this act or its application to any person or
15 circumstance is held invalid, the invalidity shall not affect
16 other provisions or applications of this act which can be given
17 effect without the invalid provision or application.

18 Section 12. This act shall take effect in 180 days.