

THE GENERAL ASSEMBLY OF PENNSYLVANIA

SENATE BILL

No. 656 Session of 2011

INTRODUCED BY VANCE, MENSCH, ERICKSON, BROWNE, BOSCOLA, FONTANA,
RAFFERTY, ORIE, PICCOLA, WAUGH, SOLOBAY, BREWSTER AND
WOZNIAK, FEBRUARY 25, 2011

REFERRED TO PUBLIC HEALTH AND WELFARE, FEBRUARY 25, 2011

AN ACT

1 Requiring hospitals to obtain certain information relating to
2 criminal history from prospective employees; providing for
3 grounds for denying employment; prescribing penalties;
4 providing for provisional employment for limited periods;
5 imposing certain requirements for hospital employees; and
6 providing for civil immunity under certain circumstances.

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

8 Section 1. Short title.

9 This act shall be known and may be cited as the Hospital
10 Employee Background Check Act.

11 Section 2. Declaration of policy.

12 It is declared the policy of this Commonwealth that the
13 conviction of any offense that constitutes serious physical harm
14 or a threat of serious physical harm or conduct which evidences
15 a reckless disregard for the vulnerability of hospital or other
16 care-dependent populations legitimately warrants a lifetime ban
17 on employment in hospitals covered under this act. Further, for
18 hospitals covered under this act, it is the policy of this
19 Commonwealth that the conviction of any offenses related to
20 misappropriation or misuse of property or convictions which
21 involved inappropriate or irresponsible behavior may
22 legitimately warrant a ban on employment.

23 Section 3. Definitions.

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

27 "Applicant." An individual being considered for employment
28 or engagement by a hospital as an employee.

29 "Department." The Department of Health of the Commonwealth.

30 "Employee." An individual who has direct contact with

1 patients or unsupervised access to patient rooms and is either
2 employed by a hospital or a contract employee, acts in a
3 managerial capacity or is a student or intern.

4 "Hospital." An entity licensed as a hospital under the act
5 of June 13, 1967 (P.L.31, No.21), known as the Public Welfare
6 Code, or the act of July 19, 1979 (P.L.130, No.48), known as the
7 Health Care Facilities Act.

8 "State Police." The Pennsylvania State Police.

9 Section 4. Information relating to prospective hospital
10 personnel.

11 (a) General rule.--Prior to hiring or engaging an applicant,
12 a hospital shall require the applicant to submit the following
13 information obtained within the preceding one-year period:

14 (1) Pursuant to 18 Pa.C.S. Ch. 91 (relating to criminal
15 history record information), a report of criminal history
16 record information from the State Police or a statement from
17 the State Police that their central repository contains no
18 such information relating to the applicant. The criminal
19 history record information shall be limited to that which is
20 disseminated pursuant to 18 Pa.C.S. § 9121(b)(2) (relating to
21 general regulations).

22 (2) Where the applicant is not or, for the two years
23 immediately preceding the date of application, has not been a
24 resident of this Commonwealth, a report of Federal criminal
25 history record information pursuant to the Federal Bureau of
26 Investigation's appropriation under the Departments of State,
27 Justice, and Commerce, the Judiciary, and Related Agencies
28 Appropriation Act, (1973 Public Law 92-544, 86 Stat. 1109).
29 The department shall be the intermediary for the purposes of
30 this paragraph. For the purposes of this paragraph, the

1 applicant shall submit a full set of fingerprints to the
2 State Police, which shall forward them to the Federal Bureau
3 of Investigation for a national criminal history record
4 check. The information obtained from the criminal history
5 record check shall be used by the department to determine the
6 applicant's eligibility. The determination shall be submitted
7 to the hospital by the applicant prior to commencing
8 employment. The hospital shall ensure confidentiality of the
9 information.

10 (b) Additional information.--The department or the State
11 Police may require the applicant to submit additional
12 information from a court or other authority if the criminal
13 history record does not provide the disposition of a criminal
14 charge or the information needed to compare a Federal or out-of-
15 State criminal offense to Pennsylvania criminal offenses.

16 (c) Fees.--The State Police may charge the applicant a fee
17 of not more than \$10 to conduct the criminal record check
18 required under subsection (a)(1). The State Police may charge a
19 fee of not more than the established charge by the Federal
20 Bureau of Investigation for the criminal history record check
21 required under subsection (a)(2). The State Police shall develop
22 a billing system to allow hospitals to assume responsibility for
23 the fee under this subsection. The State Police shall allow
24 hospitals to establish an account for quarterly payment.

25 Section 5. Grounds for denying employment.

26 (a) Lifetime bans.--In no case shall a hospital hire or
27 engage an applicant required to submit information pursuant to
28 section 4(a) or retain an employee required to submit
29 information pursuant to section 13, if the applicant's or
30 employee's criminal history record information indicates the

1 applicant or employee has been convicted of any of the following
2 offenses:

3 (1) An offense under one of the following provisions of
4 18 Pa.C.S. (relating to crimes and offenses) which is graded
5 as a felony:

6 Chapter 25 (relating to criminal homicide).

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

9 Section 2901 (relating to kidnapping).

10 Section 3121 (relating to rape).

11 Section 3123 (relating to involuntary deviate sexual
12 intercourse).

13 Section 3124.1 (relating to sexual assault).

14 Section 3124.2 (relating to institutional sexual
15 assault).

16 Section 3125 (relating to aggravated indecent
17 assault).

18 Section 3301 (relating to arson and related
19 offenses).

20 Section 4302 (relating to incest).

21 Section 6312 (relating to sexual abuse of children).

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

24 Section 4305 (relating to dealing in infant
25 children).

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

28 (b) Lifetime bans with possibility of certificate of
29 employability.--Except as otherwise provided, a hospital shall
30 not hire or engage an applicant required to submit information

1 under this act or retain an employee required to submit
2 information under this act if the applicant's or employee's
3 criminal history record information indicates the applicant or
4 employee has been convicted of any of the following offenses:

5 (1) An offense under one of the following provisions of
6 18 Pa.C.S. which is graded as a felony:

7 Section 2702 (relating to aggravated assault).

8 Section 2709.1 (relating to stalking).

9 Section 3126 (relating to indecent assault).

10 Section 3701 (relating to robbery).

11 Section 4304 (relating to endangering welfare of
12 children).

13 (2) An offense under one of the following provisions of
14 18 Pa.C.S. which is graded as a misdemeanor:

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

17 Section 3126 (relating to indecent assault).

18 (c) Ten-year ban.--Except as otherwise provided herein, a
19 hospital shall not hire or engage an applicant required to
20 submit information pursuant to section 4(a) or retain an
21 employee required to submit information pursuant to section 13
22 if the applicant's or employee's criminal history record
23 information as supplemented under subsection (d) indicates the
24 applicant or employee has been convicted, within ten years
25 immediately preceding the date of the report, not including any
26 time spent in incarceration, of any of the following offenses:

27 (1) An offense graded a felony under the act of April
28 14, 1972 (P.L.233, No.64), known as The Controlled Substance,
29 Drug, Device and Cosmetic Act.

30 (2) An offense under one of the following provisions of

1 18 Pa.C.S. which is graded as a felony:

2 Section 2902 (relating to unlawful restraint).

3 Section 3122.1 (relating to statutory sexual
4 assault).

5 Section 3502 (relating to burglary).

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

7 Section 4101 (relating to forgery).

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

10 Section 4953 (relating to retaliation against
11 witness, victim or party).

12 Section 5902 (relating to prostitution and related
13 offenses).

14 (3) An offense under one of the following provisions of
15 18 Pa.C.S. which is graded as a misdemeanor:

16 Chapter 25.

17 Section 2902.

18 Section 3127 (relating to indecent exposure).

19 Section 4101.

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

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

23 Section 6301(a)(1) (relating to corruption of
24 minors).

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

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

30 (d) Duty of applicant or employee.--An applicant or employee

1 required to submit information under section 4(a) or 13 and
2 sentenced for an offense enumerated under subsection (c) shall
3 provide the hospital with documentation of time spent in
4 incarceration and the date of release from incarceration.

5 (e) Right of review.--An applicant or employee may review,
6 challenge and appeal the completeness or accuracy of that
7 applicant's or employee's criminal history report under 18
8 Pa.C.S. Ch. 91 (relating to criminal history record
9 information). An applicant or employee may challenge the
10 decision of the department involving the Federal criminal
11 history record by filing an appeal with the department in
12 accordance with 2 Pa.C.S. (relating to administrative law and
13 procedure). An applicant or employee provisionally employed may
14 continue to be employed pending the ultimate resolution of such
15 a challenge and any subsequent appeal, unless a supersedeas or
16 temporary injunction is entered prohibiting the continued
17 employment of the individual.

18 Section 6. Certificate of employability.

19 (a) General rule.--

20 (1) An individual who would otherwise be precluded from
21 employment by a hospital under section 5(c) may petition for
22 a certificate of employability provided that at least ten
23 years, not including any time spent in incarceration, have
24 passed since the individual's conviction of any offense
25 listed under section 5(c).

26 (2) An individual who would otherwise be precluded from
27 employment by a hospital under section 5(d) may petition for
28 a certificate of employability, provided that at least five
29 years, not including time spent in incarceration, have passed
30 since the individual's conviction of any offense listed under

1 section 5(c).

2 (3) A certificate of employability granted under this
3 section shall be applicable to any hospital subject to this
4 act. The issuance of a certificate of employability shall
5 permit an individual to seek and possibly obtain employment
6 subject to this act, but in no way guarantees that a hospital
7 will offer a position to the individual.

8 (b) Petition and hearing.--An individual seeking a
9 certificate of employability shall file a petition with the
10 department. A hearing officer designated by the department shall
11 conduct a hearing on the petition in accordance with the
12 provisions of 2 Pa.C.S. (relating to administrative law and
13 procedure). The petition shall indicate whether the individual
14 requests a face-to-face hearing, which shall be conducted at the
15 department's offices in Harrisburg. If not specified, the
16 hearing may be conducted by telephone or other means as
17 determined by the department.

18 (c) Determination.--

19 (1) The department shall make a written determination as
20 to whether the petitioning individual will receive a
21 certificate of employability. The department must apply the
22 criteria of this subsection in reaching its decision.

23 (2) A determination by the department shall be a final
24 agency determination with a right to appeal to the
25 Commonwealth Court.

26 (d) Evidence.--The individual petitioning for a certificate
27 of employability has the burden of proving by a preponderance of
28 the evidence the individual's fitness to work with care-
29 dependent individuals. The department's determination about the
30 individual's fitness and whether it should issue a certificate

1 of employability shall include the following factors:

2 (1) The amount of time that has elapsed since the
3 individual's last conviction of an offense listed in section
4 5 and, if applicable, proof of the individual's release from
5 incarceration.

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

8 (3) The circumstances of a section 5 offense for which
9 the individual was convicted and the nature of the
10 conviction.

11 (4) If the individual asserts that a section 5 offense
12 was related to the individual's substance abuse, whether the
13 individual has undergone substance abuse treatment, is
14 maintaining recovery and the length of time the individual
15 has been in recovery.

16 (5) Other evidence of postconviction rehabilitation,
17 including the individual's history of community service,
18 psychological counseling and character references.

19 (6) In addition to evidence presented in the petition
20 for a certificate of employability, the department may
21 consider oral or written testimony or statements, relevant to
22 the factors listed above, from:

23 (i) Licensed professionals.

24 (ii) Members of the community.

25 (iii) Public officials.

26 (iv) Former employers of the individual.

27 (v) A hospital intending to hire or engage the
28 applicant.

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

1 (7) In addition to evidence presented in the petition
2 for a certificate of employability, the department may
3 consider written statements submitted by the petitioning
4 individual that were prepared by:

5 (i) A district attorney or other prosecutor in the
6 jurisdiction where the individual was convicted of an
7 offense listed in section 5.

8 (ii) The victim or family members of the victim of
9 any section 5 offense committed by the individual.

10 (e) Submission of evidence.--An individual petitioning for a
11 certificate of employability shall submit any and all written
12 evidence relevant to subsection (d) within 30 days of the
13 initial filing of the petition with the department. Any
14 submission of written evidence listed under subsection (d) after
15 this 30-day period shall be accepted by the hearing officer for
16 good cause shown.

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

18 (1) Conduct a hearing on a petition for a certificate of
19 employability within 90 days of the petition's being
20 received.

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

22 (3) Have the authority to grant an extension of the
23 deadlines set by paragraph (1) or (2) if the petitioning
24 individual or the department shows good cause for an
25 extension.

26 (g) Rules and regulations.--The department shall establish
27 rules and regulations for the review of petitions for a
28 certificate of employability consistent with this section.
29 Copies of the rules and regulations shall be made available for
30 distribution to the public.

1 (h) Fees.--The department shall, by regulation, establish
2 reasonable fees to petition for a certificate of employability.
3 No petition shall be considered by the department unless
4 accompanied by a fee.

5 (i) Notice to applicants.--Notification of the provisions of
6 this section shall be provided by the hospital, in a form
7 designated by the department, to each applicant.

8 (j) Limitation of certificate of employability.--
9 Certificates of employability shall state that their only
10 purpose is to exempt successful petitioners from the criminal
11 record hiring prohibitions of this act and that they do not
12 address any other qualifications of the individual to be
13 employed in a hospital or obligate hospitals to hire or engage a
14 particular individual.

15 (k) Grandfathering for training purposes.--An individual who
16 is granted a certificate of employability and who has not been
17 employed in a facility within a year of the date of petition for
18 the certificate will not be exempted from any training
19 requirements imposed by law for new employees.

20 Section 7. Regulations.

21 The department shall promulgate the regulations necessary to
22 carry out the provisions of this act.

23 Section 8. Violations.

24 (a) Administrative.--

25 (1) A hospital that fails to comply with the provisions
26 of this act commits a violation of this act and shall be
27 subject to an administrative penalty under paragraph (2).

28 (2) The Commonwealth agency or Commonwealth agencies
29 that license a hospital shall have jurisdiction to determine
30 violations of this act and may issue an order assessing a

1 civil penalty of not more than \$10,000. An order under this
2 paragraph shall be subject to 2 Pa.C.S. Chs. 5 Subch. A
3 (relating to practice and procedure of Commonwealth agencies)
4 and 7 Subch. A (relating to judicial review of Commonwealth
5 agency action).

6 (b) Criminal.--A person who intentionally or willfully fails
7 to comply or obstructs compliance with this act commits a
8 misdemeanor of the third degree and shall, upon conviction, be
9 sentenced to pay a fine of \$2,500 or to imprisonment for not
10 more than one year, or both.

11 Section 9. Provisional employment for limited periods.

12 Notwithstanding the provisions of this act, a hospital may
13 employ applicants on a provisional basis for a single period not
14 to exceed 30 days or, for applicants under section 4(a)(2), a
15 period of 90 days, if all of the following criteria are met:

16 (1) The applicant has applied for the information
17 required under section 4 and the applicant provides a copy of
18 the appropriate completed request forms to the hospital.

19 (2) The hospital has no knowledge of information
20 pertaining to the applicant which would disqualify the
21 applicant from employment pursuant to section 5, subject to
22 18 Pa.C.S. § 4911 (relating to tampering with public records
23 or information).

24 (3) The applicant swears or affirms in writing that the
25 applicant is not disqualified from employment under section
26 5.

27 (4) Except as provided under section 6, if the
28 information obtained under section 4 reveals that the
29 applicant is disqualified from employment under section 5,
30 the applicant shall be immediately dismissed by the hospital.

1 (5) The hospital agrees to supervise applicants during
2 the provisional employment. The department shall develop
3 guidelines regarding the supervision of applicants.

4 Section 10. Requirements concerning hospital employees.

5 The following shall apply:

6 (1) If the information obtained under section 4 reveals
7 that an employee of a hospital is disqualified from
8 employment under section 5(c), and the employee files a
9 petition for a certificate of employability under section 6,
10 the employee shall either, at the option of the hospital, be
11 placed on suspension without pay or continue employment under
12 appropriate supervision with no unsupervised direct contact
13 with patients until such time as a certificate of
14 employability is issued or an appeal is filed. The department
15 shall develop guidelines regarding the supervision of
16 employees under this paragraph.

17 (2) If the information obtained under section 4 reveals
18 that an employee is disqualified from employment under
19 section 5(a) or is disqualified from employment under section
20 5(c) or (d) and fails to file a petition for a certificate of
21 employability within 30 days of receiving a prohibitive hire
22 letter from the department, the employee shall be immediately
23 dismissed.

24 (3) Except as provided in paragraph (4), if a petition
25 for a certificate of employability for an employee is denied
26 pursuant to section 6, the employee on suspension or
27 supervised employment shall be immediately dismissed.

28 (4) If an appeal of the denial of a certificate of
29 employability is filed by an individual on suspension or
30 supervised employment, then the facility shall have the

option to continue the suspension period as described in paragraph (1).

(5) Within 60 days of the effective date of this section, hospitals shall provide copies of sections 5, 6 and 9 to all employees.

Section 11. Civil immunity.

A hospital may not be held civilly liable for any action directly related to good faith compliance with this act.

Section 12. Other laws.

This act does not supersede background check-employment restrictions imposed by another law if the other law is deemed applicable to a hospital or portion of a hospital.

Section 13. Report to General Assembly.

No later than one year following the effective date of this section, the State Police and the department shall report to the Public Health and Welfare Committee of the Senate and the Health and Human Services Committee of the House of Representatives their findings and recommendations regarding the implementation of this act.

Section 14. Severability.

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

Section 15. Applicability.

This act shall apply as follows:

- (1) (i) A hospital shall, within 18 months of the effective date of this paragraph, comply with sections 4 and 5 as a condition of continued employment for each

employee.

(ii) The hospital may use criminal history record information previously used to comply with sections 4 and 5, upon certification by the hospital that:

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

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

(iii) If the hospital cannot certify both conditions under subparagraph (ii), it shall require the employee to obtain a new criminal history record pursuant to section 4 before determining the employee's compliance with sections 4 and 5.

(2) An employee who has obtained the information required under section 4 may transfer to another hospital established and supervised by the same owner and shall not be required to obtain additional reports before making the transfer.

Section 16. Effective date.

This act shall take effect in 180 days.