

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 2319 Session of
2004

INTRODUCED BY VANCE, HESS, PISTELLA, WATSON, THOMAS, BAKER,
BARD, BEBKO-JONES, BELFANTI, BOYD, CAPPELLI, CIVERA, COSTA,
COY, CREIGHTON, DeWEESE, FRANKEL, GEIST, GINGRICH, GOOD,
HARRIS, HENNESSEY, HORSEY, KOTIK, MANN, MARSICO, MELIO,
R. MILLER, S. MILLER, NAILOR, NICKOL, O'NEILL, PAYNE,
PICKETT, REICHLEY, ROSS, RUBLEY, SATHER, SCAVELLO, SCHRODER,
SOLOBAY, TIGUE, TRUE, WASHINGTON, WEBER, WILT, YUDICHAK,
DeLUCA, YOUNGBLOOD, CRAHALLA, MACKERETH, E. Z. TAYLOR AND
BALDWIN, FEBRUARY 3, 2004

AS AMENDED, COMMITTEE ON AGING AND OLDER ADULT SERVICES, HOUSE
OF REPRESENTATIVES, FEBRUARY 10, 2004

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 further defining "employee"; further providing for
9 involuntary intervention by emergency court order, for
10 INFORMATION RELATING TO PROSPECTIVE FACILITY PERSONNEL, FOR <—
11 grounds for denying employment, FOR EMPLOYING PROVISIONAL <—
12 EMPLOYEES FOR LIMITED PERIODS and for applicability relating
13 to criminal history for employees.

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

16 Section 1. Section 102 of the act of November 6, 1987
17 (P.L.381, No.79), known as the Older Adults Protective Services
18 Act, is amended to read:
19 Section 102. Legislative policy.

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

16 It is further declared the policy of the Commonwealth that
17 the commission of any offense that constitutes serious physical
18 harm, a threat of serious physical harm or conduct which
19 evidences a reckless disregard for the vulnerability of care-
20 dependent populations, legitimately warrants a lifetime ban on
21 employment in facilities covered under this act. Further, for
22 facilities covered under this act, it is the policy of the
23 Commonwealth that the commission of any offenses related to
24 misappropriation or misuse of property or convictions which
25 involved inappropriate or irresponsible behavior legitimately
26 warrants a ban on employment for a period of ten years
27 immediately preceding the date of the report, not including any
28 time spent in incarceration.

29 Section 2. The definition of "employee" in section 103 of
30 the act, amended December 18, 1996 (P.L.1125, No.169), is

1 amended to read:

2 Section 103. Definitions.

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

6 * * *

7 "Employee." [An individual who is employed by a facility.
8 The term includes contract employees who have direct contact
9 with residents or unsupervised access to their personal living
10 quarters. The term includes any person who is employed or who
11 enters into a contractual relationship to provide care to a
12 care-dependent individual for monetary consideration in the
13 individual's place of residence.] An individual who has direct
14 contact with recipients or unsupervised access to their living
15 quarters and is either employed by a facility or a contract
16 employee. The term includes any person who is employed or who
17 enters into a contractual relationship to provide care to a
18 care-dependent individual for monetary consideration in the
19 individual's place of residence.

20 * * *

21 Section 3. Section 307(a) of the act, amended December 18,
22 1996 (P.L.1125, No.169), is amended to read:

23 Section 307. Involuntary intervention by emergency court order.

24 (a) Emergency petition.--[Where there was clear and
25 convincing evidence that if protective services are not
26 provided, the person to be protected is at imminent risk of
27 death or serious physical harm, the agency may petition the
28 court for an emergency order to provide the necessary services.]
29 An agency may petition a court of common pleas for an emergency
30 order to provide protective services to an older adult who is at

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1 imminent risk of death or serious physical harm INCLUDING
2 EXPLOITATION THAT MAY LEAD TO IMMINENT RISK OF DEATH OR SERIOUS
3 PHYSICAL HARM. The court of common pleas shall grant the
4 agency's petition if it finds, by a preponderance of the
5 evidence, that if protective services are not provided, the
6 older adult is at imminent risk of death or serious physical
7 harm. The courts of common pleas of each judicial district shall
8 ensure that a judge or district justice is available on a 24-
9 hour-a-day, 365-day-a-year basis to accept and decide on
10 petitions for an emergency court order under this section
11 whenever the agency determines that a delay until normal court
12 hours would significantly increase the danger the older adult
13 faces.

14 * * *

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15 SECTION 4. SECTION 502 OF THE ACT, ADDED DECEMBER 18, 1996
16 (P.L.1125, NO.169), IS AMENDED TO READ:

17 SECTION 502. INFORMATION RELATING TO PROSPECTIVE FACILITY
18 PERSONNEL.

19 (A) GENERAL RULE.--A FACILITY SHALL REQUIRE ALL APPLICANTS
20 TO SUBMIT WITH THEIR APPLICATIONS, AND SHALL REQUIRE ALL
21 ADMINISTRATORS AND ANY OPERATORS WHO HAVE OR MAY HAVE DIRECT
22 CONTACT WITH A RECIPIENT TO SUBMIT[, THE FOLLOWING INFORMATION
23 OBTAINED WITHIN THE PRECEDING ONE-YEAR PERIOD:

24 (1) PURSUANT TO 18 PA.C.S. CH. 91 (RELATING TO CRIMINAL
25 HISTORY RECORD INFORMATION), A REPORT OF CRIMINAL HISTORY
26 RECORD INFORMATION FROM THE STATE POLICE OR A STATEMENT FROM
27 THE STATE POLICE THAT THEIR CENTRAL REPOSITORY CONTAINS NO
28 SUCH INFORMATION RELATING TO THAT PERSON. THE CRIMINAL
29 HISTORY RECORD INFORMATION SHALL BE LIMITED TO THAT WHICH IS
30 DISSEMINATED PURSUANT TO 18 PA.C.S. § 9121(B)(2) (RELATING TO

1 GENERAL REGULATIONS).

2 (2) WHERE THE APPLICANT IS NOT AND FOR THE TWO YEARS
3 IMMEDIATELY PRECEDING THE DATE OF APPLICATION HAS NOT BEEN A
4 RESIDENT OF THIS COMMONWEALTH, ADMINISTRATION SHALL REQUIRE
5 THE APPLICANT TO SUBMIT WITH THE APPLICATION FOR EMPLOYMENT]
6 A CURRENT REPORT OF FEDERAL CRIMINAL HISTORY RECORD
7 INFORMATION PURSUANT TO THE FEDERAL BUREAU OF INVESTIGATION'S
8 APPROPRIATION UNDER THE DEPARTMENTS OF STATE, JUSTICE, AND
9 COMMERCE, THE JUDICIARY, AND RELATED AGENCIES APPROPRIATION
10 ACT, 1973 (PUBLIC LAW 92-544, 86 STAT. 1109). FOR THE
11 PURPOSES OF THIS SUBSECTION, A REPORT SHALL BE DEEMED CURRENT
12 IF IT WAS OBTAINED WITHIN THE ONE-YEAR PERIOD PRECEDING ITS
13 SUBMISSION TO THE FACILITY. THE DEPARTMENT SHALL BE THE
14 INTERMEDIARY FOR THE PURPOSES OF THIS [PARAGRAPH] SUBSECTION.
15 FOR THE PURPOSES OF THIS [PARAGRAPH] SUBSECTION, THE
16 APPLICANT SHALL SUBMIT A FULL SET OF FINGERPRINTS TO THE
17 STATE POLICE, WHICH SHALL FORWARD THEM TO THE FEDERAL BUREAU
18 OF INVESTIGATION FOR A NATIONAL CRIMINAL HISTORY RECORD
19 CHECK. THE INFORMATION OBTAINED FROM THE CRIMINAL RECORD
20 CHECK SHALL BE USED BY THE DEPARTMENT TO DETERMINE THE
21 APPLICANT'S ELIGIBILITY. THE DETERMINATION SHALL BE SUBMITTED
22 TO THE ADMINISTRATOR BY THE APPLICANT PRIOR TO COMMENCING
23 EMPLOYMENT. THE ADMINISTRATOR SHALL INSURE CONFIDENTIALITY OF
24 THE INFORMATION.

25 (B) FEES.--[THE STATE POLICE MAY CHARGE THE APPLICANT A FEE
26 OF NOT MORE THAN \$10 TO CONDUCT THE CRIMINAL RECORD CHECK
27 REQUIRED UNDER SUBSECTION (A)(1).] THE STATE POLICE MAY CHARGE A
28 FEE OF NOT MORE THAN THE ESTABLISHED CHARGE BY THE FEDERAL
29 BUREAU OF INVESTIGATION FOR THE CRIMINAL HISTORY RECORD CHECK
30 REQUIRED UNDER SUBSECTION [(A)(2)] (A). THE STATE POLICE SHALL

1 DEVELOP A BILLING SYSTEM TO ALLOW FACILITIES AND ADMINISTRATORS
2 TO ASSUME RESPONSIBILITY FOR THE FEE UNDER THIS SUBSECTION. THE
3 STATE POLICE SHALL ALLOW FACILITIES OR ADMINISTRATORS TO
4 ESTABLISH AN ACCOUNT FOR QUARTERLY PAYMENT.

5 Section 4 5. Section 503(a) of the act, amended June 9, 1997 <—
6 (P.L.160, No.13), is amended and the section is amended by
7 adding subsections to read:

8 Section 503. Grounds for denying employment.

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

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

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

19 Chapter 25 (relating to criminal homicide).

20 Section 2702 (relating to aggravated assault).

21 Section 2901 (relating to kidnapping).

22 Section 2902 (relating to unlawful restraint).

23 Section 3121 (relating to rape).

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

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

28 Section 3124.1 (relating to sexual assault).

29 Section 3125 (relating to aggravated indecent
30 assault).

1 Section 3126 (relating to indecent assault).

2 Section 3127 (relating to indecent exposure).

3 Section 3301 (relating to arson and related
4 offenses).

5 Section 3502 (relating to burglary).

6 Section 3701 (relating to robbery).

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

10 Section 4101 (relating to forgery).

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

13 Section 4302 (relating to incest).

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

15 Section 4304 (relating to endangering welfare of
16 children).

17 Section 4305 (relating to dealing in infant
18 children).

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

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

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

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

27 Section 6301 (relating to corruption of minors).

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

29 (3) A Federal or out-of-State offense similar in nature
30 to those crimes listed in paragraphs (1) and (2).]

1 (a.1) Lifetime bans.--In no case shall a facility hire an
2 applicant required to submit information pursuant to section
3 502(a) or retain an employee required to submit information
4 pursuant to section 508, if the applicant's or employee's
5 criminal history record information indicates the applicant or
6 employee has been convicted of any of the following offenses:

7 (1) An offense under one of the following provisions of
8 18 Pa.C.S. (relating to crimes and offenses) which is graded
9 as a felony:

10 Chapter 25 (relating to criminal homicide).

11 Section 2702 (relating to aggravated assault).

12 Section 2709 (relating to harassment).

13 Section 2709.1 (relating to stalking).

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

16 Section 2901 (relating to kidnapping).

17 Section 3121 (relating to rape).

18 Section 3123 (relating to involuntary deviate sexual
19 intercourse).

20 Section 3124.1 (relating to sexual assault).

21 Section 3125 (relating to aggravated indecent
22 assault).

23 Section 3301 (relating to arson and related
24 offenses).

25 Section 3701 (relating to robbery).

26 SECTION 4302 (RELATING TO INCEST).

27 Section 4304 (relating to endangering welfare of
28 children).

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

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

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18 Pa.C.S. which is graded as a misdemeanor:

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

Section 3126 (relating to indecent assault).

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

(a.2) Ten-year ban.--In no case may a facility hire 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, within ten years immediately preceding the date of the report, not including any time spent in incarceration, of any of the following offenses:

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

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

SECTION 2902 (RELATING TO UNLAWFUL RESTRAINT).

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Section 3122.1 (relating to statutory sexual assault).

Section 3502 (relating to burglary).

Section 3921 (relating to theft by unlawful taking or disposition).

Section 3922 (relating to theft by deception).

Section 3923 (relating to theft by extortion).

Section 3924 (relating to theft of property lost, mislaid, or delivered by mistake).

1 Section 3925 (relating to receiving stolen property).

2 Section 3926 (relating to theft of services).

3 Section 3927 (relating to theft by failure to make
4 required disposition of funds received).

5 Section 3929 (relating to retail theft), if there are
6 two or more convictions thereunder.

7 Section 3934 (relating to theft from a motor
8 vehicle).

9 Section 4101 (relating to forgery).

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

12 Section 4953 (relating to retaliation against
13 witness, victim or party).

14 Section 5902 (relating to prostitution and related
15 offenses).

16 Section 6301(a)(1) (relating to corruption of
17 minors).

18 (3) An offense under one of the following provisions of
19 18 Pa.C.S. (relating to crimes and offenses) which is graded
20 as a misdemeanor:

21 Section 2504 (relating to involuntary manslaughter).

22 Section 2902 (relating to unlawful restraint).

23 Section 3127 (relating to indecent exposure).

24 Section 3921 (relating to theft by unlawful taking or
25 disposition).

26 Section 3922 (relating to theft by deception).

27 Section 3923 (relating to theft by extortion).

28 Section 3927 (relating to theft by failure to make
29 required disposition of funds received).

30 Section 3929 (relating to retail theft), if there are

two or more convictions thereunder.

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 4305 (relating to dealing in infant children).

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

* * *

~~(d) Right of review.--An applicant or employee may review, challenge and appeal the completeness or accuracy of that applicant's or employee's criminal history report under 18 Pa.C.S. Ch. 91 (relating to criminal history record information).~~ An applicant or employee may challenge the conviction comparison interpretation of the department involving the Federal criminal history record by filing an appeal with the department in accordance with 2 Pa.C.S. (relating to administrative law and procedure).

SECTION 6. SECTION 506 OF THE ACT, ADDED DECEMBER 18, 1996 (P.L.1125, NO.169), IS AMENDED TO READ:

SECTION 506. PROVISIONAL EMPLOYEES FOR LIMITED PERIODS.

NOTWITHSTANDING SECTION 502, ADMINISTRATORS MAY EMPLOY APPLICANTS ON A PROVISIONAL BASIS FOR A SINGLE PERIOD NOT TO EXCEED [30 DAYS OR, FOR APPLICANTS UNDER SECTION 502(A)(2), A PERIOD OF] 90 DAYS, IF ALL OF THE FOLLOWING CONDITIONS ARE MET:

(1) THE APPLICANT HAS APPLIED FOR THE INFORMATION REQUIRED UNDER SECTION 502 AND THE APPLICANT PROVIDES A COPY OF THE APPROPRIATE COMPLETED REQUEST FORMS TO THE

ADMINISTRATOR.

(2) THE ADMINISTRATOR HAS NO KNOWLEDGE OF INFORMATION PERTAINING TO THE APPLICANT WHICH WOULD DISQUALIFY HIM FROM EMPLOYMENT PURSUANT TO SECTION 503, SUBJECT TO 18 PA.C.S. § 4911 (RELATING TO TAMPERING WITH PUBLIC RECORDS OR INFORMATION).

(3) THE APPLICANT SWEARS OR AFFIRMS IN WRITING THAT HE IS NOT DISQUALIFIED FROM EMPLOYMENT UNDER SECTION 503.

(4) IF THE INFORMATION OBTAINED UNDER SECTION 502 REVEALS THAT THE APPLICANT IS DISQUALIFIED FROM EMPLOYMENT UNDER SECTION 503, THE APPLICANT SHALL BE IMMEDIATELY DISMISSED BY THE ADMINISTRATOR.

(5) THE DEPARTMENT SHALL DEVELOP GUIDELINES REGARDING THE SUPERVISION OF APPLICANTS. FOR A HOME HEALTH CARE AGENCY, SUPERVISION SHALL INCLUDE RANDOM DIRECT SUPERVISION BY AN EMPLOYEE WHO HAS BEEN EMPLOYED BY THE FACILITY FOR A PERIOD OF ONE YEAR.

Section ~~5~~ 7. Section 508 of the act, amended June 9, 1997 (P.L.160, No.13), is amended to read:

Section 508. Applicability.

This chapter shall apply as follows:

[(1) An individual who, on the effective date of this chapter, has continuously for a period of one year been an employee of the same facility shall be exempt from ~~section 502~~ ~~sections 502 and 503~~ as a condition of continued employment.

(2) If an employee is not exempt under paragraph (1), the employee and the facility shall comply with ~~section 502~~ ~~sections 502 and 503~~ within one year of the effective date of this chapter.

(3) If an employee who is exempt under paragraph (1) seeks employment with a different facility, the employee and the facility shall comply with ~~{section 502}~~ ~~sections 502 and 503~~. SECTION 502.]

(3.1) AN INDIVIDUAL WHO, ON THE EFFECTIVE DATE OF THIS PARAGRAPH IS A CURRENT EMPLOYEE OF A FACILITY SHALL, WITHIN SIX MONTHS OF THE EFFECTIVE DATE OF THIS PARAGRAPH, COMPLY WITH SECTION 502 AS A CONDITION OF CONTINUED EMPLOYMENT.

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

Section ~~6~~ 8. 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 7. This act shall take effect as follows:~~

~~(1) The amendment of section 508(2) of the act shall take effect in 120 days.~~

~~(2) This section shall take effect immediately.~~

~~(3) The remainder of this act shall take effect in 60 days.~~

SECTION 9. THIS ACT SHALL TAKE EFFECT IN 60 DAYS.