

## THE GENERAL ASSEMBLY OF PENNSYLVANIA

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# HOUSE BILL

## No. 2519

Session of  
2004

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INTRODUCED BY BIRMELIN, ARMSTRONG, BAKER, BENNINGHOFF, COLEMAN,  
DAILEY, DeLUCA, GEIST, HICKERNELL, LEH, MILLARD, RUBLEY,  
STERN, THOMAS, TIGUE, WATSON, WEBER, WILT, SATHER, S. MILLER,  
SOLOBAY, PISTELLA, GINGRICH, ROHRER, BOYD, HESS, DENLINGER,  
E. Z. TAYLOR AND HARPER, APRIL 13, 2004

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AS RE-REPORTED FROM COMMITTEE ON APPROPRIATIONS, HOUSE OF  
REPRESENTATIVES, AS AMENDED, MAY 10, 2004

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## AN ACT

1 Amending Title 23 (Domestic Relations) of the Pennsylvania  
2 Consolidated Statutes, further providing for grounds for  
3 denying employment and for existing or transferred employees;  
4 and providing for certificate of employability for certain  
5 applicants or employees and for powers and duties of the  
6 Bureau of Professional and Occupational Affairs.

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

9 Section 1. Section 6303(a) of Title 23 of the Pennsylvania  
10 Consolidated Statutes is amended by adding a definition to read:  
11 § 6303. Definitions.

12 (a) General rule.--The following words and phrases when used  
13 in this chapter shall have the meanings given to them in this  
14 section unless the context clearly indicates otherwise:

15 \* \* \*

16 "Bureau." The Bureau of Professional and Occupational  
17 Affairs in the Department of State.

18 \* \* \*

1       Section 2.   Section 6344(c) and (k) of Title 23 are amended  
2 to read:

3   § 6344.   Information relating to [prospective] child-care  
4               personnel.

5       \* \* \*

6       (c)   Grounds for denying employment.--

7           (1)   In no case shall an administrator hire an applicant  
8       or retain an employee here WHERE the department has verified   <—  
9       that the applicant or employee is named in the central  
10       register as the perpetrator of a founded report of child  
11       abuse committed within the five-year period immediately  
12       preceding verification pursuant to this section.

13          (2)   In no case shall an administrator hire an applicant  
14       or retain an employee if the applicant's or employee's  
15       criminal history record information indicates the applicant  
16       or employee has been convicted of one or more of the  
17       following offenses under [Title 18] 18 Pa.C.S. (relating to  
18       crimes and offenses) or an equivalent crime under Federal law  
19       or the law of another state:

20               Chapter 25 (relating to criminal homicide).

21               Section 2604 (relating to murder of unborn child).

22               Section 2605 (relating to voluntary manslaughter of  
23       unborn child).

24               Section 2606 (relating to aggravated assault of unborn  
25       child).

26               Section 2702 (relating to aggravated assault), if it is  
27       graded as a felony of the first degree.

28               Section 2709.1 (relating to stalking).

29               Section 2901 (relating to kidnapping).

30               Section 2902 (relating to unlawful restraint).

1           Section 3121 (relating to rape).

2           Section 3122.1 (relating to statutory sexual assault).

3           Section 3123 (relating to involuntary deviate sexual

4 intercourse).

5           Section 3124.1 (relating to sexual assault).

6           Section 3125 (relating to aggravated indecent assault).

7           Section 3126 (relating to indecent assault).

8           Section 3127 (relating to indecent exposure).

9           Section 4302 (relating to incest).

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

11          Section 4304 (relating to endangering welfare of

12 children).

13          Section 4305 (relating to dealing in infant children).

14          A felony offense under section 5902(b) (relating to

15 prostitution and related offenses).

16          Section 5903(c) or (d) (relating to obscene and other

17 sexual materials and performances).

18          Section 6301 (relating to corruption of minors),

19 excluding subsection (a)(2).

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

21          Section 6320 (relating to sexual exploitation of

22 children).

23          The attempt, solicitation or conspiracy to commit any of

24 the offenses set forth in this paragraph.

25          (3) In no case shall an administrator hire an applicant

26 or retain an employee if the applicant's or employee's

27 criminal history record information indicates the applicant

28 or employee has been convicted of a felony offense under the

29 act of April 14, 1972 (P.L.233, No.64), known as The

30 Controlled Substance, Drug, Device and Cosmetic Act,

1 committed within the five-year period immediately preceding  
2 verification under this section.

3 (4) In no case shall an administrator hire an applicant  
4 or retain an employee required to submit information under  
5 subsection (a) if the applicant's or employee's criminal  
6 history record information indicates the applicant or  
7 employee has been convicted within a ten-year period  
8 preceding the date of the report, not including any time  
9 spent in incarceration, of one of the following offenses  
10 under 18 Pa.C.S. or an equivalent crime under Federal law:

11 Section 2702, unless graded as a felony of the first  
12 degree.

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

15 Section 2904 (relating to interference with custody of  
16 children).

17 Section 2909 (relating to concealment of whereabouts of a  
18 child).

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

21 Section 2910 (relating to luring a child into a motor  
22 vehicle).

23 \* \* \*

24 (k) Existing or transferred employees.--[A person employed  
25 in child-care services on January 1, 1986, shall not be required  
26 to obtain the information required in subsection (b)(1) and (2)  
27 as a condition of continued employment. A person who has once  
28 obtained the information required under subsection (b)(1) and  
29 (2) may transfer to another child-care service established and  
30 supervised by the same organization and shall not be required to

1 obtain additional reports before making the transfer.]

2       (1) A person who has obtained the information required  
3 under subsection (b) on or after the effective date of this  
4 paragraph may transfer to another child-care service  
5 established and supervised by the same organization and shall  
6 not be required to obtain additional reports before making  
7 the transfer.

8       (2) A person employed in child-care services on the  
9 effective date of this paragraph shall, within 12 months of  
10 the effective date of this paragraph, comply with subsection  
11 (b)(1) or (3) as a condition of continued employment. The  
12 following shall apply to a current child-care service  
13 employee:

14       (i) If the information obtained under subsection (b)  
15 reveals that the employee is disqualified from employment  
16 under subsection (c)(4), and the employee is eligible to  
17 apply for a certificate pursuant to section 6344.1  
18 (relating to certificate of employability), the  
19 administrator shall have the discretion to place the  
20 employee on suspension without pay or to continue the  
21 employee's employment under supervision with no  
22 unsupervised direct contact with children until such time  
23 as a certificate is issued. The department shall develop  
24 guidelines regarding the supervision of employees under  
25 this subparagraph.

26       (ii) If the employee fails to file an application  
27 for a certificate within 30 days of being suspended or  
28 placed under supervision by a child-care service  
29 receiving the information under subsection (b), the  
30 employee shall be immediately dismissed by the

1        administrator.

2            (iii) At no time may the employee be dismissed from  
3        employment on the basis of an offense resulting in  
4        disqualification from employment under subsection (c)(4)  
5        while an application is pending before a final  
6        determination of that application is made pursuant to  
7        section 6344.1(f).

8        \* \* \*

9        Section 3. Title 23 is amended by adding a section to read:

10    § 6344.1. Certificate of employability.

11        (a) General rule.--An applicant or employee who would  
12        otherwise be precluded from employment in a child-care service  
13        under section 6344(c)(4) (relating to information relating to  
14        prospective child-care personnel) may apply for a certificate of  
15        employment provided that at least five years, not including any  
16        time spent in incarceration, have passed since the applicant's  
17        or employee's conviction of any offense listed under section  
18        6344(c)(4). A certificate of employment granted under this  
19        section shall be applicable for any child-care service subject  
20        to this chapter. The issuance of a certificate shall permit an  
21        applicant or employee to seek, possibly obtain or retain  
22        employment within a child-care service, but does not require an  
23        administrator to offer a position of employment to the  
24        individual.

25        (b) Hearing.--The bureau shall conduct a hearing on any  
26        application filed by an applicant or employee who would  
27        otherwise be precluded from employment under section 6344(c)(4)  
28        and determine whether the individual demonstrates  
29        rehabilitation. A hearing under this section shall be  
30        adjudicated by the bureau's hearing officers and conducted in

1 accordance with the provisions of 2 Pa.C.S. (relating to  
2 administrative law and procedure). A determination by a hearing  
3 officer shall be a final determination of an agency with a right  
4 to appeal to Commonwealth Court.

5 (c) Evidence.--The applicant or employee applying for a  
6 certificate must prove, by a preponderance of the evidence, the  
7 individual's fitness to work in a child-care service. The  
8 determination of the bureau shall include, but not be limited  
9 to, the following factors:

10 (1) Proof of release from incarceration and the amount  
11 of time that has elapsed since the last conviction.

12 (2) The length and stability of the individual's  
13 employment history, particularly in the field in which the  
14 individual is seeking work.

15 (3) The circumstances of the offense for which the  
16 individual was convicted and the nature of the conviction.

17 (4) Other evidence of postconviction rehabilitation,  
18 including, but not limited to, history of community service,  
19 psychological counseling and character references.

20 (5) In addition to evidence submitted by the applicant  
21 or employee applying for a certificate, the bureau may  
22 consider testimony and letters of recommendation relevant to  
23 the factors under paragraph (1), (2), (3) or (4), if  
24 testimony and letters of recommendation are provided to the  
25 bureau prior to the scheduled hearing date or, at the  
26 bureau's option, provided at the scheduled hearing from any  
27 of the following:

28 (i) Licensed professionals.

29 (ii) Members of the community.

30 (iii) Public officials.

1           (iv) Former employees.

2           (v) An employer intending to hire the individual.

3           (vi) Others with knowledge of the individual or  
4           other evidence relevant to the application.

5           (6) The bureau may consider, if provided to the bureau  
6           prior to the scheduled hearing date or, at the bureau's  
7           option, provided at the scheduled hearing, any testimony,  
8           letter or recommendation submitted by:

9           (i) The district attorney of the county where any  
10           offense listed under section 6344(c)(4) occurred.

11           (ii) The victim of any offense under section  
12           6344(c)(4), the parent or guardian of the victim, if the  
13           victim is a minor, or family members of the victim, if  
14           the victim is deceased.

15           (7) At least 30 days prior to a hearing on an  
16           application for a certificate of employment, the bureau shall  
17           provide notice of the hearing to the district attorney of the  
18           county where any offense listed under section 6344(c)(4)  
19           occurred and shall make all reasonable efforts to provide  
20           notice of the hearing to the victim of any offense under  
21           section 6344(c)(4), the parent or guardian of the victim, if  
22           the victim is a minor, or family members of the victim, if  
23           the victim is deceased.

24           (d) Submission.--An applicant or employee shall submit any  
25           and all evidence listed under subsection (c) within 30 days of  
26           the initial filing of the application for a certificate. Any  
27           submission of evidence listed under subsection (c) after the 30-  
28           day period shall be accepted at the discretion of the hearing  
29           officer.

30           (e) Investigation.--The bureau shall establish procedures to



1 conduct investigations of all evidence submitted by an  
2 applicant, employee or others in regard to an application for a  
3 certificate. These procedures shall include, but not be limited  
4 to:

5 (1) Time periods for a response to an investigator's  
6 request for further documentation or evidence from the  
7 applicant or employee.

8 (2) Time periods for a response from any notice sent by  
9 the hearing officer under subsection (c)(7).

10 Any information submitted after these established time periods  
11 shall be accepted at the discretion of the hearing officer.

12 (f) Determinations.--The bureau shall conduct a hearing on  
13 an application for a certificate within 90 days of the completed  
14 application being received and issue a decision within 30 days  
15 of the hearing, unless additional time is requested by the  
16 applicant, employee or upon a showing of good cause by the  
17 Commonwealth. Determinations by the bureau shall be communicated  
18 to the department. The department shall keep a record of all  
19 determinations for certificates of employability for five years.

20 (g) Civil immunity.--An administrator of a child-care  
21 service may not be held civilly liable for any action directly  
22 related to good faith compliance with this section.

23 (h) Rules and regulations.--

24 (1) The bureau shall establish rules and regulations for  
25 the review of the applications for a certificate consistent  
26 with the guidelines established under this section.

27 (2) Notwithstanding any provision of Commonwealth law to  
28 the contrary, for the purposes of the act of June 25, 1982  
29 (P.L.633, No.181), known as the Regulatory Review Act, the  
30 Aging and Youth Committee of the Senate or its successor and

1 the Children and Youth Committee of the House of  
2 Representatives or its successor shall have jurisdiction over  
3 the bureau for regulations promulgated under this section.

4 (3) The bureau may conduct hearings pursuant to any rule  
5 or regulation already promulgated under the provisions of the  
6 act of July 2, 1993 (P.L.345, No.48), entitled "An act  
7 empowering the General Counsel or his designee to issue  
8 subpoenas for certain licensing board activities; providing  
9 for hearing examiners in the Bureau of Professional and  
10 Occupational Affairs; providing additional powers to the  
11 Commissioner of Professional and Occupational Affairs; and  
12 further providing for civil penalties and license  
13 suspension."

14 (4) Copies of the rules and regulations shall be made  
15 available for distribution to the public.

16 (i) Fees.--

17 (1) No application for a certificate shall be considered  
18 by the bureau unless accompanied by a fee established by the  
19 bureau. All fees imposed shall be sufficient to cover the  
20 costs of implementing this section.

21 (2) Fees shall be effective upon publication in the  
22 Pennsylvania Bulletin and shall not be subject to the act of  
23 July 31, 1968 (P.L.769, No.240), referred to as the  
24 Commonwealth Documents Law, the act of October 15, 1980  
25 (P.L.950, No.164), known as the Commonwealth Attorneys Act or  
26 the act of June 25, 1982 (P.L.633, No.181), known as the  
27 Regulatory Review Act.

28 (3) The fees imposed by the bureau shall be paid into  
29 the Professional Licensure Augmentation Account established  
30 pursuant to the act of July 1, 1978 (P.L.700, No.124), known

1     as the Bureau of Professional and Occupational Affairs Fee  
2     Act.

3     (j) Notice to applicants and employees precluded from  
4     employment.--Notification of the provisions of this section  
5     shall be provided by the administrator, in a form designated by  
6     the department, to each applicant or employee precluded from  
7     employment.

8     Section 4. This act shall take effect in 60 days.