

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 AND WONDERLING, MARCH 19, 2009

REFERRED TO AGING AND YOUTH, MARCH 19, 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 to the Federal Bureau of Investigation for  
12 a national criminal history record check. The information  
13 obtained from the criminal record check shall be used by the  
14 department to determine the applicant's eligibility. The  
15 determination shall be submitted to the [administrator]  
16 facility by the applicant prior to commencing employment. The  
17 [administrator] facility shall insure confidentiality of the  
18 information.

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

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). The State Police shall develop

1 a billing system to allow facilities [and administrators] to  
2 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 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 or  
2 engage an applicant required to submit information pursuant to  
3 section 502(a) or retain an employee required to submit  
4 information pursuant to section 508, if the applicant's or  
5 employee's criminal history record information indicates the  
6 applicant or employee has been convicted of any of the following  
7 offenses:

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

11 Chapter 25 (relating to criminal homicide).

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

14 Section 2901 (relating to kidnapping).

15 Section 3121 (relating to rape).

16 Section 3123 (relating to involuntary deviate sexual  
17 intercourse).

18 Section 3124.1 (relating to sexual assault).

19 Section 3124.2 (relating to institutional sexual  
20 assault).

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

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

25 Section 4302 (relating to incest).

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

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

29 (a.2) Lifetime bans with possibility of certificate of  
30 employability.--Except as provided in section 503.1, a facility

1 shall not hire or engage an applicant required to submit  
2 information pursuant to section 502(a) or retain an employee  
3 required to submit information pursuant to section 508 if the  
4 applicant's or employee's criminal history record information  
5 indicates the applicant or employee has been convicted of any of  
6 the following offenses:

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

9               Section 2702 (relating to aggravated assault).

10              Section 2709.1 (relating to stalking).

11              Section 3126 (relating to indecent assault).

12              Section 3701 (relating to robbery).

13              Section 4304 (relating to endangering welfare of  
14 children).

15       (2) An offense under one of the following provisions of  
16 18 Pa.C.S. which is graded as a misdemeanor:

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

19              Section 3126.

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

22       (a.3) Ten-year ban.--Except as provided in section 503.1, a  
23 facility shall not hire or engage an applicant required to  
24 submit information pursuant to section 502(a) or retain an  
25 employee required to submit information pursuant to section 508  
26 if the applicant's or employee's criminal history record  
27 information as supplemented under subsection (a.4) indicates the  
28 applicant or employee has been convicted, within ten years  
29 immediately preceding the date of the report, not including any  
30 time spent in incarceration, of any of the following offenses:

1       (1) An offense graded a felony under the act of April  
2       14, 1972 (P.L.233, No.64), known as The Controlled Substance,  
3       Drug, Device and Cosmetic Act.

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

6               Section 2902 (relating to unlawful restraint).

7               Section 3122.1 (relating to statutory sexual  
8       assault).

9               Section 3502 (relating to burglary).

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

11              Section 4101 (relating to forgery).

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

14              Section 4953 (relating to retaliation against  
15       witness, victim or party).

16              Section 5902 (relating to prostitution and related  
17       offenses).

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

20              Chapter 25.

21              Section 2902.

22              Section 3127 (relating to indecent exposure).

23              Section 4101.

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

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

27              Section 4305 (relating to dealing in infant  
28       children).

29              Section 6301(a)(1) (relating to corruption of  
30       minors).

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

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

6       (a.4) Duty of applicant or employee.--An applicant or  
7       employee required to submit information under section 502(a) or  
8       508 who has been incarcerated for an offense enumerated under  
9       subsection (a.2) or (a.3) shall provide the facility with  
10       documentation of time spent in incarceration and the date of  
11       release from incarceration.

12       \* \* \*

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

26       Section 6. The act is amended by adding a section to read:  
27       Section 503.1. Certificate of employability.

28       (a) General rule.--

29       (1) An individual who would otherwise be precluded from  
30       employment by a facility under section 503(a.2) may petition

1 for a certificate of employability provided that at least ten  
2 years, not including any time spent in incarceration, have  
3 passed since the individual's conviction of any offense  
4 listed under section 503(a.2).

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

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

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

27 (c) Determination.--

28 (1) The department shall make a written determination as  
29 to whether the petitioning individual will receive a  
30 certificate of employability. The department must apply the

1 criteria of this subsection in reaching its decision.

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

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

11 (1) The amount of time that has elapsed since the  
12 individual's last conviction of an offense listed in section  
13 503 and, if applicable, proof of the individual's release  
14 from incarceration.

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

17 (3) The circumstances of a section 503 offense for which  
18 the individual was convicted and the nature of the  
19 conviction.

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

25 (5) Other evidence of postconviction rehabilitation,  
26 including the individual's history of community service,  
27 psychological counseling and character references.

28 (6) In addition to evidence presented in the petition  
29 for a certificate of employability, the department may  
30 consider oral or written testimony or statements, relevant to

1 the factors listed above, from:

2 (i) Licensed professionals.

3 (ii) Members of the community.

4 (iii) Public officials.

5 (iv) Former employers of the individual.

6 (v) A facility intending to hire or engage the  
7 applicant.

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

10 (7) In addition to evidence presented in the petition  
11 for a certificate of employability, the department may  
12 consider written statements submitted by the petitioning  
13 individual that were prepared by:

14 (i) A district attorney or other prosecutor in the  
15 jurisdiction where the individual was convicted of an  
16 offense listed in section 503.

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

19 (e) Submission of evidence.--An individual petitioning for a  
20 certificate of employability shall submit any and all written  
21 evidence relevant to subsection (d) within 30 days of the  
22 initial filing of the petition with the department. Any  
23 submission of written evidence listed under subsection (d) after  
24 this 30-day period shall be accepted by the hearing officer for  
25 good cause shown.

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

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

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

30 (3) Have the authority to grant an extension of the



deadlines set by paragraph (1) or (2) if the petitioning individual or the department shows good cause for an extension.

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

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

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

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

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

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

Section 506. Provisional [employees] employment for limited

1 periods.

2 Notwithstanding [section 502 administrators] sections 502 and  
3 503, facilities may employ applicants on a provisional basis for  
4 a single period not to exceed 30 days or, for applicants under  
5 section 502(a)(2), a period of 90 days, if all of the following  
6 conditions are met:

7 (1) The applicant has applied for the information  
8 required under section 502 and the applicant provides a copy  
9 of the appropriate completed request forms to the  
10 [administrator] facility.

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

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

19 (4) [If] Except as provided under section 503(a), if the  
20 information obtained under section 502 reveals that the  
21 applicant is disqualified from employment under section 503,  
22 the applicant shall be immediately dismissed by the  
23 [administrator] facility.

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

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

1 Section 506.1. Requirements concerning employees.

2 The following shall apply:

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

14 (2) If the information obtained under section 502(a)  
15 reveals that an employee is disqualified from employment  
16 under section 503(a.1), or is disqualified from employment  
17 under section 503(a.2) or (a.3) and fails to file a petition  
18 for a certificate of employability within 30 days of  
19 receiving a prohibitive hire letter from the department, the  
20 employee shall be immediately dismissed.

21 (3) Except as provided in paragraph (4), if a petition  
22 for a certificate of employability of an employee is denied  
23 pursuant to section 503.1, the employee on suspension or  
24 supervised employment shall be immediately dismissed.

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

30 (5) Within 60 days of the effective date of this

section, facilities shall provide copies of sections 503,  
503.1 and 506.1 to all employees.

Section 9. 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 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  
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.]

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

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

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

(B) The facility 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.

1           (iii) If the facility cannot certify both conditions  
2           under subparagraph (ii), it shall require the employee to  
3           obtain a new criminal history record pursuant to section  
4           502 before determining the employee's compliance with  
5           sections 502 and 503.

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

11          Section 10. The Secretary of Aging shall coordinate a  
12          comparison study on the impact of utilizing the Pennsylvania  
13          State Police criminal background check system and the Federal  
14          Bureau of Investigation background check system pursuant to  
15          Chapter 5 of the act. The purpose of the study shall be to  
16          assess the feasibility of changing the current procedure to  
17          require the Federal Bureau of Investigation check exclusively  
18          for all applicants and employees or to continue the current  
19          procedure of utilizing both systems, with the Pennsylvania State  
20          Police check being the baseline system. Such study shall  
21          include: a detailed review of the scope of the information  
22          obtained through the use of each system; the rate of accuracy of  
23          each system; the efficiency in terms of the turnaround time  
24          associated with each system; the step-by-step process involved  
25          in the completion of the checks required in each system; the  
26          estimated fiscal impact to the Department of Aging and to  
27          facilities associated with each system; and current information  
28          regarding any advancements that have occurred with the  
29          technology involving criminal background checks as well as any  
30          changes that have occurred in the legal framework governing

1 background checks. No later than one year from the effective  
2 date of this section, the Secretary of Aging shall report to the  
3 Aging and Youth Committee of the Senate and the Aging and Older  
4 Adult Services Committee of the House of Representatives the  
5 results of the study.

6 Section 11. The provisions of this act are severable. If any  
7 provision of this act or its application to any person or  
8 circumstance is held invalid, the invalidity shall not affect  
9 other provisions or applications of this act which can be given  
10 effect without the invalid provision or application.

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