
THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 2549 Session of
2018

INTRODUCED BY HENNESSEY, READSHAW, ENGLISH, SCHLOSSBERG, MURT,
BAKER, FLYNN, JAMES, HILL-EVANS, COX, DRISCOLL, BOBACK,
BIZZARRO, MILLARD, WARD, SOLOMON, RAPP, WATSON, NEILSON,
B. MILLER, TOOHIL AND SCHLEGEL CULVER, JULY 6, 2018

REFERRED TO COMMITTEE ON AGING AND OLDER ADULT SERVICES,
JULY 6, 2018

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," making extensive amendments and adding
8 provisions relating to preliminary provisions,
9 administration, criminal history for employees, reporting
10 suspected abuse by employees and miscellaneous provisions.

11 The General Assembly of the Commonwealth of Pennsylvania
12 hereby enacts as follows:

13 Section 1. Sections 102, 103 and 301 of the act of November
14 6, 1987 (P.L.381, No.79), known as the Older Adults Protective
15 Services Act, are amended to read:

16 Section 102. Legislative [policy] intent.

17 [It is declared the policy of the Commonwealth of
18 Pennsylvania] The General Assembly finds and declares that:

19 (1) It is the policy of the Commonwealth that older
20 adults who [lack the capacity to protect themselves and are

1 at imminent risk] are at risk or at imminent risk of abuse,
2 neglect, exploitation or abandonment shall have access to and
3 be provided with services necessary to protect their health,
4 safety and welfare.

5 (2) It is not the purpose of this act to place
6 restrictions upon the personal liberty of [incapacitated]
7 older adults, but this act should be liberally construed to
8 assure the availability of protective services to all older
9 adults in need of them.

10 (3) Such services shall safeguard the rights of
11 [incapacitated] older adults while protecting them from
12 abuse, neglect, exploitation and abandonment. [It is the
13 intent of the General Assembly]

14 (4) The General Assembly intends to provide for the
15 detection and reduction, correction or elimination of abuse,
16 neglect, exploitation and abandonment[,] and to establish a
17 program of protective services for older adults in need of
18 them.

19 (5) It is the policy of the Commonwealth that
20 convictions for certain offenses that evidence a reckless
21 disregard for the vulnerability of care-dependent
22 populations, certain offenses involving misappropriation or
23 misuse of property or convictions that involve inappropriate
24 or irresponsible behavior may legitimately warrant time-
25 limited bans on employment working with older adults under
26 this act.

27 Section 103. Definitions.

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

1 "Abandonment." The desertion of an older adult by a
2 caretaker.

3 "Abuse." The occurrence of one or more of the following
4 acts:

5 (1) The infliction of injury, unreasonable confinement,
6 intimidation or punishment with resulting physical harm, pain
7 or mental anguish.

8 (2) The willful deprivation by a caretaker of goods or
9 services which are necessary to maintain physical or mental
10 health.

11 [(3) Sexual harassment, rape or abuse, as defined in the
12 act of October 7, 1976 (P.L.1090, No.218), known as the
13 Protection From Abuse Act.

14 No older adult shall be found to be abused solely on the grounds
15 of environmental factors which are beyond the control of the
16 older adult or the caretaker, such as inadequate housing,
17 furnishings, income, clothing or medical care.]

18 (3) Sexual abuse, including:

19 (i) rape;

20 (ii) involuntary deviate sexual intercourse;

21 (iii) sexual assault;

22 (iv) aggravated indecent assault;

23 (v) indecent assault; and

24 (vi) incest.

25 (4) Sexual harassment, including:

26 (i) unwelcome sexual advances;

27 (ii) requests for sexual favors; and

28 (iii) other unwelcome verbal or physical conduct of
29 a sexual nature.

30 "Administrator." The person responsible for the

1 [administration] management of a facility. The term includes a
2 person responsible for employment decisions or an independent
3 contractor responsible for administration of a facility.

4 ["Agency." The local provider of protective services, which
5 is the area agency on aging or the agency designated by the area
6 agency on aging to provide protective services in the area
7 agency's planning and service area.]

8 "Agent." A person authorized to act on behalf of an older
9 adult, including a person acting pursuant to a power of
10 attorney.

11 "Applicant." An individual who submits an application to be
12 considered for employment.

13 "Area agency on aging" or "AAA." The single local agency or
14 its agent designated by the Department of Aging within each
15 planning and service area to administer the delivery of
16 protective services.

17 "Assessment." The evaluation of an older adult's social,
18 physical and psychological well-being, along with a description
19 of the older adult's current resources and needs using
20 instruments and procedures established by the department.

21 "Care." Services provided to meet [a person's] an older
22 adult's need for personal care or health care[. Services may
23 include homemaker services, assistance with activities of daily
24 living, physical therapy, occupational therapy, speech therapy,
25 medical social services, home-care aide services, companion-care
26 services, private duty nursing services, respiratory therapy,
27 intravenous therapy, in-home dialysis and durable medical
28 equipment services, which are routinely provided unsupervised
29 and which require interaction with the care-dependent person.
30 The term does not include durable medical equipment delivery]

1 which requires interaction with the older adult.

2 "Care-dependent individual." An adult who, due to physical
3 or cognitive disability or impairment, requires assistance to
4 meet needs for food, shelter, clothing, personal care or health
5 care.

6 "Caretaker." An individual or [institution] entity that has
7 assumed the responsibility for the provision of care needed to
8 maintain the physical or mental health of an older adult. This
9 responsibility may arise voluntarily, by contract, by receipt of
10 payment for care, as a result of [family] familial
11 relationship[,] or by order of a court of competent
12 jurisdiction. [It is not the intent of this act to impose
13 responsibility on any individual if such responsibility would
14 not otherwise exist in law.]

15 "Case record." The complete record of the information
16 received and the actions taken by the area agency on aging on
17 each report of need.

18 ["Client assessment." Social, physical and psychological
19 findings along with a description of the person's current
20 resources and needs.]

21 "Consent." Authorization or approval that, where feasible,
22 is obtained in writing.

23 ["Court." A court of common pleas or a district magistrate
24 court, where applicable.]

25 "Department." The Department of Aging of the Commonwealth.

26 "Employee." An individual who [is employed by a facility.
27 The term includes contract employees who have direct contact
28 with residents or unsupervised access to their personal living
29 quarters. The term includes any person who is employed or who
30 enters into a contractual relationship to provide care to a

1 care-dependent individual for monetary consideration in the
2 individual's place of residence.]:

3 (1) Is employed by a facility, or the affiliated
4 corporate entity of a facility, or enters into a contractual
5 relationship with a facility, an older adult, an older
6 adult's family, agent, legal representative or the affiliated
7 corporate entity of a facility, to provide care to an older
8 adult.

9 (2) Has unsupervised access to another individual and
10 that individual's living quarters, resources or personal
11 records.

12 "Exploitation." An act or course of conduct by a caretaker
13 or other person against an older adult or an older adult's
14 resources, without the informed consent or authorization of the
15 older adult or with consent or authorization obtained through
16 misrepresentation, coercion or threats of force, [that results]
17 resulting in monetary, personal or other benefit, gain or profit
18 for [the perpetrator] that caretaker or person, or monetary or
19 personal loss to the older adult.

20 "Facility." Any of the following:

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

24 (2) [A home health care agency.] Any of the following
25 entities as defined in section 802.1 of the act of July 19,
26 1979 (P.L.130, No.48), known as the Health Care Facilities
27 Act:

28 (i) A home health care agency.

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

30 (iii) A hospice.

1 (iv) A home care agency.

2 (v) A home care registry.

3 [(3) A long-term care nursing facility as defined in
4 section 802.1 of the act of July 19, 1979 (P.L.130, No.48),
5 known as the Health Care Facilities Act.]

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

9 (5) A personal care home as defined in section 1001 of
10 the act of June 13, 1967 (P.L.31, No.21), known as the Public
11 Welfare Code.

12 (6) An assisted living residence as defined in section
13 1001 of the act of June 13, 1967 (P.L.31, No.21), known as
14 the Public Welfare Code.

15 (7) A PACE provider as defined in section 1894 of the
16 Social Security Act (49 Stat. 620, 42 U.S.C. § 1395eee).

17 (8) Any other public or private organization, or entity
18 or part of an organization or entity, that uses public funds
19 and is paid, in part, to provide care to care-dependent
20 individuals.

21 "Fiduciary." A guardian, custodian, trustee, agent, personal
22 representative or other person authorized or required to act on
23 behalf of an older adult.

24 "Financial exploitation." The wrongful or unauthorized
25 taking or attempt to take by withholding, appropriation,
26 concealment or use of money, assets or property of an older
27 adult, including any act or omission taken by a person,
28 including through the use of a power of attorney, guardianship,
29 custodian, trustee, personal representative or conservatorship
30 of an older adult or by an individual who stands in a position

1 of trust and confidence with the older adult, including business
2 transactions to:

3 (1) obtain or attempt to obtain control, through
4 deception, intimidation or undue influence, over the older
5 adult's money, assets or property to deprive the older adult
6 of the ownership, use, benefit or possession of the older
7 adult's money, assets or property; or

8 (2) convert or attempt to convert money, assets or
9 property of the older adult to deprive the older adult of the
10 ownership, use, benefit or possession of the older adult's
11 money, assets or property.

12 "Financial institution." Any of the following:

13 (1) An insured bank as defined in section 3(h) of the
14 Federal Insurance Deposit Act (64 Stat. 873, 12 U.S.C. §
15 1813(h)).

16 (2) A commercial bank or trust company.

17 (3) A private banker.

18 (4) An agency or branch of a foreign bank in the United
19 States.

20 (5) Any credit union.

21 (6) A thrift institution.

22 (7) A broker or dealer registered with the Securities
23 and Exchange Commission under the Securities Exchange Act of
24 1934 (48 Stat. 881, 15 U.S.C. § 78a et seq.).

25 (8) A broker or dealer in securities or commodities.

26 (9) An investment banker or investment company.

27 (10) A currency exchange.

28 (11) An issuer, redeemer or cashier of travelers'
29 checks, checks, money orders or similar instruments.

30 (12) An operator of a credit card system.

1 (13) A loan or finance company.

2 (14) A licensed sender of money or any other person who
3 engages as a business in the transmission of funds, including
4 any person who engages as a business in an informal money
5 transfer system or any network of people who engage as a
6 business in facilitating the transfer of money domestically
7 or internationally outside of the conventional financial
8 institutions system.

9 (15) A person required to be registered as an investment
10 adviser by the Investment Advisers Act of 1940 (54 Stat. 847,
11 15 U.S.C. § 80b-1 et seq.) or under the laws of this
12 Commonwealth.

13 (16) Any business or agency that engages in activity the
14 department determines, by regulation, to be similar to,
15 related to or a substitute for any activity engaged in by a
16 business described in paragraphs (1) through (14).

17 ["Home health care agency." Any of the following:

18 (1) A home health care organization or agency licensed
19 by the Department of Health.

20 (2) A public or private agency or organization, or part
21 of an agency or organization, which provides care to a care-
22 dependent individual in the individual's place of residence.]

23 "Incident reporting system." Home and Community Services
24 Information System (HCSIS) or its successor.

25 "Intimidation." An act or omission by any person or entity
26 toward another person [which is intended to, or with knowledge
27 that the act or omission will, obstruct, impede, impair, prevent
28 or interfere] that obstructs, impedes, impairs, prevents or
29 interferes with the administration of this act or any other law
30 intended to protect older adults from mistreatment.

1 "Law enforcement official." Any of the following:

2 (1) A police officer of a municipality.

3 (2) A district attorney.

4 (3) The Pennsylvania State Police.

5 (4) A county sheriff.

6 (5) The Attorney General of the Commonwealth.

7 (6) The United States Department of Justice and other
8 Federal law enforcement agencies.

9 (7) A law enforcement authority in another state.

10 "Mandatory reporter." Any of the following:

11 (1) Facility employee or administrator.

12 (2) Physician or other licensed or certified health care
13 professional.

14 (3) Coroner.

15 "Neglect." The failure to provide for oneself or the failure
16 of a caretaker to provide goods or services essential to avoid a
17 clear and serious threat to physical or mental health. No older
18 adult who does not consent to the provision of protective
19 services shall be found to be neglected solely on the grounds of
20 environmental factors which are beyond the control of the older
21 adult or the caretaker, such as inadequate housing, furnishings,
22 income, clothing or medical care.

23 "Older adult." [A person] An individual within the
24 jurisdiction of [the] this Commonwealth who is 60 years of age
25 or older.

26 "Older adult in need of protective services." An
27 incapacitated older adult who is unable to perform or obtain
28 services that are necessary to maintain physical or mental
29 health, for whom there is no responsible caretaker and who is at
30 risk or imminent risk of danger to his person or property.

1 "Protective services." Those activities, resources and
2 supports provided to older adults under this act to detect,
3 prevent, reduce or eliminate abuse, neglect, exploitation and
4 abandonment.

5 ["Protective setting." A setting chosen by the agency where
6 services can be provided in the least restrictive environment to
7 protect the physical and mental well-being of the older adult.]

8 "Recipient." An individual who receives care, services or
9 treatment in or from a facility.

10 "Secretary." The Secretary of Aging of the Commonwealth.

11 ["Serious bodily injury." Injury which creates a substantial
12 risk of death or which causes serious permanent disfigurement or
13 protracted loss or impairment of the function of a body member
14 or organ.]

15 "Serious bodily injury." Injury that:

16 (1) creates a substantial risk of death; or

17 (2) causes serious permanent disfigurement or protracted
18 loss or impairment of the function of a body member or organ.

19 "Serious physical injury." An injury that:

20 (1) causes a person severe pain; or

21 (2) significantly impairs a person's physical
22 functioning, either temporarily or permanently.

23 "Service plan." A written plan [developed]:

24 (1) Developed by the [agency] area agency on aging on

25 the basis of comprehensive assessment of [a client's need

26 which describes identified needs, goals to be achieved and

27 specific services to support goal attainment, with regular

28 follow-up and predetermined reassessment of client progress.

29 Specific services to support goal attainment may include, but

30 is not limited to, homemaker services, home-delivered meals,

1 attendant care, other in-home services, emergency shelter or
2 food, legal aid services, transportation and other such
3 services. Service plans are cooperatively developed by the
4 agency staff, the client or the client's appointed guardian,
5 and other family members when appropriate. The plan shall
6 also address, where applicable, special needs of other
7 members of the household unit as they may affect the older
8 adult's need for protective services.] an older adult that
9 describes identified needs and specific services designed to
10 support goal attainment.

11 (2) That includes regular follow-up and predetermined
12 reassessment of progress.

13 (3) In which the specific services support goal
14 attainment and may include, but need not be limited to:

15 (i) Homemaker services.

16 (ii) Home-delivered meals.

17 (iii) Personal care.

18 (iv) Other in-home services.

19 (v) Emergency shelter or food.

20 (vi) Legal aid services.

21 (vii) Transportation.

22 (viii) Other such services.

23 (4) Cooperatively developed by the area agency on aging
24 staff, the older adult or his legal representative, and other
25 family members, when appropriate.

26 (5) That addresses special needs of other members of the
27 household unit if they affect the older adult's need for
28 protective services.

29 "Sexual abuse." Intentionally, knowingly or recklessly
30 causing or attempting to cause rape, involuntary deviate sexual

1 intercourse, sexual assault, statutory sexual assault,
2 aggravated indecent assault, indecent assault or incest.

3 "Suspicious death." A death which is unexpected with
4 unexplained circumstances or cause.

5 Section 301. Duties of department and area agencies on aging.

6 (a) Public information and interdepartmental consultation.--

7 The department shall conduct an ongoing campaign designed to
8 inform and educate older adults, professionals and the general
9 public about the need for [an] and the availability of
10 protective services under this [chapter] act. The department
11 shall consult with other [departments of the Commonwealth] State
12 agencies on the design and implementation of the ongoing public
13 awareness campaign. The department shall also consider the
14 concerns of area agencies on aging and the entities identified
15 by them under subsection (c).

16 (b) Staff training.--

17 (1) The department shall establish minimum standards of
18 training and experience [which] that protective services
19 providers funded by the department shall be required to
20 follow in the selection and assignment of staff for the
21 provision of protective services.

22 (2) The department shall establish a training program
23 for mandatory reporters about the requirement to report under
24 this act.

25 (c) Protective services plans.--

26 (1) Each area agency on aging shall include a protective
27 services plan as part of its annual plan. The plan shall
28 describe the local implementation of this [chapter] act,
29 including the organization, staffing, mode of operations and
30 financing of protective services, as well as the provisions

1 made for purchase of services, interagency relations,
2 interagency agreements, service referral mechanisms and locus
3 of responsibility for cases with multiservice agency needs.

4 (2) The [description of] department shall establish the
5 methods that will be used by the [agency] AAA, its designees
6 and its service providers to assure the privacy of older
7 adults receiving services and the confidentiality of all
8 records [shall be established by the department]. The
9 department shall establish a schedule for the submission and
10 approval of the plans.

11 (3) The [plan shall include] area agency on aging shall
12 include in the plan, a list of all entities, whether public
13 or private, that have been identified by the [area agency on
14 aging] AAA as having substantial contact with potential
15 victims or alleged perpetrators of abuse, neglect,
16 exploitation and abandonment. [This list shall be submitted]
17 The area agency on aging shall submit this list to the
18 department for purposes of the public information campaign
19 under subsection (a).

20 Section 2. The act is amended by adding a section to read:

21 Section 301.1. Duties of financial institutions and
22 fiduciaries.

23 (a) Training.--A financial institution with employees in
24 this Commonwealth, or with employees regularly engaging in
25 financial transactions with, or on behalf of, older adults in
26 this Commonwealth, shall adopt and implement a training program
27 for its employees to:

28 (1) Identify activities that constitute the financial
29 exploitation of older adults.

30 (2) Recognize signs of potential financial exploitation

1 of older adults.

2 (3) Prevent and deter the financial exploitation of
3 older adults.

4 (4) Respond to suspected cases of financial exploitation
5 of older adults.

6 (b) Model training program.--The department, in cooperation
7 with the Department of Banking and Securities and
8 representatives of the financial services industry in this
9 Commonwealth, shall establish a model training program that may
10 be used to satisfy the requirements of subsection (a). A
11 national organization's training program may be adopted as the
12 model program if the training is certified or accredited.

13 (c) Regulated financial institutions.--A financial
14 institution subject to visitorial examination by a regulatory
15 authority that incorporates the training activities required by
16 subsection (a) into the financial institution's employee
17 training program to control fraud and money laundering that is
18 subject to examination by the regulatory authority shall be
19 deemed to be in compliance with subsection (a).

20 (d) Authority to prohibit disbursement of funds and
21 transactions.--

22 (1) If a financial institution or fiduciary reasonably
23 believes after initiating an internal review that a requested
24 disbursement or transaction may result in the financial
25 exploitation of an older adult, the financial institution or
26 fiduciary may, but is not required to, refuse to make the
27 disbursement or engage in the transaction, as appropriate, to
28 prevent financial exploitation of the older adult with
29 respect to the account:

30 (i) of the older adult;

1 (ii) on which the older adult is a beneficiary,
2 including a trust or guardianship account; or
3 (iii) of a person suspected of perpetrating
4 financial exploitation of an older adult.

5 (2) A financial institution or fiduciary may, but is not
6 required to, refuse to disburse funds or engage in a
7 transaction under this section if an area agency on aging or
8 law enforcement official requests the financial institution
9 or fiduciary to do so or provides information in writing to
10 the financial institution or fiduciary demonstrating that it
11 is reasonable to believe that financial exploitation of an
12 older adult may have occurred, may have been attempted or is
13 being attempted.

14 (3) A financial institution or fiduciary is not required
15 to refuse to disburse funds or engage in a transaction when
16 provided with information alleging that financial
17 exploitation of an older adult may have occurred, may have
18 been attempted or is being attempted and may use the
19 financial institution's or fiduciary's discretion to
20 determine whether or not to refuse to disburse funds based on
21 the information available to the financial institution or
22 fiduciary.

23 (4) Except as prohibited by Federal or State law, a
24 financial institution or fiduciary that refuses to disburse
25 funds or engage in a transaction based on a reasonable belief
26 that financial exploitation of an older adult may have
27 occurred, may have been attempted or is being attempted
28 shall:

29 (i) Make a reasonable effort to notify all persons
30 authorized to transact business on the account or that

1 are beneficiaries of the account affected by the refusal
2 to make the disbursement or engage in the transaction,
3 orally or in writing, except for any person reasonably
4 believed to have engaged in the suspected or attempted
5 financial exploitation of the older adult.

6 (ii) Report the incident to the area agency on aging
7 or law enforcement officials.

8 (5) A notification provided under paragraph (4)(i) is
9 sufficient if the notice states that a financial institution
10 or fiduciary has temporarily blocked the disbursement of
11 funds or delayed the execution of transactions as authorized
12 by section 301.1(d) and identifies the name of the financial
13 institution or fiduciary and any account or transactions to
14 which the notification applies and provides a name and
15 telephone number of a contact person representing the
16 financial institution or fiduciary or the area agency on
17 aging or law enforcement agency to which a report has been
18 provided under paragraph (4)(ii).

19 (6) Any refusal to disburse funds or engage in a
20 transaction as authorized by this section based on the
21 reasonable belief of a financial institution or fiduciary
22 that financial exploitation of an older adult may have
23 occurred, may have been attempted or is being attempted shall
24 expire upon the sooner of:

25 (i) fifteen business days after the date on which
26 the financial institution or fiduciary first refused to
27 disburse the funds or engage in a transaction, unless
28 sooner terminated or extended by an order of a court of
29 competent jurisdiction, or upon a request made by a law
30 enforcement official, the department or an area agency on

1 aging. An additional 25 business days shall be permitted,
2 if requested by a law enforcement official, the
3 department or an area agency on aging or following the
4 submission of an application for a court order further
5 extending the time period; or

6 (ii) except as provided by paragraph (i), the time
7 when the financial institution or fiduciary is satisfied
8 that the disbursement will not result in financial harm
9 to the older adult. A request provided by subparagraph
10 (i) shall be documented in writing.

11 (7) A court of competent jurisdiction may enter an order
12 extending the refusal by the financial institution or
13 fiduciary to disburse funds based on a reasonable belief that
14 financial exploitation of an older adult may have occurred,
15 may have been attempted or is being attempted. A court of
16 competent jurisdiction may also order other protective relief
17 as authorized.

18 (e) Immunity.--Except as provided by subsection (g), a
19 financial institution or fiduciary and its directors, officers,
20 employees or agents shall not be subject to a claim for damages
21 or other civil or criminal liability for:

22 (1) The identification or failure to identify the
23 financial exploitation of an older adult.

24 (2) A decision to make a report or not make a report
25 under subsection (a).

26 (3) A refusal to disburse funds or engage in a
27 transaction under subsection (c) or a decision to allow the
28 disbursement of funds or the conduct of transactions under
29 subsection (c).

30 (4) The release of information to a law enforcement

1 agency, the department or an area agency on aging as
2 authorized by this chapter.

3 (f) Additional immunities and defenses.--Notwithstanding any
4 other law to the contrary:

5 (1) The refusal by a financial institution to engage in
6 a transaction as authorized under this subsection shall not
7 constitute the wrongful dishonor of an item under 13 Pa.C.S.
8 § 4402 (relating to liability of bank to customer for
9 wrongful dishonor; time of determining insufficiency of
10 account).

11 (2) A reasonable belief that payment of a check will
12 facilitate the financial exploitation of an older adult shall
13 constitute reasonable grounds to doubt the collectability of
14 the item for purposes of the Expedited Funds Availability Act
15 (Public Law 100-86, 12 U.S.C. § 4001 et seq.), the Check
16 Clearing for the 21st Century Act (Public Law 108-100, 12
17 U.S.C. § 5001 et seq.) and 12 C.F.R. Pt. 229 (relating to
18 availability of funds and collection of checks (regulation
19 cc)).

20 (g) Limitation.--The immunities and defenses provided under
21 subsections (e) and (f) shall not apply to a director, officer,
22 employee or agent of a financial institution or fiduciary who
23 has been found to have engaged in financial exploitation of an
24 older adult.

25 (h) Standing.--

26 (1) A financial institution, fiduciary or mandatory
27 reporter may initiate a proceeding in a court of competent
28 jurisdiction to:

29 (i) obtain protective services for an older adult in
30 need of protective services;

1 (ii) prohibit the disbursement of funds or
2 transactions that may result in the financial
3 exploitation of an older adult; or

4 (iii) to request the review of an order issued under
5 this act or other law to protect an older adult from
6 suspected financial exploitation.

7 (2) A financial institution, fiduciary or mandatory
8 reporter shall not be subject to a claim for damages or other
9 civil or criminal liability for initiating or participating
10 in proceedings under this subsection or for a decision not to
11 do so.

12 (i) Suspicious activity reports.--

13 (1) The department shall use its best efforts to enter
14 into a cooperative agreement with the United States
15 Department of the Treasury to receive or access suspicious
16 activity reports filed by financial institutions with the
17 United States Department of the Treasury.

18 (2) Except as prohibited by Federal law, any other
19 Commonwealth agency that receives or is granted access to
20 such reports from the United States Department of the
21 Treasury shall make the reports or access to the reports
22 available to the department in order to facilitate the
23 discharge of the department's duties under this act.

24 Section 3. Section 302 of the act is amended to read:

25 Section 302. Reporting[; protection from retaliation;
26 immunity].

27 (a) [Reporting] Voluntary reports.--Any person, including an
28 employee of a financial institution or fiduciary, having
29 reasonable cause to [believe] suspect that an older adult [is in
30 need of protective services] may be a victim of abuse, neglect,

1 exploitation or abandonment may report such information to the
2 area agency on aging. [agency which is the local provider of
3 protective services. Where applicable, reports shall comply with
4 the provisions of Chapter 7.

5 (b) Receiving reports.--The agency shall be capable of
6 receiving reports of older adults in need of protective services
7 24 hours a day, seven days a week (including holidays). This
8 capability may include the use of a local emergency response
9 system or a crisis intervention agency, provided that access can
10 be made to a protective services caseworker in appropriate
11 emergency situations as set forth in regulations promulgated by
12 the department. All reports received orally under this section
13 shall be reduced to writing immediately by the person who
14 receives the report.

15 (c) Retaliatory action; penalty.--Any person making a report
16 or cooperating with the agency, including providing testimony in
17 any administrative or judicial proceeding, and the victim shall
18 be free from any discriminatory, retaliatory or disciplinary
19 action by an employer or by any other person or entity. Any
20 person who violates this subsection is subject to a civil
21 lawsuit by the reporter or the victim wherein the reporter or
22 victim shall recover treble compensatory damages, compensatory
23 and punitive damages or \$5,000, whichever is greater.

24 (c.1) Intimidation; penalty.--Any person, including the
25 victim, with knowledge sufficient to justify making a report or
26 cooperating with the agency, including possibly providing
27 testimony in any administrative or judicial proceeding, shall be
28 free from any intimidation by an employer or by any other person
29 or entity. Any person who violates this subsection is subject to
30 civil lawsuit by the person intimidated or the victim wherein

1 the person intimidated or the victim shall recover treble
2 compensatory damages, compensatory and punitive damages or
3 \$5,000, whichever is greater.

4 (d) Immunity.--Any person participating in the making of a
5 report or who provides testimony in any administrative or
6 judicial proceeding arising out of a report shall be immune from
7 any civil or criminal liability on account of the report or
8 testimony unless the person acted in bad faith or with malicious
9 purpose. This immunity shall not extend to liability for acts of
10 abuse, neglect, exploitation or abandonment, even if such acts
11 are the subject of the report or testimony.]

12 (e) Mandatory reports.--

13 (1) A mandatory reporter, who has reasonable cause to
14 suspect that an older adult may be a victim of abuse,
15 neglect, exploitation or abandonment shall immediately make
16 an oral report to the area agency on aging. If applicable,
17 the AAA shall advise the mandatory reporter of additional
18 reporting requirements that may pertain under paragraph (2).
19 Within 48 hours of making the oral report, the mandatory
20 reporter shall make a written report to the AAA.

21 (2) A mandatory reporter who has reasonable cause to
22 suspect that an older adult may be a victim of suspicious
23 death, serious bodily injury, serious physical injury, sexual
24 abuse or financial exploitation shall, in addition to any
25 duty imposed under paragraph (1), immediately contact law
26 enforcement officials and the department to make an oral
27 report. Within 48 hours of making the oral report, the
28 mandatory reporter shall make a written report to appropriate
29 law enforcement officials and to the area agency on aging.
30 The AAA shall forward the report to the department within 48

1 hours of receipt.

2 (3) A written mandatory report under this subsection
3 shall be in a manner and on forms prescribed by the
4 department. At a minimum, the report shall include the
5 following information, as well as any additional information
6 required by regulation:

7 (i) Name, age, sex and address of the older adult.

8 (ii) Name and address of the older adult's legal
9 representative or next of kin.

10 (iii) Name and address of the facility, if
11 applicable.

12 (iv) Nature and location of the reported incident
13 and any specific comments or observations that are
14 directly related to the alleged incident and the older
15 adult involved.

16 (v) Any relevant information known related to the
17 identity of the alleged perpetrator, including, but not
18 limited to, name, age, sex and relationship to the older
19 adult.

20 (vi) Name of the individual making the report,
21 contact information for the reporter, and information
22 regarding any actions taken by the reporter in response
23 to the incident.

24 (4) The provisions of this section shall be satisfied
25 when the mandatory or voluntary reporter submits a report to
26 the Incident Reporting System. Nothing in this subsection
27 shall be construed to prohibit a reporter who has reasonable
28 cause to suspect that a recipient is a victim of abuse or
29 neglect from also making a report to the area agency on
30 aging.

1 (c) Unsubstantiated reports.--If, after investigation by the
2 agency, the report is unsubstantiated, the case shall be closed
3 and all information identifying the reporter and the alleged
4 abuser shall be immediately deleted from all records. For
5 purposes of substantiating a pattern of abuse, neglect,
6 exploitation or abandonment, the name of the alleged victim and
7 any information describing the alleged act of abuse, neglect,
8 exploitation or abandonment may be maintained for a period of
9 six months under procedures established by the department.

10 (d) Substantiated reports.--If the report is substantiated
11 by the agency, or if the client assessment is necessary in order
12 to determine whether or not the report is substantiated, the
13 agency shall provide for a timely client assessment if the older
14 adult consents to an assessment. Upon completion of the
15 assessment, written findings shall be prepared which shall
16 include recommended action. This service plan shall provide for
17 the least restrictive alternative, encouraging client self-
18 determination and continuity of care. The service plan shall be
19 in writing and shall include a recommended course of action,
20 which may include the pursuit of civil or criminal remedies. If
21 an older adult found to be in need of protective services does
22 not consent to a client assessment or the development of a
23 service plan, the agency may apply to the case the provisions of
24 section 307.

25 Section 304. Provision of services; access to records and
26 persons.

27 (a) Availability of protective services.--The agency shall
28 offer protective services under any of the following conditions:

29 (1) An older adult requests such services.

30 (2) Another interested person requests such services on

1 behalf of an older adult.

2 (3) If, after investigation of a report, the agency
3 determines the older adult is in need of such services.

4 (b) Consent by request.--Except as provided in section 307,
5 an individual shall receive protective services voluntarily. In
6 no event may protective services be provided under this chapter
7 to any person who does not consent to such services or who,
8 having consented, withdraws such consent, unless such services
9 are ordered by a court, requested by a guardian of the older
10 adult or provided under section 307. Nothing in this chapter
11 shall prevent the agency from petitioning for the appointment of
12 a guardian pursuant to Title 20 of the Pennsylvania Consolidated
13 Statutes (relating to decedents, estates and fiduciaries).

14 (c) Interference with services.--If any person interferes
15 with the provision of services or interferes with the right of
16 an older adult to consent to provision of services, the agency
17 may petition the court for an order enjoining such interference.

18 (d) Access to records.--The agency shall have access to all
19 records relevant to:

20 (1) Investigations of reports under section 303.

21 (2) Assessment of client need.

22 (3) Service planning when an older adult's need for
23 protective services has been or is being established.

24 (4) The delivery of services arranged for under the
25 service plan developed by the agency to respond to an older
26 adult's assessed need for specific services.

27 (e) Access to persons.--The agency shall have access to
28 older persons who have been reported to be in need of protective
29 services in order to:

30 (1) Investigate reports under section 303 and Chapter 7.

1 (2) Assess client need and develop a service plan for
2 addressing needs determined.

3 (3) Provide for the delivery of services by the agency
4 or other service provider arranged for under the service plan
5 developed by the agency.

6 (f) Denial of access to persons.--If the agency is denied
7 access to an older adult reported to be in need of protective
8 services and access is necessary to complete the investigation
9 or the client assessment and service plan, or the delivery of
10 needed services in order to prevent further abuse, neglect,
11 exploitation or abandonment of the older adult reported to be in
12 need of protective services, the agency may petition the court
13 for an order to require the appropriate access when either of
14 the following conditions apply:

15 (1) The caretaker or a third party has interfered with
16 the completion of the investigation or the client assessment
17 and service plan or the delivery of services.

18 (2) The agency can demonstrate that the older adult
19 reported to be in need of protective services is denying
20 access because of coercion, extortion or justifiable fear of
21 future abuse, neglect, or exploitation or abandonment.

22 (g) Access by consent.--The agency's access to confidential
23 records held by other agencies or individuals and the agency's
24 access to an older adult reported to be in need of protective
25 services shall require the consent of the older adult or a
26 court-appointed guardian except as provided for under this
27 section or section 307.

28 (h) Denial of access to records.--If the agency is denied
29 access to records necessary for the completion of a proper
30 investigation of a report or a client assessment and service

1 plan, or the delivery of needed services in order to prevent
2 further abuse, neglect, exploitation or abandonment of the older
3 adult reported to be in need of protective services, the agency
4 may petition the court of common pleas for an order requiring
5 the appropriate access when either of the following conditions
6 apply:

7 (1) The older adult has provided written consent for any
8 confidential records to be disclosed and the keeper of the
9 records denies access.

10 (2) The agency can demonstrate that the older adult is
11 denying access to records because of incompetence, coercion,
12 extortion or justifiable fear of future abuse, neglect,
13 exploitation or abandonment.]

14 Section 5. The act is amended by adding sections to read:
15 Section 304.1. Receipt and investigation of reports.

16 (a) Receipt.--The area agency on aging shall be capable of
17 receiving reports of older adults in need of protective services
18 24 hours per day, seven days per week. This capability may
19 include the use of a local emergency response system or a crisis
20 intervention agency provided that access can be made to a
21 protective services caseworker in appropriate emergency
22 situations, as set forth in regulations issued by the
23 department. All reports received orally shall be documented
24 immediately in a manner set forth by the department.

25 (b) Investigation.--

26 (1) The area agency on aging shall investigate each
27 report in accordance with regulations issued by the
28 department. The investigation shall be initiated within 72
29 hours after the receipt of the report and carried out under
30 regulations issued by the department. The regulations shall

1 provide for the methods of conducting investigations and
2 shall assure that steps are taken to avoid any conflict of
3 interest.

4 (2) Consent of the older adult is not required in order
5 to begin investigating reports of abuse, neglect,
6 exploitation or abandonment.

7 (c) Access to older adults.--

8 (1) The area agency on aging shall have direct access to
9 older adults who have been reported to be in need of
10 protective services in order to:

11 (i) Investigate reports.

12 (ii) Assess needs of the older adult and develop a
13 service plan for addressing those needs.

14 (iii) Provide for the delivery of services by the
15 AAA or other service provider arranged for under the
16 service plan.

17 (2) If the AAA is denied access to an older adult
18 reported to be in need of protective services, the AAA may
19 petition the court for an order to require any of the
20 following:

21 (i) Access to the older adult.

22 (ii) A medical evaluation of the older adult.

23 (iii) A psychiatric evaluation of the older adult.

24 (3) For purposes of paragraph (2), denial of access may
25 include:

26 (i) interference by a caretaker or third party with
27 the completion of the investigation or the assessment and
28 service plan or the delivery of services; or

29 (ii) refusal of the older person to permit or
30 cooperate with the AAA investigation as a result of

1 coercion, extortion or justifiable fear of future abuse,
2 neglect, exploitation, abandonment or death.

3 (d) Access to records.--

4 (1) The area agency on aging shall have access to all
5 records for the purposes of investigating reports.

6 (2) The AAA shall, subject to the consent of the older
7 adult, have access to all records for the purposes of:

8 (i) Assessing an older adult's need for services.

9 (ii) Planning and delivery of services.

10 (3) Records of State agencies, private organizations,
11 financial institutions, fiduciaries, medical institutions and
12 practitioners and persons reasonably suspected of engaging in
13 or facilitating the abuse, neglect, exploitation or
14 abandonment of an older adult, which the AAA reasonably
15 believes to be necessary to complete an investigation or
16 assessment and service plan, shall be requested in written
17 form and be made available to the AAA unless the disclosure
18 would be prohibited by any other provision of Federal or
19 State law. Except as provided by a court order, access to
20 records of financial institutions shall be limited to records
21 relating to the most recent transaction or transactions that
22 may comprise financial exploitation and that occurred not
23 more than 60 calendar days prior to the first transaction
24 that was reported or 60 calendar days after the last
25 transaction that was reported.

26 (4) If the AAA can demonstrate that the older adult has
27 denied access to the older adult's records because of
28 incapacity, coercion, extortion or justifiable fear, the AAA
29 shall have the power to access all records. If the older
30 adult denying access to records is competent, the AAA may

1 petition the court for an order to require access.

2 (5) If any other entity or individual denies access to
3 the older adult's records, the AAA may petition the court for
4 an order to require access.

5 (6) The area agency on aging or the department shall
6 compensate any person requested or ordered to provide records
7 to the AAA for the reasonable costs of producing records in a
8 manner consistent with the requirements of section 1115(a) of
9 the Right to Financial Privacy Act of 1978 (Public Law 96-
10 630, 12 U.S.C. § 3415).

11 (e) Investigations involving facilities.--

12 (1) If the report concerns a facility, the area agency
13 on aging shall notify the local ombudsman and the licensing
14 agency. Any investigations concerning facilities shall be
15 conducted under procedures developed by the department in
16 consultation with the State agency with oversight authority
17 for such facility.

18 (2) The department and any other State agency shall
19 share information with one another and with mandatory
20 reporters, fiduciaries and financial institutions necessary
21 to ensure the health, safety and welfare of the older adult
22 and to assist financial institutions and fiduciaries in
23 exercising their authority to prohibit disbursement of funds
24 and transactions as provided by section 301.1(c).

25 (3) Facilities shall take reasonable steps to protect
26 the older adults following receipt of a report of suspected
27 abuse, neglect, abandonment or exploitation involving a
28 facility employee, including a plan of supervision or
29 suspension.

30 (f) Investigations involving law enforcement.--

1 (1) Law enforcement officials, the area agency on aging
2 and mandatory reporters shall coordinate their respective
3 investigations and shall advise each other and provide any
4 applicable additional information on an ongoing basis.

5 (2) Upon receiving a report that falls into any of the
6 following categories, the AAA shall immediately notify law
7 enforcement:

8 (i) Suspicious death.

9 (ii) Serious bodily injury.

10 (iii) Serious physical injury.

11 (iv) Sexual abuse.

12 (3) Following a referral to law enforcement:

13 (i) The AAA shall contact law enforcement to obtain
14 information about any actions taken and the outcomes,
15 including any decisions regarding criminal charges.

16 (ii) Law enforcement shall provide this information
17 to the extent that it is available.

18 (iii) To the extent a law enforcement agency
19 exercises discretion not to pursue or to defer a criminal
20 investigation or prosecution, the area agency on aging
21 may initiate civil proceedings to obtain a protective
22 order, seek injunctive relief or seek compensation or
23 restitution for damages from a person that abuses,
24 neglects, abandons or exploits an older adult.

25 (iv) The AAA shall report this information to the
26 department in a manner prescribed by the department.

27 (g) Unsubstantiated reports.--If, after investigation by the
28 area agency on aging, the report is unsubstantiated, the case
29 shall be closed. For purposes of substantiating a pattern of
30 abuse, neglect, exploitation or abandonment, case records shall

1 be maintained for three years.

2 (h) Substantiated reports.--

3 (1) If, after investigation by the area agency on aging,
4 the report is substantiated, the AAA, in conjunction with the
5 older adult, the older adult's caregiver, including the
6 healthcare provider or representative from the facility,
7 shall develop a service plan.

8 (2) The service plan shall encourage self-determination
9 and continuity of care in the least restrictive setting.

10 (3) For purposes of substantiating a pattern of abuse,
11 neglect, exploitation or abandonment, case records shall be
12 maintained for three years.

13 (4) The AAA may pursue civil or criminal remedies.

14 (5) An older adult shall not be found to be abused or
15 neglected solely on the grounds of environmental factors that
16 are beyond the control of the older adult or the caretaker,
17 such as inadequate housing, furnishings, income, clothing or
18 medical care.

19 Section 304.2. Provision of protective services.

20 (a) Availability of protective services.--The area agency on
21 aging shall offer protective services under any of the following
22 conditions:

23 (1) An older adult requests protective services.

24 (2) Another interested person requests protective
25 services on behalf of an older adult.

26 (3) After investigation of a report, the AAA determines
27 the older adult is in need of protective services.

28 (b) Consent by request.--An older adult shall receive
29 protective services voluntarily, unless protective services are
30 ordered by a court of competent jurisdiction or requested by the

1 older adult's legal representative.

2 (c) Interference with protective services.--If any person
3 interferes with the provision of protective services or
4 interferes with the right of an older adult to consent to
5 provision of protective services, the area agency on aging may
6 petition the court for an order enjoining such interference.

7 (d) Financial obligations; liabilities and payments.--All
8 older adults receiving services and all agencies providing
9 protective services under this act shall comply with the
10 following provisions regarding liability for the payment of
11 services:

12 (1) Funding to provide or make available protective
13 services under this act shall not be used in place of any
14 public or private entitlements or benefits for which the
15 older adult receiving protective services under this act is
16 or may be eligible.

17 (2) Funding available to local protective services
18 agencies under this act may be used to cover the costs of
19 activities, including, but not limited to:

20 (i) Administering protective services plans.

21 (ii) Receiving and maintaining records of reports of
22 abuse, neglect, exploitation and abandonment.

23 (iii) Conducting investigations of reported abuse,
24 neglect, exploitation and abandonment.

25 (iv) Carrying out assessments and developing service
26 plans.

27 (v) Petitioning the court.

28 (vi) Providing for emergency involuntary
29 intervention.

30 (vii) Arranging for available services needed to

1 carry out service plans, which may include, as
2 appropriate, arranging for services for other persons in
3 the household unit in order to reduce, correct or
4 eliminate abuse, neglect, exploitation or abandonment of
5 an older adult.

6 (viii) Purchasing, on a temporary basis, protective
7 services determined by a service plan to be necessary to
8 reduce, correct or eliminate abuse, neglect, exploitation
9 or abandonment of an older adult when such protective
10 services are not available within the existing resources
11 of the AAA or other appropriate provider. Purchase of
12 protective services under this subparagraph shall be
13 limited to a 30-day period, which period may be renewed
14 with adequate justification under regulations issued by
15 the department.

16 (3) Older adults receiving protective services shall not
17 be required to pay a fee for any protective services received
18 by other older adults when the receipt of such protective
19 services by others is not subject to cost sharing.

20 Section 6. Sections 305 and 306 of the act are repealed:

21 [Section 305. Immunity from civil and criminal liability.

22 In the absence of willful misconduct or gross negligence, the
23 agency, the director, employees of the agency, protective
24 services workers or employees of the department shall not be
25 civilly or criminally liable for any decision or action or
26 resulting consequence of decisions or action when acting under
27 and according to the provisions of this chapter.

28 Section 306. Confidentiality of records.

29 (a) General rule.--Information contained in reports, records
30 of investigation, client assessment and service plans shall be

1 considered confidential and shall be maintained under
2 regulations promulgated by the department to safeguard
3 confidentiality. Except as provided below, this information
4 shall not be disclosed to anyone outside the agency other than
5 to a court of competent jurisdiction or pursuant to a court
6 order.

7 (b) Limited access to the agency's protective services
8 records.--

9 (1) In the event that an investigation by the agency
10 results in a report of criminal conduct, law enforcement
11 officials shall have access to all relevant records
12 maintained by the agency or the department.

13 (2) In arranging specific services to carry out service
14 plans, the agency may disclose to appropriate service
15 providers such information as may be necessary to initiate
16 the delivery of services.

17 (3) A subject of a report made under section 302 may
18 receive, upon written request, all information contained in
19 the report except that prohibited from being disclosed by
20 paragraph (4).

21 (4) The release of information that would identify the
22 person who made a report of suspected abuse, neglect,
23 exploitation or abandonment or person who cooperated in a
24 subsequent investigation, is hereby prohibited unless the
25 secretary can determine that such a release will not be
26 detrimental to the safety of such person.

27 (5) When the department is involved in the hearing of an
28 appeal by a subject of a report made under section 302, the
29 appropriate department staff shall have access to all
30 information in the report record relevant to the appeal.

1 (6) For the purposes of monitoring agency performance,
2 appropriate staff of the department may access agency
3 protective services records.]

4 Section 7. Section 307 of the act is amended to read:

5 Section 307. Involuntary intervention by emergency court order.

6 (a) Emergency petition.--[Where there was clear and
7 convincing evidence that if protective services are not
8 provided, the person to be protected is at imminent risk of
9 death or serious physical harm, the agency may petition the
10 court for an emergency order to provide the necessary services.
11 The courts of common pleas of each judicial district shall
12 ensure that a judge or district justice is available on a 24-
13 hour-a-day, 365-day-a-year basis to accept and decide on
14 petitions for an emergency court order under this section
15 whenever the agency determines that a delay until normal court
16 hours would significantly increase the danger the older adult
17 faces.]

18 (1) An area agency on aging may petition a court of
19 common pleas for an emergency order to provide protective
20 services to an older adult who is at imminent risk of death,
21 sexual abuse, serious bodily injury, serious physical injury
22 or financial exploitation.

23 (2) The court of common pleas shall grant the AAA's
24 petition if it finds, by a preponderance of the evidence,
25 that failure to provide protective services will place the
26 older adult at imminent risk of death, sexual abuse, serious
27 bodily injury, serious physical injury or financial
28 exploitation.

29 (3) The courts of common pleas of each judicial district
30 shall ensure that a judge or magisterial district judge is

1 available on a 24-hour-a-day, 365-days-a-year basis to accept
2 and rule on petitions for emergency court orders under this
3 section whenever the AAA determines that a delay until normal
4 court hours may significantly increase danger to the older
5 adult.

6 (b) Limited order.--The court, after finding clear and
7 convincing evidence of the need for an emergency order, shall
8 order only such protective services as are necessary to remove
9 the conditions creating the established need.

10 (c) Right to counsel.--In order to protect the rights of an
11 older adult for whom protective services are being ordered, an
12 emergency court order under this section shall provide that the
13 older adult has the right to legal counsel. If the older adult
14 is unable to provide for counsel, such counsel shall be
15 appointed by the court.

16 (d) Forcible entry.--Where it is necessary to forcibly enter
17 premises after obtaining a court order, a [peace officer] law
18 enforcement official may do so, accompanied by a representative
19 of the [agency] area agency on aging.

20 (e) Health and safety requirements.--The [agency] area
21 agency on aging shall take reasonable steps to [assure] ensure
22 that while the [person is receiving] older adult receives
23 protective services under an emergency court order, the health
24 and safety needs of any of the [person's] older adult's
25 dependents are met and that personal property and the dwelling
26 the [person] older adult occupies are secure.

27 [(f) Exclusion of remedy.--Nothing in this chapter shall be
28 interpreted to deny any older adult access to the emergency
29 medical services or police protection that would be provided to
30 anyone, regardless of age, in similar circumstances.]

1 Section 8. Sections 308, 309, 310 and 311 of the act are
2 repealed:

3 [Section 308. Individual rights.

4 (a) Rights of protective services clients.--The agency shall
5 observe the following minimum requirements to safeguard the
6 rights of an older adult who is reported to be in need of
7 protective services:

8 (1) The agency shall discreetly notify the older person
9 during the investigation that a report has been made and
10 shall provide the person with a brief summary of the nature
11 of the report.

12 (2) As provided under section 306(b)(3), the older adult
13 may request, and the agency shall provide, additional
14 information contained in the report.

15 (3) Any denial of services by the department or an
16 authorized agency under this chapter may be appealed
17 according to the provisions of the rules and regulations
18 issued by the department under Article XXII-A of the act of
19 April 9, 1929 (P.L.177, No.175), known as The Administrative
20 Code of 1929.

21 (4) Nothing in this act shall limit the right of any
22 older person to file a petition pursuant to the act of
23 October 7, 1976 (P.L.1090, No.218), known as the Protection
24 From Abuse Act.

25 (b) Rights of alleged abusers.--An individual who is alleged
26 in a protective services report to be a perpetrator of the
27 abuse, neglect, exploitation or abandonment of an older adult
28 shall be entitled to the following if the report is
29 substantiated by the agency:

30 (1) Such an individual shall be notified by the agency

1 at the conclusion of the investigation of the report that
2 allegations have been made and shall be given a brief summary
3 of the allegations.

4 (2) As provided under section 306(b)(3), the alleged
5 perpetrator may request, and the agency shall provide,
6 additional information contained in the report.

7 (3) An alleged perpetrator is entitled to file an appeal
8 with the department under 1 Pa. Code Part II (relating to
9 general rules of administrative practice and procedure) to
10 challenge the agency's finding resulting from the
11 investigation of a report made under section 303.

12 Section 309. Financial obligations; liabilities and payments.

13 All individuals receiving services and all agencies providing
14 services under this chapter shall comply with the following
15 provisions regarding liability for the payment of services:

16 (1) Funding to provide or make available protective
17 services under this chapter shall not supplant any public and
18 private entitlements or resources for which persons receiving
19 protective services under this chapter are or may be
20 eligible, and shall not be available until such persons have
21 exhausted their eligibility and receipt of benefits under
22 said public and private entitlements or resources.

23 (2) Funding available to local protective services
24 agencies under this chapter may be used to cover the costs of
25 activities including, but not limited to, the following:

26 (i) Administering protective services plans required
27 under section 301(c).

28 (ii) Receiving and maintaining records of reports of
29 abuse under section 302.

30 (iii) Conducting investigations of reported abuse

1 under section 303.

2 (iv) Carrying out client assessments and developing
3 service plans under section 303.

4 (v) Petitioning the court under sections 304 and
5 307.

6 (vi) Providing emergency involuntary intervention
7 under section 307.

8 (vii) Arranging for available services needed to
9 carry out service plans, which may include, as
10 appropriate, arranging for services for other household
11 members in order to reduce, correct or eliminate abuse,
12 neglect, exploitation or abandonment of an older adult.

13 (viii) Purchasing, on a temporary basis, services
14 determined by a service plan to be necessary to reduce,
15 correct or eliminate abuse, neglect, exploitation or
16 abandonment of an older adult when such services are not
17 available within the existing resources of the agency or
18 other appropriate provider. Purchase of services under
19 this provision is limited to a 30-day period which may be
20 renewed with adequate justification under regulations
21 promulgated by the department.

22 (3) The obligation of the Commonwealth and the counties
23 to provide funds to the department or any agency for services
24 provided pursuant to this chapter shall be entirely
25 discharged by the appropriations made to the department or an
26 agency. Provided that the agency has met its responsibility
27 under the law, no action at law or equity shall be instituted
28 in any court to require the department, any agency, county or
29 the Commonwealth to provide benefits or services under this
30 chapter for which appropriations from the Commonwealth or

1 counties are not available.

2 (4) Protective services clients receiving the same
3 services provided to others under an agency service plan
4 shall not be required to pay a fee for any services not
5 subject to cost sharing for other older adults.

6 Section 310. Regulations; enforcement.

7 (a) Promulgation of regulations.--The department shall
8 promulgate the rules and regulations to carry out this chapter
9 and shall be responsible for presenting to the General Assembly
10 annually a report on the program and services performed.

11 (b) Enforcement.--This chapter shall be enforced only after
12 promulgation of regulations by the department, which shall occur
13 no later than 12 months following passage of this chapter,
14 except that section 301 shall apply when the area agency on
15 aging certifies to the department that it is prepared to fulfill
16 its responsibilities. The certification shall be made within 90
17 days following promulgation of regulations.

18 Section 311. Funds for payment of administration of chapter.

19 Funds necessary to administer this chapter shall be provided
20 by annual appropriation by the General Assembly.]

21 Section 9. The act is amended by adding sections to read:

22 Section 312. Confidentiality of records.

23 (a) General rule.--Information contained in reports, records
24 of investigation, assessments and service plans created under
25 this act shall be considered privileged and confidential and
26 shall be maintained under regulations issued by the department.
27 Except as provided below, this information shall only be
28 disclosed by area agency on aging staff for the purpose of
29 development and implementation of protective services. Neither
30 the department nor the AAA may release information that could be

1 detrimental to an older adult, except that such information
2 shall be released to law enforcement under subsection (b)(2).
3 All information contained in protective services records is
4 subject to other Federal and State confidentiality and security
5 laws.

6 (b) Access.--

7 (1) Any person in possession of protective services
8 records may only provide access to the records, or
9 information contained in the records, to:

10 (i) A court of competent jurisdiction or another
11 party pursuant to a court order for purposes of
12 implementation of this act or other law enforcement or
13 official governmental purposes, but not for use by
14 nongovernmental persons in civil litigation. A subpoena
15 shall not be deemed a court order for purposes of this
16 section.

17 (ii) Law enforcement officials or the coroner, if
18 the information is relevant to their investigation of
19 abuse, neglect, exploitation or abandonment or death of
20 the older adult.

21 (iii) A practitioner of the healing arts who is
22 examining or treating the older adult and who suspects
23 that the older adult is in need of protection under this
24 act.

25 (iv) The director or an individual specifically
26 designated in writing by the director of any hospital or
27 other medical institution where the older adult is being
28 treated, if the director or designee suspects that the
29 recipient is in need of protection under this act.

30 (v) A financial institution or fiduciary as

1 necessary to exercise the authority to prohibit
2 disbursement of funds and transactions provided by
3 section 301.1(c).

4 (2) In arranging specific services to carry out service
5 plans, the area agency on aging may disclose to appropriate
6 service providers such information as may be necessary to
7 initiate delivery of services.

8 (3) The older adult who is the subject of a report or
9 his guardian may receive, upon written request, all
10 information contained in the report, except information that
11 would identify the person who made a report of suspected
12 abuse, neglect, exploitation or abandonment or persons who
13 cooperated in a subsequent investigation.

14 (4) A person who makes a report of suspected abuse,
15 neglect, exploitation or abandonment may receive, upon
16 written request, confirmation that the report was received
17 and the AAA is acting in accordance with this act.

18 (5) For the purposes of monitoring agency performance or
19 conducting other official duties, appropriate staff of the
20 department, as designated by the secretary, may access AAA
21 protective services records.

22 (6) The department or the AAA may collaborate or share a
23 summary of protective services information with State
24 agencies for purposes of official Commonwealth business.

25 (7) The department or the AAA may share a summary of
26 protective services information with another AAA that is
27 performing duties under this act that are relevant to older
28 adults within their jurisdictions.

29 (8) An employee of an agency of another state who
30 performs older adult protective services similar to those

1 under this act may access protective services records
2 relevant to older adults within their jurisdiction.

3 (c) Protecting identify of reporter and cooperating
4 witnesses.--

5 (1) Except for disclosures to law enforcement officials,
6 the release of records that would identify the individual who
7 made a report under this act or an individual who cooperated
8 in a subsequent investigation is prohibited.

9 (2) Where records are provided pursuant to court order,
10 the identity of the reporter and cooperating witnesses shall
11 be redacted, unless otherwise ordered by the court after an
12 in camera review.

13 Section 313. Rights of older adults.

14 (a) General rule.--An area agency on aging shall discreetly
15 notify the older adult during the investigation that a report
16 has been made and shall provide the older adult a brief summary
17 of the nature of the report.

18 (b) Release of information.--As provided in section
19 312(b) (3), an older adult who is the subject of a report, or the
20 older adult's guardian, if the guardian is not named as the
21 alleged perpetrator in the report, may receive, upon written
22 request, a summary of information contained in the report of
23 need except information that would identify the person who made
24 a report of suspected abuse, neglect, exploitation or
25 abandonment or persons who cooperated in a subsequent
26 investigation.

27 (c) Appeal.--Any denial of protective services by the
28 department or an authorized area agency on aging under this act
29 may be appealed according to the provisions of the rules and
30 regulations issued by the department under Article XXII-A of the

1 act of April 9, 1929 (P.L.177, No.175), known as The
2 Administrative Code of 1929.
3 Section 314. Electronic records.

4 Any requirements of this act that information be prepared,
5 filed, submitted, requested, maintained or signed in writing may
6 be satisfied by the use of an electronic record or signature to
7 the extent otherwise permitted by law, unless the department, an
8 AAA or a law enforcement agency requires the use of a written
9 record or signature.

10 Section 10. Sections 501, 502 and 503 of the act are
11 repealed:

12 [Section 501. Definitions.

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

16 "Applicant." An individual who submits an application, which
17 is being considered for employment, to a facility.

18 "State Police." The Pennsylvania State Police.

19 Section 502. Information relating to prospective facility
20 personnel.

21 (a) General rule.--A facility shall require all applicants
22 to submit with their applications, and shall require all
23 administrators and any operators who have or may have direct
24 contact with a recipient to submit, the following information
25 obtained within the preceding one-year period:

26 (1) Pursuant to 18 Pa.C.S. Ch. 91 (relating to criminal
27 history record information), a report of criminal history
28 record information from the State Police or a statement from
29 the State Police that their central repository contains no
30 such information relating to that person. The criminal

1 history record information shall be limited to that which is
2 disseminated pursuant to 18 Pa.C.S. § 9121(b)(2) (relating to
3 general regulations).

4 (2) Where the applicant is not and for the two years
5 immediately preceding the date of application has not been a
6 resident of this Commonwealth, administration shall require
7 the applicant to submit with the application for employment a
8 report of Federal criminal history record information
9 pursuant to the Federal Bureau of Investigation's
10 appropriation under the Departments of State, Justice, and
11 Commerce, the Judiciary, and Related Agencies Appropriation
12 Act, 1973 (Public Law 92-544, 86 Stat. 1109). The department
13 shall be the intermediary for the purposes of this paragraph.
14 For the purposes of this paragraph, the applicant shall
15 submit a full set of fingerprints in a manner prescribed by
16 the department. The Commonwealth shall submit the
17 fingerprints to the Federal Bureau of Investigation for a
18 national criminal history record check. The information
19 obtained from the criminal record check shall be used by the
20 department to determine the applicant's eligibility. The
21 determination shall be submitted to the administrator by the
22 applicant prior to commencing employment. The administrator
23 shall insure confidentiality of the information. The
24 provisions of 18 Pa.C.S. § 9121(b)(2) shall not apply if the
25 request for a report of Federal criminal history record
26 information is made pursuant to this section.

27 (b) (Reserved).

28 Section 503. Grounds for denying employment.

29 (a) General rule.--In no case shall a facility hire an
30 applicant or retain an employee required to submit information

1 pursuant to section 502(a) if the applicant's or employee's
2 criminal history record information indicates the applicant or
3 employee has been convicted of any of the following offenses:

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

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

9 Chapter 25 (relating to criminal homicide).

10 Section 2702 (relating to aggravated assault).

11 Section 2901 (relating to kidnapping).

12 Section 2902 (relating to unlawful restraint).

13 Section 3121 (relating to rape).

14 Section 3122.1 (relating to statutory sexual
15 assault).

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

18 Section 3124.1 (relating to sexual assault).

19 Section 3125 (relating to aggravated indecent
20 assault).

21 Section 3126 (relating to indecent assault).

22 Section 3127 (relating to indecent exposure).

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

25 Section 3502 (relating to burglary).

26 Section 3701 (relating to robbery).

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

30 Section 4101 (relating to forgery).

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

3 Section 4302 (relating to incest).

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

5 Section 4304 (relating to endangering welfare of
6 children).

7 Section 4305 (relating to dealing in infant
8 children).

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

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

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

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

17 Section 6301 (relating to corruption of minors).

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

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

21 (c) Immunity.--An administrator or a facility shall not be
22 held civilly liable for any action directly related to good
23 faith compliance with this section.]

24 Section 11. The act is amended by adding a section to read:
25 Section 503.1. Criminal history.

26 (a) General rule.--Prior to hiring or engaging an applicant,
27 a facility shall require the applicant to submit to the facility
28 the following information obtained within the preceding one-year
29 period:

30 (1) Pursuant to 18 Pa.C.S. Ch. 91 (relating to criminal

1 history record information), a report of criminal history
2 record information from the Pennsylvania State Police or a
3 statement from the Pennsylvania State Police that their
4 central repository contains no such information relating to
5 the applicant. The provisions of 18 Pa.C.S. § 9121(b)(2)
6 (relating to general regulations) shall not apply to criminal
7 history information or other criminal history record
8 information requested or received under this section.

9 (2) Federal criminal history record information pursuant
10 to the Federal Bureau of Investigation's appropriation under
11 the Departments of State, Justice, and Commerce, the
12 Judiciary, and Related Agencies Appropriation Act, 1973
13 (Public Law 92-544, 86 Stat. 1109), subject to the following:

14 (i) The department shall be the intermediary for the
15 purposes of this paragraph. The applicant shall submit a
16 full set of fingerprints to the Federal Bureau of
17 Investigation in a manner designated by the department.
18 The provisions of 18 Pa.C.S. § 9121(b)(2) shall not apply
19 to criminal history information or other criminal history
20 record information requested or received under this
21 section.

22 (ii) Criminal history information shall be used by
23 the department to determine the applicant's eligibility
24 for employment with a facility. The employment
25 determination shall be provided to the facility and the
26 applicant prior to commencement of employment. The
27 facility shall ensure confidentiality of the information.

28 (3) The department may require the applicant to submit
29 additional information from a court or other authority within
30 the time frame designated by the department. Failure to

1 provide the requested information within the time frame
2 designated by the department may result in employment
3 ineligibility.

4 (b) Prohibited offenses.--The following offenses and Federal
5 or out-of-State offenses similar in nature shall be prohibited,
6 as follows:

7 (1) Lifetime ban. A facility may not hire or engage an
8 applicant required to submit criminal history information
9 under this act if the applicant's criminal history record
10 information indicates that the applicant has been convicted
11 of an offense or attempt, solicitation or conspiracy to
12 commit an offense under one of the following provisions of 18
13 Pa.C.S. (relating to crimes and offenses):

14 Chapter 25 (relating to criminal homicide).

15 Section 2718 (relating to strangulation).

16 Section 3011 (relating to trafficking in
17 individuals).

18 Section 3121 (relating to rape).

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

21 Section 3124.2 (relating to institutional sexual
22 assault).

23 (2) Twenty-five year ban. A facility may not hire or
24 engage an applicant required to submit criminal history
25 information under this act for a period of 25 years from the
26 date of conviction if the applicant's criminal history record
27 information indicates the applicant has been convicted of an
28 offense or attempt, solicitation or conspiracy to commit an
29 offense under one of the following provisions of 18 Pa.C.S.:

30 Chapter 26 (relating to crimes against unborn child).

1 Section 2702 (relating to aggravated assault).
2 Section 2713 (relating to neglect of care-dependent
3 person).
4 Section 2715 (relating to threat to use weapons of
5 mass destruction).
6 Section 2716 (relating to weapons of mass
7 destruction).
8 Section 2717 (relating to terrorism).
9 Section 2901 (relating to kidnapping).
10 Section 2903 (relating to false imprisonment).
11 Section 3122.1 (relating to statutory sexual
12 assault).
13 Section 3124.1 (relating to sexual assault).
14 Section 3125 (relating to aggravated indecent
15 assault).
16 Section 3126 (relating to indecent assault).
17 Section 3129 (relating to sexual intercourse with an
18 animal).
19 Section 3212 (relating to infanticide).
20 Section 4302 (relating to incest).
21 Section 4303 (relating to concealing death of child).
22 Section 4304 (relating to endangering welfare of
23 children).
24 Section 4305 (relating to dealing in infant
25 children).
26 Section 5510 (relating to abuse of corpse).
27 Section 5903 (a) (1), (a) (3) (ii), (a) (5) (ii), (a) (6),
28 (c) or (d) (relating to obscene and other sexual
29 materials and performances).
30 Section 6310 (relating to the sexual exploitation of

1 children).

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

3 Section 6318 (relating to unlawful contact with a
4 minor).

5 Section 6319 (relating to solicitation of minors to
6 traffic drugs).

7 (3) Ten-year ban. A facility may not hire or engage an
8 applicant required to submit criminal history information
9 under this act for a period of ten years from the date of
10 conviction, if the applicant's criminal history record
11 information indicates that the applicant has been convicted
12 of:

13 (i) Any of the following provisions of 18 Pa.C.S.:

14 Section 2705 (relating to recklessly endangering
15 another person) two or more misdemeanors.

16 Section 2710 (relating to ethnic intimidation).

17 Section 2902 (relating to unlawful restraint).

18 A felony offense under section 2904 (relating to
19 interference with custody of children).

20 Section 2909 (relating to concealment of whereabouts
21 of a child).

22 Section 3127 (relating to indecent exposure).

23 Section 3131 (relating to unlawful dissemination of
24 intimate image).

25 Section 3301 (relating to arson and related
26 offenses).

27 Section 3502 (relating to burglary).

28 Section 3701 (relating to robbery).

29 A felony offense under Chapter 39 (relating to theft
30 and related offenses).

1 Two or more misdemeanors under Chapter 39.

2 Section 4101 (relating to forgery).

3 Section 4103 (relating to fraudulent destruction,
4 removal or concealment of recordable instruments).

5 Section 4106 (relating to access device fraud).

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

8 Section 4115 (relating to falsely impersonating
9 persons privately employed).

10 Section 4120 (relating to identity theft).

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

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

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

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

19 Section 6301 (relating to corruption of minors).

20 (4) 5-year ban. A facility may not hire or engage an
21 applicant required to submit criminal history information
22 under this act for a period of five years from the date of
23 conviction, if the applicant's criminal history record
24 information indicates that the applicant has been convicted
25 of:

26 (i) Any of the following provisions of 75 Pa.C.S.
27 (relating to vehicles):

28 Section 3735 (relating to homicide by vehicle while
29 driving under influence).

30 Section 3735.1 (relating to aggravated assault by

1 vehicle while driving under the influence).

2 Section 3742 (relating to accidents involving death
3 or personal injury).

4 Section 3802 (relating to driving under influence of
5 alcohol or controlled substance) graded as a misdemeanor
6 of the second degree or higher.

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

10 (iii) A misdemeanor of the first degree or a felony
11 under 18 Pa.C.S. §4105 (relating to bad checks).

12 (c) Waiver request.--Unless prohibited by Federal law, the
13 department may grant a waiver of the prohibitions under
14 subsection (b) when the individual submits a written waiver
15 request. The waiver request shall be submitted on a form
16 provided by the department and shall contain the following:

17 (1) The length of time since the individual's
18 conviction.

19 (2) The circumstances of the individual's conviction.

20 (3) If the individual was incarcerated, a copy of the
21 order from the Federal, State or local jurisdiction that
22 released the individual from incarceration, including the
23 date of release.

24 (4) Evidence of the individual's rehabilitation.

25 (5) Evidence of prior or present relevant work
26 experience.

27 (6) Evidence of competency and proficiency of the
28 individual in relevant work.

29 (d) Waiver approval.--

30 (1) The department shall review and issue a decision on

1 approval or denial of the waiver request within 30 days.

2 (2) If the waiver request is denied, the response letter
3 from the department shall include information regarding the
4 appeal process.

5 (e) Applicability.--A waiver request granted under
6 subsection (e) applies only to the crimes listed on the waiver
7 application and shall be in effect for the shorter of the
8 following time periods:

9 (1) three years after the date of issuance of the waiver
10 by the department; or

11 (2) the expiration of the applicable employment ban.

12 (f) Exception.--If the individual is granted a waiver and
13 remains continuously employed by the same employer after the
14 expiration of the time period in subsection (d), the waiver
15 shall continue to apply for the duration of the individual's
16 employment with that employer.

17 (g) Limitations.--

18 (1) The grant of a waiver request by the department does
19 not guarantee employment to the individual.

20 (2) If new criminal charges are filed against an
21 individual who has obtained a waiver from the department, the
22 individual must report the new criminal charges to both the
23 employer and the department within seven days of the charges
24 being filed.

25 (h) Appeal rights.--If the department denies an individual's
26 request for a waiver, the individual shall have 20 days to
27 submit a written appeal to the Secretary of Aging.

28 (1) Upon receipt of such notice of appeal, the Secretary
29 of Aging shall have 30 days to complete a review of the
30 relevant facts and circumstances and issue a final decision.

1 (2) All final decisions by the Secretary of Aging shall
2 be reviewable in accordance with the laws.

3 (i) Duties and responsibilities of the department.--

4 (1) Within 60 days from the effective date of this
5 section, the department shall develop a waiver form to be
6 used by individuals seeking a waiver from the restrictions
7 listed in subsection (b).

8 (2) Within 90 days from the effective date of this
9 section, the department shall develop a procedure for the
10 hearing of appeals resulting from department denials of
11 waiver request applications.

12 (j) Date of release or discharge.--To determine an
13 individual's release, discharge or termination of supervision,
14 the individual shall provide to the department, upon request,
15 documentation relating to the individual's release or discharge
16 from a State or county correctional institution or from
17 termination of supervised probation or parole.

18 (k) Employee disclosure.--

19 (1) The department shall develop a standardized form to
20 be used by facilities for the written reporting by employees
21 and administrators of any conviction for an offense
22 enumerated under subsection (b). The form shall be published
23 on the department's publicly accessible Internet website and
24 in the Pennsylvania Bulletin.

25 (2) Facilities required to use the form under paragraph
26 (1) shall comply with the following:

27 (i) The form shall contain a list of the prohibited
28 offenses under subsection (b) and a space for the
29 employee to indicate any convictions. Employees and
30 administrators who have not been convicted of any

1 enumerated offense shall respond "no conviction."

2 (ii) Employees and administrators shall be informed
3 that failure to accurately report any conviction for an
4 offense enumerated under subsection (b) shall subject the
5 employee to criminal prosecution under 18 Pa.C.S. § 4904
6 (relating to unsworn falsification to authorities).

7 (3) Facilities shall require employees and
8 administrators to complete and submit the form on an annual
9 basis relating to any conviction that occurred during the
10 prior 12-month period. Employees and administrators shall
11 advise their employers with written notice utilizing the form
12 not later than 72 hours after a conviction.

13 (4) If an employee or administrator refuses to submit
14 the form, the facility shall immediately require the employee
15 to submit a current report of criminal history record
16 information as required under subsection (a).

17 (l) Penalties.--

18 (1) An employee or administrator who discloses a
19 conviction for an offense enumerated under subsection (b)
20 shall be subject to termination.

21 (2) An employee or administrator who willfully fails to
22 disclose a conviction for an offense enumerated under
23 subsection (b) shall be subject to termination and may be
24 subject to criminal prosecution under 18 Pa.C.S. § 4904.

25 (m) Provisional employees for limited periods.--

26 (1) Facilities may employ applicants on a provisional
27 basis for a single period not to exceed 30 days, if all of
28 the following conditions are met:

29 (i) The applicant has applied for a criminal history
30 report required under subsection (a)(1) and (2) and

1 provided the facility with a copy of the completed
2 request forms.

3 (ii) The facility has no knowledge about the
4 applicant that would disqualify the applicant from
5 employment under 18 Pa.C.S. § 4911 (relating to tampering
6 with public records or information).

7 (iii) The applicant swears or affirms in writing
8 that the applicant is not disqualified from employment
9 under this act.

10 (2) If the information obtained from the criminal
11 history report reveals that the applicant is disqualified
12 from employment, the applicant shall be dismissed
13 immediately.

14 (3) The department shall develop guidelines, in
15 consultation with the Department of Health and the Department
16 of Human Services, regarding the supervision of applicants.
17 Supervision shall include random direct supervision by an
18 employee who has been employed by the facility for a period
19 of at least one year.

20 Section 12. Sections 504, 505, 506, 507, 508, 702, 703, 704,
21 705 and 706 of the act are repealed:

22 [Section 504. Regulations.

23 The department, in consultation with the Department of Health
24 and the Department of Public Welfare, shall promulgate the
25 regulations necessary to carry out this chapter.

26 Section 505. Violations.

27 (a) Administrative.--

28 (1) An administrator who intentionally or willfully
29 fails to comply or obstructs compliance with the provisions
30 of this chapter commits a violation of this chapter and shall

1 be subject to an administrative penalty under paragraph (3).

2 (2) A facility owner that intentionally or willfully
3 fails to comply with or obstructs compliance with this
4 chapter commits a violation of this chapter and shall be
5 subject to an administrative penalty under paragraph (3).

6 (3) The Commonwealth agency or Commonwealth agencies
7 which license the facility have jurisdiction to determine
8 violations of this chapter and may issue an order assessing a
9 civil penalty of not more than \$2,500. An order under this
10 paragraph is subject to 2 Pa.C.S. Ch. 5 Subch. A (relating to
11 practice and procedure of Commonwealth agencies) and Ch. 7
12 Subch. A (relating to judicial review of Commonwealth agency
13 action).

14 (b) Criminal.--

15 (1) An administrator who intentionally or willfully
16 fails to comply or obstructs compliance with this chapter
17 commits a misdemeanor of the third degree and shall, upon
18 conviction, be sentenced to pay a fine of \$2,500 or to
19 imprisonment for not more than one year, or both.

20 (2) A facility owner that intentionally or willfully
21 fails to comply with or obstructs compliance with this
22 chapter commits a misdemeanor of the third degree and shall,
23 upon conviction, be sentenced to pay a fine of \$2,500 or to
24 imprisonment for not more than one year, or both.

25 Section 506. Provisional employees for limited periods.

26 Notwithstanding section 502, administrators may employ
27 applicants on a provisional basis for a single period not to
28 exceed 30 days or, for applicants under section 502(a)(2), a
29 period of 90 days, if all of the following conditions are met:

30 (1) The applicant has applied for the information

1 required under section 502 and the applicant provides a copy
2 of the appropriate completed request forms to the
3 administrator.

4 (2) The administrator has no knowledge of information
5 pertaining to the applicant which would disqualify him from
6 employment pursuant to section 503, subject to 18 Pa.C.S. §
7 4911 (relating to tampering with public records or
8 information).

9 (3) The applicant swears or affirms in writing that he
10 is not disqualified from employment under section 503.

11 (4) If the information obtained under section 502
12 reveals that the applicant is disqualified from employment
13 under section 503, the applicant shall be immediately
14 dismissed by the administrator.

15 (5) The department shall develop guidelines regarding
16 the supervision of applicants. For a home health care agency,
17 supervision shall include random direct supervision by an
18 employee who has been employed by the facility for a period
19 of one year.

20 Section 507. State Police.

21 No later than one year following the effective date of this
22 chapter, the State Police and the department shall report to the
23 Aging and Youth Committee of the Senate and the Aging and Youth
24 Committee of the House of Representatives with their findings
25 and recommendations regarding the implementation of this
26 chapter.

27 Section 508. Applicability.

28 This chapter shall apply as follows:

29 (1) An individual who, on the effective date of this
30 chapter, has continuously for a period of one year been an

1 employee of the same facility shall be exempt from section
2 502 as a condition of continued employment.

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

6 (3) If an employee who is exempt under paragraph (1)
7 seeks employment with a different facility, the employee and
8 the facility shall comply with section 502.

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

14 Section 702. Reports to department and coroner.

15 (a) Department.--

16 (1) Within 48 hours of receipt of a written report under
17 section 701(a) involving sexual abuse, serious physical
18 injury, serious bodily injury or suspicious death, the agency
19 shall transmit a written report to the department.

20 Supplemental reports shall be transmitted as they are
21 obtained by the agency.

22 (2) A report under this subsection shall be made in a
23 manner and on forms prescribed by the department. The report
24 shall include, at a minimum, the following information:

25 (i) The name and address of the alleged victim.

26 (ii) Where the suspected abuse occurred.

27 (iii) The age and sex of the alleged perpetrator and
28 victim.

29 (iv) The nature and extent of the suspected abuse,
30 including any evidence of prior abuse.

1 (v) The name and relationship of the individual
2 responsible for causing the alleged abuse to the victim,
3 if known, and any evidence of prior abuse by that
4 individual.

5 (vi) The source of the report.

6 (vii) The individual making the report and where
7 that individual can be reached.

8 (viii) The actions taken by the reporting source,
9 including taking of photographs and x-rays, removal of
10 recipient and notification under subsection (b).

11 (ix) Any other information which the department may
12 require by regulation.

13 (b) Coroner.--For a report under section 701(a) which
14 concerns the death of a recipient, if there is reasonable cause
15 to suspect that the recipient died as a result of abuse, the
16 agency shall give the oral report and forward a copy of the
17 written report to the appropriate coroner within 24 hours.
18 Section 703. Investigation.

19 (a) Law enforcement officials.--Upon receipt of a report
20 under section 701(b), law enforcement officials shall conduct an
21 investigation to determine what criminal charges, if any, will
22 be filed.

23 (b) Notification.--If law enforcement officials have
24 reasonable cause to suspect that a recipient has suffered sexual
25 abuse, serious physical injury, serious bodily injury or a
26 suspicious death, law enforcement officials shall notify the
27 agency.

28 (c) Cooperation.--To the fullest extent possible, law
29 enforcement officials, the facility and the agency shall
30 coordinate their respective investigations. Law enforcement

1 officials, the facility and the agency shall advise each other
2 and provide any applicable additional information on an ongoing
3 basis.

4 (d) Further notification.--Law enforcement officials shall
5 notify the agency and the facility of a decision regarding
6 criminal charges. The agency and the department shall keep a
7 record of any decision regarding criminal charges.

8 (e) Compliance with Chapter 3.--In addition to the
9 provisions of this section, the agency shall comply with Chapter
10 3.

11 Section 704. Restrictions on employees.

12 (a) Plan of supervision.--Upon notification that an employee
13 is alleged to have committed abuse, the facility shall
14 immediately implement a plan of supervision or, where
15 appropriate, suspension of the employee, subject to approval by
16 the agency and by the Commonwealth agency with regulatory
17 authority over the facility. A plan of supervision for a home
18 health care agency must include periodic random direct
19 inspections of care-dependent individuals by a facility employee
20 who has been continuously employed by that facility for a period
21 of at least one year.

22 (b) Prohibition.--Upon the filing of criminal charges
23 against an employee, the Commonwealth agency which licenses the
24 facility shall order the facility to immediately prohibit that
25 employee from having access to recipients at the facility. If
26 that employee is a director, operator, administrator or
27 supervisor, that employee shall be subject to restrictions
28 deemed appropriate by the Commonwealth agency which licenses the
29 facility to assure the safety of recipients of the facility.

30 Section 705. Confidentiality of and access to confidential

1 reports.

2 (a) General rule.--Except as provided in subsection (b), a
3 report under this chapter shall be confidential.

4 (b) Exceptions.--A report under this chapter shall be made
5 available to all of the following:

6 (1) An employee of the department or of an agency in the
7 course of official duties in connection with responsibilities
8 under this chapter.

9 (2) An employee of the Department of Health or the
10 Department of Public Welfare in the course of official
11 duties.

12 (3) An employee of an agency of another state which
13 performs protective services similar to those under this
14 chapter.

15 (4) A practitioner of the healing arts who is examining
16 or treating a recipient and who suspects that the recipient
17 is in need of protection under this chapter.

18 (5) The director, or an individual specifically
19 designated in writing by the director, of any hospital or
20 other medical institution where a victim is being treated if
21 the director or designee suspects that the recipient is in
22 need of protection under this chapter.

23 (6) A guardian of the recipient.

24 (7) A court of competent jurisdiction pursuant to a
25 court order.

26 (8) The Attorney General.

27 (9) Law enforcement officials of any jurisdiction as
28 long as the information is relevant in the course of
29 investigating cases of abuse.

30 (10) A mandated reporter under Chapter 3 who made a

1 report of suspected abuse. Information released under this
2 paragraph shall be limited to the following:

3 (i) The final status of the report following the
4 investigation.

5 (ii) Services provided or to be provided by the
6 agency.

7 (c) Excision of certain names.--The name of the person
8 suspected of committing the abuse shall be excised from a report
9 made available under subsection (b) (4), (5) and (10).

10 (d) Release of information to alleged perpetrator and
11 victim.--Upon written request, an alleged perpetrator and victim
12 may receive a copy of all information except that prohibited
13 from being disclosed by subsection (e).

14 (e) Protecting identity of person making report.--Except for
15 reports to law enforcement officials, the release of data that
16 would identify the individual who made a report under this
17 chapter or an individual who cooperated in a subsequent
18 investigation is prohibited. Law enforcement officials shall
19 treat all reporting sources as confidential information.

20 Section 706. Penalties.

21 (a) Administrative.--

22 (1) An administrator who intentionally or willfully
23 fails to comply or obstructs compliance with the provisions
24 of this chapter or who intimidates or commits a retaliatory
25 act against an employee who complies in good faith with the
26 provisions of this chapter commits a violation of this
27 chapter and shall be subject to an administrative penalty
28 under paragraph (3).

29 (2) A facility owner that intentionally or willfully
30 fails to comply with or obstructs compliance with this

1 chapter or that intimidates or commits a retaliatory act
2 against an employee who complies in good faith with this
3 chapter commits a violation of this chapter and shall be
4 subject to an administrative penalty under paragraph (3).

5 (3) The Commonwealth agency or Commonwealth agencies
6 which regulate the facility have jurisdiction to determine
7 violations of this chapter and may issue an order assessing a
8 civil penalty of not more than \$2,500. An order under this
9 paragraph is subject to 2 Pa.C.S. Ch. 5 Subch. A (relating to
10 practice and procedure of Commonwealth agencies) and Ch. 7
11 Subch. A (relating to judicial review of Commonwealth agency
12 action).

13 (b) Criminal.--

14 (1) An administrator who intentionally or willfully
15 fails to comply or obstructs compliance with this chapter
16 commits a misdemeanor of the third degree and shall, upon
17 conviction, be sentenced to pay a fine of \$2,500 or to
18 imprisonment for not more than one year, or both.

19 (2) A facility owner that intentionally or willfully
20 fails to comply with or obstructs compliance with this
21 chapter commits a misdemeanor of the third degree and shall,
22 upon conviction, be sentenced to pay a fine of \$2,500 or to
23 imprisonment for not more than one year, or both.

24 (c) Penalties for failure to report.--A person required
25 under this chapter to report a case of suspected abuse who
26 willfully fails to do so commits a summary offense for the first
27 violation and a misdemeanor of the third degree for a second or
28 subsequent violation.]

29 Section 13. The act is amended by adding a section to read:
30 Section 706.1. Penalties.

1 (a) Civil penalties.--

2 (1) A mandatory reporter who fails to comply or
3 obstructs compliance with the provisions of this act or who
4 intimidates or commits a retaliatory act against an
5 individual who complies in good faith with the provisions of
6 this act commits a violation of this act and shall be subject
7 to an administrative penalty. The department shall determine
8 violations of this act and may issue an order assessing a
9 civil penalty of not more than \$5,000. An order under this
10 paragraph is subject to 2 Pa.C.S. Chs. 5 Subch. A (relating
11 to practice and procedure of Commonwealth agencies) and 7
12 Subch. A (relating to judicial review of Commonwealth agency
13 action).

14 (2) The Commonwealth agency or agencies which license a
15 facility shall determine violations of section 503.1
16 (relating to criminal history) and may issue an order
17 assessing a civil penalty of not more than \$5,000.

18 (b) Damages for retaliatory action.--

19 (1) The older adult or any person making a report or
20 cooperating with an area agency on aging, including providing
21 testimony in any administrative or judicial proceeding, shall
22 be free from any discriminatory, retaliatory or disciplinary
23 action by an employer or by any other person or entity.

24 (2) Any person who violates this subsection is subject
25 to a civil lawsuit by the reporter or the older adult wherein
26 the reporter or older adult shall recover treble compensatory
27 damages, compensatory and punitive damages or \$5,000,
28 whichever is greater.

29 (c) Damages for intimidation.--

30 (1) Any person, including an older adult, with knowledge

1 sufficient to justify making a report or cooperating with an
2 area agency on aging, including possibly providing testimony
3 in any administrative or judicial proceeding, shall be free
4 from any intimidation by an employer or by any other person
5 or entity.

6 (2) Any person who violates this subsection is subject
7 to a civil lawsuit by the person intimidated or the older
8 adult wherein the person intimidated or the older adult shall
9 recover treble compensatory damages, compensatory and
10 punitive damages or \$5,000, whichever is greater.

11 (d) Criminal penalties.--

12 (1) A mandatory reporter under this act who
13 intentionally fails to report suspected abuse, neglect,
14 exploitation or abandonment commits a summary offense for the
15 first violation and a misdemeanor of the second degree for a
16 second or subsequent violation and shall, upon conviction, be
17 sentenced to pay a fine of \$5,000, or imprisonment for not
18 more than one year, or both.

19 (2) It shall be unlawful for a person to knowingly or
20 intentionally make or cause to be made a false statement or
21 representation of a material fact in a report of need, in
22 accordance with 18 Pa.C.S. § 4904 (relating to unsworn
23 falsification to authorities). A person who makes a false
24 statement is guilty of a misdemeanor of the second degree for
25 each violation with a maximum penalty of \$10,000 and five
26 years' imprisonment.

27 (e) Immunity.--

28 (1) Any person participating in the making of a report
29 or who provides testimony in any administrative or judicial
30 proceeding in any court of this Commonwealth, arising out of

1 a report, shall be immune from any civil or criminal
2 liability on account of the report or testimony related to
3 good faith compliance with this act.

4 (2) This immunity shall not extend to liability for acts
5 of abuse, neglect, exploitation or abandonment, even if such
6 acts are the subject of the report or testimony.

7 (3) Any company, institution and all affiliated entities
8 that employ a person required or permitted to make a report
9 under this act shall not be held civilly liable for any
10 action directly related to good faith compliance with this
11 act.

12 (f) Funds.--Funds collected under this act by the department
13 shall be dedicated for department programs to investigate and
14 prevent the abuse, neglect, exploitation and abandonment of
15 older adults.

16 Section 14. Section 707 of the act is repealed:

17 [Section 707. Immunity.

18 An administrator or a facility shall not be held civilly
19 liable for any action directly related to good faith compliance
20 with this chapter.]

21 Section 15. The act is amended by adding sections to read:

22 Section 707.1. Immunity from civil and criminal liability.

23 In the absence of willful misconduct or gross negligence, an
24 area agency on aging, the director, employees of an area agency
25 on aging, protective services workers or employees of the
26 department shall not be civilly or criminally liable for any
27 decision or action or resulting consequence of decisions or
28 action when acting under and according to the provisions of this
29 act.

30 Section 707.2. Funding.

1 Funds necessary to administer this act shall be provided by
2 annual appropriation by the General Assembly.

3 Section 16. Section 708 of the act is amended to read:

4 Section 708. Regulations[.] and annual report.

5 (a) General rule.--The Department of Aging, the Department
6 of Health and the Department of [Public Welfare] Human Services
7 shall promulgate the regulations necessary to carry out this
8 [chapter.] act.

9 (b) Duty to report.--The department shall present to the
10 General Assembly annually a report on the program and services
11 performed.

12 Section 17. This act shall take effect as follows:

13 (1) The addition of section 301.1 of the act shall take
14 effect in one year.

15 (2) This section shall take effect immediately.

16 (3) The remainder of this act shall take effect in 180
17 days.