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THE GENERAL ASSEMBLY OF PENNSYLVANIA

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SENATE BILL

No. 224      Session of  
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INTRODUCED BY VANCE, M. WHITE, BOSCOLA, COSTA, KITCHEN, LOGAN,  
O'PAKE, REGOLA, STACK, STOUT AND C. WILLIAMS,  
FEBRUARY 8, 2005

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REFERRED TO PUBLIC HEALTH AND WELFARE, FEBRUARY 8, 2005

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AN ACT

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

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

8 Section 1. Short title.

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

11 Section 2. Declaration of policy.

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

25 Section 3. Definitions.

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

29 "Applicant." An individual who submits an application to and  
30 is being considered for employment by a hospital.

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

2 "Employee." An individual who has direct contact with  
3 patients or unsupervised access to patient rooms and is either  
4 employed by a hospital or a contract employee, acts in a  
5 managerial capacity or is a student or intern.

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

10 "State Police." The Pennsylvania State Police.

11 Section 4. Information relating to prospective hospital  
12 personnel.

13 (a) General rule.--A hospital shall require all applicants  
14 to submit with their applications the following information  
15 obtained within the preceding one-year period:

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

24 (2) Where the applicant is not or, for the two years  
25 immediately preceding the date of application, has not been a  
26 resident of this Commonwealth, a hospital shall require the  
27 applicant to submit with the application for employment a  
28 report of Federal criminal history record information  
29 pursuant to the Federal Bureau of Investigation's  
30 appropriation under the Department of State, Justice, and

Commerce, the Judiciary, and Related Agencies Appropriation Act, 1973 Public Law 92-544, 86 Stat. 1109. The department shall be the intermediary for the purposes of this paragraph. For the purposes of this paragraph, the applicant shall submit a full set of fingerprints to the State Police, which shall forward them to the Federal Bureau of Investigation for a national criminal history record check. The information obtained from the criminal history record check shall be used by the department to determine the applicant's eligibility. The determination shall be submitted to the hospital by the applicant prior to commencing employment. The hospital shall ensure confidentiality of the information.

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

#### Section 5. Grounds for denying employment.

(a) Lifetime bans.--In no case shall a hospital hire an applicant required to submit information pursuant to section 4(a) (relating to information relating to prospective hospital personnel) or retain an employee required to submit information pursuant to section 13 (relating to applicability), if the applicant's or employee's criminal history record information indicates the applicant or employee has been convicted of any of the following offenses:

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

4           Chapter 25 (relating to criminal homicide).

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

7           Section 2709.1 (relating to stalking).

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

10          Section 2901 (relating to kidnapping).

11          Section 3121 (relating to rape).

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

14          Section 3124.1 (relating to sexual assault).

15          Section 3125 (relating to aggravated indecent assault).

16          Section 3301 (relating to arson and related offenses).

17          Section 3701 (relating to robbery).

18          Section 4302 (relating to incest).

19          Section 4304 (relating to endangering welfare of  
20 children).

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

22          Section 6320 (relating to sexual exploitation of  
23 children).

24           (2) An offense under one of the following provisions of  
25 18 Pa.C.S. which is graded as a misdemeanor:

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

28          Section 3126 (relating to indecent assault).

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

30           (3) A Federal or out-of-State offense similar in nature

1 to any offense listed in paragraph (1) or (2).

2 (b) Ten-year ban.--In no case may a hospital hire an  
3 applicant required to submit information pursuant to section  
4 4(a) or retain an employee required to submit information  
5 pursuant to section 13 if the applicant's or employee's criminal  
6 history record information as supplemented under subsection (c)  
7 indicates the applicant or employee has been convicted, within  
8 ten years immediately preceding the date of the report, not  
9 including any time spent in incarceration, of any of the  
10 following offenses:

11 (1) An offense graded a felony under the act of April  
12 14, 1972 (P.L.233, No.64), known as The Controlled Substance,  
13 Drug, Device and Cosmetic Act.

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

16 Section 2702, if it is graded as a felony of the second  
17 degree.

18 Section 2902 (relating to unlawful restraint).

19 Section 3122.1 (relating to statutory sexual assault).

20 Section 3502 (relating to burglary).

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

22 Section 4101 (relating to forgery).

23 Section 4952 (relating to intimidation of witnesses or  
24 victims).

25 Section 4953 (relating to retaliation against witness,  
26 victim or party).

27 Section 5902 (relating to prostitution and related  
28 offenses).

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

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

Section 2504 (relating to involuntary manslaughter).

Section 2902.

Section 3127 (relating to indecent exposure).

Section 4101.

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

Section 4303 (relating to concealing death of child).

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

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

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

(c) Duty of applicant or employee.--An applicant or employee required to submit information under section 4(a) or 13 and sentenced for an offense enumerated under subsection (b) shall provide the hospital with documentation of time spent in incarceration and the date of release from incarceration.

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

Section 6. Regulations.

1 The department shall promulgate the regulations necessary to  
2 carry out the provisions of this act.

3 Section 7. Violations.

4 (a) Administrative.--

5 (1) A hospital which fails to comply with the provisions  
6 of this act commits a violation of this act and shall be  
7 subject to an administrative penalty under paragraph (2).

8 (2) The Commonwealth agency or Commonwealth agencies  
9 which license a hospital shall have jurisdiction to determine  
10 violations of this act and may issue an order assessing a  
11 civil penalty of not more than \$10,000. An order under this  
12 paragraph shall be subject to 2 Pa.C.S. Chs. 5 Subch. A  
13 (relating to practice and procedure of Commonwealth agencies)  
14 and 7 Subch. A (relating to judicial review of Commonwealth  
15 agency action).

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

21 Section 8. Conditional employees for limited periods.

22 Notwithstanding the provisions of this act, a hospital may  
23 employ applicants on a conditional basis for a single period not  
24 to exceed 30 days or, for applicants under section 4(a)(2)  
25 (relating to information relating to prospective hospital  
26 personnel), a period of 90 days, if all of the following  
27 criteria are met:

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



1           (2) The hospital has no knowledge of information  
2     pertaining to the applicant which would disqualify the  
3     applicant from employment pursuant to section 5 (relating to  
4     grounds for denying employment), subject to 18 Pa.C.S. § 4911  
5     (relating to tampering with public records or information).

6           (3) The applicant swears or affirms in writing that the  
7     applicant is not disqualified from employment under section  
8     5.

9           (4) If the information obtained under section 4 reveals  
10    that the applicant is disqualified from employment under  
11    section 5, the applicant shall be immediately dismissed by  
12    the hospital.

13 Section 9. Requirements concerning current hospital employees.

14     The following shall apply:

15           (1) If the information obtained under section 4  
16     (relating to information relating to prospective hospital  
17     personnel) reveals that an individual currently employed at a  
18     hospital is disqualified from employment under section 5(b)  
19     (relating to grounds for denying employment), the individual  
20     shall either, at the option of the hospital, be placed on  
21     suspension without pay or continue employment under  
22     supervision with no unsupervised direct contact with  
23     patients.

24           (2) Within 30 days of the effective date of this  
25     section, each hospital shall provide copies of this section  
26     to all current hospital employees.

27 Section 10. Civil immunity.

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

30 Section 11. Other laws.

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

4 Section 12. Report to General Assembly.

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

11 Section 13. Applicability.

12 This act shall apply as follows:

13 (1) (i) An individual who, on the effective date of  
14 this section, is a current employee of a hospital shall,  
15 within 12 months of the effective date of this section,  
16 comply with section 4 as a condition of continued  
17 employment.

18 (ii) Criminal history record information which meets  
19 the requirements of section 4 was obtained within the  
20 four-year period preceding the effective date of this  
21 section and was submitted to a hospital prior to the  
22 effective date of this section shall be deemed current  
23 for the purposes of subparagraph (i) upon review for  
24 compliance with section 5 by the appropriate entity.

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

30 Section 14. Severability.

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

6 Section 15. Effective date.

7       This act shall take effect in 60 days.