

## THE GENERAL ASSEMBLY OF PENNSYLVANIA

## SENATE BILL

No. 667 Session of  
2007

INTRODUCED BY VANCE, BRUBAKER, BOSCOLA, COSTA, EARLL, FONTANA,  
GREENLEAF, KITCHEN, O'PAKE, PICCOLA, RAFFERTY, REGOLA, STOUT,  
TOMLINSON, M. WHITE, C. WILLIAMS, WONDERLING, BROWNE AND  
WASHINGTON, MARCH 22, 2007

SENATOR VANCE, AGING AND YOUTH, AS AMENDED, JUNE 3, 2008

## AN ACT

1 Amending the act of November 6, 1987 (P.L.381, No.79), entitled  
2 "An act relating to the protection of the abused, neglected,  
3 exploited or abandoned elderly; establishing a uniform  
4 Statewide reporting and investigative system for suspected  
5 abuse, neglect, exploitation or abandonment of the elderly;  
6 providing protective services; providing for funding; and  
7 making repeals," further providing for legislative policy,  
8 for definitions, for involuntary intervention by emergency  
9 court order, FOR INFORMATION RELATING TO PROSPECTIVE FACILITY <—  
10 PERSONNEL and for grounds for denying employment; ~~and~~ <—  
11 providing for CERTIFICATE OF EMPLOYABILITY; FURTHER PROVIDING <—  
12 FOR PROVISIONAL EMPLOYEES FOR LIMITED PERIODS; PROVIDING FOR  
13 REQUIREMENTS CONCERNING EMPLOYEES, FOR comparison study by  
14 Department of Aging and for applicability relating to  
15 criminal history for employees.

16 The General Assembly of the Commonwealth of Pennsylvania  
17 hereby enacts as follows:

18 Section 1. Section 102 of the act of November 6, 1987  
19 (P.L.381, No.79), known as the Older Adults Protective Services  
20 Act, amended December 18, 1996 (P.L.1125, No.169), is amended to  
21 read:

22 Section 102. Legislative policy.

23 It is declared the policy of the Commonwealth of Pennsylvania

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

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

29 Section 2. The definitions of "CARE," "employee," <—  
30 "exploitation" and "facility" in section 103 of the act, amended

1 December 18, 1996 (P.L.1125, No.169), are amended to read:

2 Section 103. Definitions.

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

6 \* \* \*

7 ~~"Administrator." The person responsible for the~~ <—  
8 ~~administration of a facility or an employer. The term includes a~~  
9 ~~person responsible for employment decisions or an independent~~  
10 ~~contractor.~~

11 \* \* \*

12 "Care." Services provided to meet a person's need for  
13 personal {care or} health care[. Services may include homemaker <—  
14 services, assistance with activities of daily living, physical  
15 therapy, occupational therapy, speech therapy, medical social  
16 services, home-care aide services, companion-care services,  
17 private duty nursing services, respiratory therapy, intravenous  
18 therapy, in-home dialysis and durable medical equipment  
19 services,] which are routinely provided unsupervised and which  
20 require interaction with the care-dependent person. The term  
21 does not include durable medical equipment delivery.

22 \* \* \*

23 "Employee." [An individual who is employed by a facility.  
24 The term includes contract employees who have direct contact  
25 with residents or unsupervised access to their personal living  
26 quarters. The term includes any person who is employed or who  
27 enters into a contractual relationship to provide care to a  
28 care-dependent individual for monetary consideration in the  
29 individual's place of residence.] An individual who has direct  
30 contact with residents or unsupervised access to their living

1 quarters and is either employed by a facility or enters into a  
2 contractual relationship with a facility or employer to provide <—  
3 care to a care-dependent individual for monetary consideration  
4 in the individual's place of residence.

5 "Exploitation." An act or course of conduct by a caretaker  
6 or other person, including an individual who is acting under a  
7 power of attorney, against an older adult or an older adult's  
8 resources, without the informed consent of the older adult or  
9 with consent obtained through misrepresentation, coercion or  
10 threats of force, that results in monetary, personal or other  
11 benefit, gain or profit for the perpetrator or monetary or  
12 personal loss to the older adult.

13 "Facility." Any of the following:

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

17 (2) [A home health care agency. <—

18 (3) A long-term care nursing facility as defined in  
19 section 802.1 of the act of July 19, 1979 (P.L.130, No.48),  
20 known as the Health Care Facilities Act.] THE FOLLOWING <—

21 ENTITIES AS DEFINED IN SECTION 802.1 OF THE ACT OF JULY 19,  
22 1979 (P.L.130, NO.48), KNOWN AS THE HEALTH CARE FACILITIES  
23 ACT:

24 (I) A HOME HEALTH CARE AGENCY.

25 (II) A LONG-TERM CARE NURSING FACILITY.

26 (III) A HOSPICE.

27 (IV) A HOME CARE AGENCY.

28 (V) A HOME CARE REGISTRY.

29 ~~(3.1) A hospice as defined in section 802.1 of the~~ <—  
30 ~~Health Care Facilities Act.~~

~~(3.2) A home care agency as defined in section 802.1 of the Health Care Facilities Act.~~

~~(3.3) A home care registry as defined in section 802.1 of the Health Care Facilities Act.~~

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

(5) A personal care home OR ASSISTED LIVING RESIDENCE as defined in section 1001 of the act of June 13, 1967 (P.L.31, No.21), known as the Public Welfare Code. <—

(6) A continuing care provider as defined in section 3 of the act of June 18, 1984 (P.L.391, No.82), known as the Continuing-Care Provider Registration and Disclosure Act. The term does not include an entity licensed by the Department of Health to provide drug and alcohol addiction treatment services.

\* \* \*

Section 3. Section 307(a) AND (B) of the act, amended December 18, 1996 (P.L.1125, No.169), ~~is~~ ARE amended to read: <—  
Section 307. Involuntary intervention by emergency court order. <—

(a) Emergency petition.--[Where there was clear and convincing evidence that if protective services are not provided, the person to be protected is at imminent risk of death or serious physical harm, the agency may petition the court for an emergency order to provide the necessary services.]

An agency may petition a court of common pleas for an emergency order to provide protective services to an older adult who is at imminent risk of FINANCIAL EXPLOITATION, death or serious physical harm including exploitation that may lead to imminent risk of death or serious physical harm. The court of common <— <—

1 pleas shall grant the agency's petition if it finds, by a  
2 preponderance of the evidence, that if protective services are <—  
3 not provided, FAILURE TO PROVIDE PROTECTIVE SERVICES WILL PLACE <—  
4 the older adult is at imminent risk of FINANCIAL EXPLOITATION, <—  
5 death or serious physical harm. The courts of common pleas of  
6 each judicial district shall ensure that a judge or [district  
7 justice] magisterial district judge is available on a 24-hour-a-  
8 day, 365-day-a-year basis to accept and [decide] RULE on <—  
9 petitions for an emergency court order under this section  
10 whenever the agency determines that a delay until normal court  
11 hours would significantly increase the danger the older adult  
12 faces.

13 (B) LIMITED ORDER.--THE COURT, AFTER FINDING [CLEAR AND <—  
14 CONVINCING] A PREPONDERANCE OF EVIDENCE OF THE NEED FOR AN  
15 EMERGENCY ORDER, SHALL ORDER ONLY SUCH SERVICES AS ARE NECESSARY  
16 TO REMOVE THE CONDITIONS CREATING THE ESTABLISHED NEED.

17 \* \* \*

18 Section 4. Sections 501 and 502 of the act, added December  
19 18, 1996 (P.L.1125, No.169), are amended to read:  
20 Section 501. Definitions.

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

24 "Applicant." An individual [who submits an application,  
25 which is] being considered for employment[, to a facility.] or  
26 engagement by a facility or employer AS AN EMPLOYEE. <—

27 "Employer." A person who hires or engages an employee to <—  
28 provide care to a care dependent individual.

29 "State Police." The Pennsylvania State Police.

30 Section 502. Information relating to [prospective {facility <—

1                   personnell] ~~employees~~ APPLICANTS.                   <—

2           (a)   General rule.--[A facility shall require all applicants  
3   to submit with their applications, and shall require all] ~~Prior~~                   <—  
4   ~~to hiring or engaging an employee, a facility or employer shall~~  
5   ~~require all applicants, administrators and any operators who~~  
6   ~~have or may have direct contact with a recipient~~ ADMINISTRATORS                   <—  
7   AND ANY OPERATORS WHO HAVE OR MAY HAVE DIRECT CONTACT WITH A  
8   RECIPIENT] PRIOR TO HIRING OR ENGAGING AN APPLICANT, A FACILITY  
9   SHALL REQUIRE THE APPLICANT to submit[, ] the following

10   information obtained within the preceding one-year period:  
11           (1)   Pursuant to 18 Pa.C.S. Ch. 91 (relating to criminal  
12   history record information), a report of criminal history  
13   record information from the State Police or a statement from  
14   the State Police that their central repository contains no  
15   such information relating to [that person] THE APPLICANT. The                   <—  
16   criminal history record information shall be limited to that  
17   which is disseminated pursuant to 18 Pa.C.S. § 9121(b)(2)  
18   (relating to general regulations).

19           (2)   Where the applicant is not and for the two years  
20   immediately preceding the date of application has not been a  
21   resident of this Commonwealth, [administration shall require  
22   the applicant to submit with the application for employment]  
23   a report of Federal criminal history record information  
24   pursuant to the Federal Bureau of Investigation's  
25   appropriation under the Departments of State, Justice, and  
26   Commerce, the Judiciary, and Related Agencies Appropriation  
27   Act, 1973 (Public Law 92-544, 86 Stat. 1109). The department  
28   shall be the intermediary for the purposes of this paragraph.  
29   For the purposes of this paragraph, the applicant shall  
30   submit a full set of fingerprints to the State Police, which

1 shall forward them to the Federal Bureau of Investigation for  
2 a national criminal history record check. The information  
3 obtained from the criminal record check shall be used by the  
4 department to determine the applicant's eligibility. The  
5 determination shall be submitted to the administrator by the  
6 applicant prior to commencing employment. The administrator  
7 shall insure confidentiality of the information.

8 (A.1) ADDITIONAL INFORMATION.--THE DEPARTMENT OR THE STATE <—  
9 POLICE MAY REQUIRE THE APPLICANT TO SUBMIT ADDITIONAL  
10 INFORMATION FROM A COURT OR OTHER AUTHORITY IF THE CRIMINAL  
11 HISTORY RECORD DOES NOT PROVIDE THE DISPOSITION OF A CRIMINAL  
12 CHARGE OR THE INFORMATION NEEDED TO COMPARE A FEDERAL OR OUT-OF-  
13 STATE CRIMINAL OFFENSE TO PENNSYLVANIA CRIMINAL OFFENSES.

14 (b) Fees.--The State Police may charge the applicant a fee  
15 of not more than \$10 to conduct the criminal record check  
16 required under subsection (a)(1). The State Police may charge a  
17 fee of not more than the established charge by the Federal  
18 Bureau of Investigation for the criminal history record check  
19 required under subsection (a)(2). The State Police shall develop  
20 a billing system to allow facilities and administrators to  
21 assume responsibility for the fee under this subsection. The  
22 State Police shall allow facilities or administrators to  
23 establish an account for quarterly payment.

24 Section 5. Section 503(a) of the act, amended June 9, 1997  
25 (P.L.160, No.13), is amended and the section is amended by  
26 adding subsections to read:

27 Section 503. Grounds for denying employment.

28 [(a) General rule.--In no case shall a facility hire an  
29 applicant or retain an employee required to submit information  
30 pursuant to section 502(a) if the applicant's or employee's



1 criminal history record information indicates the applicant or  
2 employee has been convicted of any of the following offenses:

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

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

8 Chapter 25 (relating to criminal homicide).

9 Section 2702 (relating to aggravated assault).

10 Section 2901 (relating to kidnapping).

11 Section 2902 (relating to unlawful restraint).

12 Section 3121 (relating to rape).

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

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

17 Section 3124.1 (relating to sexual assault).

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

20 Section 3126 (relating to indecent assault).

21 Section 3127 (relating to indecent exposure).

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

24 Section 3502 (relating to burglary).

25 Section 3701 (relating to robbery).

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

29 Section 4101 (relating to forgery).

30 Section 4114 (relating to securing execution of

documents by deception).

Section 4302 (relating to incest).

Section 4303 (relating to concealing death of child).

Section 4304 (relating to endangering welfare of children).

Section 4305 (relating to dealing in infant children).

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

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

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

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

Section 6301 (relating to corruption of minors).

Section 6312 (relating to sexual abuse of children).

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

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

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

Chapter 25 (relating to criminal homicide).

1           ~~Section 2702 (relating to aggravated assault), if it~~ <—  
2           ~~is graded as a felony of the first degree.~~  
3           ~~Section 2709.1 (relating to stalking).~~  
4           ~~Section 2713 (relating to neglect of care-dependent~~  
5           ~~person).~~  
6           ~~Section 2901 (relating to kidnapping).~~  
7           ~~Section 3121 (relating to rape).~~  
8           ~~Section 3123 (relating to involuntary deviate sexual~~  
9           ~~intercourse).~~  
10           ~~Section 3124.1 (relating to sexual assault).~~  
11           ~~SECTION 3124.2 (RELATING TO INSTITUTIONAL SEXUAL~~ <—  
12           ~~ASSAULT).~~  
13           ~~Section 3125 (relating to aggravated indecent~~  
14           ~~assault).~~  
15           ~~Section 3301 (relating to arson and related~~  
16           ~~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           ~~(2) An offense under one of the following provisions of~~ <—  
23           ~~18 Pa.C.S. which is graded as a misdemeanor:~~  
24           ~~Section 2713 (relating to neglect of care dependent~~  
25           ~~person).~~  
26           ~~Section 3126 (relating to indecent assault).~~  
27           ~~(3) (2) A Federal or out-of-State offense similar in~~ <—  
28           ~~nature to any offense listed in paragraph (1) or (2).~~ <—  
29           ~~(A.2) LIFETIME BANS WITH POSSIBILITY OF CERTIFICATE OF~~ <—  
30           ~~EMPLOYABILITY.--EXCEPT AS PROVIDED IN SECTION 503.1, A FACILITY~~

1 SHALL NOT HIRE OR ENGAGE AN APPLICANT REQUIRED TO SUBMIT  
2 INFORMATION PURSUANT TO SECTION 502(A) OR RETAIN AN EMPLOYEE  
3 REQUIRED TO SUBMIT INFORMATION PURSUANT TO SECTION 508 IF THE  
4 APPLICANT'S OR EMPLOYEE'S CRIMINAL HISTORY RECORD INFORMATION  
5 INDICATES THE APPLICANT OR EMPLOYEE HAS BEEN CONVICTED OF ANY OF  
6 THE FOLLOWING OFFENSES:

7 (1) AN OFFENSE UNDER ONE OF THE FOLLOWING PROVISIONS OF  
8 18 PA.C.S. WHICH IS GRADED AS A FELONY:

9 SECTION 2702 (RELATING TO AGGRAVATED ASSAULT).

10 SECTION 2709.1 (RELATING TO STALKING).

11 SECTION 3126 (RELATING TO INDECENT ASSAULT).

12 SECTION 3701 (RELATING TO ROBBERY).

13 SECTION 4304 (RELATING TO ENDANGERING WELFARE OF  
14 CHILDREN).

15 (2) AN OFFENSE UNDER ONE OF THE FOLLOWING PROVISIONS OF  
16 18 PA.C.S. WHICH IS GRADED AS A MISDEMEANOR:

17 SECTION 2713 (RELATING TO NEGLECT OF CARE-DEPENDENT  
18 PERSON).

19 SECTION 3126.

20 (3) A FEDERAL OR OUT-OF-STATE OFFENSE SIMILAR IN NATURE  
21 TO ANY OFFENSE LISTED IN PARAGRAPH (1) OR (2).

22 ~~(a.2) Ten year ban. In no case may a facility or employer~~ <—

23 ~~(A.3) TEN-YEAR BAN.--EXCEPT AS PROVIDED IN SECTION 503.1, A~~ <—

24 FACILITY SHALL NOT hire OR ENGAGE an applicant required to <—

25 submit information pursuant to section 502(a) or retain an

26 employee required to submit information pursuant to section 508

27 if the applicant's or employee's criminal history record

28 information as supplemented under subsection ~~(a.3)~~ (A.4) <—

29 indicates the applicant or employee has been convicted, within

30 ten years immediately preceding the date of the report, not

1 including any time spent in incarceration, of any of the  
2 following offenses:

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

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

8 ~~Section 2702 (relating to aggravated assault), if it~~ <—  
9 ~~is graded as a felony of the second degree.~~

10 Section 2902 (relating to unlawful restraint).

11 Section 3122.1 (relating to statutory sexual  
12 assault).

13 Section 3502 (relating to burglary).

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

15 Section 4101 (relating to forgery).

16 Section 4952 (relating to intimidation of witnesses  
17 or victims).

18 Section 4953 (relating to retaliation against  
19 witness, victim or party).

20 Section 5902 (relating to prostitution and related  
21 offenses).

22 (3) An offense under one of the following provisions of  
23 18 Pa.C.S. which is graded as a misdemeanor:

24 ~~Section 2504 (relating to involuntary manslaughter).~~ <—

25 CHAPTER 25. <—

26 Section 2902 (relating to unlawful restraint).

27 Section 3127 (relating to indecent exposure).

28 ~~Section 3922 (relating to theft by deception).~~ <—

29 ~~Section 3923 (relating to theft by extortion).~~

30 ~~Section 3927 (relating to theft by failure to make~~

~~required disposition of funds received).~~

Section 4101 (relating to forgery).

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

Section 4303 (relating to concealing death of child).

Section 4305 (relating to dealing in infant children).

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).

~~(a.3)~~ (A.4) Duty of applicant or employee.--An applicant or employee required to submit information under section 502(a) or 508 and WHO HAS BEEN incarcerated for an offense enumerated under subsection (a.2) OR (A.3) shall provide the facility 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 a petition with the department in accordance with 2 Pa.C.S. (relating to administrative law and procedure). An applicant or employee provisionally employed

1 under section 506 may continue to be employed pending the  
2 ultimate resolution of such a challenge and any subsequent  
3 appeal, unless a supersedeas or temporary injunction is entered  
4 prohibiting the continued employment of the individual.

5 SECTION 6. THE ACT IS AMENDED BY ADDING A SECTION TO READ: <—

6 SECTION 503.1. CERTIFICATE OF EMPLOYABILITY.

7 (A) GENERAL RULE.--

8 (1) AN INDIVIDUAL WHO WOULD OTHERWISE BE PRECLUDED FROM  
9 EMPLOYMENT BY A FACILITY UNDER SECTION 503(A.2) MAY PETITION  
10 FOR A CERTIFICATE OF EMPLOYABILITY PROVIDED THAT AT LEAST TEN  
11 YEARS, NOT INCLUDING ANY TIME SPENT IN INCARCERATION, HAVE  
12 PASSED SINCE THE INDIVIDUAL'S CONVICTION OF ANY OFFENSE  
13 LISTED UNDER SECTION 503(A.2).

14 (2) AN INDIVIDUAL WHO WOULD OTHERWISE BE PRECLUDED FROM  
15 EMPLOYMENT BY A FACILITY UNDER SECTION 503(A.3) MAY PETITION  
16 FOR A CERTIFICATE OF EMPLOYABILITY PROVIDED THAT AT LEAST  
17 FIVE YEARS, NOT INCLUDING ANY TIME SPENT IN INCARCERATION,  
18 HAVE PASSED SINCE THE INDIVIDUAL'S CONVICTION OF ANY OFFENSE  
19 LISTED UNDER SECTION 503(A.3).

20 (3) A CERTIFICATE OF EMPLOYABILITY GRANTED UNDER THIS  
21 SECTION SHALL BE APPLICABLE TO ANY FACILITY SUBJECT TO THIS  
22 ACT. THE ISSUANCE OF A CERTIFICATE OF EMPLOYABILITY SHALL  
23 PERMIT AN INDIVIDUAL TO SEEK AND POSSIBLY OBTAIN EMPLOYMENT  
24 SUBJECT TO THIS ACT, BUT IN NO WAY GUARANTEES THAT A FACILITY  
25 WILL OFFER A POSITION TO THE INDIVIDUAL.

26 (B) PETITION AND HEARING.--AN INDIVIDUAL SEEKING A  
27 CERTIFICATE OF EMPLOYABILITY SHALL FILE A PETITION WITH THE  
28 DEPARTMENT. A HEARING OFFICER DESIGNATED BY THE DEPARTMENT SHALL  
29 CONDUCT A HEARING ON THE PETITION IN ACCORDANCE WITH THE  
30 PROVISIONS OF 2 PA.C.S. (RELATING TO ADMINISTRATIVE LAW AND

1 PROCEDURE). THE PETITION SHALL INDICATE WHETHER THE INDIVIDUAL  
2 REQUESTS A FACE-TO-FACE HEARING, WHICH WILL BE CONDUCTED AT THE  
3 DEPARTMENT'S OFFICES IN HARRISBURG. IF NOT SPECIFIED, THE  
4 HEARING MAY BE CONDUCTED BY TELEPHONE OR OTHER MEANS AS  
5 DETERMINED BY THE DEPARTMENT.

6 (C) DETERMINATION.--

7 (1) THE DEPARTMENT SHALL MAKE A WRITTEN DETERMINATION AS  
8 TO WHETHER THE PETITIONING INDIVIDUAL WILL RECEIVE A  
9 CERTIFICATE OF EMPLOYABILITY. THE DEPARTMENT MUST APPLY THE  
10 CRITERIA OF THIS SUBSECTION IN REACHING ITS DECISION.

11 (2) A DETERMINATION BY THE DEPARTMENT SHALL BE A FINAL  
12 AGENCY DETERMINATION WITH A RIGHT TO APPEAL TO THE  
13 COMMONWEALTH COURT.

14 (D) EVIDENCE.--THE INDIVIDUAL PETITIONING FOR A CERTIFICATE  
15 OF EMPLOYABILITY HAS THE BURDEN OF PROVING BY A PREPONDERANCE OF  
16 THE EVIDENCE THE INDIVIDUAL'S FITNESS TO WORK WITH CARE-  
17 DEPENDENT INDIVIDUALS. THE DEPARTMENT'S DETERMINATION ABOUT THE  
18 INDIVIDUAL'S FITNESS AND WHETHER IT SHOULD ISSUE A CERTIFICATE  
19 OF EMPLOYABILITY SHALL BE BASED ON, BUT NOT BE LIMITED TO, THE  
20 FOLLOWING FACTORS:

21 (1) THE AMOUNT OF TIME THAT HAS ELAPSED SINCE THE  
22 INDIVIDUAL'S LAST CONVICTION OF AN OFFENSE LISTED IN SECTION  
23 503 AND, IF APPLICABLE, PROOF OF THE INDIVIDUAL'S RELEASE  
24 FROM INCARCERATION.

25 (2) THE LENGTH, CONSISTENCY AND CHARACTER OF THE  
26 INDIVIDUAL'S EMPLOYMENT HISTORY.

27 (3) THE CIRCUMSTANCES OF A SECTION 503 OFFENSE FOR WHICH  
28 THE INDIVIDUAL WAS CONVICTED AND THE NATURE OF THE  
29 CONVICTION.

30 (4) IF THE INDIVIDUAL ASSERTS THAT A SECTION 503 OFFENSE



1 WAS RELATED TO THE INDIVIDUAL'S SUBSTANCE ABUSE, WHETHER THE  
2 INDIVIDUAL HAS UNDERGONE SUBSTANCE ABUSE TREATMENT, IS  
3 MAINTAINING RECOVERY AND THE LENGTH OF TIME THE INDIVIDUAL  
4 HAS BEEN IN RECOVERY.

5 (5) OTHER EVIDENCE OF POSTCONVICTION REHABILITATION,  
6 INCLUDING, BUT NOT LIMITED TO, THE INDIVIDUAL'S HISTORY OF  
7 COMMUNITY SERVICE, PSYCHOLOGICAL COUNSELING AND CHARACTER  
8 REFERENCES.

9 (6) IN ADDITION TO EVIDENCE PRESENTED IN THE PETITION  
10 FOR A CERTIFICATE OF EMPLOYABILITY, THE DEPARTMENT MAY  
11 CONSIDER ORAL OR WRITTEN TESTIMONY OR STATEMENTS, RELEVANT TO  
12 THE FACTORS LISTED ABOVE, FROM:

13 (I) LICENSED PROFESSIONALS.

14 (II) MEMBERS OF THE COMMUNITY.

15 (III) PUBLIC OFFICIALS.

16 (IV) FORMER EMPLOYERS OF THE INDIVIDUAL.

17 (V) A FACILITY INTENDING TO HIRE OR ENGAGE THE  
18 APPLICANT.

19 (VI) OTHERS WITH KNOWLEDGE OF THE INDIVIDUAL OR  
20 OTHER EVIDENCE RELEVANT TO THE PETITION.

21 (7) IN ADDITION TO EVIDENCE PRESENTED IN THE PETITION  
22 FOR A CERTIFICATE OF EMPLOYABILITY, THE DEPARTMENT MAY  
23 CONSIDER WRITTEN STATEMENTS SUBMITTED BY THE PETITIONING  
24 INDIVIDUAL THAT WERE PREPARED BY:

25 (I) A DISTRICT ATTORNEY OR OTHER PROSECUTOR IN THE  
26 JURISDICTION WHERE THE INDIVIDUAL WAS CONVICTED OF AN  
27 OFFENSE LISTED IN SECTION 503.

28 (II) THE VICTIM, OR FAMILY MEMBERS OF THE VICTIM, OF  
29 ANY SECTION 503 OFFENSE COMMITTED BY THE INDIVIDUAL.

30 (E) SUBMISSION OF EVIDENCE.--AN INDIVIDUAL PETITIONING FOR A

1 CERTIFICATE OF EMPLOYABILITY SHALL SUBMIT ANY AND ALL WRITTEN  
2 EVIDENCE RELEVANT TO SUBSECTION (D) WITHIN 30 DAYS OF THE  
3 INITIAL FILING OF THE PETITION WITH THE DEPARTMENT. ANY  
4 SUBMISSION OF WRITTEN EVIDENCE LISTED UNDER SUBSECTION (D) AFTER  
5 THIS 30-DAY PERIOD SHALL BE ACCEPTED BY THE HEARING OFFICER FOR  
6 GOOD CAUSE SHOWN.

7 (F) DETERMINATION.--THE DEPARTMENT'S HEARING OFFICER SHALL:

8 (1) CONDUCT A HEARING ON A PETITION FOR A CERTIFICATE OF  
9 EMPLOYABILITY WITHIN 90 DAYS OF THE PETITION BEING RECEIVED.

10 (2) ISSUE A DETERMINATION WITHIN 30 DAYS OF THE HEARING.

11 (3) HAVE THE AUTHORITY TO GRANT AN EXTENSION OF THE  
12 DEADLINES SET BY PARAGRAPH (1) OR (2) IF THE PETITIONING  
13 INDIVIDUAL OR THE DEPARTMENT SHOWS GOOD CAUSE FOR AN  
14 EXTENSION.

15 (G) RULES AND REGULATIONS.--THE DEPARTMENT SHALL ESTABLISH  
16 RULES AND REGULATIONS FOR THE REVIEW OF PETITIONS FOR A  
17 CERTIFICATE OF EMPLOYABILITY CONSISTENT WITH THIS SECTION.  
18 COPIES OF THE RULES AND REGULATIONS SHALL BE MADE AVAILABLE FOR  
19 DISTRIBUTION TO THE PUBLIC.

20 (H) FEES.--THE DEPARTMENT SHALL, BY REGULATION, ESTABLISH  
21 REASONABLE FEES TO PETITION FOR A CERTIFICATE OF EMPLOYABILITY.  
22 NO PETITION SHALL BE CONSIDERED BY THE DEPARTMENT UNLESS  
23 ACCOMPANIED BY A FEE.

24 (I) NOTICE TO APPLICANTS.--NOTIFICATION OF THE PROVISIONS OF  
25 THIS SECTION SHALL BE PROVIDED BY THE ADMINISTRATOR OR EMPLOYER,  
26 IN A FORM DESIGNATED BY THE DEPARTMENT, TO EACH APPLICANT.

27 (J) LIMITATION OF CERTIFICATE OF EMPLOYABILITY.--  
28 CERTIFICATES OF EMPLOYABILITY SHALL STATE THAT THEIR ONLY  
29 PURPOSE IS TO EXEMPT SUCCESSFUL PETITIONERS FROM THE CRIMINAL  
30 RECORD HIRING PROHIBITIONS OF THIS ACT AND THAT THEY DO NOT

1 ADDRESS ANY OTHER QUALIFICATIONS OF THE INDIVIDUAL TO BE  
2 EMPLOYED IN A FACILITY OR OBLIGATE FACILITIES TO HIRE OR ENGAGE  
3 A PARTICULAR INDIVIDUAL.

4 (K) GRANDFATHERING FOR TRAINING PURPOSES.--AN INDIVIDUAL WHO  
5 IS GRANTED A CERTIFICATE OF EMPLOYABILITY AND WHO HAS NOT BEEN  
6 EMPLOYED IN A FACILITY WITHIN A YEAR OF THE DATE OF PETITION FOR  
7 THE CERTIFICATE WILL NOT BE EXEMPTED FROM ANY TRAINING  
8 REQUIREMENTS IMPOSED BY LAW FOR NEW EMPLOYEES.

9 Section ~~6~~ 7. Section 506 of the act, added December 18, ~~1966~~ <—  
10 1996 (P.L.1125, No.169), is amended to read: <—

11 Section 506. Provisional [employees] EMPLOYMENT for limited <—  
12 periods.

13 Notwithstanding [section 502] SECTIONS 502 and 503, <—  
14 administrators may employ applicants on a provisional basis for  
15 a single period not to exceed 30 days or, for applicants under  
16 section 502(a)(2), a period of 90 days, if all of the following  
17 conditions are met:

18 (1) The applicant has applied for the information  
19 required under section 502 and the applicant provides a copy  
20 of the appropriate completed request forms to the  
21 administrator.

22 (2) The administrator has no knowledge of information  
23 pertaining to the applicant which would disqualify [him] THE <—  
24 APPLICANT from employment pursuant to section 503, subject to  
25 18 Pa.C.S. § 4911 (relating to tampering with public records  
26 or information).

27 (3) The applicant swears or affirms in writing that [he] <—  
28 THE APPLICANT is not disqualified from employment under <—  
29 section 503.

30 (4) [If] Except as provided under section 503(a), if the

1 information obtained under section 502 reveals that the  
2 applicant is disqualified from employment under section 503,  
3 the applicant shall be immediately dismissed by the  
4 administrator.

5 (5) The department shall develop guidelines regarding  
6 the supervision of applicants. [For a home health care <—  
7 agency, supervision shall include random direct supervision  
8 by an employee who has been employed by the facility for a  
9 period of one year.] <—

10 SECTION 8. THE ACT IS AMENDED BY ADDING A SECTION TO READ: <—

11 SECTION 506.1. REQUIREMENTS CONCERNING EMPLOYEES.

12 THE FOLLOWING SHALL APPLY:

13 (1) IF THE INFORMATION OBTAINED UNDER SECTION 502(A)  
14 REVEALS THAT AN EMPLOYEE IS DISQUALIFIED FROM EMPLOYMENT  
15 UNDER SECTIONS 503(A.2) OR (A.3), AND THE EMPLOYEE FILES A  
16 PETITION FOR A CERTIFICATE OF EMPLOYABILITY PURSUANT TO  
17 SECTION 503.1, THAT THE EMPLOYEE SHALL EITHER, AT THE OPTION  
18 OF AN ADMINISTRATOR, BE PLACED ON SUSPENSION WITHOUT PAY OR  
19 CONTINUE EMPLOYMENT UNDER APPROPRIATE SUPERVISION UNTIL SUCH  
20 TIME AS A CERTIFICATE OF EMPLOYABILITY IS ISSUED OR AN APPEAL  
21 IS FILED. THE DEPARTMENT SHALL DEVELOP GUIDELINES REGARDING  
22 THE SUPERVISION OF EMPLOYEES UNDER THIS PARAGRAPH.

23 (2) IF THE INFORMATION OBTAINED UNDER SECTION 502(A)  
24 REVEALS THAT AN EMPLOYEE IS DISQUALIFIED FROM EMPLOYMENT  
25 UNDER SECTION 503(A.1), OR IS DISQUALIFIED FROM EMPLOYMENT  
26 UNDER SECTION 503(A.2) OR (A.3) AND FAILS TO FILE A PETITION  
27 FOR A CERTIFICATE OF EMPLOYABILITY WITHIN 30 DAYS OF  
28 RECEIVING A PROHIBITIVE HIRE LETTER FROM THE DEPARTMENT, THE  
29 EMPLOYEE SHALL BE IMMEDIATELY DISMISSED.

30 (3) EXCEPT AS PROVIDED IN PARAGRAPH (4), IF A PETITION

1 FOR A CERTIFICATE OF EMPLOYABILITY OF AN EMPLOYEE IS DENIED  
2 PURSUANT TO SECTION 503.1, THE EMPLOYEE ON SUSPENSION OR  
3 SUPERVISED EMPLOYMENT SHALL BE IMMEDIATELY DISMISSED.

4 (4) IF AN APPEAL OF THE DENIAL OF A CERTIFICATE OF  
5 EMPLOYABILITY IS FILED BY AN INDIVIDUAL ON SUSPENSION OR  
6 SUPERVISED EMPLOYMENT, THEN THE ADMINISTRATOR SHALL HAVE THE  
7 OPTION TO CONTINUE THE SUSPENSION PERIOD AS DESCRIBED IN  
8 PARAGRAPH (1).

9 (5) WITHIN 60 DAYS OF THE EFFECTIVE DATE OF THIS  
10 SECTION, FACILITIES SHALL PROVIDE COPIES OF SECTIONS 503,  
11 503.1 AND 506.1 TO ALL EMPLOYEES.

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

14 Section 508. Applicability.

15 This chapter shall apply as follows:

16 [(1) An individual who, on the effective date of this  
17 chapter, has continuously for a period of one year been an  
18 employee of the same facility shall be exempt from section  
19 502 as a condition of continued employment.

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

23 (3) If an employee who is exempt under paragraph (1)  
24 seeks employment with a different facility, the employee and  
25 the facility shall comply with section 502.]

26 ~~(3.1) (i) For any individual who, on the effective date~~ <—  
27 ~~of this paragraph is a current employee, a facility or~~  
28 ~~employer~~ A FACILITY shall, within 18 months of the <—  
29 effective date of this paragraph, comply with sections  
30 502 and 503 as a condition of continued employment of the <—

~~individual FOR EACH EMPLOYEE.~~

~~(ii) Information submitted pursuant to section 502 which was obtained prior to the effective date of this paragraph shall be deemed current for the purposes of subparagraph (i) upon review for compliance with section 503 by the appropriate entity.~~

(II) THE FACILITY MAY USE CRIMINAL HISTORY RECORD INFORMATION PREVIOUSLY USED TO COMPLY WITH SECTIONS 502 AND 503, UPON CERTIFICATION BY THE FACILITY THAT:

(A) THE EMPLOYEE HAS BEEN CONTINUOUSLY EMPLOYED BY THE FACILITY SINCE THE DATE THAT THE EMPLOYEE WAS HIRED OR ENGAGED UNDER THIS ACT.

(B) THE FACILITY HAS NO KNOWLEDGE THAT THE EMPLOYEE HAS BEEN CONVICTED OF ANY CRIMINAL OFFENSE SINCE THE DATE OF THE CRIMINAL HISTORY RECORD INFORMATION ON FILE FOR THAT EMPLOYEE.

(III) IF THE FACILITY CANNOT CERTIFY BOTH CONDITIONS UNDER SUBPARAGRAPH (II), IT SHALL REQUIRE THE EMPLOYEE TO OBTAIN A NEW CRIMINAL HISTORY RECORD PURSUANT TO SECTION 502 BEFORE DETERMINING THE EMPLOYEE'S COMPLIANCE WITH SECTIONS 502 AND 503.

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

Section 8 10. The Secretary of Aging shall coordinate a comparison study on the impact of utilizing the Pennsylvania State Police criminal background check system and the Federal Bureau of Investigation background check system pursuant to

1 Chapter 5 of the act. The purpose of the study shall be to  
2 assess the feasibility of changing the current procedure to  
3 require the Federal Bureau of Investigation check exclusively  
4 for all applicants and employees or to continue the current  
5 procedure of utilizing both systems, with the Pennsylvania State  
6 Police check being the baseline system. Such study shall  
7 include: a detailed review of the scope of the information  
8 obtained through the use of each system; the rate of accuracy of  
9 each system; the efficiency in terms of the turnaround time  
10 associated with each system; the step-by-step process involved  
11 in the completion of the checks required in each system; the  
12 estimated fiscal impact to the Department of Aging and to  
13 ~~employers~~ FACILITIES associated with each system; and current <—  
14 information regarding any advancements that have occurred with  
15 the technology involving criminal background checks as well as  
16 any changes that have occurred in the legal framework governing  
17 background checks. No later than one year from the effective  
18 date of this section, the Secretary of Aging shall report to the  
19 Aging and Youth Committee of the Senate and the Aging and Older  
20 Adult Services Committee of the House of Representatives the  
21 results of the study.

22 Section 9 11. The provisions of this act are severable. If <—  
23 any provision of this act or its application to any person or  
24 circumstance is held invalid, the invalidity shall not affect  
25 other provisions or applications of this act which can be given  
26 effect without the invalid provision or application.

27 ~~Section 10. This act shall take effect January 1, 2008, or <—~~  
28 ~~180 days after enactment, whichever is later.~~

29 SECTION 12. THIS ACT SHALL TAKE EFFECT IN 180 DAYS. <—