

THE GENERAL ASSEMBLY OF PENNSYLVANIA

SENATE BILL

No. 273 Session of
2005

INTRODUCED BY VANCE, M. WHITE, BOSCOLA, COSTA, KITCHEN, LOGAN,
O'PAKE, PICCOLA, REGOLA, STACK, STOUT, TOMLINSON AND
C. WILLIAMS, FEBRUARY 15, 2005

REFERRED TO AGING AND YOUTH, FEBRUARY 15, 2005

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 and for grounds for denying employment; and
10 providing for comparison study by Department of Aging and for
11 applicability relating to criminal history for employees.

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

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

18 Section 102. Legislative policy.

19 It is declared the policy of the Commonwealth of Pennsylvania
20 that older adults who lack the capacity to protect themselves
21 and are at imminent risk of abuse, neglect, exploitation or
22 abandonment shall have access to and be provided with services

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

12 It is further declared the policy of the Commonwealth that
13 the commission of any offense that constitutes serious physical
14 harm, a threat of serious physical harm or conduct which
15 evidences a reckless disregard for the vulnerability of care-
16 dependent populations legitimately warrants a lifetime ban on
17 employment in facilities covered under this act. Further, for
18 facilities covered under this act, it is the policy of the
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 2. The definitions of "employee," "exploitation" and
26 "facility" in section 103 of the act, amended December 18, 1996
27 (P.L.1125, No.169), are amended to read:

28 Section 103. Definitions.

29 The following words and phrases when used in this act shall
30 have the meanings given to them in this section unless the

1 context clearly indicates otherwise:

2 * * *

3 "Employee." [An individual who is employed by a facility.
4 The term includes contract employees who have direct contact
5 with residents or unsupervised access to their personal living
6 quarters. The term includes any person who is employed or who
7 enters into a contractual relationship to provide care to a
8 care-dependent individual for monetary consideration in the
9 individual's place of residence.] An individual who has direct
10 contact with residents or unsupervised access to their living
11 quarters and is either employed by a facility or a contract
12 employee. The term includes any person who is employed or who
13 enters into a contractual relationship to provide care to a
14 care-dependent individual for monetary consideration in the
15 individual's place of residence.

16 "Exploitation." An act or course of conduct by a caretaker
17 or other person, including an individual who is acting under a
18 power of attorney, against an older adult or an older adult's
19 resources, without the informed consent of the older adult or
20 with consent obtained through misrepresentation, coercion or
21 threats of force, that results in monetary, personal or other
22 benefit, gain or profit for the perpetrator or monetary or
23 personal loss to the older adult.

24 "Facility." Any of the following:

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

28 (2) A home health care agency.

29 (3) A long-term care nursing facility as defined in
30 section 802.1 of the act of July 19, 1979 (P.L.130, No.48),

known as 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 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) of the act, amended December 18, 1996 (P.L.1125, No.169), is 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 death or serious physical harm including exploitation that may lead to imminent risk of death or serious physical harm. The court of common pleas shall grant the agency's petition if it finds, by a preponderance of the evidence, that if protective services are not provided, the older adult is at imminent risk of death or serious physical

1 harm. The courts of common pleas of each judicial district shall
2 ensure that a judge or [district justice] magisterial district
3 judge is available on a 24-hour-a-day, 365-day-a-year basis to
4 accept and decide on petitions for an emergency court order
5 under this section whenever the agency determines that a delay
6 until normal court hours would significantly increase the danger
7 the older adult faces.

8 * * *

9 Section 4. Section 503(a) of the act, amended June 9, 1997
10 (P.L.160, No.13), is amended and the section is amended by
11 adding subsections to read:

12 Section 503. Grounds for denying employment.

13 [(a) General rule.--In no case shall a facility hire an
14 applicant or retain an employee required to submit information
15 pursuant to section 502(a) if the applicant's or employee's
16 criminal history record information indicates the applicant or
17 employee has been convicted of any of the following offenses:

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

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

23 Chapter 25 (relating to criminal homicide).

24 Section 2702 (relating to aggravated assault).

25 Section 2901 (relating to kidnapping).

26 Section 2902 (relating to unlawful restraint).

27 Section 3121 (relating to rape).

28 Section 3122.1 (relating to statutory sexual
29 assault).

30 Section 3123 (relating to involuntary deviate sexual

1 intercourse).

2 Section 3124.1 (relating to sexual assault).

3 Section 3125 (relating to aggravated indecent
4 assault).

5 Section 3126 (relating to indecent assault).

6 Section 3127 (relating to indecent exposure).

7 Section 3301 (relating to arson and related
8 offenses).

9 Section 3502 (relating to burglary).

10 Section 3701 (relating to robbery).

11 A felony offense under Chapter 39 (relating to theft
12 and related offenses) or two or more misdemeanors under
13 Chapter 39.

14 Section 4101 (relating to forgery).

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

17 Section 4302 (relating to incest).

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

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

21 Section 4305 (relating to dealing in infant
22 children).

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

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

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

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

1 Section 6301 (relating to corruption of minors).

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

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

5 (a.1) Lifetime bans.--In no case shall a facility hire an
6 applicant required to submit information pursuant to section
7 502(a) or retain an employee required to submit information
8 pursuant to section 508, if the applicant's or employee's
9 criminal history record information indicates the applicant or
10 employee has been convicted of any of the following offenses:

11 (1) An offense under one of the following provisions of
12 18 Pa.C.S. (relating to crimes and offenses) which is graded
13 as a felony:

14 Chapter 25 (relating to criminal homicide).

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

17 Section 2709.1 (relating to stalking).

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

20 Section 2901 (relating to kidnapping).

21 Section 3121 (relating to rape).

22 Section 3123 (relating to involuntary deviate sexual
23 intercourse).

24 Section 3124.1 (relating to sexual assault).

25 Section 3125 (relating to aggravated indecent
26 assault).

27 Section 3301 (relating to arson and related
28 offenses).

29 Section 3701 (relating to robbery).

30 Section 4302 (relating to incest).

1 Section 4304 (relating to endangering welfare of
2 children).

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

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

6 Section 2713 (relating to neglect of care-dependent
7 person).

8 Section 3126 (relating to indecent assault).

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

11 (a.2) Ten-year ban.--In no case may a facility hire an
12 applicant required to submit information pursuant to section
13 502(a) or retain an employee required to submit information
14 pursuant to section 508 if the applicant's or employee's
15 criminal history record information as supplemented under
16 subsection (a.3) indicates the applicant or employee has been
17 convicted, within ten years immediately preceding the date of
18 the report, not including any time spent in incarceration, of
19 any of the following offenses:

20 (1) An offense graded a felony under the act of April
21 14, 1972 (P.L.233, No.64), known as The Controlled Substance,
22 Drug, Device and Cosmetic Act.

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

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

27 Section 2902 (relating to unlawful restraint).

28 Section 3122.1 (relating to statutory sexual
29 assault).

30 Section 3502 (relating to burglary).

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

2 Section 4101 (relating to forgery).

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

5 Section 4953 (relating to retaliation against
6 witness, victim or party).

7 Section 5902 (relating to prostitution and related
8 offenses).

9 (3) An offense under one of the following provisions of
10 18 Pa.C.S. which is graded as a misdemeanor:

11 Section 2504 (relating to involuntary manslaughter).

12 Section 2902 (relating to unlawful restraint).

13 Section 3127 (relating to indecent exposure).

14 Section 3922 (relating to theft by deception).

15 Section 3923 (relating to theft by extortion).

16 Section 3927 (relating to theft by failure to make
17 required disposition of funds received).

18 Section 4101 (relating to forgery).

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

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

22 Section 4305 (relating to dealing in infant
23 children).

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

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

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

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

7 * * *

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

17 Section 5. Section 508 of the act, amended June 9, 1997
18 (P.L.160, No.13), is amended to read:

19 Section 508. Applicability.

20 This chapter shall apply as follows:

21 [(1) An individual who, on the effective date of this
22 chapter, has continuously for a period of one year been an
23 employee of the same facility shall be exempt from section
24 502 as a condition of continued employment.

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

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

1 (3.1) (i) An individual who, on the effective date of
2 this paragraph is a current employee of a facility shall,
3 within 12 months of the effective date of this paragraph,
4 comply with section 502 as a condition of continued
5 employment.

6 (ii) Information submitted pursuant to section 502
7 which was obtained within the one-year period preceding
8 the effective date of this paragraph shall be deemed
9 current for the purposes of subparagraph (i) upon review
10 for compliance with section 503 by the appropriate
11 entity.

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

17 Section 6. The Secretary of Aging shall coordinate a
18 comparison study on the impact of utilizing the Pennsylvania
19 State Police criminal background check system and the Federal
20 Bureau of Investigation background check system pursuant to
21 Chapter 5 of the act. The purpose of the study shall be to
22 assess the feasibility of changing the current procedure to
23 require the Federal Bureau of Investigation check exclusively
24 for all applicants and employees or to continue the current
25 procedure of utilizing both systems, with the Pennsylvania State
26 Police check being the baseline system. Such study shall
27 include: a detailed review of the scope of the information
28 obtained through the use of each system; the rate of accuracy of
29 each system; the efficiency in terms of the turnaround time
30 associated with each system; the step-by-step process involved

1 in the completion of the checks required in each system; the
2 estimated fiscal impact to the Department of Aging and to
3 employers associated with each system; and, current information
4 regarding any advancements that have occurred with the
5 technology involving criminal background checks as well as any
6 changes that have occurred in the legal framework governing
7 background checks. No later than one year from the effective
8 date of this section, the Secretary of Aging shall report to the
9 Aging and Youth Committee of the Senate and the Aging and Older
10 Adult Services Committee of the House of Representatives the
11 results of the study.

12 Section 7. The provisions of this act are severable. If any
13 provision of this act or its application to any person or
14 circumstance is held invalid, the invalidity shall not affect
15 other provisions or applications of this act which can be given
16 effect without the invalid provision or application.

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