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BIL:CDM 05/30/08

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A07170

AMENDMENTS TO SENATE BILL NO. 667

Sponsor:

Printer's No. 716

- 1 Amend Title, page 1, line 9, by inserting after "order"
2 , for information relating to prospective facility
3 personnel
- 4 Amend Title, page 1, line 9, by striking out "and" where it
5 appears the second time
- 6 Amend Title, page 1, line 10, by inserting after "for" where
7 it appears the first time
8 certificate of employability; further providing for
9 provisional employees for limited periods; providing
10 for requirements concerning employees, for
- 11 Amend Sec. 1 (Sec. 102), page 2, line 14, by striking out
12 "commission" and inserting
13 conviction
- 14 Amend Sec. 1 (Sec. 102), page 2, line 14, by striking out
15 "constitutes" and inserting
16 involves
- 17 Amend Sec. 1 (Sec. 102), page 2, line 17, by inserting after
18 "populations"
19 may
- 20 Amend Sec. 1 (Sec. 102), page 2, line 17, by striking out
21 "warrants" and inserting
22 warrant
- 23 Amend Sec. 1 (Sec. 102), page 2, line 20, by striking out
24 "commission" and inserting

1 conviction

2 Amend Sec. 1 (Sec. 102), page 2, line 20, by striking out
3 "related to" and inserting

4 involving

5 Amend Sec. 1 (Sec. 102), page 2, line 22, by inserting after
6 "behavior"

7 may

8 Amend Sec. 1 (Sec. 102), page 2, line 23, by striking out
9 "warrants" and inserting

10 warrant

11 Amend Sec. 1 (Sec. 102), page 2, lines 23 through 25, by
12 striking out "for a period of ten years" in line 23, all of line
13 24 and "time spent in incarceration" in line 25

14 Amend Sec. 2, page 2, line 26, by inserting after "of"
15 "care,"

16 Amend Sec. 2 (Sec. 103), page 3, lines 4 through 8, by
17 striking out all of said lines

18 Amend Sec. 2 (Sec. 103), page 3, line 10, by striking out the
19 brackets before and after "care or"

20 Amend Sec. 2 (Sec. 103), page 3, line 29, by striking out "or
21 employer"

22 Amend Sec. 2 (Sec. 103), page 4, line 14, by inserting a
23 bracket before "A"

24 Amend Sec. 2 (Sec. 103), page 4, line 17, by inserting a
25 bracket after "Act." and inserting immediately thereafter

26 The following entities as defined in section 802.1 of the act of
27 July 19, 1979 (P.L.130, No.48), known as the Health Care
28 Facilities Act:

- 29 (i) A home health care agency.
30 (ii) A long-term care nursing facility.
31 (iii) A hospice.
32 (iv) A home care agency.
33 (v) A home care registry.

34 Amend Sec. 2 (Sec. 103), page 4, lines 18 through 23, by

1 striking out all of said lines

2 Amend Sec. 2 (Sec. 103), page 4, line 27, by inserting after

3 "home"

4 or assisted living residence

5 Amend Sec. 3, page 5, line 7, by inserting after "307(a)"

6 and (b)

7 Amend Sec. 3, page 5, line 8, by striking out "is" and

8 inserting

9 are

10 Amend Sec. 3 (Sec. 307), page 5, line 17, by inserting after

11 "of"

12 financial exploitation,

13 Amend Sec. 3 (Sec. 307), page 5, lines 17 through 19, by

14 striking out "including" in line 17, all of line 18 and

15 "physical harm" in line 19

16 Amend Sec. 3 (Sec. 307), page 5, line 21, by striking out "if

17 protective services are not provided," and inserting

18 failure to provide protective services will place

19 Amend Sec. 3 (Sec. 307), page 5, line 22, by striking out

20 "is"

21 Amend Sec. 3 (Sec. 307), page 5, line 22, by inserting after

22 "of"

23 financial exploitation,

24 Amend Sec. 3 (Sec. 307), page 5, line 26, by inserting

25 brackets before and after "decide" and inserting immediately

26 thereafter

27 rule

28 Amend Sec. 3 (Sec. 307), page 5, by inserting between lines

29 29 and 30

30 (b) Limited order.--The court, after finding [clear and

1 convincing] a preponderance of evidence of the need for an
2 emergency order, shall order only such services as are necessary
3 to remove the conditions creating the established need.

4 Amend Sec. 4 (Sec. 501), page 6, line 9, by striking out "or
5 employer" and inserting

6 as an employee

7 Amend Sec. 4 (Sec. 501), page 6, lines 10 and 11, by striking
8 out all of said lines

9 Amend Sec. 4 (Sec. 502), page 6, line 13, by inserting a
10 bracket before "prospective"

11 Amend Sec. 4 (Sec. 502), page 6, line 13, by striking out the
12 bracket before "facility"

13 Amend Sec. 4 (Sec. 502), page 6, line 14, by striking out
14 "employees" and inserting

15 applicants

16 Amend Sec. 4 (Sec. 502), page 6, lines 16 through 19, by
17 striking out "] Prior" in line 16, all of lines 17 and 18 and
18 "have or may have direct contact with a recipient" in line 19
19 and inserting

20 administrators and any operators who have or may have direct
21 contact with a recipient] Prior to hiring or engaging an
22 applicant, a facility shall require the applicant

23 Amend Sec. 4 (Sec. 502), page 6, line 26, by inserting
24 brackets before and after "that person" and inserting
25 immediately thereafter

26 the applicant

27 Amend Sec. 4 (Sec. 502), page 7, by inserting between lines
28 18 and 19

29 (a.1) Additional information.--The department or the State
30 Police may require the applicant to submit additional
31 information from a court or other authority if the criminal
32 history record does not provide the disposition of a criminal
33 charge or the information needed to compare a Federal or out-of-
34 State criminal offense to Pennsylvania criminal offenses.

35 Amend Sec. 5 (Sec. 503), page 9, lines 25 and 26, by striking

1 out "or employer hire" and inserting

2 hire or engage

3 Amend Sec. 5 (Sec. 503), page 10, lines 6 through 8, by

4 striking out all of said lines

5 Amend Sec. 5 (Sec. 503), page 10, by inserting between lines

6 15 and 16

7 Section 3124.2 (relating to institutional sexual
8 assault).

9 Amend Sec. 5 (Sec. 503), page 10, line 20, by striking out
10 all of said line

11 Amend Sec. 5 (Sec. 503), page 10, lines 22 and 23, by

12 striking out all of said lines

13 Amend Sec. 5 (Sec. 503), page 10, lines 25 through 30, by

14 striking out all of lines 25 through 29 and "(3)" in line 30 and

15 inserting

16 (2)

17 Amend Sec. 5 (Sec. 503), page 11, line 1, by striking out "or

18 (2)"

19 Amend Sec. 5 (Sec. 503), page 11, by inserting between lines

20 1 and 2

21 (a.2) Lifetime bans with possibility of certificate of
22 employability.--Except as provided in section 503.1, a facility
23 shall not hire or engage an applicant required to submit
24 information pursuant to section 502(a) or retain an employee
25 required to submit information pursuant to section 508 if the
26 applicant's or employee's criminal history record information
27 indicates the applicant or employee has been convicted of any of
28 the following offenses:

29 (1) An offense under one of the following provisions of
30 18 Pa.C.S. which is graded as a felony:

31 Section 2702 (relating to aggravated assault).

32 Section 2709.1 (relating to stalking).

33 Section 3126 (relating to indecent assault).

34 Section 3701 (relating to robbery).

35 Section 4304 (relating to endangering welfare of
36 children).

37 (2) An offense under one of the following provisions of
38 18 Pa.C.S. which is graded as a misdemeanor:

39 Section 2713 (relating to neglect of care-dependent
40 person).

1 Section 3126.

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

4 Amend Sec. 5 (Sec. 503), page 11, line 2, by striking out all
5 of said line and inserting

6 (a.3) Ten-year ban.--Except as provided in section 503.1, a
7 facility shall not

8 Amend Sec. 5 (Sec. 503), page 11, line 3, by inserting after
9 "hire"

10 or engage

11 Amend Sec. 5 (Sec. 503), page 11, line 7, by striking out
12 "(a.3)" and inserting

13 (a.4)

14 Amend Sec. 5 (Sec. 503), page 11, lines 16 and 17, by
15 striking out all of said lines

16 Amend Sec. 5 (Sec. 503), page 12, line 2, by striking out all
17 of said line and inserting

18 Chapter 25.

19 Amend Sec. 5 (Sec. 503), page 12, lines 5 through 8, by
20 striking out all of said lines

21 Amend Sec. 5 (Sec. 503), page 12, line 22, by striking out
22 "(a.3)" and inserting

23 (a.4)

24 Amend Sec. 5 (Sec. 503), page 12, line 24, by striking out
25 "and" and inserting

26 who has been

27 Amend Sec. 5 (Sec. 503), page 12, line 25, by inserting after
28 "(a.2)"

29 or (a.3)

30 Amend Bill, page 13, by inserting between lines 11 and 12

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

1 (a) General rule.--

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

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

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

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

30 (c) Determination.--

31 (1) The department shall make a written determination as
32 to whether the petitioning individual will receive a
33 certificate of employability. The department must apply the
34 criteria of this subsection in reaching its decision.

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

38 (d) Evidence.--The individual petitioning for a certificate
39 of employability has the burden of proving by a preponderance of
40 the evidence the individual's fitness to work with care-
41 dependent individuals. The department's determination about the
42 individual's fitness and whether it should issue a certificate
43 of employability shall be based on, but not be limited to, the
44 following factors:

45 (1) The amount of time that has elapsed since the
46 individual's last conviction of an offense listed in section
47 503 and, if applicable, proof of the individual's release
48 from incarceration.

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

51 (3) The circumstances of a section 503 offense for which
52 the individual was convicted and the nature of the
53 conviction.

54 (4) If the individual asserts that a section 503 offense
55 was related to the individual's substance abuse, whether the
56 individual has undergone substance abuse treatment, is
57 maintaining recovery and the length of time the individual
58 has been in recovery.

59 (5) Other evidence of postconviction rehabilitation,

1 including, but not limited to, the individual's history of
 2 community service, psychological counseling and character
 3 references.

4 (6) In addition to evidence presented in the petition
 5 for a certificate of employability, the department may
 6 consider oral or written testimony or statements, relevant to
 7 the factors listed above, from:

8 (i) Licensed professionals.

9 (ii) Members of the community.

10 (iii) Public officials.

11 (iv) Former employers of the individual.

12 (v) A facility intending to hire or engage the
 13 applicant.

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

16 (7) In addition to evidence presented in the petition
 17 for a certificate of employability, the department may
 18 consider written statements submitted by the petitioning
 19 individual that were prepared by:

20 (i) A district attorney or other prosecutor in the
 21 jurisdiction where the individual was convicted of an
 22 offense listed in section 503.

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

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

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

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

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

36 (3) Have the authority to grant an extension of the
 37 deadlines set by paragraph (1) or (2) if the petitioning
 38 individual or the department shows good cause for an
 39 extension.

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

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

49 (i) Notice to applicants.--Notification of the provisions of
 50 this section shall be provided by the administrator or employer,
 51 in a form designated by the department, to each applicant.

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

59 (k) Grandfathering for training purposes.--An individual who

1 is granted a certificate of employability and who has not been
 2 employed in a facility within a year of the date of petition for
 3 the certificate will not be exempted from any training
 4 requirements imposed by law for new employees.

5 Amend Sec. 6, page 13, line 12, by striking out "6" and
 6 inserting

7 7

8 Amend Sec. 6 (Sec. 506), page 13, line 14, by inserting
 9 brackets before and after "employees" and inserting immediately
 10 thereafter

11 employment

12 Amend Sec. 6 (Sec. 506), page 13, line 24, by inserting after
 13 "[him]"

14 the applicant

15 Amend Sec. 6 (Sec. 506), page 13, line 28, by inserting
 16 brackets before and after "he" and inserting immediately
 17 thereafter

18 the applicant

19 Amend Sec. 6 (Sec. 506), page 14, line 6, by inserting a
 20 bracket before "For"

21 Amend Sec. 6 (Sec. 506), page 14, line 9, by inserting a
 22 bracket after "year."

23 Amend Bill, page 14, by inserting between lines 9 and 10

24 Section 8. The act is amended by adding a section to read:
 25 Section 506.1. Requirements concerning employees.

26 The following shall apply:

27 (1) If the information obtained under section 502(a)
 28 reveals that an employee is disqualified from employment
 29 under sections 503(a.2) or (a.3), and the employee files a
 30 petition for a certificate of employability pursuant to
 31 section 503.1, that the employee shall either, at the option
 32 of an administrator, be placed on suspension without pay or
 33 continue employment under appropriate supervision until such
 34 time as a certificate of employability is issued or an appeal
 35 is filed. The department shall develop guidelines regarding
 36 the supervision of employees under this paragraph.

37 (2) If the information obtained under section 502(a)
 38 reveals that an employee is disqualified from employment
 39 under section 503(a.1), or is disqualified from employment

1 under section 503(a.2) or (a.3) and fails to file a petition
 2 for a certificate of employability within 30 days of
 3 receiving a prohibitive hire letter from the department, the
 4 employee shall be immediately dismissed.

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

9 (4) If an appeal of the denial of a certificate of
 10 employability is filed by an individual on suspension or
 11 supervised employment, then the administrator shall have the
 12 option to continue the suspension period as described in
 13 paragraph (1).

14 (5) Within 60 days of the effective date of this
 15 section, facilities shall provide copies of sections 503,
 16 503.1 and 506.1 to all employees.

17 Amend Sec. 7, page 14, line 10, by striking out "7" and
 18 inserting

19 9

20 Amend Sec. 7 (Sec. 508), page 14, lines 24 through 26, by
 21 striking out "For any individual who, on the effective date" in
 22 line 24, all of line 25 and "employer" in line 26 and inserting

23 A facility

24 Amend Sec. 7 (Sec. 508), page 14, line 28, by striking out
 25 "of the individual" and inserting

26 for each employee

27 Amend Sec. 7 (Sec. 508), page 14, lines 29 and 30; page 15,
 28 lines 1 through 3, by striking out all of said lines on said
 29 pages and inserting

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

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

36 (B) The facility has no knowledge that the
 37 employee has been convicted of any criminal offense
 38 since the date of the criminal history record
 39 information on file for that employee.

40 (iii) If the facility cannot certify both conditions
 41 under subparagraph (ii), it shall require the employee to
 42 obtain a new criminal history record pursuant to section
 43 502 before determining the employee's compliance with
 44 sections 502 and 503.

45 Amend Sec. 8, page 15, line 9, by striking out "8" and

1 inserting

2 10

3 Amend Sec. 8, page 15, line 25, by striking out "employers"

4 and inserting

5 facilities

6 Amend Sec. 9, page 16, line 4, by striking out "9" and

7 inserting

8 11

9 Amend Sec. 10, page 16, lines 9 and 10, by striking out all

10 of said lines and inserting

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