



Senate Aging and Youth Committee

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Summary SB 667 PN 716

This legislation amends the Older Adult Protective Services Act by creating two classes of criminal convictions that would impact on an individual's ability to be employed in a facility where such individual would be providing care to a care dependent person. A facility is defined as a domiciliary care home, a home health care agency, a long-term nursing facility, a hospice, a home care agency, a home care registry, an older adult daily living center, a personal care home and a continuing care provider.

The current section regarding the grounds for denying employment is deleted and replaced with a two tiered system of lifetime and ten year bans on employment for current and prospective employees. Individuals convicted of crimes involving serious physical harm or reckless disregard for the vulnerability of care dependent populations would be subject to a lifetime ban from employment in these facilities. Individuals convicted of certain lesser offenses would be prohibited from employment for a period of 10 years after their conviction, not including any time spent in incarceration. Applicants or employees have the right to appeal the accuracy of the Pennsylvania State Police criminal history record as well as the Federal criminal history record to the Department of Aging. Facilities may retain employees and provisionally hire applicants pending the resolution of this appeal and must comply with the background check provisions within 18 months of the effective date of the act. Background checks obtained prior to this act may be considered current.

The bill also reduces the burden of proof required for an agency to petition a court of common pleas for an emergency court order to provide protective services from clear and convincing evidence to a preponderance of the evidence.

Lastly, it requires the Secretary of Aging to coordinate a comparison study on the impact of utilizing the Pennsylvania State Police criminal background check system and the Federal Bureau of Investigation background system. The purpose is to assess the feasibility of utilizing the Federal system exclusively or to continue to use both. The bill requires the Secretary to report the results of this study no later than one year from the effective date of the act to the Senate Aging and Youth Committee and the House Older Adult Services Committee.

Effective Date

This act shall take effect in 180 days.

Background

The Pennsylvania Supreme Court in *Nixon v. Commonwealth of Pa* (2003), 839 A.2d 277, held the criminal records provision in the Older Adult Protective Services Act was unconstitutional because it infringed on certain employees' rights to pursue an occupation. The court determined that the right to engage in a particular occupation was not a fundamental right but that the state must show that the prohibition had a real and substantial relationship to the protection of the care dependent population from victimization. While the court found the goal of protecting this population legitimate, it held there was no basis to distinguish between those who held a job for a year before the effective date of the chapter and those who did not. This legislation attempts to treat current and prospective employees similarly.