

State of South Dakota

SEVENTY-FOURTH SESSION
LEGISLATIVE ASSEMBLY, 1999

336C0034

SENATE JUDICIARY COMMITTEE ENGROSSED NO. **SB102** - 2/4/99

Introduced by: Senators Brosz, Albers, Lawler, and Moore and Representatives Broderick,
Fryslie, Konold, and Solum

1 FOR AN ACT ENTITLED, An Act to require a criminal history check for certain employees or
2 potential employees of assisted living centers.

3 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF SOUTH DAKOTA:

4 Section 1. Except as otherwise provided in this Act, before any assisted living center that is
5 required to be licensed pursuant to § 34-12-2 makes an offer to employ or to contract with a
6 nonlicensed person to provide nursing care, health-related services, medic services, or supportive
7 assistance to any individual, the assisted living center shall request that a criminal history check
8 be conducted on the nonlicensed person. If the assisted living center is part of a larger complex
9 of buildings, the requirement of a criminal history check applies only to an offer of employment
10 or contract made to a nonlicensed person who will work primarily in the immediate boundaries
11 of assisted living center.

12 Section 2. The assisted living center may obtain the criminal history record maintained by the
13 Division of Criminal Investigation of a nonlicensed person offering to provide nursing care,
14 health-related services, or supportive services to any individual. The assisted living center shall
15 request the division to conduct a criminal history check on the nonlicensed person and shall
16 provide the division any relevant information required by the division to conduct the check.

1 Section 3. The assisted living center may make an offer of temporary employment to a
2 nonlicensed person pending the results of the criminal history check on the person required in
3 section 1 of this Act. In such instances, the assisted living center shall provide to the Division of
4 Criminal Investigation the name and relevant information relating to the person within seventy-
5 two hours after the date the person accepts temporary employment.

6 Section 4. The Division of Criminal Investigation shall provide to the assisted living center
7 the criminal history records of any person being investigated.

8 Section 5. Any assisted living center shall inform each applicant for employment or each
9 prospective contract provider that the assisted living center is required to obtain a criminal
10 history record before making an offer of employment to, or contracting with, a nonlicensed
11 person.

12 Section 6. If the results of a criminal history check reveal that any nonlicensed person has
13 been convicted of any of the following offenses, the assisted living center may not hire or
14 contract with the person:

- 15 (1) Homicide;
- 16 (2) Assault;
- 17 (3) Rape and sexual contact;
- 18 (4) Kidnapping and false imprisonment;
- 19 (5) Arson;
- 20 (6) Criminal damage to property;
- 21 (7) Burglary;
- 22 (8) Robbery;
- 23 (9) Sexual offenses; or
- 24 (10) Abuse or neglect of disabled adults.

25 Section 7. If the results of a criminal history check reveal that a nonlicensed person hired on

1 a temporary basis or any other person who is an employee has been convicted of any of the
2 offenses listed in section 6 of this Act, the assisted living center shall immediately terminate the
3 person's employment.

4 Section 8. The provisions of sections 6 and 7 of this Act do not apply to an employee or
5 contract provider who has been employed in the assisted living center for twenty-four months
6 of the preceding thirty-six months or a person who has received a pardon of any relevant
7 conviction. The assisted living center may waive the provisions of sections 6 and 7 of this Act
8 for mitigating circumstances, which include:

- 9 (1) Age at which the crime was committed;
- 10 (2) Circumstances surrounding the crime;
- 11 (3) Length of time since the conviction;
- 12 (4) Criminal history since the conviction;
- 13 (5) Work history;
- 14 (6) Current employment references;
- 15 (7) Character references;
- 16 (8) Nurse aide registry records;
- 17 (9) Other evidence demonstrating the ability of the person to perform the employment
18 responsibilities competently and that the person does not pose a threat to the health
19 or safety of patients or clients.

20 The granting of a waiver does not create an obligation upon the assisted living center to offer
21 permanent employment to the person.

22 Section 9. All criminal history records received by an assisted living center pursuant to this
23 Act are confidential and are restricted to the exclusive use of the Department of Health and the
24 assisted living center requesting the information. Except by court order or with the written
25 consent of the person being investigated, the records or information obtained from or regarding

1 the records may not be released or otherwise disclosed to any other person or agency. The
2 records shall be destroyed after one year from the termination of employment of the person to
3 whom such records relate. However, upon receipt of written consent by an applicant for
4 employment with a health provider, the assisted living center in receipt of a criminal history
5 check may send a copy to the employer seeking the referral.

6 Section 10. The Department of Health shall review the employment files of any facility or
7 agency required to obtain criminal history records under this Act to ensure such facilities are in
8 compliance with the provisions of this Act.

9 Section 11. No nonlicensed person hired on a temporary basis and terminated pursuant to
10 the provisions of this Act is eligible for unemployment compensation.

1 **BILL HISTORY**

2 1/22/99 First read in Senate and referred to Judiciary. S.J. 160

3 1/25/99 Scheduled for Committee hearing on this date.

4 1/25/99 Judiciary Do Pass Amended, Passed, AYES 7, NAYS 0. S.J. 173

5 1/26/99 Referred to Judiciary. S.J. 193

6 1/29/99 Scheduled for Committee hearing on this date.

7 2/3/99 Judiciary Do Pass Amended, Passed, AYES 4, NAYS 0. S.J. 313