

State of South Dakota

SEVENTY-FOURTH SESSION
LEGISLATIVE ASSEMBLY, 1999

336C0034

SENATE BILL NO. 102

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. The

1 assisted living center shall pay a fee of fifteen dollars to the division for a search of the office's
2 criminal history files on the applicant for employment.

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

8 Section 4. The Division of Criminal Investigation shall provide to the assisted living center
9 the criminal history records of a person being investigated only such records as relate to:

- 10 (1) A felony or misdemeanor classified as an offense against the person;
11 (2) A felony or misdemeanor classified as an offense affecting the public morals;
12 (3) A felony or misdemeanor classified as an offense affecting the family;
13 (4) A felony violation of any state law intended to control the possession or distribution
14 of a controlled substance; or
15 (5) A felony or misdemeanor classified as an offense against property.

16 Within thirty days of receiving notification by the assisted living center to conduct a criminal
17 history check, the division shall complete the criminal history check and report the results of the
18 check to the requesting assisted living center.

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

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

- 1 (1) Homicide;
- 2 (2) Assault and battery;
- 3 (3) Rape and sexual battery;
- 4 (4) Kidnapping and false imprisonment;
- 5 (5) Arson;
- 6 (6) Criminal damage to property;
- 7 (7) Burglary;
- 8 (8) Robbery;
- 9 (9) Sexual offenses; or
- 10 (10) Abuse or neglect of disabled adults.

11 Section 7. If the results of a criminal history check reveal that a nonlicensed person hired on
12 a temporary basis or any other person who is an employee has been convicted of any of the
13 offenses listed in section 6 of this Act, the assisted living center shall immediately terminate the
14 person's employment.

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

- 20 (1) Age at which the crime was committed;
- 21 (2) Circumstances surrounding the crime;
- 22 (3) Length of time since the conviction;
- 23 (4) Criminal history since the conviction;
- 24 (5) Work history;
- 25 (6) Current employment references;

1 (7) Character references;

2 (8) Nurse aide registry records;

3 (9) Other evidence demonstrating the ability of the person to perform the employment
4 responsibilities competently and that the person does not pose a threat to the health
5 or safety of patients or clients.

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

8 Section 9. All criminal history records received by an assisted living center pursuant to this
9 Act are confidential and are restricted to the exclusive use of the Department of Health and the
10 assisted living center requesting the information. Except by court order or with the written
11 consent of the person being investigated, the records or information obtained from or regarding
12 the records may not be released or otherwise disclosed to any other person or agency. The
13 records shall be destroyed after one year from the termination of employment of the person to
14 whom such records relate. However, upon receipt of written consent by an applicant for
15 employment with a health provider, the assisted living center in receipt of a criminal history
16 check may send a copy to the employer seeking the referral.

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

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