

ASSEMBLY, No. 1243

STATE OF NEW JERSEY

Introduced Pending Technical Review by Legislative Counsel

PRE-FILED FOR INTRODUCTION IN THE 1996 SESSION

By Assemblyman AZZOLINA and Assemblywoman CRECCO

1 AN ACT requiring criminal history record background checks for
2 certain child care employees and operators, supplementing Titles 30
3 and 53 of the Revised Statutes and making an appropriation.

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5 **BE IT ENACTED** by the Senate and General Assembly of the State
6 of New Jersey:

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8 1. As used in this act:

9 "Department" means the Department of Human Services.

10 "Employee" means an individual 18 years of age or older who is
11 employed at a facility for children and works at the facility for the
12 equivalent of at least one seven hour day per week. Employee
13 includes, but is not limited to, the facility's director or principal
14 administrator, teaching, social service, child care, dietary, clerical and
15 maintenance staff, and the driver of a motor vehicle used to transport
16 children to and from the facility.

17 "Facility for children" means a facility or program providing for the
18 care or supervision of children for 20 hours or more a week, including
19 but not limited to, a residential facility, child care center licensed
20 pursuant to P.L.1983, c.492 (C.30:5B-1 et seq.), or a facility or
21 program operated by the Department of Human Services that provides
22 care or supervision of children, but not including:

23 a. A program operated by:

24 (1) a public school district or a private school which is run solely
25 for educational purposes;

26 (2) any kindergarten or prekindergarten which is an integral part
27 of any elementary educational institution or system; or

28 (3) a child care center which is an integral part of a private
29 educational institution or system offering elementary education in
30 grades kindergarten through sixth; and

31 b. A center or special class operated primarily for religious
32 instruction or for the temporary care of children while persons
33 responsible for the children are attending religious services; or

34 c. A State institution or facility for the mentally ill or the

1 developmentally disabled pursuant to P.L.1988, c.45 (C.30:4-3.4 et
2 seq.).

3 "Operator" means a person who sponsors, owns, or operates a
4 facility for children which is subject to the provisions of this act.

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6 2. a. A facility shall require, and the Department of Human
7 Services shall ensure, that the principal administrator of the facility
8 requests the State Bureau of Identification in the Division of State
9 Police in the Department of Law and Public Safety to conduct a
10 criminal history record background check of each prospective
11 employee, including a name and fingerprint identification check, to
12 ascertain whether the person has a record of criminal history, for
13 which check the person shall provide prior written consent. The
14 facility shall supply to the bureau the information necessary to conduct
15 the check, including the name and fingerprints of the person.

16 b. If the principal administrator of a facility does not provide the
17 bureau with the information necessary to conduct the criminal history
18 record background checks on the facility's employees, the department
19 may deny, suspend, revoke, or refuse to renew the facility's license,
20 certification, approval or contract, as the case may be.

21 c. If a prospective employee of a facility refuses to consent to, or
22 cooperate in, the securing of a criminal history record background
23 check, the person shall not be considered for employment at the
24 facility.

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26 3. The department shall act as a clearinghouse for the collection
27 and the dissemination of information obtained as a result of conducting
28 the criminal history record background check conducted pursuant to
29 section 9 of this act. The department shall advise the principal
30 administrator or personnel administrator of the facility, as appropriate,
31 of the information received from the bureau concerning a prospective
32 employee of the facility.

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34 4. a. The principal administrator of the facility shall initiate a
35 criminal history record background check on a prospective employee
36 before the person begins employment at the facility, whenever
37 possible, and if it is not reasonably possible to do so, immediately after
38 the person begins employment, to determine if the person is fit to be
39 an employee at the facility.

40 b. If the information from the criminal history record background
41 check pursuant to section 9 of this act discloses that a prospective
42 employee of the facility has a record of criminal history, the principal
43 administrator or personnel administrator of the facility shall review the
44 information with respect to the type and date of the criminal offense
45 to determine if the person is fit to serve as an employee of the facility.
46 Criminal offenses that may render a person unfit to serve as an

1 employee of a facility include, but are not limited to, crimes of
2 violence, sexual offenses or offenses involving the abuse, neglect or
3 exploitation of a child. Prior to making the determination, the
4 principal administrator of the facility shall advise the person that the
5 criminal history records have been received and shall give the person
6 the opportunity to review the records, to offer an explanation
7 concerning the information contained therein and to submit additional
8 pertinent information. The facility shall not employ a person who is
9 not fit to serve as an employee of a facility according to the guidelines
10 established by the department pursuant to section 6 of this act.

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12 5. a. As a condition of the department's licensure, certification,
13 approval or contracting with a facility after the effective date of this
14 act, the department shall require that a criminal history record
15 background check be conducted on the person who applies to become
16 an operator of the facility prior to that person assuming the position
17 of operator of the facility.

18 b. If the information from the criminal history record background
19 check, conducted pursuant to section 9 of this act, discloses that a
20 prospective operator of a facility has a record of criminal history, the
21 department shall review the information with respect to type and date
22 of the criminal offense to determine if the person is fit to serve as an
23 operator of the facility. Criminal offenses that may render a person
24 unfit to serve as an operator include, but are not limited to, crimes of
25 violence, sexual offenses or offenses involving the abuse, neglect or
26 exploitation of a child. Prior to making its determination, the
27 department shall advise the person that the criminal history records
28 have been received and shall give the person the opportunity to review
29 the records, to offer an explanation concerning the information
30 contained therein, and to submit additional pertinent information. The
31 department shall not license, certify, approve or contract with a person
32 who is not fit to serve as operator of the facility, according to the
33 guidelines established pursuant to section 6 of this act.

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35 6. In accordance with the "Administrative Procedure Act,"
36 P.L.1968, c.410 (C.52:14B-1 et seq.), the department shall adopt rules
37 and regulations necessary to implement the provisions of this act,
38 including but not limited to:

39 a. Guidelines for determining whether a person is fit to serve as an
40 employee or operator of a facility;

41 b. Procedures requiring the facility to make documented, good
42 faith efforts to contact previous employers to obtain information and
43 recommendations concerning the person's fitness for employment in a
44 facility;

45 c. Procedures requiring the conduct of a nonemployment
46 background check by the facility on a person covering such items as

1 education, organizational affiliations and other activities;

2 d. Procedures for hearing contested cases when a person is found
3 unfit to serve as an employee or operator of a facility; and

4 e. Guidelines, to be developed after consultation with the Attorney
5 General, concerning access to information obtained as a result of
6 conducting a criminal history record background check pursuant to
7 section 9 of this act, setting out the procedures for transmitting this
8 information and defining who may obtain the information.

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10 7. The Commissioner of Human Services shall report to the
11 Governor and the Legislature no later than three years from the
12 effective date of this act on the effectiveness of the criminal history
13 record background checks in screening prospective employees and
14 operators of facilities. The commissioner shall include in the report
15 recommendations for modifying the provisions of this act which he
16 believes to be necessary and appropriate.

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18 8. The prospective employee or operator shall assume the cost of
19 all criminal history record background checks conducted pursuant to
20 this act.

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22 9. The Division of State Police in the Department of Law and
23 Public Safety shall conduct a criminal history record background check
24 which includes a name and fingerprint identification check of each
25 prospective employee and operator of a facility to ascertain whether
26 or not the person has a criminal history. The division shall conduct the
27 background check only upon receipt of the person's written consent to
28 conduct the background check.

29 The bureau shall, for the purposes of conducting the criminal
30 history record background check, examine its own files and arrange
31 for a similar examination by the Federal Bureau of Investigation, and
32 shall forward the information obtained as a result of conducting the
33 check to the Department of Human Services.

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35 10. There is appropriated \$90,000 from the General Fund to
36 effectuate the purposes of this act.

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38 11. This act shall take effect on the 60th day after enactment.

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STATEMENT

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43 This bill requires only prospective employees and operators of a
44 facility providing for the care and supervision of children to submit to
45 a State and federal criminal history record background check, to
46 determine whether that person would be fit to serve as an employee or

1 operator of the facility. Prospective employees or operators would
2 assume the cost of the background check.

3 If a person is deemed unfit to serve as an employee or operator, the
4 facility would not be able to employ that person or, in the case of an
5 operator, the department would not be able to license or contract with
6 the operator. Any employee or operator who refuses to cooperate
7 would be removed from the position and that employment would be
8 terminated.

9 The bill also appropriates \$90,000 to the Department of Human
10 Services for any costs incurred by the department in implementing this
11 program.

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16 Requires criminal history background checks on certain child care
17 workers; appropriates \$90,000.