

ASSEMBLY, No. 1988

STATE OF NEW JERSEY

INTRODUCED MAY 6, 1996

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1 AN ACT concerning criminal history record background checks for  
2 certain in-home care givers for children and supplementing chapter  
3 13 of Title 56 of the Revised Statutes and chapter 1 of Title 53 of  
4 the Revised Statutes.

5

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

8

9 1. As used in this act:

10 "Director" means the Director of the Division of Consumer Affairs  
11 in the Department of Law and Public Safety.

12 "Division" means the Division of Consumer Affairs in the  
13 Department of Law and Public Safety.

14 "In-home care giver" or "care giver" means an unrelated person  
15 over the age of 16 who, through the assistance of an in-home child  
16 care placement agency, is employed to provide in-home child care.  
17 The in-home care giver may live in the home of the employer and may  
18 perform, in addition to child care, housekeeping duties. The term shall  
19 include au pair and nanny, but shall not include a baby sitter, as  
20 defined in section 1 of P.L.1989, c.331 (C.34:8-43).

21 "In-home child care placement agency" or "agency" means a  
22 private entity engaged in the business of procuring, or assisting in the  
23 procuring of, in-home child care positions for in-home care givers for  
24 a fee, charge or commission, regardless of whether that fee, charge or  
25 commission is collected from the applicant for employment or the

1 applicant for help.

2 2. a. The director, after consultation with the Attorney General,  
3 shall establish a registry for in-home child care placement agencies  
4 engaged in the business of procuring, or assisting in the procuring of,  
5 in-home child care positions for care givers within the State. An  
6 agency need not have an office located within the State in order to  
7 register with the division under the provisions of this section.

8 b. An application for registration shall include:

9 (1) The location, address and telephone number of the agency's  
10 principal place of business;

11 (2) The name, address and telephone number of the chief executive  
12 officer of the agency;

13 (3) The name, address and telephone number of the registered  
14 process agent for the agency;

15 (4) A disclosure form stating whether any principal officer of the  
16 agency has been convicted of any crime, which for the purposes of this  
17 act shall mean a violation of provisions of the "New Jersey Code of  
18 Criminal Justice," Title 2C of the New Jersey Statutes, or the  
19 equivalent under the laws of any other jurisdiction; and

20 (5) Such other information as the director shall deem necessary.

21 c. After review, the director may approve or deny an application.  
22 An agency whose application has been approved shall be registered  
23 with the division for a period of three years, unless the director shall  
24 remove, pursuant to rule and regulation, the agency for any violation  
25 of this act or good cause. An application for renewal shall be in the  
26 same manner and form as that initially required for registration.

27 An agency whose application for registration has been denied by the  
28 director may reapply.

29 d. The director may impose an application fee and an annual  
30 registration fee. The fees authorized under this subsection shall not  
31 exceed the actual cost to the division in processing agency applications  
32 and in establishing and maintaining the agency registry.

33

34 3. An agency registered in accordance with the provisions of this  
35 act may request a criminal history record background check on any  
36 care giver who is using that agency to procure an in-home child care  
37 position in this State.

38 a. In the case of a prospective care giver who has been a resident  
39 of this State for the immediately preceding three years, the check shall  
40 determine whether information exists on file in the Federal Bureau of  
41 Investigation, Identification Division, or in the State Bureau of  
42 Identification in the Division of State Police which would reveal that  
43 the care giver has been convicted of any crime.

44 b. In the case of a prospective care giver who is not a resident of  
45 this State, the agency may submit comparable evidence from another  
46 jurisdiction, or jurisdictions if appropriate, indicating whether the care

1 giver has been convicted in the immediately preceding five years of any  
2 offense which would constitute a crime if committed in New Jersey.  
3 The director, after consultation with the Superintendent of State  
4 Police, shall by rule and regulation determine what constitutes  
5 comparable evidence for the purposes of this subsection.

6  
7 4. a. No registered agency may request a criminal history record  
8 background check pursuant to the provisions of section 4 of this act  
9 without the written consent of that person. The consent required  
10 under this section shall be in a manner and form prescribed by the  
11 director and shall include, but not be limited to, the care giver's  
12 signature, name, address, and fingerprints.

13 b. The division shall act as a clearinghouse for the collection and  
14 dissemination of information obtained as a result of conducting  
15 criminal history record background checks pursuant to this act. The  
16 dissemination of such information shall be consistent with the purposes  
17 of this act and in accordance with rules and regulations promulgated  
18 by the director.

19 c. The director is authorized to exchange fingerprint data with and  
20 receive criminal history record information from the Federal Bureau  
21 of Investigation, Identification Section, the Division of State Police,  
22 and such other law enforcement agencies and jurisdictions as may be  
23 necessary for the purposes of section 4 of this act.

24  
25 5. a. Upon receipt of the information relating to a care giver's  
26 criminal history record background check, the director shall notify the  
27 registered agency of the names of those care givers who are  
28 determined not to have been convicted of a crime. Along with that  
29 notice, the director shall forward a certificate for each such person,  
30 certifying that the care giver identified thereon has been subject to a  
31 criminal history record background check and that the check has not  
32 revealed any record of the care giver being convicted of a crime. The  
33 certificate shall be in a form and shall contain such additional  
34 information as the director may by rule and regulation prescribe.

35 b. If the care giver's criminal history record background check  
36 does reveal a criminal conviction, the director shall so notify that  
37 person. The care giver shall have 30 days from the receipt of that  
38 notice to petition the director for a review, citing the reasons therefor.  
39 If, in that review, the care giver shall challenge successfully the  
40 accuracy of the criminal history record information indicating his  
41 criminal conviction or if the care giver shall demonstrate affirmatively  
42 to the director clear and convincing evidence of his rehabilitation, the  
43 director may issue a certificate, as provided in subsection a. of this  
44 section, indicating that the care giver has not been convicted of a  
45 crime.

46 When determining whether a person has affirmatively demonstrated

1 his rehabilitation, the director shall consider:

2 (1) The nature and seriousness of the offense;

3 (2) The circumstances under which the offense occurred;

4 (3) The date of the offense;

5 (4) The age of the care giver when the offense was committed;

6 (5) Whether the offense was repeated;

7 (6) Social conditions which may have contributed to the offense;

8 and

9 (7) Any evidence of rehabilitation, including good conduct in the  
10 community; counseling, psychological or psychiatric treatment;  
11 additional academic or vocational training; or personal  
12 recommendations.

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14 6. The costs associated with the registration, collection and  
15 dissemination of information, criminal history record background  
16 checks, and other administrative expenses associated with the  
17 implementation of the provisions of this act shall be assumed by the  
18 agencies registered under this act and shall be assessed pursuant to a  
19 fee schedule promulgated by the director.

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21 7. The division shall develop and undertake a public education  
22 program designed to inform the citizens of this State of the provisions  
23 of this act. The program shall publicize the availability of care givers  
24 who have undergone criminal background checks and shall encourage  
25 prospective employers of in-home care givers to hire those who have  
26 been certified by the division in accordance with the provisions of this  
27 act.

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29 8. The director, pursuant to the provisions of the "Administrative  
30 Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.), shall  
31 promulgate rules and regulations to effectuate the purposes of this act.

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33 9. The Division of State Police in the Department of Law and  
34 Public Safety, upon the request of the Director of the Division of  
35 Consumer Affairs in the Department of Law and Public Safety, shall  
36 conduct a criminal history record background check which includes a  
37 name and fingerprint identification check of a care giver in order to  
38 ascertain whether that person has a record of a criminal conviction.  
39 The request shall be in accordance with the provisions of P.L. , c.  
40 (C. )(now pending before the Legislature as this bill) and the check  
41 shall be performed only upon certification by the director that the  
42 subject of the check has given written consent therefor.

43 For the purpose of conducting the criminal history record  
44 background check, the State Police shall examine its own files and  
45 arrange for a similar examination by federal authorities. The  
46 information obtained as a result of any such check shall be forwarded

1 to the Director of the Division of Consumer Affairs, as provided in  
2 P.L. , c. (C. )(now pending before the Legislature as this bill).

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4 10. This bill shall take effect on the first day of the seventh month  
5 following enactment, except that section 8 shall take effect  
6 immediately.

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9 STATEMENT

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11 This bill authorizes criminal background checks for individuals  
12 seeking employment as in-home child care givers. In-home child care  
13 givers are defined in the bill as unrelated persons who are over the age  
14 of 16 and provide in-home child care services. They may or may not  
15 live in their employer's home and may, as part of the conditions of  
16 their employment, perform housekeeping duties. They are commonly  
17 known as au pairs or nannies. For the purposes of this bill, babysitters  
18 are not considered in-home care givers.

19 Under the provisions of the bill, the Division of Consumer Affairs  
20 in the Department of Law and Public Safety is directed to establish a  
21 registry for agencies engaged in the business of placing in-home care  
22 givers in this State. The registry program is permissive; agencies are  
23 not required to participate. The bill provides, however, that if these  
24 agencies do register with the division, they may request criminal  
25 history record background checks for the care givers they are seeking  
26 to place in New Jersey homes.

27 In the case of a prospective care giver who is a resident of this  
28 State, the background check is to consist of a review of the records of  
29 the Federal Bureau of Investigation, Identification Division, and of the  
30 State Bureau of Identification in the State Police.

31 In the case of a prospective care giver who is not a resident of the  
32 State, the agency is authorized to submit comparable evidence,  
33 acceptable to the State Police, that the individual has not been  
34 convicted of a crime.

35 The division is directed to provide the registered agency with a  
36 certificate for each care giver whose background check does not reveal  
37 a criminal past. The certificate, which would certify that the  
38 prospective care giver has never been convicted of a crime, would be  
39 used by the agency in procuring employment for that individual.

40 For individuals who question the accuracy of the information set  
41 forth on the records consulted by the investigatory agencies and for  
42 those who claim that although they have a criminal past, they have  
43 been rehabilitated, the bill provides an appeal procedure.

44 The bill also directs the division to develop and undertake a public  
45 education program designed to publicize the bill's provisions. The  
46 program is to inform prospective employers of the availability of care

1 givers who have undergone criminal history checks and to encourage  
2 them to hire individuals who have been certified by the division as not  
3 having criminal pasts.

4 Finally, the bill provides that the costs associated with the  
5 implementation of this program be assessed to the registered agencies  
6 through a fee schedule.

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11 Authorizes criminal background checks for au pairs and nannies.