

SENATE, No. 227

STATE OF NEW JERSEY

Introduced Pending Technical Review by Legislative Counsel

PRE-FILED FOR INTRODUCTION IN THE 1996 SESSION

By Senator SACCO

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

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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 request 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 and
11 current employee, including a name and fingerprint identification
12 check, to ascertain whether the person has a record of criminal history,
13 for 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.

25 d. If a current employee refuses to consent to, or cooperate in, the
26 securing of a criminal history record background check, the person
27 shall be immediately removed from his position and his employment
28 shall be terminated.

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

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

44 b. The principal administrator of a facility shall initiate a criminal
45 history record background check on current employees of the facility
46 within 180 days of the effective date of this act as a condition of

1 continued employment.

2 c. If the information from the criminal history record background
3 check pursuant to section 9 of this act discloses that a prospective or
4 current employee of the facility has a record of criminal history, the
5 principal administrator or personnel administrator of the facility shall
6 review the information with respect to the type and date of the
7 criminal offense to determine if the person is fit to serve as an
8 employee of the facility. Criminal offenses that may render a person
9 unfit to serve as an employee of a facility include, but are not limited
10 to, crimes of violence, sexual offenses or offenses involving the abuse,
11 neglect or exploitation of a child. Prior to making the determination,
12 the principal administrator of the facility shall advise the person that
13 the criminal history records have been received and shall give the
14 person the opportunity to review the records, to offer an explanation
15 concerning the information contained therein and to submit additional
16 pertinent information. The facility shall not employ a person who is
17 not fit to serve as an employee of a facility according to the guidelines
18 established by the department pursuant to section 6 of this act. If a
19 current employee is unfit, the facility shall immediately remove the
20 employee from the position and terminate employment.

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22 5. a. As a condition of the department's licensure, certification,
23 approval or contracting with a facility after the effective date of this
24 act, the department shall require that a criminal history record
25 background check be conducted on the person who applies to become
26 an operator of the facility prior to that person assuming the position
27 of operator of the facility.

28 b. The department shall require that within 180 days after the
29 effective date of this act, a criminal history record background check
30 be initiated on a person who is currently an operator of a facility, as a
31 condition of continued licensure, certification or approval of, or
32 contracting with, the facility.

33 c. If the information from the criminal history record background
34 check, conducted pursuant to section 9 of this act, discloses that a
35 prospective or current operator of a facility has a record of criminal
36 history, the department shall review the information with respect to
37 type and date of the criminal offense to determine if the person is fit
38 to serve as an operator of the facility. Criminal offenses that may
39 render a person unfit to serve as an operator include, but are not
40 limited to, crimes of violence, sexual offenses or offenses involving the
41 abuse, neglect or exploitation of a child. Prior to making its
42 determination, the department shall advise the person that the criminal
43 history records have been received and shall give the person the
44 opportunity to review the records, to offer an explanation concerning
45 the information contained therein, and to submit additional pertinent
46 information. The department shall not license, certify, approve or

1 contract with a person who is not fit to serve as operator of the
2 facility, according to the guidelines established pursuant to section 6
3 of this act. If the current operator of the facility is not qualified to
4 continue to serve as operator of the facility, the department shall
5 immediately remove the operator from the position and terminate the
6 license, certification, approval or contract of the facility, if
7 appropriate.

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

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

15 b. Procedures requiring the facility to make documented, good
16 faith efforts to contact previous employers to obtain information and
17 recommendations concerning the person's fitness for employment in a
18 facility;

19 c. Procedures requiring the conduct of a nonemployment
20 background check by the facility on a person covering such items as
21 education, organizational affiliations and other activities;

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

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

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30 7. The Commissioner of Human Services shall report to the
31 Governor and the Legislature no later than three years from the
32 effective date of this act on the effectiveness of the criminal history
33 record background checks in screening prospective or current
34 employees and operators of facilities. The commissioner shall include
35 in the report recommendations for modifying the provisions of this act
36 which he believes to be necessary and appropriate.

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38 8. The prospective or current employee shall assume the cost of the
39 criminal history record background check conducted pursuant to this
40 act.

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42 9. The Division of State Police in the Department of Law and
43 Public Safety shall conduct a criminal history record check which
44 includes a name and fingerprint identification check of each current
45 and prospective employee and operator of a facility to ascertain
46 whether or not the person has a criminal history. The division shall

1 conduct the background check only upon receipt of the person's
2 written consent to conduct the background check.

3 The bureau shall, for the purposes of conducting the criminal
4 history record background check, examine its own files and arrange
5 for a similar examination by the Federal Bureau of Investigation, and
6 shall forward the information obtained as a result of conducting the
7 check to the Department of Human Services.

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9 10. This act shall take effect on the 60th day after enactment.

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STATEMENT

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14 This bill would require that each prospective and current employee
15 and operator of a facility providing for the care and supervision of
16 children submit to a State and federal criminal history record
17 background check, to determine if the person is fit to serve as an
18 employee or operator of the facility. If the person is not fit to serve
19 as an employee or operator, the facility would not be able to employ
20 that person or, in the case of an operator, the department would not
21 be able to license or contract with the operator.

22 This bill also requires that if any administrator, employee or
23 operator refuses to cooperate in the record check, that person will be
24 removed from his position and his employment or the facility's license,
25 terminated.

26 This bill provides that the prospective or current employee will
27 assume the cost of the background check conducted pursuant to this
28 bill. Background screening is one element in a comprehensive
29 approach to preventing abuse in child care programs. While it can be
30 an effective preventive measure, these checks should not be expected
31 to eliminate all incidents of child abuse.

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37 Requires criminal history background checks on certain child care
workers.