

[First Reprint]
SENATE, No. 1349

STATE OF NEW JERSEY

INTRODUCED JUNE 20, 1996

By Senators KOSCO and INVERSO

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
26 applicant for help.

27

28 2. a. The director, after consultation with the Attorney General,
29 shall establish a registry for in-home child care placement agencies
30 engaged in the business of procuring, or assisting in the procuring of,
31 in-home child care positions for care givers within the State. An

EXPLANATION - Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and intended to be omitted in the law.

Matter underlined thus is new matter.

Matter enclosed in superscript numerals has been adopted as follows:

¹ Senate SLP committee amendments adopted June 16, 1997.

1 agency need not have an office located within the State in order to
2 register with the division under the provisions of this section.

3 b. An application for registration shall include:

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

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

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

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

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

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

22 An agency whose application for registration has been denied by the
23 director may reapply.

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

28

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

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

39 b. In the case of a prospective care giver who is not a resident of
40 this State, the agency may submit comparable evidence from another
41 jurisdiction, or jurisdictions if appropriate, indicating whether the care
42 giver has been convicted in the immediately preceding five years of any
43 offense which would constitute a crime if committed in New Jersey.
44 The director, after consultation with the Superintendent of State
45 Police, shall by rule and regulation determine what constitutes
46 comparable evidence for the purposes of this subsection.

1 4. a. No registered agency may request a criminal history record
2 background check pursuant to the provisions of section ¹[4] 3¹ of this
3 act without the written consent of that person. The consent required
4 under this section shall be in a manner and form prescribed by the
5 director and shall include, but not be limited to, the care giver's
6 signature, name, address, and fingerprints.

7 b. The division shall act as a clearinghouse for the collection and
8 dissemination of information obtained as a result of conducting
9 criminal history record background checks pursuant to this act. The
10 dissemination of such information shall be consistent with the purposes
11 of this act and in accordance with rules and regulations promulgated
12 by the director.

13 c. The director is authorized to exchange fingerprint data with and
14 receive criminal history record information from the Federal Bureau
15 of Investigation, Identification Section, the Division of State Police,
16 and such other law enforcement agencies and jurisdictions as may be
17 necessary for the purposes of section ¹[4] 3¹ of this act.

18
19 5. a. Upon receipt of the information relating to a care giver's
20 criminal history record background check, the director shall notify the
21 registered agency of the names of those care givers who are
22 determined not to have been convicted of a crime. Along with that
23 notice, the director shall forward a certificate for each such person,
24 certifying that the care giver identified thereon has been subject to a
25 criminal history record background check and that the check has not
26 revealed any record of the care giver being convicted of a crime. The
27 certificate shall be in a form and shall contain such additional
28 information as the director may by rule and regulation prescribe.

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

40 When determining whether a person has affirmatively demonstrated
41 his rehabilitation, the director shall consider:

- 42 (1) The nature and seriousness of the offense;
- 43 (2) The circumstances under which the offense occurred;
- 44 (3) The date of the offense;
- 45 (4) The age of the care giver when the offense was committed;
- 46 (5) Whether the offense was repeated;

1 (6) Social conditions which may have contributed to the offense;
2 and

3 (7) Any evidence of rehabilitation, including good conduct in the
4 community; counseling, psychological or psychiatric treatment;
5 additional academic or vocational training; or personal
6 recommendations.

7

8 6. The costs associated with the registration, collection and
9 dissemination of information, criminal history record background
10 checks, and other administrative expenses associated with the
11 implementation of the provisions of this act shall be assumed by the
12 agencies registered under this act and shall be assessed pursuant to a
13 fee schedule promulgated by the director.

14

15 7. The division shall develop and undertake a public education
16 program designed to inform the citizens of this State of the provisions
17 of this act. The program shall publicize the availability of care givers
18 who have undergone criminal background checks and shall encourage
19 prospective employers of in-home care givers to hire those who have
20 been certified by the division in accordance with the provisions of this
21 act.

22

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

26

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

37 For the purpose of conducting the criminal history record
38 background check, the State Police shall examine its own files and
39 arrange for a similar examination by federal authorities. The
40 information obtained as a result of any such check shall be forwarded
41 to the Director of the Division of Consumer Affairs, as provided in
42 P.L. , c. (C.)(now pending before the Legislature as this bill).

43

44 10. This bill shall take effect on the first day of the seventh month
45 following enactment, except that section 8 shall take effect
46 immediately.

1

2

3 Authorizes criminal background checks for au pairs and nannies.