
SENATE BILL 5714

State of Washington

62nd Legislature

2011 Regular Session

By Senators Kohl-Welles, Litzow, McAuliffe, Harper, and Kline

Read first time 02/08/11. Referred to Committee on Human Services & Corrections.

1 AN ACT Relating to implementing a portable background check
2 clearance registry for licensed and regulated child care facilities;
3 amending RCW 43.215.215; reenacting and amending RCW 43.215.010; and
4 adding a new section to chapter 43.215 RCW.

5 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

6 NEW SECTION. **Sec. 1.** A new section is added to chapter 43.215 RCW
7 to read as follows:

8 Subject to funding appropriated for this specific purpose, by July
9 1, 2012, the department of early learning shall establish and maintain
10 an individual-based or portable background check clearance registry.
11 An individual seeking a child care license or employment in any child
12 care facility licensed or regulated by the department must submit a
13 background check application on forms determined by the department.

14 **Sec. 2.** RCW 43.215.010 and 2007 c 415 s 2 and 2007 c 394 s 2 are
15 each reenacted and amended to read as follows:

16 The definitions in this section apply throughout this chapter
17 unless the context clearly requires otherwise.

1 (1) "Agency" means any person, firm, partnership, association,
2 corporation, or facility that provides child care and early learning
3 services outside a child's own home and includes the following
4 irrespective of whether there is compensation to the agency:

5 (a) "Child day care center" means an agency that regularly provides
6 child day care and early learning services for a group of children for
7 periods of less than twenty-four hours;

8 (b) "Early learning" includes but is not limited to programs and
9 services for child care; state, federal, private, and nonprofit
10 preschool; child care subsidies; child care resource and referral;
11 parental education and support; and training and professional
12 development for early learning professionals;

13 (c) "Family day care provider" means a child day care provider who
14 regularly provides child day care and early learning services for not
15 more than twelve children in the provider's home in the family living
16 quarters;

17 (d) "Nongovernmental private-public partnership" means an entity
18 registered as a nonprofit corporation in Washington state with a
19 primary focus on early learning, school readiness, and parental
20 support, and an ability to raise a minimum of five million dollars in
21 contributions;

22 (e) "Service provider" means the entity that operates a community
23 facility.

24 (2) "Agency" does not include the following:

25 (a) Persons related to the child in the following ways:

26 (i) Any blood relative, including those of half-blood, and
27 including first cousins, nephews or nieces, and persons of preceding
28 generations as denoted by prefixes of grand, great, or great-great;

29 (ii) Stepfather, stepmother, stepbrother, and stepsister;

30 (iii) A person who legally adopts a child or the child's parent as
31 well as the natural and other legally adopted children of such persons,
32 and other relatives of the adoptive parents in accordance with state
33 law; or

34 (iv) Spouses of any persons named in (i), (ii), or (iii) of this
35 subsection (2)(a), even after the marriage is terminated;

36 (b) Persons who are legal guardians of the child;

37 (c) Persons who care for a neighbor's or friend's child or
38 children, with or without compensation, where the person providing care

1 for periods of less than twenty-four hours does not conduct such
2 activity on an ongoing, regularly scheduled basis for the purpose of
3 engaging in business, which includes, but is not limited to,
4 advertising such care;

5 (d) Parents on a mutually cooperative basis exchange care of one
6 another's children;

7 (e) Nursery schools or kindergartens that are engaged primarily in
8 educational work with preschool children and in which no child is
9 enrolled on a regular basis for more than four hours per day;

10 (f) Schools, including boarding schools, that are engaged primarily
11 in education, operate on a definite school year schedule, follow a
12 stated academic curriculum, accept only school-age children, and do not
13 accept custody of children;

14 (g) Seasonal camps of three months' or less duration engaged
15 primarily in recreational or educational activities;

16 (h) Facilities providing care to children for periods of less than
17 twenty-four hours whose parents remain on the premises to participate
18 in activities other than employment;

19 (i) Any agency having been in operation in this state ten years
20 before June 8, 1967, and not seeking or accepting moneys or assistance
21 from any state or federal agency, and is supported in part by an
22 endowment or trust fund;

23 (j) An agency operated by any unit of local, state, or federal
24 government or an agency, located within the boundaries of a federally
25 recognized Indian reservation, licensed by the Indian tribe;

26 (k) An agency located on a federal military reservation, except
27 where the military authorities request that such agency be subject to
28 the licensing requirements of this chapter;

29 (l) An agency that offers early learning and support services, such
30 as parent education, and does not provide child care services on a
31 regular basis.

32 (3) "Applicant" means a person who requests or seeks employment in
33 an agency.

34 (4) "Department" means the department of early learning.

35 (5) "Director" means the director of the department.

36 (6) "Employer" means a person or business that engages the services
37 of one or more people, especially for wages or salary to work in an
38 agency.

1 (7) "Enforcement action" means denial, suspension, revocation,
2 modification, or nonrenewal of a license pursuant to RCW 43.215.300(1)
3 or assessment of civil monetary penalties pursuant to RCW
4 43.215.300(3).

5 (8) "Probationary license" means a license issued as a disciplinary
6 measure to an agency that has previously been issued a full license but
7 is out of compliance with licensing standards.

8 (9) "Requirement" means any rule, regulation, or standard of care
9 to be maintained by an agency.

10 (10) "Conviction information" means criminal history record
11 information relating to an incident that has led to a conviction or
12 other disposition adverse to the subject.

13 (11) "Negative action" means a court order, court judgment, or an
14 adverse action taken by an agency, in any state, federal, tribal, or
15 foreign jurisdiction, that results in a finding against the applicant
16 reasonably related to the individual's character, suitability, and
17 competence to care for or have unsupervised access to children in child
18 care. This may include but is not limited to:

19 (a) A decision issued by an administrative law judge;

20 (b) A final determination, decision, or finding made by an agency
21 following an investigation;

22 (c) An adverse agency action, including termination, revocation, or
23 denial of a license or certification, or if pending adverse agency
24 action, the voluntary surrender of a license, certification, or
25 contract in lieu of the adverse action;

26 (d) A revocation, denial, or restriction placed on any professional
27 license; and

28 (e) A final decision of a disciplinary board.

29 (12) "Nonconviction information" means arrest, founded allegations
30 of child abuse or neglect pursuant to chapter 26.44 RCW, or other
31 negative action adverse to the applicant.

32 **Sec. 3.** RCW 43.215.215 and 2007 c 415 s 5 are each amended to read
33 as follows:

34 (1) In determining whether an individual is of appropriate
35 character, suitability, and competence to provide child care and early
36 learning services to children, the department may consider the history
37 of past involvement of child protective services or law enforcement

1 agencies with the individual for the purpose of establishing a pattern
2 of conduct, behavior, or inaction with regard to the health, safety, or
3 welfare of a child. No report of child abuse or neglect that has been
4 destroyed or expunged under RCW 26.44.031 may be used for such
5 purposes. No unfounded or inconclusive allegation of child abuse or
6 neglect as defined in RCW 26.44.020 may be disclosed to a provider
7 licensed under this chapter.

8 (2) In order to determine the suitability of first-time agency
9 license applicants (~~((for an agency license, licensees, their~~
10 ~~employees)), all applicants and other persons (~~(who have))~~ having
11 unsupervised access to children in care(~~(, and who have not resided in~~
12 ~~the state of Washington during the three year period before being~~
13 ~~authorized to care for children,)) shall be fingerprinted.~~~~

14 (a) The fingerprints shall be forwarded to the Washington state
15 patrol and federal bureau of investigation for a criminal history
16 record check.

17 (b) (~~The fingerprint criminal history record checks shall be at~~
18 ~~the expense of the licensee. The licensee may not pass this cost on to~~
19 ~~the employee or prospective employee, unless the employee is determined~~
20 ~~to be unsuitable due to his or her criminal history record)) The
21 applicant must pay for the costs of obtaining the fingerprint criminal
22 history record check.~~

23 (c) The director shall use the fingerprint criminal history record
24 check information solely for the purpose of determining eligibility for
25 a license and for determining the character, suitability, and
26 competence of those persons or agencies, excluding parents, not
27 required to be licensed who are authorized to care for children.

28 (d) Criminal justice agencies shall provide the director such
29 information as they may have and that the director may require for such
30 purpose.

31 (e) The department shall issue a background check clearance card or
32 certificate to the applicant if after the completion of a background
33 check the department concludes the applicant is qualified for
34 unsupervised access to children in care. The background check
35 clearance card or certificate is valid for three years from the date of
36 issuance.

37 (f) The original applicant for an agency license, licensees, their
38 employees, and other persons who have unsupervised access to children

1 in care must submit a new background check application to the
2 department, on a form determined by the department, one hundred twenty
3 days before the expiration date listed on the background check
4 clearance card or certificate.

5 (g) The applicant and agency must maintain on-site for inspection
6 a copy of the background check clearance card or certificate.

7 (h) Individuals who have been issued a background check clearance
8 card or certificate must report nonconviction and conviction
9 information to the department within twenty-four hours of the event
10 constituting the nonconviction or conviction information.

11 (i) The department shall investigate and conduct a redetermination
12 of an applicant's or licensee's background clearance if the department
13 receives a complaint or information from individuals, a law enforcement
14 agency, or other federal, state, or local government agency. Subject
15 to the requirements in RCW 43.215.300 and 43.215.305, and based on a
16 determination that an individual lacks the appropriate character,
17 suitability, or competence to provide child care or early learning
18 services to children, the department may invalidate the background card
19 or certificate, or suspend, modify, or revoke any license authorized by
20 this chapter.

21 (j) Existing licensees, their employees, and other persons who have
22 been qualified by the department to have unsupervised access to
23 children in care must submit a new background application within one
24 year following the creation of the portable background check registry
25 established in section 1 of this act.

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