
SUBSTITUTE HOUSE BILL 1946

State of Washington

55th Legislature

1997 Regular Session

By House Committee on Children & Family Services (originally sponsored by Representatives Kenney, Dyer, Cody, Van Luven, Chopp, Cooke, Keiser, Anderson, Cole, Cooper, Veloria, Hatfield, Constantine, Morris, O'Brien, Ogden, Blalock, Costa, Conway and Tokuda)

Read first time 03/05/97.

1 AN ACT Relating to increasing protections for vulnerable persons;
2 amending RCW 43.43.832, 43.43.842, 43.20A.710, 18.52C.010, 18.52C.020,
3 and 18.52C.040; adding a new section to chapter 43.20A RCW; and adding
4 a new section to chapter 43.43 RCW.

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

6 **Sec. 1.** RCW 43.43.832 and 1995 c 250 s 2 are each amended to read
7 as follows:

8 (1) The legislature finds that businesses and organizations
9 providing services to children, developmentally disabled persons, and
10 vulnerable adults need adequate information to determine which
11 employees or licensees to hire or engage. The legislature further
12 finds that many developmentally disabled individuals and vulnerable
13 adults desire to hire their own employees directly and also need
14 adequate information to determine which employees or licensees to hire
15 or engage. Therefore, the Washington state patrol criminal
16 identification system (~~may~~) shall disclose, upon the request of a
17 business or organization as defined in RCW 43.43.830, a developmentally
18 disabled person, or a vulnerable adult as defined in RCW 43.43.830 or
19 his or her guardian, an applicant's record for convictions of offenses

1 against children or other persons, convictions for crimes relating to
2 financial exploitation, but only if the victim was a vulnerable adult,
3 adjudications of child abuse in a civil action, the issuance of a
4 protection order against the respondent under chapter 74.34 RCW, and
5 disciplinary board final decisions and any subsequent criminal charges
6 associated with the conduct that is the subject of the disciplinary
7 board final decision. When necessary, applicants may be employed on a
8 conditional basis pending completion of such a background
9 investigation.

10 (2) The legislature also finds that the state board of education
11 may request of the Washington state patrol criminal identification
12 system information regarding a certificate applicant's record for
13 convictions under subsection (1) of this section.

14 (3) The legislature also finds that law enforcement agencies, the
15 office of the attorney general, prosecuting authorities, and the
16 department of social and health services may request this same
17 information to aid in the investigation and prosecution of child,
18 developmentally disabled person, and vulnerable adult abuse cases and
19 to protect children and adults from further incidents of abuse.

20 (4) The legislature further finds that the department of social and
21 health services, when considering persons for state positions directly
22 responsible for the care, supervision, or treatment of children,
23 developmentally disabled persons, or vulnerable adults or when
24 licensing ~~((or))~~, authorizing, or contracting such services, persons,
25 or agencies pursuant to its authority under chapter 74.15, 71A.10,
26 70.128, 18.51, 18.20, 18.48, 72.36, or 72.23 RCW, or persons receiving
27 services from home health, hospice, or home care agencies licensed or
28 required to be licensed under chapter 70.126 RCW, or any later-enacted
29 statute which purpose is to license or regulate a facility which
30 handles vulnerable adults, must consider the information listed in
31 subsection (1) of this section. However, when necessary, persons may
32 be employed on a conditional basis pending completion of the background
33 investigation. Conditional employment or unsupervised volunteer work
34 pending the completion of the criminal history background check shall
35 only be authorized if the potential volunteer, employer, or employee
36 verifies that the background application has been submitted to the
37 appropriate agency and the applicant shows three positive work or
38 personal references. The three references must be approved by the
39 employer, kept by the agency or individual serving as employer, agent,

1 supervisor, or department, as appropriate, and made available for the
2 department to review. The approved three references shall serve only
3 as a means for allowing temporary employment until an approved criminal
4 history background check has been received. The approved three
5 references do not take the place of a clear criminal history background
6 check. The Washington personnel resources board shall adopt rules to
7 accomplish the purposes of this subsection as it applies to state
8 employees.

9 **Sec. 2.** RCW 43.43.842 and 1992 c 104 s 1 are each amended to read
10 as follows:

11 (1) The secretary of social and health services and the secretary
12 of health shall adopt additional requirements for the licensure or
13 relicensure of agencies providing services under chapter 74.39A RCW and
14 nursing pools under chapter 18.52C RCW or facilities which provide care
15 and treatment to vulnerable adults consistent with chapter 74.34 RCW.
16 These additional requirements shall ensure that any person associated
17 with a licensed agency or facility having direct contact with a
18 vulnerable adult shall not have been: (a) Convicted of a crime against
19 persons as defined in RCW 43.43.830, except as provided in this
20 section; (b) convicted of crimes relating to financial exploitation as
21 defined in RCW 43.43.830, except as provided in this section; (c) found
22 in any disciplinary board final decision to have abused a vulnerable
23 adult under RCW 43.43.830; or (d) the subject in a protective
24 proceeding under chapter 74.34 RCW.

25 (2) The rules adopted under this section shall permit the licensee
26 to consider the criminal history of an applicant for employment in a
27 licensed facility when the applicant has one or more convictions for a
28 past offense and:

29 (a) The offense was simple assault, assault in the fourth degree,
30 or the same offense as it may be renamed, and three or more years have
31 passed between the most recent conviction and the date of application
32 for employment;

33 (b) The offense was prostitution, or the same offense as it may be
34 renamed, and three or more years have passed between the most recent
35 conviction and the date of application for employment;

36 (c) The offense was theft in the third degree, or the same offense
37 as it may be renamed, and three or more years have passed between the
38 most recent conviction and the date of application for employment;

1 (d) The offense was theft in the second degree, or the same offense
2 as it may be renamed, and five or more years have passed between the
3 most recent conviction and the date of application for employment;

4 (e) The offense was forgery, or the same offense as it may be
5 renamed, and five or more years have passed between the most recent
6 conviction and the date of application for employment.

7 The offenses set forth in (a) through (e) of this subsection do not
8 automatically disqualify an applicant from employment by a licensee.
9 Nothing in this section may be construed to require the employment of
10 any person against a licensee's judgment.

11 In consultation with law enforcement personnel, the secretary of
12 social and health services and the secretary of health shall
13 investigate the conviction record and the protection proceeding record
14 information under chapter 43.43 RCW of each agency providing services
15 pursuant to chapters 74.39A and 18.52C RCW, or facility and its staff
16 under their respective jurisdictions seeking licensure or relicensure.
17 The secretaries shall use the information solely for the purpose of
18 determining eligibility for licensure or relicensure. Criminal justice
19 agencies shall provide the secretaries such information as they may
20 have and that the secretaries may require for such purpose.

21 **Sec. 3.** RCW 43.20A.710 and 1993 c 210 s 1 are each amended to read
22 as follows:

23 The secretary shall investigate the conviction records, pending
24 charges or disciplinary board final decisions of: (1) Persons being
25 considered for state employment in positions directly responsible for
26 the supervision, care, or treatment of children or individuals with
27 mental illness or developmental disabilities; and (2) individual
28 providers who are paid by the state for in-home services and hired by
29 individuals with physical disabilities, developmental disabilities,
30 mental illness, or mental impairment. The investigation may include an
31 examination of state and national criminal identification data and the
32 child abuse and neglect register established under chapter 26.44 RCW.
33 The secretary shall provide the results of the state background check
34 on individual providers to the individuals with physical disabilities,
35 developmental disabilities, mental illness, or mental impairment who
36 hired them and to their legal guardians, if any. The secretary shall
37 use the information solely for the purpose of determining the
38 character, suitability, and competence of these applicants except that

1 in the case of individuals with physical disabilities, developmental
2 disabilities, mental illness, or mental impairment who employ
3 individual providers, the determination of character, suitability, and
4 competence of applicants (~~shall~~) may be made by the individual with
5 a physical disability, developmental disability, mental illness, or
6 mental impairment, and except that state payment for in-home services
7 shall be denied if the in-home provider has a disqualifying criminal
8 history background. Criminal justice agencies shall provide the
9 secretary such information as they may have and that the secretary may
10 require for such purpose. If necessary, persons may be employed on a
11 conditional basis pending completion of the background investigation.
12 Conditional employment or unsupervised volunteer work pending the
13 completion of the criminal history background check shall only be
14 authorized if the potential volunteer, employer, or employee verifies
15 that the background application has been submitted to the appropriate
16 agency and the applicant shows three positive work or personal
17 references. The three references must be approved by the employer,
18 kept by the individual receiving the services, and made available for
19 the department to review. The approved three references shall serve
20 only as a means for allowing temporary employment until an approved
21 criminal history background check has been received. The approved
22 three references do not take the place of a clear criminal history
23 background check.

24 **Sec. 4.** RCW 18.52C.010 and 1988 c 243 s 1 are each amended to read
25 as follows:

26 The legislature intends to protect the public's right to high
27 quality health care by assuring that nursing pools employ, procure, or
28 refer competent and qualified nursing personnel or long-term care
29 personnel providing services pursuant to chapter 74.39A RCW, and that
30 such nursing or long-term care personnel are provided to individuals,
31 agencies, or health care facilities in a way to meet the needs of
32 residents and patients.

33 **Sec. 5.** RCW 18.52C.020 and 1991 c 3 s 130 are each amended to read
34 as follows:

35 Unless the context clearly requires otherwise, the definitions in
36 this section apply throughout this chapter.

37 (1) "Secretary" means the secretary of the department of health.

1 (2) "Health care facility" means a nursing home, hospital, hospice
2 care facility, home health care agency, hospice agency, boarding home,
3 adult family home, group home, or other entity for the delivery of
4 health care, or the delivery of long-term care services pursuant to
5 chapter 74.39A RCW, including services provided under the state-funded
6 individual provider program.

7 (3) "Nursing home" means any nursing home facility licensed
8 pursuant to chapter 18.52 RCW.

9 (4) "Nursing pool" means any person engaged in the business of
10 providing, procuring, or referring health care personnel for temporary
11 employment in health care facilities, such as licensed nurses or
12 practical nurses, and nursing assistants. "Nursing pool" does not
13 include an individual who only engages in providing his or her own
14 services.

15 (5) "Person" includes an individual, firm, corporation,
16 partnership, or association.

17 **Sec. 6.** RCW 18.52C.040 and 1991 c 3 s 132 are each amended to read
18 as follows:

19 (1) The nursing pool shall document that each temporary employee or
20 referred independent contractor provided or referred to health care
21 facilities currently meets the minimum state credentialing
22 requirements.

23 (2) The nursing pool shall not require, as a condition of
24 employment or referral, that employees or independent contractors of
25 the nursing pool recruit new employees or independent contractors for
26 the nursing pool from among the permanent employees of the health care
27 facility to which the nursing pool employee or independent contractor
28 has been assigned or referred.

29 (3) The nursing pool shall carry professional and general liability
30 insurance to insure against any loss or damage occurring, whether
31 professional or otherwise, as the result of the negligence of its
32 employees, agents or independent contractors for acts committed in the
33 course of their employment with the nursing pool: PROVIDED, That a
34 nursing pool that only refers self-employed, independent contractors to
35 health care facilities shall carry professional and general liability
36 insurance to cover its own liability as a nursing pool which refers
37 self-employed, independent contractors to health care facilities: AND
38 PROVIDED FURTHER, That it shall require, as a condition of referral,

1 that self-employed, independent contractors carry professional and
2 general liability insurance to insure against loss or damage resulting
3 from their own acts committed in the course of their own employment by
4 a health care facility.

5 (4) The uniform disciplinary act, chapter 18.130 RCW, shall govern
6 the issuance and denial of registration and the discipline of persons
7 registered under this chapter. The secretary shall be the disciplinary
8 authority under this chapter.

9 (5) All nursing pools shall require background checks under chapter
10 43.43 RCW for employees or independent contractors of the nursing pools
11 and other individuals working with unsupervised access to vulnerable
12 adults in compliance with the requirements of RCW 43.43.830 through
13 43.43.842.

14 NEW SECTION. Sec. 7. A new section is added to chapter 43.20A RCW
15 to read as follows:

16 The secretary of social and health services shall adopt additional
17 requirements for individuals who work independently, or with any agency
18 or organization providing temporary assistance as a paid or voluntary
19 employee, or through independent contractors, that brings them into
20 unsupervised access with vulnerable adults receiving long-term care
21 services or assistance under chapters 74.39A, 72.23, and 72.36 RCW.

22 NEW SECTION. Sec. 8. A new section is added to chapter 43.43 RCW
23 to read as follows:

24 If information is released under this chapter by the state of
25 Washington, the state and its employees: (1) Make no representation
26 that the subject of the inquiry has no criminal record or adverse civil
27 or administrative decisions; (2) make no determination that the subject
28 of the inquiry is suitable for involvement with a business or
29 organization; and (3) are not liable for defamation, invasion of
30 privacy, negligence, or any other claim in connection with any lawful
31 dissemination of information.

--- END ---