

2 By Representative Boldt

3 **ESSB 5606** - H COMM AMD **ADOPTED 4/11/01**
4 By Committee on Children & Family Services

5
6 Strike everything after the enacting clause and insert the
7 following:

8 "NEW SECTION. **Sec. 1.** It is the intent of the legislature to
9 authorize the department of social and health services to investigate
10 the background of current and future department employees to the same
11 extent and with the same effect as it has authorized the state to
12 investigate the background and exclude from the provision of service
13 current and future care providers, contractors, volunteers, and others.
14 The department of social and health services must coordinate with the
15 department of personnel to develop rules that address the procedures
16 for undertaking background checks, and specifically what action would
17 be taken against a current employee who is disqualified from his or her
18 current position because of a background check not previously
19 performed. Current employees would not be subject to a check under the
20 provisions of this act until one year from the effective date of this
21 act.

22 NEW SECTION. **Sec. 2.** A new section is added to chapter 9.96A RCW
23 to read as follows:

24 This chapter is not applicable to the department of social and
25 health services when employing a person, who in the course of his or
26 her employment, has or may have unsupervised access to any person who
27 is under the age of eighteen, who is under the age of twenty-one and
28 has been sentenced to a term of confinement under the supervision of
29 the department of social and health services under chapter 13.40 RCW,
30 who is a vulnerable adult under chapter 74.34 RCW, or who is a
31 vulnerable person. For purposes of this section "vulnerable person"
32 means an adult of any age who lacks the functional, mental, or physical
33 ability to care for himself or herself.

34 **Sec. 3.** RCW 28A.400.303 and 1992 c 159 s 2 are each amended to
35 read as follows:

1 School districts, educational service districts, the state school
2 for the deaf, the state school for the blind, and their contractors
3 hiring employees who will have regularly scheduled unsupervised access
4 to children shall require a record check through the Washington state
5 patrol criminal identification system under RCW 43.43.830 through
6 43.43.834, 10.97.030, and 10.97.050 and through the federal bureau of
7 investigation before hiring an employee. The record check shall
8 include a fingerprint check using a complete Washington state criminal
9 identification fingerprint card. The requesting entity shall provide
10 a copy of the record report to the applicant. When necessary,
11 applicants may be employed on a conditional basis pending completion of
12 the investigation. If the applicant has had a record check within the
13 previous two years, the district, the state school for the deaf, the
14 state school for the blind, or contractor may waive the requirement.
15 The district, pursuant to chapter 41.59 or 41.56 RCW, the state school
16 for the deaf, the state school for the blind, or contractor hiring the
17 employee shall determine who shall pay costs associated with the record
18 check.

19 **Sec. 4.** RCW 28A.400.305 and 1996 c 126 s 5 are each amended to
20 read as follows:

21 The superintendent of public instruction shall adopt rules as
22 necessary under chapter 34.05 RCW on record check information. The
23 rules shall include, but not be limited to the following:

24 (1) Written procedures providing a school district, state school
25 for the deaf, or state school for the blind employee or applicant for
26 certification or employment access to and review of information
27 obtained based on the record check required under RCW 28A.400.303 (~~and~~
28 ~~28A.400.304~~); and

29 (2) Written procedures limiting access to the superintendent of
30 public instruction record check data base to only those individuals
31 processing record check information at the office of the superintendent
32 of public instruction, the appropriate school district or districts,
33 the state school for the deaf, the state school for the blind, and the
34 appropriate educational service district or districts.

35 **Sec. 5.** RCW 43.20A.710 and 2000 c 87 s 2 are each amended to read
36 as follows:

1 (1) The secretary shall investigate the conviction records, pending
2 charges ~~((or))~~ and disciplinary board final decisions of:

3 (a) ~~((Persons being considered for state employment in positions
4 directly responsible for the supervision, care, or treatment of))~~ Any
5 current employee or applicant seeking or being considered for any
6 position with the department who will or may have unsupervised access
7 to children, vulnerable adults, or individuals with mental illness or
8 developmental disabilities~~((;~~

9 ~~((b) Persons being considered for state employment in positions
10 involving unsupervised access to vulnerable adults to conduct)).~~ This
11 includes, but is not limited to, positions conducting comprehensive
12 assessments, financial eligibility determinations, licensing and
13 certification activities, investigations, surveys, or case management;
14 or for state positions otherwise required by federal law to meet
15 employment standards;

16 ~~((e))~~ (b) Individual providers who are paid by the state and
17 providers who are paid by home care agencies to provide in-home
18 services involving unsupervised access to persons with physical,
19 mental, or developmental disabilities or mental illness, or to
20 vulnerable adults as defined in chapter 74.34 RCW, including but not
21 limited to services provided under chapter 74.39 or 74.39A RCW; and

22 ~~((d))~~ (c) Individuals or businesses or organizations for the
23 care, supervision, case management, or treatment of children,
24 developmentally disabled persons, or vulnerable adults, including but
25 not limited to services contracted for under chapter 18.20, 18.48,
26 70.127, 70.128, 72.36, or 74.39A RCW or Title 71A RCW.

27 (2) The investigation may include an examination of state and
28 national criminal identification data. The secretary shall use the
29 information solely for the purpose of determining the character,
30 suitability, and competence of these applicants.

31 (3) An individual provider or home care agency provider who has
32 resided in the state less than three years before applying for
33 employment involving unsupervised access to a vulnerable adult as
34 defined in chapter 74.34 RCW must be fingerprinted for the purpose of
35 investigating conviction records both through the Washington state
36 patrol and the federal bureau of investigation. This subsection
37 applies only with respect to the provision of in-home services funded
38 by medicaid personal care under RCW 74.09.520, community options
39 program entry system waiver services under RCW 74.39A.030, or chore

1 services under RCW 74.39A.110. However, this subsection does not
2 supersede RCW 74.15.030(2)(b).

3 (4) An individual provider or home care agency provider hired to
4 provide in-home care for and having unsupervised access to a vulnerable
5 adult as defined in chapter 74.34 RCW must have no conviction for a
6 disqualifying crime under RCW 43.43.830 and 43.43.842. An individual
7 or home care agency provider must also have no conviction for a crime
8 relating to drugs as defined in RCW 43.43.830. This subsection applies
9 only with respect to the provision of in-home services funded by
10 medicaid personal care under RCW 74.09.520, community options program
11 entry system waiver services under RCW 74.39A.030, or chore services
12 under RCW 74.39A.110.

13 (5) The secretary shall provide the results of the background check
14 on individual providers to the persons hiring them or to their legal
15 guardians, if any, for their determination of the character,
16 suitability, and competence of the applicants. If the person elects to
17 hire or retain an individual provider after receiving notice from the
18 department that the applicant has a conviction for an offense that
19 would disqualify the applicant from having unsupervised access to
20 persons with physical, mental, or developmental disabilities or mental
21 illness, or to vulnerable adults as defined in chapter 74.34 RCW, then
22 the secretary shall deny payment for any subsequent services rendered
23 by the disqualified individual provider.

24 (6) Criminal justice agencies shall provide the secretary such
25 information as they may have and that the secretary may require for
26 such purpose.

27 NEW SECTION. **Sec. 6.** A new section is added to chapter 41.06 RCW
28 to read as follows:

29 The board shall amend any existing rules established under RCW
30 41.06.475 and adopt rules developed in cooperation and agreement with
31 the department of social and health services to implement the
32 provisions of this act.

33 NEW SECTION. **Sec. 7.** A new section is added to chapter 41.06 RCW
34 to read as follows:

35 (1) Employees currently in positions covered by sections 2 and 5 of
36 this act are not subject to a background check under this act until one
37 year from the effective date of this act.

1 (2) The rules adopted by the personnel resources board must address
2 the action that will be taken if a background check result disqualifies
3 an employee from his or her current position.

4 NEW SECTION. **Sec. 8.** This act is necessary for the immediate
5 preservation of the public peace, health, or safety, or support of the
6 state government and its existing public institutions, and takes effect
7 immediately."

8 Correct the title.

EFFECT: Exempts the Department of Social and Health Services from the 10-year limit on past convictions when considering persons for employment in positions that have or may have unsupervised access to a vulnerable population. Amends the statutes relating to background checks of school employees to include the State School for the Blind and the State School for the Deaf. Requires the Department of Social and Health Services to perform criminal history checks on current employees and applicants that will or may have unsupervised access to a vulnerable population. The checks on current employees will not occur until 1 year after the effective date of the act; in the interim, the Personnel Resources Board must develop a policy for current employees who are disqualified by their criminal history. Rule-making authority is granted. An emergency clause is inserted.

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