
SENATE BILL 6221

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By Senators Kohl, Long, Fairley, McAuliffe, Prentice, Franklin,
Winsley, Oke, Bauer and Rasmussen

Read first time 01/09/96. Referred to Committee on Human Services &
Corrections.

1 AN ACT Relating to biennial background checks of persons providing
2 services to children, developmentally disabled persons, and vulnerable
3 adults; amending RCW 43.43.832, 43.43.834, and 43.43.838; reenacting
4 and amending RCW 43.43.840; and creating a new section.

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

6 NEW SECTION. **Sec. 1.** The legislature finds that businesses and
7 organizations, in order to continue to provide safe, quality services
8 to children, developmentally disabled persons, and vulnerable adults,
9 must be adequately informed of the continued eligibility of employees,
10 licensees, and volunteers. The legislature further finds that
11 businesses and organizations providing services for such individuals
12 must have the ability to make subsequent background checks of an
13 employee, licensee, or volunteer on a biennial basis. It is the intent
14 of the legislature to provide for such additional background checks.

15 **Sec. 2.** RCW 43.43.832 and 1995 c 250 s 2 are each amended to read
16 as follows:

17 (1) The legislature finds that businesses and organizations
18 providing services to children, developmentally disabled persons, and

1 vulnerable adults need adequate information to determine which
2 employees ~~((or))~~, licensees, or volunteers to hire ~~((or))~~, engage, or
3 retain. The legislature further finds that many developmentally
4 disabled individuals and vulnerable adults desire to hire their own
5 employees directly and also need adequate information to determine
6 which employees ~~((or))~~, licensees, or volunteers to hire ~~((or))~~,
7 engage, or retain. Therefore, the Washington state patrol criminal
8 identification system may disclose, upon the request of a business or
9 organization as defined in RCW 43.43.830, a developmentally disabled
10 person, or a vulnerable adult as defined in RCW 43.43.830 or his or her
11 guardian, an ~~((applicant's))~~ applicant, employee, licensee, or
12 volunteer's record for convictions of offenses against children or
13 other persons, convictions for crimes relating to financial
14 exploitation, but only if the victim was a vulnerable adult,
15 adjudications of child abuse in a civil action, the issuance of a
16 protection order against the respondent under chapter 74.34 RCW, and
17 disciplinary board final decisions and any subsequent criminal charges
18 associated with the conduct that is the subject of the disciplinary
19 board final decision. When necessary, applicants may be employed on a
20 conditional basis pending completion of such a background
21 investigation.

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

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

32 (4) The legislature further finds that the department of social and
33 health services, when considering persons for state positions directly
34 responsible for the care, supervision, or treatment of children,
35 developmentally disabled persons, or vulnerable adults or when
36 licensing or authorizing such persons or agencies pursuant to its
37 authority under chapter 74.15, 18.51, 18.20, or 72.23 RCW, or any
38 later-enacted statute which purpose is to license or regulate a
39 facility which handles vulnerable adults, must consider the information

1 listed in subsection (1) of this section. However, when necessary,
2 persons may be employed on a conditional basis pending completion of
3 the background investigation. The Washington personnel resources board
4 shall adopt rules to accomplish the purposes of this subsection as it
5 applies to state employees.

6 **Sec. 3.** RCW 43.43.834 and 1990 c 3 s 1103 are each amended to read
7 as follows:

8 (1) A business or organization shall not make an inquiry to the
9 Washington state patrol under RCW 43.43.832 or an equivalent inquiry to
10 a federal law enforcement agency unless the business or organization
11 has: (a) Notified the applicant who has been offered a position as an
12 employee or volunteer((7)) that an inquiry may be made; or (b) notified
13 the employee, licensee, or volunteer that an inquiry may be made.

14 (2) A business or organization shall require each applicant, or
15 each employee, licensee, or volunteer if the inquiry is being made
16 after the person has been hired or engaged, to disclose to the business
17 or organization whether the applicant, employee, licensee, or volunteer
18 has been:

19 (a) Convicted of any crime against children or other persons;

20 (b) Convicted of crimes relating to financial exploitation if the
21 victim was a vulnerable adult;

22 (c) Found in any dependency action under RCW 13.34.040 to have
23 sexually assaulted or exploited any minor or to have physically abused
24 any minor;

25 (d) Found by a court in a domestic relations proceeding under Title
26 26 RCW to have sexually abused or exploited any minor or to have
27 physically abused any minor;

28 (e) Found in any disciplinary board final decision to have sexually
29 or physically abused or exploited any minor or developmentally disabled
30 person or to have abused or financially exploited any vulnerable adult;
31 or

32 (f) Found by a court in a protection proceeding under chapter 74.34
33 RCW, to have abused or financially exploited a vulnerable adult.

34 The disclosure shall be made in writing and signed by the
35 applicant, employee, licensee, or volunteer and sworn under penalty of
36 perjury. The disclosure sheet shall specify all crimes against
37 children or other persons and all crimes relating to financial

1 exploitation as defined in RCW 43.43.830 in which the victim was a
2 vulnerable adult.

3 (3) The business or organization shall pay such reasonable fee for
4 the records check as the state patrol may require under RCW 43.43.838.

5 (4) The business or organization shall notify the applicant,
6 employee, licensee, or volunteer of the state patrol's response within
7 ten days after receipt by the business or organization. The employer
8 shall provide a copy of the response to the applicant, employee,
9 licensee, or volunteer and shall notify the applicant, employee,
10 licensee, or volunteer of such availability.

11 (5) The business or organization shall use this record only in:
12 (a) Making the initial employment or engagement decision; or (b)
13 conducting biennial reviews to assure the continued eligibility of
14 employees, licensees, and volunteers. Further dissemination or use of
15 the record is prohibited. A business or organization violating this
16 subsection is subject to a civil action for damages.

17 (6) An insurance company shall not require a business or
18 organization to request background information on any employee before
19 issuing a policy of insurance.

20 (7) The business and organization shall be immune from civil
21 liability for failure to request background information on an
22 applicant, employee, licensee, or volunteer unless the failure to do so
23 constitutes gross negligence.

24 **Sec. 4.** RCW 43.43.838 and 1995 c 29 s 1 are each amended to read
25 as follows:

26 (1) After January 1, 1988, and notwithstanding any provision of RCW
27 43.43.700 through 43.43.810 to the contrary, the state patrol shall
28 furnish a transcript of the conviction record, disciplinary board final
29 decision and any subsequent criminal charges associated with the
30 conduct that is the subject of the disciplinary board final decision,
31 or civil adjudication record pertaining to any person for whom the
32 state patrol or the federal bureau of investigation has a record upon
33 the written request of:

34 (a) The subject of the inquiry;

35 (b) Any business or organization for the purpose of conducting
36 evaluations under RCW 43.43.832;

37 (c) The department of social and health services;

1 (d) Any law enforcement agency, prosecuting authority, or the
2 office of the attorney general; or

3 (e) The department of social and health services for the purpose of
4 meeting responsibilities set forth in chapter 74.15, 18.51, 18.20, or
5 72.23 RCW, or any later-enacted statute which purpose is to regulate or
6 license a facility which handles vulnerable adults. However, access to
7 conviction records pursuant to this subsection (1)(e) does not limit or
8 restrict the ability of the department to obtain additional information
9 regarding conviction records and pending charges as set forth in RCW
10 74.15.030(2)(b).

11 After processing the request, if the conviction record,
12 disciplinary board final decision and any subsequent criminal charges
13 associated with the conduct that is the subject of the disciplinary
14 board final decision, or adjudication record shows no evidence of a
15 crime against children or other persons or, in the case of vulnerable
16 adults, no evidence of crimes relating to financial exploitation in
17 which the victim was a vulnerable adult, an identification declaring
18 the showing of no evidence shall be issued to the business or
19 organization by the state patrol and shall be issued within fourteen
20 working days of the request. The business or organization shall
21 provide a copy of the identification declaring the showing of no
22 evidence to the applicant, employee, licensee, or volunteer.
23 Possession of such identification shall satisfy future record check
24 requirements for the applicant, employee, licensee, or volunteer for a
25 two-year period unless the prospective employee is any current school
26 district employee who has applied for a position in another school
27 district.

28 (2) The state patrol shall by rule establish fees for disseminating
29 records under this section to recipients identified in subsection
30 (1)(a) and (b) of this section. The state patrol shall also by rule
31 establish fees for disseminating records in the custody of the national
32 crime information center. The revenue from the fees shall cover, as
33 nearly as practicable, the direct and indirect costs to the state
34 patrol of disseminating the records: PROVIDED, That no fee shall be
35 charged to a nonprofit organization for the records check: PROVIDED
36 FURTHER, That in the case of record checks using fingerprints requested
37 by school districts and educational service districts, the state patrol
38 shall charge only for the incremental costs associated with checking
39 fingerprints in addition to name and date of birth. Record checks

1 requested by school districts and educational service districts using
2 only name and date of birth shall continue to be provided free of
3 charge.

4 (3) No employee of the state, employee of a business or
5 organization, or the business or organization is liable for defamation,
6 invasion of privacy, negligence, or any other claim in connection with
7 any lawful dissemination of information under RCW 43.43.830 through
8 43.43.840 or 43.43.760.

9 (4) Before July 26, 1987, the state patrol shall adopt rules and
10 forms to implement this section and to provide for security and privacy
11 of information disseminated under this section, giving first priority
12 to the criminal justice requirements of this chapter. The rules may
13 include requirements for users, audits of users, and other procedures
14 to prevent use of civil adjudication record information or criminal
15 history record information inconsistent with this chapter.

16 (5) Nothing in RCW 43.43.830 through 43.43.840 shall authorize an
17 employer to make an inquiry not specifically authorized by this
18 chapter, or be construed to affect the policy of the state declared in
19 chapter 9.96A RCW.

20 **Sec. 5.** RCW 43.43.840 and 1989 c 334 s 5 and 1989 c 90 s 5 are
21 each reenacted and amended to read as follows:

22 (1) The supreme court shall by rule require the courts of the state
23 to notify the state patrol of any dependency action under RCW
24 (~~(13.34.030(2)(b))~~) 13.34.040, domestic relations action under Title 26
25 RCW, or protection action under chapter 74.34 RCW, in which the court
26 makes specific findings of physical abuse or sexual abuse or
27 exploitation of a child or abuse or financial exploitation of a
28 vulnerable adult.

29 (2) The department of licensing shall notify the state patrol of
30 any disciplinary board final decision that includes specific findings
31 of physical abuse or sexual abuse or exploitation of a child or abuse
32 or financial exploitation of a vulnerable adult.

33 (3) When a business or an organization terminates, fires,
34 dismisses, fails to renew the contract, or permits the resignation of
35 an employee because of crimes against children or other persons or
36 because of crimes relating to the financial exploitation of a
37 vulnerable adult, and if that employee is employed in a position
38 requiring a certificate or license issued by a licensing agency such as

- 1 the state board of education, the business or organization shall notify
- 2 the licensing agency of such termination of employment.

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