

2SHB 1903 - S COMM AMD
By Committee on Ways & Means

ADOPTED 04/12/2011

1 Strike everything after the enacting clause and insert the
2 following:

3 "NEW SECTION. **Sec. 1.** A new section is added to chapter 43.215
4 RCW to read as follows:

5 Subject to appropriation, the department of early learning shall
6 establish and maintain an individual-based or portable background check
7 clearance registry by July 1, 2012. Any individual seeking a child
8 care license or employment in any child care facility licensed or
9 regulated under current law shall submit a background application on a
10 form prescribed by the department in rule.

11 **Sec. 2.** RCW 43.215.215 and 2007 c 415 s 5 are each amended to read
12 as follows:

13 (1) In determining whether an individual is of appropriate
14 character, suitability, and competence to provide child care and early
15 learning services to children, the department may consider the history
16 of past involvement of child protective services or law enforcement
17 agencies with the individual for the purpose of establishing a pattern
18 of conduct, behavior, or inaction with regard to the health, safety, or
19 welfare of a child. No report of child abuse or neglect that has been
20 destroyed or expunged under RCW 26.44.031 may be used for such
21 purposes. No unfounded or inconclusive allegation of child abuse or
22 neglect as defined in RCW 26.44.020 may be disclosed to a provider
23 licensed under this chapter.

24 (2) In order to determine the suitability of (~~applicants~~)
25 individuals newly applying for an agency license, new licensees, their
26 new employees, and other persons who newly have unsupervised access to
27 children in care, (~~and who have not resided in the state of Washington~~
28 ~~during the three year period before being authorized to care for~~
29 ~~children,~~) shall be fingerprinted.

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

4 ~~(b) ((The fingerprint criminal history record checks shall be at
5 the expense of the licensee. The licensee may not pass this cost on to
6 the employee or prospective employee, unless the employee is determined
7 to be unsuitable due to his or her criminal history record.)) (i)
8 Effective July 1, 2012, all individuals applying for first-time agency
9 licenses, all new employees, and other persons who have not been
10 previously qualified by the department to have unsupervised access to
11 children in care must be fingerprinted and obtain a criminal history
12 record check pursuant to this section.~~

13 (ii) Persons required to be fingerprinted and obtain a criminal
14 record check pursuant to this section must pay for the cost of this
15 check as follows: The fee established by the Washington state patrol
16 for the criminal background history check, including the cost of
17 obtaining the fingerprints; and a fee paid to the department for the
18 cost of administering the individual-based/portable background check
19 clearance registry. The fee paid to the department must be deposited
20 into the individual-based/portable background check clearance account
21 established in section 5 of this act. The licensee may, but need not,
22 pay these costs on behalf of a prospective employee or reimburse the
23 prospective employee for these costs. The licensee and the prospective
24 employee may share these costs.

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

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

33 (e) No later than July 1, 2013, all agency licensees holding
34 licenses prior to July 1, 2012, persons who were employees before July
35 1, 2012, and persons who have been qualified by the department before
36 July 1, 2012, to have unsupervised access to children in care, must
37 submit a new background application to the department. The department
38 must require persons submitting a new background application pursuant

1 to this subsection (2)(e) to pay a fee to the department for the cost
2 of administering the individual-based/portable background check
3 clearance registry. This fee must be paid into the individual-
4 based/portable background check clearance account established in
5 section 5 of this act. The licensee may, but need not, pay these costs
6 on behalf of a prospective employee or reimburse the prospective
7 employee for these costs. The licensee and the prospective employee
8 may share these costs.

9 (f) The department shall issue a background check clearance card or
10 certificate to the applicant if after the completion of a background
11 check the department concludes the applicant is qualified for
12 unsupervised access to children in care. The background check
13 clearance card or certificate is valid for three years from the date of
14 issuance. A valid card or certificate must be accepted by a potential
15 employer as proof that the applicant has successfully completed a
16 background check as required under this chapter.

17 (g) The original applicant for an agency license, licensees, their
18 employees, and other persons who have unsupervised access to children
19 in care shall submit a new background check application to the
20 department, on a form and by a date as determined by the department.

21 (h) The applicant and agency shall maintain on-site for inspection
22 a copy of the background check clearance card or certificate.

23 (i) Individuals who have been issued a background check clearance
24 card or certificate shall report nonconviction and conviction
25 information to the department within twenty-four hours of the event
26 constituting the nonconviction or conviction information.

27 (j) The department shall investigate and conduct a redetermination
28 of an applicant's or licensee's background clearance if the department
29 receives a complaint or information from individuals, a law enforcement
30 agency, or other federal, state, or local government agency. Subject
31 to the requirements contained in RCW 43.215.300 and 43.215.305 and
32 based on a determination that an individual lacks the appropriate
33 character, suitability, or competence to provide child care or early
34 learning services to children, the department may: (i) Invalidate the
35 background card or certificate; or (ii) suspend, modify, or revoke any
36 license authorized by this chapter.

1 **Sec. 3.** RCW 43.215.010 and 2007 c 415 s 2 and 2007 c 394 s 2 are
2 each reenacted and amended to read as follows:

3 The definitions in this section apply throughout this chapter
4 unless the context clearly requires otherwise.

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

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

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

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

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

26 (e) "Service provider" means the entity that operates a community
27 facility.

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

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

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

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

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

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

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

4 (c) Persons who care for a neighbor's or friend's child or
5 children, with or without compensation, where the person providing care
6 for periods of less than twenty-four hours does not conduct such
7 activity on an ongoing, regularly scheduled basis for the purpose of
8 engaging in business, which includes, but is not limited to,
9 advertising such care;

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

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

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

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

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

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

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

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

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

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

- 1 (4) "Department" means the department of early learning.
- 2 (5) "Director" means the director of the department.
- 3 (6) "Employer" means a person or business that engages the services
4 of one or more people, especially for wages or salary to work in an
5 agency.
- 6 (7) "Enforcement action" means denial, suspension, revocation,
7 modification, or nonrenewal of a license pursuant to RCW 43.215.300(1)
8 or assessment of civil monetary penalties pursuant to RCW
9 43.215.300(3).
- 10 (8) "Probationary license" means a license issued as a disciplinary
11 measure to an agency that has previously been issued a full license but
12 is out of compliance with licensing standards.
- 13 (9) "Requirement" means any rule, regulation, or standard of care
14 to be maintained by an agency.
- 15 (10) "Conviction information" means criminal history record
16 information relating to an incident which has led to a conviction or
17 other disposition adverse to the applicant.
- 18 (11) "Negative action" means a court order, court judgment, or an
19 adverse action taken by an agency, in any state, federal, tribal, or
20 foreign jurisdiction, which results in a finding against the applicant
21 reasonably related to the individual's character, suitability, and
22 competence to care for or have unsupervised access to children in child
23 care. This may include, but is not limited to:
- 24 (a) A decision issued by an administrative law judge;
- 25 (b) A final determination, decision, or finding made by an agency
26 following an investigation;
- 27 (c) An adverse agency action, including termination, revocation, or
28 denial of a license or certification, or if pending adverse agency
29 action, the voluntary surrender of a license, certification, or
30 contract in lieu of the adverse action;
- 31 (d) A revocation, denial, or restriction placed on any professional
32 license; or
- 33 (e) A final decision of a disciplinary board.
- 34 (12) "Nonconviction information" means arrest, founded allegations
35 of child abuse, or neglect pursuant to chapter 26.44 RCW, or other
36 negative action adverse to the applicant.

1 NEW SECTION. **Sec. 4.** A new section is added to chapter 43.215 RCW
2 to read as follows:

3 Effective July 1, 2011, all agency licensees shall pay the
4 department a one-time fee established by the department. When
5 establishing the fee, the department must consider the cost of
6 developing and administering the registry, and shall not set a fee
7 which is estimated to generate revenue beyond estimated costs for the
8 development and administration of the registry. Fee revenues must be
9 deposited in the individual-based/portable background check clearance
10 account created in section 5 of this act and may be expended only for
11 the costs of developing and administering the individual-based/portable
12 background check clearance registry created in section 1 of this act.

13 NEW SECTION. **Sec. 5.** A new section is added to chapter 43.215 RCW
14 to read as follows:

15 The individual-based/portable background check clearance account is
16 created in the custody of the state treasurer. All fees collected
17 pursuant to RCW 43.215.215 and section 4 of this act must be deposited
18 in the account. Expenditures from the account may be made only for
19 development and administration, and implementation of the individual-
20 based/portable background check registry established in section 1 of
21 this act. Only the director of the department of early learning or the
22 director's designee may authorize expenditures from the account. The
23 account is subject to allotment procedures under chapter 43.88 RCW, but
24 an appropriation is not required for expenditures.

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

27 Upon resignation or termination with or without cause of any
28 individual working in a child care agency, the child care agency shall
29 report to the department within twenty-four hours if it has knowledge
30 of the following with respect to the individual:

- 31 (1) Any charge or conviction for a crime listed in WAC 170-06-0120;
32 (2) Any other charge or conviction for a crime that could be
33 reasonably related to the individual's suitability to provide care for
34 or have unsupervised access to children or care; or
35 (3) Any negative action as defined in RCW 43.215.010.

1 NEW SECTION. **Sec. 7.** To the extent that existing resources are
2 available, the department of early learning, the office of the
3 superintendent of public instruction, and educational service districts
4 shall develop a proposal to coordinate their common background check
5 activities. The proposal shall include the development of an
6 information sharing system, or protocol, that will operate in accord
7 with federal regulations. These agencies shall submit their proposal
8 to the legislature no later than December 15, 2011."

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9 On page 1, line 2 of the title, after "employees;" strike the
10 remainder of the title and insert "amending RCW 43.215.215; reenacting
11 and amending RCW 43.215.010; adding new sections to chapter 43.215 RCW;
12 and creating a new section."

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