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**SENATE BILL 5720**

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**State of Washington 64th Legislature 2015 Regular Session**

**By** Senators Kohl-Welles, Becker, Parlette, and King; by request of Nursing Care Quality Assurance Commission

AN ACT Relating to fingerprint-based background checks for health professionals; and amending RCW 43.43.700, 43.43.705, 43.43.742, and 18.130.064.

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

**Sec.**  RCW 43.43.700 and 2006 c 294 s 1 are each amended to read as follows:

(1) There is hereby established within the Washington state patrol a section on identification and criminal history hereafter referred to as the section.

(2) In order to aid the administration of justice the section shall install systems for the identification of individuals, including the fingerprint system and such other systems as the chief deems necessary. The section shall keep a complete record and index of all information received in convenient form for consultation and comparison.

(3) The section shall obtain from whatever source available and file for record the fingerprints, palmprints, photographs, or such other identification data as it deems necessary, of persons who have been or shall hereafter be lawfully arrested and charged with, or convicted of any criminal offense. The section may obtain like information concerning persons arrested for or convicted of crimes under the laws of another state or government.

(4) The section may:

(a) Retain the fingerprints submitted by a statutorily authorized agency;

(b) Allow a search by criminal justice agencies of arrest fingerprint submissions and unsolved crime files against the fingerprints submitted for noncriminal justice purposes;

(c) Notify a statutorily authorized agency of a change in criminal history record information that is identified against retained fingerprints. The section must ensure that arrest information is provided only to the statutorily authorized agency from which the fingerprints originated.

(5) A statutorily authorized agency must notify license applicants, applicants for employment, and applicants for other noncriminal justice purposes subject to a criminal history background check that their fingerprints may be retained by the section and the federal bureau of investigation. A statutorily authorized agency must also provide notification to license applicants, applicants for employment, and applicants for other noncriminal justice purposes that:

(a) Arrests and unsolved crime files may be searched against their retained fingerprints; and

(b) Notification of any changes to criminal history record information may be made to the statutorily authorized agency that submitted the fingerprints to the section.

**Sec.**  RCW 43.43.705 and 2006 c 294 s 2 are each amended to read as follows:

Upon the receipt of identification data from criminal justice agencies within this state, the section shall immediately cause the files to be examined and upon request shall promptly return to the contributor of such data a transcript of the record of previous arrests and dispositions of the persons described in the data submitted.

Upon application, the section shall furnish to criminal justice agencies a transcript of the criminal history record information available pertaining to any person of whom the section has a record.

For the purposes of RCW 43.43.700 through 43.43.785 the following words and phrases shall have the following meanings:

"Criminal history record information" includes, and shall be restricted to identifying data and information recorded as the result of an arrest or other initiation of criminal proceedings and the consequent proceedings related thereto. "Criminal history record information" shall not include intelligence, analytical, or investigative reports and files.

"Criminal justice agencies" are those public agencies within or outside the state which perform, as a principal function, activities directly relating to the apprehension, prosecution, adjudication or rehabilitation of criminal offenders.

"Statutorily authorized agency" means a public agency that has statutory authority under state, federal, or local law to conduct a state and federal criminal history background check for license applicants, applicants for employment, or other noncriminal justice purposes.

The section may refuse to furnish any information pertaining to the identification or history of any person or persons of whom it has a record, or other information in its files and records, to any applicant if the chief determines that the applicant has previously misused information furnished to such applicant by the section or the chief believes that the applicant will not use the information requested solely for the purpose of due administration of the criminal laws or for the purposes enumerated in RCW 43.43.760(4). The applicant may appeal such determination by notifying the chief in writing within thirty days. The hearing shall be before an administrative law judge appointed under chapter 34.12 RCW and in accordance with procedures for adjudicative proceedings under chapter 34.05 RCW.

**Sec.**  RCW 43.43.742 and 1987 c 450 s 4 are each amended to read as follows:

(1) The Washington state patrol shall adopt rules concerning submission of fingerprints taken by local agencies ((~~after July 26, 1987,~~)) from persons for license application or other noncriminal purposes.

(2) The Washington state patrol must adopt rules concerning the participation of statutorily authorized agencies in receiving notifications of any changes to criminal history records information after the submission of fingerprints taken by local agencies for noncriminal purposes.

(3) The Washington state patrol may charge fees for submission of fingerprints which will cover as nearly as practicable the direct and indirect costs to the Washington state patrol of processing such submission or notifying a statutorily authorized agency of a change in criminal history record information as provided in RCW 43.43.700.

**Sec.**  RCW 18.130.064 and 2008 c 134 s 7 are each amended to read as follows:

(1)(a) The secretary is authorized to receive criminal history record information that includes nonconviction data for any purpose associated with investigation or licensing and investigate the complete criminal history and pending charges of all applicants and license holders.

(b) Dissemination or use of nonconviction data for purposes other than that authorized in this section is prohibited. Disciplining authorities shall restrict the use of background check results in determining the individual's suitability for a license and in conducting disciplinary functions.

(2)(a) The secretary shall establish requirements for each applicant for an initial license to obtain a state background check through the state patrol prior to the issuance of any license. ((~~The background check may be fingerprint-based at the discretion of the department.~~))

(b) Except pursuant to (c) of this subsection, the secretary has the discretion to require a fingerprint-based background check. The secretary shall specify those situations where a background check under (a) of this subsection is inadequate and an applicant for an initial license must obtain ((~~an electronic~~))a fingerprint-based national background check through the state patrol and federal bureau of investigation. Situations where a background check is inadequate may include instances where an applicant has recently lived out of state or where the applicant has a criminal record in Washington. The secretary shall issue a temporary practice permit to an applicant who must have a national background check conducted if the background check conducted under (a) of this subsection does not reveal a criminal record in Washington, and if the applicant meets the provisions of RCW 18.130.075.

(c) If a disciplining authority adopts rules authorizing such activities for applicants and licensees in the professions it regulates under RCW 18.130.040, the secretary shall obtain fingerprint-based national background checks through the state patrol and federal bureau of investigation for criminal history on all applicants seeking licensure or license renewal. The secretary may receive notifications of any changes to criminal history records information on all applicants seeking licensure or license renewal based on the retained fingerprints. The rules adopted by the disciplining authority must establish requirements for:

(i) Setting fees associated with fingerprint-based national and state background checks; and

(ii) Notifying all applicants and licensees that:

(A) Their fingerprints may be retained by the state patrol and federal bureau of investigation;

(B) Arrests and unsolved crimes files may be searched against their retained fingerprints; and

(C) Their criminal history record information will be periodically updated and any changes reported to the secretary by the state patrol pursuant to RCW 43.43.700.

(3) In addition to the background check required in subsection (2) of this section, an investigation may include an examination of state and national criminal identification data. The disciplining authority shall use the information for determining eligibility for licensure or renewal. The disciplining authority may also use the information when determining whether to proceed with an investigation of a report under RCW 18.130.080. For a national criminal history records check, the department shall require fingerprints be submitted to and searched through the Washington state patrol identification and criminal history section. The Washington state patrol shall forward the fingerprints to the federal bureau of investigation.

(4) The secretary shall adopt rules to require license holders to report to the disciplining authority any arrests, convictions, or other determinations or findings by a law enforcement agency occurring after June 12, 2008, for a criminal offense. The report must be made within fourteen days of the conviction.

(5) The secretary shall conduct an annual review of a representative sample of all license holders who have previously obtained a background check through the department. The selection of the license holders to be reviewed must be representative of all categories of license holders and geographic locations.

(6)(a) When deciding whether or not to issue an initial license, the disciplining authority shall consider the results of any background check conducted under subsection (2) of this section that reveals a conviction for any criminal offense that constitutes unprofessional conduct under this chapter or the chapters specified in RCW 18.130.040(2) or a series of arrests that when considered together demonstrate a pattern of behavior that, without investigation, may pose a risk to the safety of the license holder's patients.

(b) If the background check conducted under subsection (2) of this section reveals any information related to unprofessional conduct that has not been previously disclosed to the disciplining authority, the disciplining authority shall take appropriate disciplinary action against the license holder.

(7) The department shall:

(a) Require the applicant or license holder to submit full sets of fingerprints if necessary to complete the background check;

(b) Require the applicant to submit any information required by the state patrol; and

(c) Notify the applicant if their background check reveals a criminal record. Only when the background check reveals a criminal record will an applicant receive a notice. Upon receiving such a notice, the applicant may request and the department shall provide a copy of the record to the extent permitted under RCW 10.97.050, including making accessible to the applicant for their personal use and information any records of arrest, charges, or allegations of criminal conduct or other nonconviction data pursuant to RCW 10.97.050(4).

(8) Criminal justice agencies shall provide the secretary with both conviction and nonconviction information that the secretary requests for investigations under this chapter.

(9) There is established a unit within the department for the purpose of detection, investigation, and prosecution of any act prohibited or declared unlawful under this chapter. The secretary will employ supervisory, legal, and investigative personnel for the unit who must be qualified by training and experience.

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