
SENATE BILL 5316

State of Washington

68th Legislature

2023 Regular Session

By Senators C. Wilson, Billig, and Nobles

Read first time 01/12/23. Referred to Committee on Early Learning & K-12 Education.

1 AN ACT Relating to background check and licensing fees for
2 programs administered by the department of children, youth, and
3 families; amending RCW 43.43.837, 43.216.270, and 43.216.271;
4 repealing RCW 43.216.272 and 43.216.273; repealing 2021 c 304 s 34
5 (uncodified); and declaring an emergency.

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

7 **Sec. 1.** RCW 43.43.837 and 2022 c 297 s 954 are each amended to
8 read as follows:

9 (1) Except as provided in subsection (2) of this section, in
10 order to determine the character, competence, and suitability of any
11 applicant or service provider to have unsupervised access, the
12 secretary of the department of social and health services and the
13 secretary of the department of children, youth, and families may
14 require a fingerprint-based background check through both the
15 Washington state patrol and the federal bureau of investigation at
16 any time, but shall require a fingerprint-based background check when
17 the applicant or service provider has resided in the state less than
18 three consecutive years before application, and:

19 (a) Is an applicant or service provider providing services to
20 children or people with developmental disabilities under RCW
21 74.15.030;

1 (b) Is an individual sixteen years of age or older who: (i) Is
2 not under the placement and care authority of the department of
3 children, youth, and families; and (ii) resides in an applicant or
4 service provider's home, facility, entity, agency, or business or who
5 is authorized by the department of children, youth, and families to
6 provide services to children under RCW 74.15.030;

7 (c) Is an individual who is authorized by the department of
8 social and health services to provide services to people with
9 developmental disabilities under RCW 74.15.030; or

10 (d) Is an applicant or service provider providing in-home
11 services funded by:

12 (i) Medicaid personal care under RCW 74.09.520;

13 (ii) Community options program entry system waiver services under
14 RCW 74.39A.030;

15 (iii) Chore services under RCW 74.39A.110; or

16 (iv) Other home and community long-term care programs,
17 established pursuant to chapters 74.39 and 74.39A RCW, administered
18 by the department of social and health services.

19 (2) Long-term care workers, as defined in RCW 74.39A.009, who are
20 hired after January 7, 2012, are subject to background checks under
21 RCW 74.39A.056.

22 (3) To satisfy the shared background check requirements provided
23 for in RCW 43.216.270 and 43.20A.710, the department of children,
24 youth, and families and the department of social and health services
25 shall share federal fingerprint-based background check results as
26 permitted under the law. The purpose of this provision is to allow
27 both departments to fulfill their joint background check
28 responsibility of checking any individual who may have unsupervised
29 access to vulnerable adults, children, or juveniles. Neither
30 department may share the federal background check results with any
31 other state agency or person.

32 (4) The secretary of the department of children, youth, and
33 families shall require a fingerprint-based background check through
34 the Washington state patrol identification and criminal history
35 section and the federal bureau of investigation when the department
36 seeks to approve an applicant or service provider for a foster or
37 adoptive placement of children in accordance with federal and state
38 law. Fees charged by the Washington state patrol and the federal
39 bureau of investigation for fingerprint-based background checks shall
40 be paid by the department of children, youth, and families for

1 ((applicant)) foster care and child care applicants and service
2 providers (~~(providing foster care as required in RCW 74.15.030)~~).

3 (5) Any secure facility operated by the department of social and
4 health services or the department of children, youth, and families
5 under chapter 71.09 RCW shall require applicants and service
6 providers to undergo a fingerprint-based background check through the
7 Washington state patrol identification and criminal history section
8 and the federal bureau of investigation.

9 (6) Service providers and service provider applicants, except for
10 those long-term care workers exempted in subsection (2) of this
11 section, who are required to complete a fingerprint-based background
12 check may be hired for a one hundred twenty-day provisional period as
13 allowed under law or program rules when:

14 (a) A fingerprint-based background check is pending; and

15 (b) The applicant or service provider is not disqualified based
16 on the immediate result of the background check.

17 (7) Fees charged by the Washington state patrol and the federal
18 bureau of investigation for fingerprint-based background checks shall
19 be paid by the applicable department for applicants or service
20 providers providing:

21 (a) Services to people with a developmental disability under RCW
22 74.15.030;

23 (b) In-home services funded by medicaid personal care under RCW
24 74.09.520;

25 (c) Community options program entry system waiver services under
26 RCW 74.39A.030;

27 (d) Chore services under RCW 74.39A.110;

28 (e) Services under other home and community long-term care
29 programs, established pursuant to chapters 74.39 and 74.39A RCW,
30 administered by the department of social and health services or the
31 department of children, youth, and families;

32 (f) Services in, or to residents of, a secure facility under RCW
33 71.09.115; and

34 (g) For fiscal year 2023, applicants for child care and early
35 learning services to children under RCW 43.216.270.

36 ~~(8) ((Service providers licensed under RCW 74.15.030 must pay
37 fees charged by the Washington state patrol and the federal bureau of
38 investigation for conducting fingerprint-based background checks.~~

39 ~~(9) Department of children, youth, and families service providers
40 licensed under RCW 74.15.030 may not pass on the cost of the~~

1 ~~background check fees to their applicants unless the individual is~~
2 ~~determined to be disqualified due to the background information.~~

3 ~~(10))~~ The department of social and health services and the
4 department of children, youth, and families shall develop rules
5 identifying the financial responsibility of service providers,
6 applicants, and the department for paying the fees charged by law
7 enforcement to roll, print, or scan fingerprints-based for the
8 purpose of a Washington state patrol or federal bureau of
9 investigation fingerprint-based background check.

10 ~~((11))~~ (9) For purposes of this section, unless the context
11 plainly indicates otherwise:

12 (a) "Applicant" means a current or prospective department of
13 social and health services, department of children, youth, and
14 families, or service provider employee, volunteer, student, intern,
15 researcher, contractor, or any other individual who will or may have
16 unsupervised access because of the nature of the work or services he
17 or she provides. "Applicant" includes but is not limited to any
18 individual who will or may have unsupervised access and is:

19 (i) Applying for a license or certification from the department
20 of social and health services or the department of children, youth,
21 and families;

22 (ii) Seeking a contract with the department of social and health
23 services, the department of children, youth, and families, or a
24 service provider;

25 (iii) Applying for employment, promotion, reallocation, or
26 transfer;

27 (iv) An individual that a department of social and health
28 services or department of children, youth, and families client or
29 guardian of a department of social and health services or department
30 of children, youth, and families client chooses to hire or engage to
31 provide services to himself or herself or another vulnerable adult,
32 juvenile, or child and who might be eligible to receive payment from
33 the department of social and health services or the department of
34 children, youth, and families for services rendered; or

35 (v) A department of social and health services or department of
36 children, youth, and families applicant who will or may work in a
37 department-covered position.

38 (b) "Authorized" means the department of social and health
39 services or the department of children, youth, and families grants an
40 applicant, home, or facility permission to:

1 (i) Conduct licensing, certification, or contracting activities;
2 (ii) Have unsupervised access to vulnerable adults, juveniles,
3 and children;

4 (iii) Receive payments from a department of social and health
5 services or department of children, youth, and families program; or

6 (iv) Work or serve in a department of social and health services
7 or department of children, youth, and families-covered position.

8 (c) "Secretary" means the secretary of the department of social
9 and health services.

10 (d) "Secure facility" has the meaning provided in RCW 71.09.020.

11 (e) "Service provider" means entities, facilities, agencies,
12 businesses, or individuals who are licensed, certified, authorized,
13 or regulated by, receive payment from, or have contracts or
14 agreements with the department of social and health services or the
15 department of children, youth, and families to provide services to
16 vulnerable adults, juveniles, or children. "Service provider"
17 includes individuals whom a department of social and health services
18 or department of children, youth, and families client or guardian of
19 a department of social and health services or department of children,
20 youth, and families client may choose to hire or engage to provide
21 services to himself or herself or another vulnerable adult, juvenile,
22 or child and who might be eligible to receive payment from the
23 department of social and health services or the department of
24 children, youth, and families for services rendered.

25 **Sec. 2.** RCW 43.216.270 and 2022 c 297 s 960 are each amended to
26 read as follows:

27 (1)(a) In determining whether an individual is of appropriate
28 character, suitability, and competence to provide child care and
29 early learning services to children, the department may consider the
30 history of past involvement of child protective services or law
31 enforcement agencies with the individual for the purpose of
32 establishing a pattern of conduct, behavior, or inaction with regard
33 to the health, safety, or welfare of a child. No report of child
34 abuse or neglect that has been destroyed or expunged under RCW
35 26.44.031 may be used for such purposes. No unfounded or inconclusive
36 allegation of child abuse or neglect as defined in RCW 26.44.020 may
37 be disclosed to a provider licensed under this chapter.

38 (b) The department may not deny or delay a license to provide
39 child care and early learning services under this chapter to an

1 individual solely because of a founded finding of physical abuse or
2 negligent treatment or maltreatment involving the individual revealed
3 in the background check process or solely because the individual's
4 child was found by a court to be dependent as a result of a finding
5 that the individual abused or neglected their child pursuant to RCW
6 13.34.030(6)(b) when that founded finding or court finding is
7 accompanied by a certificate of parental improvement as defined in
8 chapter 74.13 RCW related to the same incident.

9 (2) In order to determine the suitability of individuals newly
10 applying for an agency license, new licensees, their new employees,
11 and other persons who newly have unsupervised access to children in
12 child care, shall be fingerprinted.

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

16 (b) ~~((i))~~ All individuals applying for first-time agency
17 licenses, all new employees, and other persons who have not been
18 previously qualified by the department to have unsupervised access to
19 children in child care must be fingerprinted and obtain a criminal
20 history record check pursuant to this section.

21 ~~((ii) Except during fiscal year 2023, persons required to be
22 fingerprinted and obtain a criminal history record check pursuant to
23 this section must pay for the cost of this check as follows: The fee
24 established by the Washington state patrol for the criminal
25 background history check, including the cost of obtaining the
26 fingerprints; and a fee paid to the department for the cost of
27 administering the individual-based/portable background check
28 clearance registry. The fee paid to the department must be deposited
29 into the individual-based/portable background check clearance account
30 established in RCW 43.216.273. The licensee may, but need not, pay
31 these costs on behalf of a prospective employee or reimburse the
32 prospective employee for these costs. The licensee and the
33 prospective employee may share these costs.))~~

34 (c) The secretary shall use the fingerprint criminal history
35 record check information solely for the purpose of determining
36 eligibility for a license and for determining the character,
37 suitability, and competence of those persons or agencies, excluding
38 parents, not required to be licensed who are authorized to care for
39 children.

1 (d) Criminal justice agencies shall provide the secretary such
2 information as they may have and that the secretary may require for
3 such purpose.

4 (e) No later than July 1, 2013, all agency licensees holding
5 licenses prior to July 1, 2012, persons who were employees before
6 July 1, 2012, and persons who have been qualified by the department
7 before July 1, 2012, to have unsupervised access to children in child
8 care, must submit a new background application to the department.

9 ~~((The department must require persons submitting a new background
10 application pursuant to this subsection (2)(e) to pay a fee to the
11 department for the cost of administering the individual-based/
12 portable background check clearance registry. This fee must be paid
13 into the individual-based/portable background check clearance account
14 established in RCW 43.216.273. The licensee may, but need not, pay
15 these costs on behalf of a prospective employee or reimburse the
16 prospective employee for these costs. The licensee and the
17 prospective employee may share these costs.))~~

18 (f) The department shall issue a background check clearance card
19 or certificate to the applicant if after the completion of a
20 background check the department concludes the applicant is qualified
21 for unsupervised access to children in child care. The background
22 check clearance card or certificate is valid for ~~((three))~~ five years
23 from the date of issuance. A valid card or certificate must be
24 accepted by a potential employer as proof that the applicant has
25 successfully completed a background check as required under this
26 chapter. For purposes of renewal of the background clearance card or
27 certificate, all agency licensees holding a license, persons who are
28 employees, and persons who have been previously qualified by the
29 department, must submit a new background application to the
30 department on a date to be determined by the department. ~~((Except
31 during fiscal year 2023, fee requirements applicable to this section
32 also apply to background clearance renewal applications.))~~

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

38 ~~((The payment requirements applicable to (a) through (g) of
39 this subsection do not apply to persons who:~~

1 ~~(i) Provide regularly scheduled care for a child or children in~~
2 ~~the home of the provider or in the home of the child or children for~~
3 ~~periods of less than twenty-four hours or, if necessary due to the~~
4 ~~nature of the parent's work, for periods equal to or greater than~~
5 ~~twenty-four hours;~~

6 ~~(ii) Receive child care subsidies; and~~

7 ~~(iii) Are exempt from licensing under this chapter.~~

8 ~~(i))~~ The applicant and agency shall maintain on-site for
9 inspection a copy of the background check clearance card or
10 certificate.

11 ~~((j))~~ (i) Individuals who have been issued a background check
12 clearance card or certificate shall report nonconviction and
13 conviction information to the department within twenty-four hours of
14 the event constituting the nonconviction or conviction information.

15 ~~((k))~~ (j) The department shall investigate and conduct a
16 redetermination of an applicant's or licensee's background clearance
17 if the department receives a complaint or information from
18 individuals, a law enforcement agency, or other federal, state, or
19 local government agency. Subject to the requirements contained in RCW
20 43.216.325 and 43.216.327 and based on a determination that an
21 individual lacks the appropriate character, suitability, or
22 competence to provide child care or early learning services to
23 children, the department may: (i) Invalidate the background card or
24 certificate; or (ii) suspend, modify, or revoke any license
25 authorized by this chapter.

26 (3) To satisfy the shared background check requirements of the
27 department of children, youth, and families, the office of the
28 superintendent of public instruction, and the department of social
29 and health services, each department shall share federal fingerprint-
30 based background check results as permitted under the law. The
31 purpose of this provision is to allow these departments to fulfill
32 their joint background check responsibility of checking any
33 individual who may have unsupervised access to vulnerable adults,
34 children, or juveniles. These departments may not share the federal
35 background check results with any other state agency or person.

36 (4) Individuals who have completed a fingerprint background check
37 as required by the office of the superintendent of public
38 instruction, consistent with RCW 28A.400.303, and have been
39 continuously employed by the same school district or educational
40 service district, can meet the requirements in subsection (2) of this

1 section by providing a true and accurate copy of their Washington
2 state patrol and federal bureau of investigation background check
3 report results to the department or if the school district or the
4 educational service district provides an affidavit to the department
5 that the individual has been authorized to work by the school
6 district or educational service district after completing a record
7 check consistent with RCW 28A.400.303. The department may require
8 that additional background checks be completed that do not require
9 additional fingerprinting (~~and, except during fiscal year 2023, may~~
10 ~~charge a fee for these additional background checks~~).

11 **Sec. 3.** RCW 43.216.271 and 2021 c 304 s 12 are each amended to
12 read as follows:

13 (~~Subject to appropriation, the~~) The department shall maintain
14 an individual-based or portable background check clearance registry.
15 Any individual seeking a child care license or employment in any
16 child care facility or outdoor nature-based child care program
17 licensed or regulated under current law shall submit a background
18 application on a form prescribed by the department in rule.

19 NEW SECTION. **Sec. 4.** The following acts or parts of acts are
20 each repealed:

21 (1) RCW 43.216.272 (Fee for developing and administering
22 individual-based/portable background check clearance registry) and
23 2017 3rd sp.s. c 6 s 208 & 2011 c 295 s 4; and

24 (2) RCW 43.216.273 (Individual-based/portable background check
25 clearance account) and 2017 3rd sp.s. c 6 s 209 & 2011 c 295 s 5.

26 NEW SECTION. **Sec. 5.** 2021 c 304 s 34 (uncodified) is repealed.

27 NEW SECTION. **Sec. 6.** Section 5 of this act is necessary for the
28 immediate preservation of the public peace, health, or safety, or
29 support of the state government and its existing public institutions,
30 and takes effect immediately.

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