

2 **HB 2258** - S COMM AMD

3 By Committee on Health & Human Services

4

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

7 "**Sec. 1.** RCW 43.43.830 and 1992 c 145 s 16 are each amended to  
8 read as follows:

9 Unless the context clearly requires otherwise, the definitions in  
10 this section apply throughout RCW 43.43.830 through 43.43.840.

11 (1) "Applicant" means:

12 (a) Any prospective employee who will or may have unsupervised  
13 access to children under sixteen years of age or developmentally  
14 disabled persons or vulnerable adults during the course of his or her  
15 employment or involvement with the business or organization or  
16 guardian;

17 (b) Any prospective volunteer or student who will have regularly  
18 scheduled unsupervised access to children under sixteen years of age,  
19 developmentally disabled persons, or vulnerable adults during the  
20 course of his or her educational program, employment, or involvement  
21 with the business or organization or guardian under circumstances where  
22 such access will or may involve groups of (i) five or fewer children  
23 under twelve years of age, (ii) three or fewer children between twelve  
24 and sixteen years of age, (iii) developmentally disabled persons, or  
25 (iv) vulnerable adults; or

26 (c) Any prospective adoptive parent, as defined in RCW 26.33.020.

27 (2) "Business or organization" means a business or organization  
28 licensed in this state, any agency of the state, or other governmental  
29 entity, that educates, trains, treats, supervises, or provides  
30 recreation to developmentally disabled persons, vulnerable adults, or  
31 children under sixteen years of age, including school districts and  
32 educational service districts.

33 (3) "Civil adjudication" means a specific court finding of sexual  
34 abuse or exploitation or physical abuse in a dependency action under  
35 RCW 13.34.040 or in a domestic relations action under Title 26 RCW. In  
36 the case of vulnerable adults, civil adjudication means a specific

1 court finding of abuse or financial exploitation in a protection  
2 proceeding under chapter 74.34 RCW. It does not include administrative  
3 proceedings. The term "civil adjudication" is further limited to court  
4 findings that identify as the perpetrator of the abuse a named  
5 individual, over the age of eighteen years, who was a party to the  
6 dependency or dissolution proceeding or was a respondent in a  
7 protection proceeding in which the finding was made and who contested  
8 the allegation of abuse or exploitation.

9 (4) "Conviction record" means "conviction record" information as  
10 defined in RCW 10.97.030(3) relating to a crime against children or  
11 other persons committed by either an adult or a juvenile. It does not  
12 include a conviction for an offense that has been the subject of an  
13 expungement, pardon, annulment, certificate of rehabilitation, or other  
14 equivalent procedure based on a finding of the rehabilitation of the  
15 person convicted, or a conviction that has been the subject of a  
16 pardon, annulment, or other equivalent procedure based on a finding of  
17 innocence. It does include convictions for offenses for which the  
18 defendant received a deferred or suspended sentence, unless the record  
19 has been expunged according to law.

20 (5) "Crime against children or other persons" means a conviction of  
21 any of the following offenses: Aggravated murder; first or second  
22 degree murder; first or second degree kidnaping; first, second, or  
23 third degree assault; first, second, or third degree assault of a  
24 child; first, second, or third degree rape; first, second, or third  
25 degree rape of a child; first or second degree robbery; first degree  
26 arson; first degree burglary; first or second degree manslaughter;  
27 first or second degree extortion; indecent liberties; incest; vehicular  
28 homicide; first degree promoting prostitution; communication with a  
29 minor; unlawful imprisonment; simple assault; sexual exploitation of  
30 minors; first or second degree criminal mistreatment; child abuse or  
31 neglect as defined in RCW 26.44.020; first or second degree custodial  
32 interference; malicious harassment; first, second, or third degree  
33 child molestation; first or second degree sexual misconduct with a  
34 minor; first or second degree rape of a child; patronizing a juvenile  
35 prostitute; child abandonment; promoting pornography; selling or  
36 distributing erotic material to a minor; custodial assault; violation  
37 of child abuse restraining order; child buying or selling;  
38 prostitution; felony indecent exposure; or any of these crimes as they  
39 may be renamed in the future.

1 (6) "Crimes relating to financial exploitation" means a conviction  
2 for first, second, or third degree extortion; first, second, or third  
3 degree theft; first or second degree robbery; forgery; or any of these  
4 crimes as they may be renamed in the future.

5 (7) "Disciplinary board final decision" means any final decision  
6 issued by the disciplinary board or the director of the department of  
7 licensing for the following businesses or professions:

8 (a) Chiropractic;

9 (b) Dentistry;

10 (c) Dental hygiene;

11 (d) Massage;

12 (e) Midwifery;

13 (f) Naturopathy;

14 (g) Osteopathy;

15 (h) Physical therapy;

16 (i) Physicians;

17 (j) Practical nursing;

18 (k) Registered nursing;

19 (l) Psychology; and

20 (m) Real estate brokers and salesmen.

21 (8) "Unsupervised" means not in the presence of:

22 (a) Another employee or volunteer from the same business or  
23 organization as the applicant; or

24 (b) Any relative or guardian of any of the children or  
25 developmentally disabled persons to which the applicant has access  
26 during the course of his or her employment or involvement with the  
27 business or organization.

28 (9) "Vulnerable adult" means a person sixty years of age or older  
29 who has the functional, mental, or physical inability to care for  
30 himself or herself or a patient in a state hospital as defined in  
31 chapter 72.23 RCW.

32 (10) "Financial exploitation" means the illegal or improper use of  
33 a vulnerable adult or that adult's resources for another person's  
34 profit or advantage.

35 (11) "Agency" means any person, firm, partnership, association,  
36 corporation, or facility which receives, provides services to, houses  
37 or otherwise cares for vulnerable adults.

38 (12) "Guardian" means a person who is a parent or guardian of a  
39 child under age sixteen, a developmentally disabled person, or a

1 vulnerable adult, and who wants to employ an applicant as a babysitter  
2 or caretaker of the child, developmentally disabled person, or  
3 vulnerable adult.

4 **Sec. 2.** RCW 43.43.832 and 1993 c 281 s 51 are each amended to read  
5 as follows:

6 (1) The legislature finds that businesses and organizations  
7 providing services to children, developmentally disabled persons, and  
8 vulnerable adults need adequate information to determine which  
9 employees or licensees to hire or engage. Therefore, the Washington  
10 state patrol criminal identification system may disclose, upon the  
11 request of a business or organization as defined in RCW 43.43.830, an  
12 applicant'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 also finds that guardians of children,  
33 developmentally disabled persons, and vulnerable adults also need  
34 information to determine which employees to hire as babysitters or  
35 caretakers of the guardians's children, developmentally disabled  
36 persons, or vulnerable adults. Upon request of a guardian, the  
37 Washington state patrol criminal identification system may disclose the  
38 same information delineated in subsection (1) of this section to aid

1 the guardian in making employment decisions regarding caretakers.

2       (5) The legislature further finds that the department of social and  
3 health services, when considering persons for state positions directly  
4 responsible for the care, supervision, or treatment of children,  
5 developmentally disabled persons, or vulnerable adults or when  
6 licensing or authorizing such persons or agencies pursuant to its  
7 authority under chapter ((74.15, 18.51)) 13.32A, 13.34, 18.20, ((or))  
8 18.51, 72.23, or 74.15 RCW, or any later-enacted statute which purpose  
9 is to license or regulate a facility which handles vulnerable adults,  
10 must consider the information listed in subsection (1) of this section.  
11 However, when necessary, persons may be employed on a conditional basis  
12 pending completion of the background investigation. The Washington  
13 personnel resources board shall adopt rules to accomplish the purposes  
14 of this subsection as it applies to state employees.

15       (6) The legislature further finds that educational programs that  
16 provide students with access to children, developmentally disabled  
17 adults, or vulnerable adults must consider the information listed in  
18 subsection (1) of this section.

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

21       (1) A business ((or)), organization, guardian, or educational  
22 program shall not make an inquiry to the Washington state patrol under  
23 RCW 43.43.832 or an equivalent inquiry to a federal law enforcement  
24 agency unless the business ((or)), organization, guardian, or  
25 educational program has notified the applicant who has been offered a  
26 position as an employee or volunteer, that an inquiry may be made.

27       (2) A business or organization shall require each applicant to  
28 disclose to the business or organization whether the applicant has  
29 been:

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

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

33       (c) Found in any dependency action under RCW 13.34.040 to have  
34 sexually assaulted or exploited any minor or to have physically abused  
35 any minor;

36       (d) Found by a court in a domestic relations proceeding under Title  
37 26 RCW to have sexually abused or exploited any minor or to have  
38 physically abused any minor;

1 (e) Found in any disciplinary board final decision to have sexually  
2 or physically abused or exploited any minor or developmentally disabled  
3 person or to have abused or financially exploited any vulnerable adult;  
4 or

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

7 The disclosure shall be made in writing and signed by the applicant  
8 and sworn under penalty of perjury. The disclosure sheet shall specify  
9 all crimes against children or other persons and all crimes relating to  
10 financial exploitation as defined in RCW 43.43.830 in which the victim  
11 was a vulnerable adult.

12 (3) A guardian may require an applicant to disclose to the guardian  
13 the same information as specified in subsection (2) of this section.

14 (4) An educational program may require a student to disclose to the  
15 educational program the same information as specified on subsection (2)  
16 of this section.

17 (5) The business ((or)), organization, guardian, or educational  
18 program shall pay such reasonable fee for the records check as the  
19 state patrol may require under RCW 43.43.838.

20 ~~((4))~~ (6) The business ((or)), organization, guardian, or  
21 educational program shall notify the applicant of the state patrol's  
22 response within ten days after receipt by the business ((or)),  
23 organization, guardian, or educational program. The employer or  
24 guardian shall provide a copy of the response to the applicant and  
25 shall notify the applicant of such availability.

26 ~~((5))~~ (7) The business ((or)), organization, guardian, or  
27 educational program shall use this record only in making the initial  
28 employment or engagement decision. Further dissemination or use of the  
29 record is prohibited. A business ((or)), organization, guardian, or  
30 educational program violating this subsection is subject to a civil  
31 action for damages.

32 ~~((6))~~ (8) An insurance company shall not require a business or  
33 organization or guardian to request background information on any  
34 employee before issuing a policy of insurance.

35 ~~((7))~~ (9) The business ((and)), organization, guardian, or  
36 educational program shall be immune from civil liability for failure to  
37 request background information on an applicant or student unless the  
38 failure to do so constitutes gross negligence.

1       **Sec. 4.** RCW 43.43.838 and 1992 c 159 s 7 are each amended to read  
2 as follows:

3       (1) After January 1, 1988, and notwithstanding any provision of RCW  
4 43.43.700 through 43.43.810 to the contrary, the state patrol shall  
5 furnish a transcript of the conviction record, disciplinary board final  
6 decision and any subsequent criminal charges associated with the  
7 conduct that is the subject of the disciplinary board final decision,  
8 or civil adjudication record pertaining to any person for whom the  
9 state patrol or the federal bureau of investigation has a record upon  
10 the written request of:

11       (a) The subject of the inquiry;

12       (b) Any business (~~(or)~~), organization, guardian, or educational  
13 program for the purpose of conducting evaluations under RCW 43.43.832;

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

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

17       (e) The department of social and health services for the purpose of  
18 meeting responsibilities set forth in chapter 74.15, 18.51, 18.20, or  
19 72.23 RCW, or any later-enacted statute which purpose is to regulate or  
20 license a facility which handles vulnerable adults. However, access to  
21 conviction records pursuant to this subsection (1)(e) does not limit or  
22 restrict the ability of the department to obtain additional information  
23 regarding conviction records and pending charges as set forth in RCW  
24 74.15.030(2)(b).

25       After processing the request, if the conviction record,  
26 disciplinary board final decision and any subsequent criminal charges  
27 associated with the conduct that is the subject of the disciplinary  
28 board final decision, or adjudication record shows no evidence of a  
29 crime against children or other persons or, in the case of vulnerable  
30 adults, no evidence of crimes relating to financial exploitation in  
31 which the victim was a vulnerable adult, an identification declaring  
32 the showing of no evidence shall be issued to the applicant by the  
33 state patrol and shall be issued within fourteen working days of the  
34 request. Possession of such identification shall satisfy future record  
35 check requirements for the applicant for a two-year period unless the  
36 prospective employee is any current school district employee who has  
37 applied for a position in another school district or is an applicant  
38 for a caretaking or babysitting position for a guardian who has not  
39 requested a record check on the applicant within the last two years.

1 (2) The state patrol shall by rule establish fees for disseminating  
2 records under this section to recipients identified in subsection  
3 (1)(a) and (b) of this section. The state patrol shall also by rule  
4 establish fees for disseminating records in the custody of the national  
5 crime information center. The revenue from the fees shall cover, as  
6 nearly as practicable, the direct and indirect costs to the state  
7 patrol of disseminating the records: PROVIDED, That no fee shall be  
8 charged to a nonprofit organization for the records check: PROVIDED  
9 FURTHER, That in the case of record checks using fingerprints requested  
10 by school districts and educational service districts, the state patrol  
11 shall charge only for the incremental costs associated with checking  
12 fingerprints in addition to name and date of birth. Record checks  
13 requested by school districts and educational service districts using  
14 only name and date of birth shall continue to be provided free of  
15 charge.

16 (3) No employee of the state, employee of a business or  
17 organization, (~~(or)~~) the business or organization, or a guardian or  
18 educational program is liable for defamation, invasion of privacy,  
19 negligence, or any other claim in connection with any lawful  
20 dissemination of information under RCW 43.43.830 through 43.43.840 or  
21 43.43.760.

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

29 (5) Nothing in RCW 43.43.830 through 43.43.840 shall authorize an  
30 employer or a guardian to make an inquiry not specifically authorized  
31 by this chapter, or be construed to affect the policy of the state  
32 declared in chapter 9.96A RCW."

33 **HB 2258** - S COMM AMD

34 By Committee on Health & Human Services

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36 On page 1, line 2 of the title, after "persons;" strike the  
37 remainder of the title and insert "and amending RCW 43.43.830,



1 43.43.832, 43.43.834, and 43.43.838."

--- **END** ---