
SECOND SUBSTITUTE SENATE BILL 6152

State of Washington

56th Legislature

2000 Regular Session

By Senate Committee on Ways & Means (originally sponsored by Senators Stevens, Hochstatter, Swecker and Kohl-Welles)

Read first time 02/08/2000.

1 AN ACT Relating to the care, supervision, and treatment of
2 children, developmentally disabled persons, and vulnerable adults;
3 amending RCW 43.43.832 and 74.15.030; adding a new section to chapter
4 74.15 RCW; creating a new section; and providing an effective date.

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

6 **Sec. 1.** RCW 43.43.832 and 1997 c 392 s 524 are each amended to
7 read as follows:

8 (1) The legislature finds that businesses and organizations
9 providing services to children, developmentally disabled persons, and
10 vulnerable adults need adequate information to determine which
11 employees or licensees to hire or engage. The legislature further
12 finds that many developmentally disabled individuals and vulnerable
13 adults desire to hire their own employees directly and also need
14 adequate information to determine which employees or licensees to hire
15 or engage. Therefore, the Washington state patrol criminal
16 identification system shall disclose, upon the request of a business or
17 organization as defined in RCW 43.43.830, a developmentally disabled
18 person, or a vulnerable adult as defined in RCW 43.43.830 or his or her
19 guardian, an applicant's record for convictions of offenses against

1 children or other persons, convictions for crimes relating to financial
2 exploitation, but only if the victim was a vulnerable adult,
3 adjudications of child abuse in a civil action, the issuance of a
4 protection order against the respondent under chapter 74.34 RCW, and
5 disciplinary board final decisions and any subsequent criminal charges
6 associated with the conduct that is the subject of the disciplinary
7 board final decision.

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

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

18 (4) The legislature further finds that the department of social and
19 health services must consider the information listed in subsection (1)
20 of this section in the following circumstances:

21 (a) When considering persons for state positions directly
22 responsible for the care, supervision, or treatment of children,
23 developmentally disabled persons, or vulnerable adults;

24 (b) When licensing agencies or facilities with individuals in
25 positions directly responsible for the care, supervision, or treatment
26 of children, developmentally disabled persons, or vulnerable adults,
27 including but not limited to agencies or facilities licensed under
28 chapter 74.15 or 18.51 RCW;

29 (c) When contracting with individuals or businesses or
30 organizations, or when authorizing payment, for the care, supervision,
31 or treatment of children, developmentally disabled persons, or
32 vulnerable adults, including but not limited to services contracted for
33 under chapter 18.20, 18.48, 70.127, 70.128, 72.36, or 74.39A RCW or
34 Title 71A RCW.

35 (5) Whenever a state conviction record check is required by state
36 law, persons may be employed or engaged as volunteers or independent
37 contractors on a conditional basis pending completion of the state
38 background investigation. Whenever a national criminal record check
39 through the federal bureau of investigation is required by state law,

1 a person may be employed or engaged as a volunteer or independent
2 contractor on a conditional basis pending completion of the national
3 check. The Washington personnel resources board shall adopt rules to
4 accomplish the purposes of this subsection as it applies to state
5 employees.

6 (6)(a) For purposes of facilitating timely access to criminal
7 background information and to reasonably minimize the number of
8 requests made under this section, recognizing that certain health care
9 providers change employment frequently, health care facilities may,
10 upon request from another health care facility, share copies of
11 completed criminal background inquiry information.

12 (b) Completed criminal background inquiry information may be shared
13 by a willing health care facility only if the following conditions are
14 satisfied: The licensed health care facility sharing the criminal
15 background inquiry information is reasonably known to be the person's
16 most recent employer, no more than twelve months has elapsed from the
17 date the person was last employed at a licensed health care facility to
18 the date of their current employment application, and the criminal
19 background information is no more than two years old.

20 (c) If criminal background inquiry information is shared, the
21 health care facility employing the subject of the inquiry must require
22 the applicant to sign a disclosure statement indicating that there has
23 been no conviction or finding as described in RCW 43.43.842 since the
24 completion date of the most recent criminal background inquiry.

25 (d) Any health care facility that knows or has reason to believe
26 that an applicant has or may have a disqualifying conviction or finding
27 as described in RCW 43.43.842, subsequent to the completion date of
28 their most recent criminal background inquiry, shall be prohibited from
29 relying on the applicant's previous employer's criminal background
30 inquiry information. A new criminal background inquiry shall be
31 requested pursuant to RCW 43.43.830 through 43.43.842.

32 (e) Health care facilities that share criminal background inquiry
33 information shall be immune from any claim of defamation, invasion of
34 privacy, negligence, or any other claim in connection with any
35 dissemination of this information in accordance with this subsection.

36 (f) Health care facilities shall transmit and receive the criminal
37 background inquiry information in a manner that reasonably protects the
38 subject's rights to privacy and confidentiality.

1 (g) For the purposes of this subsection, "health care facility"
2 means a nursing home licensed under chapter 18.51 RCW, a boarding home
3 licensed under chapter 18.20 RCW, or an adult family home licensed
4 under chapter 70.128 RCW.

5 **Sec. 2.** RCW 74.15.030 and 1997 c 386 s 33 are each amended to read
6 as follows:

7 The secretary shall have the power and it shall be the secretary's
8 duty:

9 (1) In consultation with the children's services advisory
10 committee, and with the advice and assistance of persons representative
11 of the various type agencies to be licensed, to designate categories of
12 facilities for which separate or different requirements shall be
13 developed as may be appropriate whether because of variations in the
14 ages, sex and other characteristics of persons served, variations in
15 the purposes and services offered or size or structure of the agencies
16 to be licensed hereunder, or because of any other factor relevant
17 thereto;

18 (2) In consultation with the children's services advisory
19 committee, adopt and publish minimum requirements for authorizing
20 payment of exempt child care providers;

21 (3) In consultation with the children's services advisory
22 committee, and with the advice and assistance of persons representative
23 of the various type agencies to be licensed, to adopt and publish
24 minimum requirements for licensing applicable to each of the various
25 categories of agencies to be licensed.

26 The minimum requirements shall be limited to:

27 (a) The size and suitability of a facility and the plan of
28 operation for carrying out the purpose for which an applicant seeks a
29 license;

30 (b) The character, suitability and competence of an agency and
31 other persons associated with an agency directly responsible for the
32 care and treatment of children, expectant mothers or developmentally
33 disabled persons. In consultation with law enforcement personnel, the
34 secretary shall investigate the conviction record or pending charges
35 and ~~((dependency))~~ not founded child abuse or neglect as defined in RCW
36 26.44.020(19) record information under chapter 43.43 RCW of each agency
37 and its staff seeking licensure or relicensure. In order to determine
38 the character, suitability, and competence of applicants for an agency

1 license, licensees, their employees, (~~and~~) other persons who have
2 unsupervised access to children in care, and when authorizing payment
3 for services by a person who has unsupervised access to a child, the
4 department shall:

5 (i) In consultation with law enforcement personnel, investigate the
6 conviction record or pending charges and not founded child abuse or
7 neglect as defined in RCW 26.44.020(19) record information under
8 chapter 43.43 RCW of any such person;

9 (ii) Require that any such person who (~~have~~) has not resided in
10 the state of Washington during the three-year period before being
11 authorized to care for children shall be fingerprinted. The
12 requirement for fingerprints does not include those individuals or
13 businesses or organizations named in RCW 43.43.832(4)(c). The
14 fingerprints shall be forwarded to the Washington state patrol and
15 federal bureau of investigation for a criminal history records check.
16 To investigate criminal history information, the department may
17 reasonably rely on a criminal history records check of the Washington
18 state patrol criminal identification system and, where a federal bureau
19 of investigation check is required, a federal bureau of investigation
20 check by another governmental agency or the United States military if
21 the check is less than one year old. The fingerprint criminal history
22 records checks will be at the expense of the licensee except that in
23 the case of a foster family home, if this expense would work a hardship
24 on the licensee, the department shall pay the expense. The licensee
25 may not pass this cost on to the employee or prospective employee,
26 unless the employee is determined to be unsuitable due to his or her
27 criminal history record. The secretary shall use the information
28 solely for the purpose of determining eligibility for a license and for
29 determining the character, suitability, and competence of those persons
30 or agencies, excluding parents, not required to be licensed who are
31 authorized to care for children, expectant mothers, and developmentally
32 disabled persons. The department shall share the conviction record,
33 pending charges, and not founded child abuse or neglect as defined in
34 RCW 26.44.020(19) record information with the child placing agency that
35 is responsible for certifying the licensee or applicant. Criminal
36 justice agencies shall provide the secretary such information as they
37 may have and that the secretary may require for such purpose;

38 (iii) When the additional federal bureau of investigation check is
39 required for a job applicant of an agency licensed under this chapter,

1 complete the state background check, which includes Washington state
2 patrol and department child abuse and neglect records. If the state
3 background check does not disqualify the job applicant and the results
4 of the federal bureau of investigation check have not been received,
5 the department may provide provisional approval to the licensee to hire
6 the applicant as a temporary employee for up to one hundred twenty
7 days, pending the results of the federal bureau of investigation check.
8 If the federal bureau of investigation report does not disqualify the
9 applicant, the department shall notify the employing licensed agency
10 that the applicant may be hired permanently. If the federal bureau of
11 investigation check disqualifies an applicant, the department shall
12 notify the employing licensed agency that the provisional approval to
13 hire the applicant is withdrawn and that the applicant is disqualified;
14 and

15 (iv) Implement a waiver process for exempt child care providers
16 whose background check would otherwise preclude the department from
17 authorizing payment for the exempt provider's services. Applicants for
18 employment as exempt child care providers may request an administrative
19 hearing regarding a determination of disqualification;

20 (c) The number of qualified persons required to render the type of
21 care and treatment for which an agency seeks a license;

22 (d) The safety, cleanliness, and general adequacy of the premises
23 to provide for the comfort, care and well-being of children, expectant
24 mothers or developmentally disabled persons;

25 (e) The provision of necessary care, including food, clothing,
26 supervision and discipline; physical, mental and social well-being; and
27 educational, recreational and spiritual opportunities for those served;

28 (f) The financial ability of an agency to comply with minimum
29 requirements established pursuant to this chapter ((74.15-RCW)) and RCW
30 74.13.031; and

31 (g) The maintenance of records pertaining to the admission,
32 progress, health and discharge of persons served;

33 ((+3+)) (4) To investigate any person, including relatives by blood
34 or marriage except for parents, for character, suitability, and
35 competence in the care and treatment of children, expectant mothers,
36 and developmentally disabled persons prior to authorizing that person
37 to care for children, expectant mothers, and developmentally disabled
38 persons. However, if a child is placed with a relative under RCW
39 13.34.060 or 13.34.130, and if such relative appears otherwise suitable

1 and competent to provide care and treatment the criminal history
2 background check required by this section need not be completed before
3 placement, but shall be completed as soon as possible after placement;

4 ~~((4))~~ (5) On reports of alleged child abuse and neglect, to
5 investigate agencies in accordance with chapter 26.44 RCW, including
6 child day-care centers and family day-care homes, to determine whether
7 the alleged abuse or neglect has occurred, and whether child protective
8 services or referral to a law enforcement agency is appropriate;

9 ~~((5))~~ (6) To issue, revoke, or deny licenses to agencies pursuant
10 to this chapter ~~((74.15—RCW))~~ and RCW 74.13.031. Licenses shall
11 specify the category of care which an agency is authorized to render
12 and the ages, sex and number of persons to be served;

13 ~~((6))~~ (7) To prescribe the procedures and the form and contents
14 of reports necessary for the administration of this chapter ~~((74.15
15 RCW))~~ and RCW 74.13.031 and to require regular reports from each
16 licensee;

17 ~~((7))~~ (8) To inspect agencies periodically to determine whether
18 or not there is compliance with this chapter ~~((74.15—RCW))~~ and RCW
19 74.13.031 and the requirements adopted hereunder;

20 ~~((8))~~ (9) To review requirements adopted hereunder at least every
21 two years and to adopt appropriate changes after consultation with the
22 child care coordinating committee and other affected groups for child
23 day-care requirements and with the children's services advisory
24 committee for requirements for other agencies; and

25 ~~((9))~~ (10) To consult with public and private agencies in order
26 to help them improve their methods and facilities for the care of
27 children, expectant mothers and developmentally disabled persons.

28 NEW SECTION. **Sec. 3.** A new section is added to chapter 74.15 RCW
29 to read as follows:

30 The department of social and health services and its employees,
31 when acting in good faith and operating under the rules adopted under
32 RCW 74.15.030(3)(b)(iv), are immune from criminal or civil liability,
33 when conducting background checks or disqualifying individuals from
34 receiving payment as child care providers.

35 NEW SECTION. **Sec. 4.** If specific funding for the purposes of this
36 act, referencing this act by bill or chapter number, is not provided by

1 June 30, 2000, in the omnibus appropriations act, this act is null and
2 void.

3 NEW SECTION. **Sec. 5.** Sections 1 and 2 of this act take effect
4 August 1, 2000.

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