

CERTIFICATION OF ENROLLMENT
ENGROSSED SUBSTITUTE SENATE BILL 5606

Chapter 296, Laws of 2001

57th Legislature
2001 Regular Session

BACKGROUND CHECK REQUIREMENTS

EFFECTIVE DATE: 7/22/01

Passed by the Senate April 20, 2001
YEAS 40 NAYS 0

BRAD OWEN
President of the Senate

Passed by the House April 20, 2001
YEAS 93 NAYS 0

FRANK CHOPP
Speaker of the
House of Representatives

CLYDE BALLARD
Speaker of the
House of Representatives

Approved May 14, 2001

GARY LOCKE
Governor of the State of Washington

CERTIFICATE

I, Tony M. Cook, Secretary of the Senate of the State of Washington, do hereby certify that the attached is **ENGROSSED SUBSTITUTE SENATE BILL 5606** as passed by the Senate and the House of Representatives on the dates hereon set forth.

TONY M. COOK
Secretary

FILED

May 14, 2001 - 3:22 p.m.

Secretary of State
State of Washington

ENGROSSED SUBSTITUTE SENATE BILL 5606

AS AMENDED BY THE HOUSE

Passed Legislature - 2001 Regular Session

State of Washington

57th Legislature

2001 Regular Session

By Senate Committee on Human Services & Corrections (originally sponsored by Senators Kohl-Welles and Long; by request of Department of Social and Health Services)

READ FIRST TIME 02/26/01.

1 AN ACT Relating to making the background check requirements for
2 employees consistent with background check requirements for service
3 providers, agencies, and entities serving vulnerable adults and
4 children; amending RCW 28A.400.303, 28A.400.305, and 43.20A.710; adding
5 a new section to chapter 9.96A RCW; adding new sections to chapter
6 41.06 RCW; and creating a new section.

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

8 NEW SECTION. **Sec. 1.** It is the intent of the legislature to
9 authorize the department of social and health services to investigate
10 the background of current and future department employees to the same
11 extent and with the same effect as it has authorized the state to
12 investigate the background and exclude from the provision of service
13 current and future care providers, contractors, volunteers, and others.
14 The department of social and health services must coordinate with the
15 department of personnel to develop rules that address the procedures
16 for undertaking background checks, and specifically what action would
17 be taken against a current employee who is disqualified from his or her
18 current position because of a background check not previously
19 performed.

1 NEW SECTION. **Sec. 2.** A new section is added to chapter 9.96A RCW
2 to read as follows:

3 This chapter is not applicable to the department of social and
4 health services when employing a person, who in the course of his or
5 her employment, has or may have unsupervised access to any person who
6 is under the age of eighteen, who is under the age of twenty-one and
7 has been sentenced to a term of confinement under the supervision of
8 the department of social and health services under chapter 13.40 RCW,
9 who is a vulnerable adult under chapter 74.34 RCW, or who is a
10 vulnerable person. For purposes of this section "vulnerable person"
11 means an adult of any age who lacks the functional, mental, or physical
12 ability to care for himself or herself.

13 **Sec. 3.** RCW 28A.400.303 and 1992 c 159 s 2 are each amended to
14 read as follows:

15 School districts, educational service districts, the state school
16 for the deaf, the state school for the blind, and their contractors
17 hiring employees who will have regularly scheduled unsupervised access
18 to children shall require a record check through the Washington state
19 patrol criminal identification system under RCW 43.43.830 through
20 43.43.834, 10.97.030, and 10.97.050 and through the federal bureau of
21 investigation before hiring an employee. The record check shall
22 include a fingerprint check using a complete Washington state criminal
23 identification fingerprint card. The requesting entity shall provide
24 a copy of the record report to the applicant. When necessary,
25 applicants may be employed on a conditional basis pending completion of
26 the investigation. If the applicant has had a record check within the
27 previous two years, the district, the state school for the deaf, the
28 state school for the blind, or contractor may waive the requirement.
29 The district, pursuant to chapter 41.59 or 41.56 RCW, the state school
30 for the deaf, the state school for the blind, or contractor hiring the
31 employee shall determine who shall pay costs associated with the record
32 check.

33 **Sec. 4.** RCW 28A.400.305 and 1996 c 126 s 5 are each amended to
34 read as follows:

35 The superintendent of public instruction shall adopt rules as
36 necessary under chapter 34.05 RCW on record check information. The
37 rules shall include, but not be limited to the following:

1 (1) Written procedures providing a school district, state school
2 for the deaf, or state school for the blind employee or applicant for
3 certification or employment access to and review of information
4 obtained based on the record check required under RCW 28A.400.303 (~~and~~
5 ~~28A.400.304~~)); and

6 (2) Written procedures limiting access to the superintendent of
7 public instruction record check data base to only those individuals
8 processing record check information at the office of the superintendent
9 of public instruction, the appropriate school district or districts,
10 the state school for the deaf, the state school for the blind, and the
11 appropriate educational service district or districts.

12 **Sec. 5.** RCW 43.20A.710 and 2000 c 87 s 2 are each amended to read
13 as follows:

14 (1) The secretary shall investigate the conviction records, pending
15 charges (~~(or)~~) and disciplinary board final decisions of:

16 (a) (~~Persons being considered for state employment in positions~~
17 ~~directly responsible for the supervision, care, or treatment of~~) Any
18 current employee or applicant seeking or being considered for any
19 position with the department who will or may have unsupervised access
20 to children, vulnerable adults, or individuals with mental illness or
21 developmental disabilities(~~(;~~

22 (~~b) Persons being considered for state employment in positions~~
23 ~~involving unsupervised access to vulnerable adults to conduct~~). This
24 includes, but is not limited to, positions conducting comprehensive
25 assessments, financial eligibility determinations, licensing and
26 certification activities, investigations, surveys, or case management;
27 or for state positions otherwise required by federal law to meet
28 employment standards;

29 (~~(e)~~) (b) Individual providers who are paid by the state and
30 providers who are paid by home care agencies to provide in-home
31 services involving unsupervised access to persons with physical,
32 mental, or developmental disabilities or mental illness, or to
33 vulnerable adults as defined in chapter 74.34 RCW, including but not
34 limited to services provided under chapter 74.39 or 74.39A RCW; and

35 (~~(d)~~) (c) Individuals or businesses or organizations for the
36 care, supervision, case management, or treatment of children,
37 developmentally disabled persons, or vulnerable adults, including but

1 not limited to services contracted for under chapter 18.20, 18.48,
2 70.127, 70.128, 72.36, or 74.39A RCW or Title 71A RCW.

3 (2) The investigation may include an examination of state and
4 national criminal identification data. The secretary shall use the
5 information solely for the purpose of determining the character,
6 suitability, and competence of these applicants.

7 (3) An individual provider or home care agency provider who has
8 resided in the state less than three years before applying for
9 employment involving unsupervised access to a vulnerable adult as
10 defined in chapter 74.34 RCW must be fingerprinted for the purpose of
11 investigating conviction records both through the Washington state
12 patrol and the federal bureau of investigation. This subsection
13 applies only with respect to the provision of in-home services funded
14 by medicaid personal care under RCW 74.09.520, community options
15 program entry system waiver services under RCW 74.39A.030, or chore
16 services under RCW 74.39A.110. However, this subsection does not
17 supersede RCW 74.15.030(2)(b).

18 (4) An individual provider or home care agency provider hired to
19 provide in-home care for and having unsupervised access to a vulnerable
20 adult as defined in chapter 74.34 RCW must have no conviction for a
21 disqualifying crime under RCW 43.43.830 and 43.43.842. An individual
22 or home care agency provider must also have no conviction for a crime
23 relating to drugs as defined in RCW 43.43.830. This subsection applies
24 only with respect to the provision of in-home services funded by
25 medicaid personal care under RCW 74.09.520, community options program
26 entry system waiver services under RCW 74.39A.030, or chore services
27 under RCW 74.39A.110.

28 (5) The secretary shall provide the results of the background check
29 on individual providers to the persons hiring them or to their legal
30 guardians, if any, for their determination of the character,
31 suitability, and competence of the applicants. If the person elects to
32 hire or retain an individual provider after receiving notice from the
33 department that the applicant has a conviction for an offense that
34 would disqualify the applicant from having unsupervised access to
35 persons with physical, mental, or developmental disabilities or mental
36 illness, or to vulnerable adults as defined in chapter 74.34 RCW, then
37 the secretary shall deny payment for any subsequent services rendered
38 by the disqualified individual provider.

1 (6) 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 NEW SECTION. **Sec. 6.** A new section is added to chapter 41.06 RCW
5 to read as follows:

6 (1) The board shall amend any existing rules established under RCW
7 41.06.475 and adopt rules developed in cooperation and agreement with
8 the department of social and health services to implement the
9 provisions of this act.

10 (2) The legislature's delegation of authority to the agency under
11 this act is strictly limited to:

12 (a) The minimum delegation necessary to administer the act's clear
13 and unambiguous directives; and

14 (b) The administration of circumstances and behaviors foreseeable
15 at the time of enactment.

16 NEW SECTION. **Sec. 7.** A new section is added to chapter 41.06 RCW
17 to read as follows:

18 The personnel resources board must develop policy recommendations
19 addressing the action that will be taken if a background check result
20 disqualifies an employee from his or her current position. A report of
21 the recommendations developed must be delivered to the legislature by
22 December 1, 2001.

Passed the Senate April 20, 2001.

Passed the House April 20, 2001.

Approved by the Governor May 14, 2001.

Filed in Office of Secretary of State May 14, 2001.