

10010

I N A S S E M B L Y

February 24, 2010

Introduced by M. of A. M. MILLER -- read once and referred to the
Committee on Labor

AN ACT to amend the labor law, in relation to establishing the sex
offender employment check act to require certain employers to access
the sex offender registry prior to the commencement of work by employ-
ees for certain positions with substantial contact with children; and
to amend the correction law, in relation to prohibiting registered sex
offenders from working with children

THE PEOPLE OF THE STATE OF NEW YORK, REPRESENTED IN SENATE AND ASSEM-
BLY, DO ENACT AS FOLLOWS:

1 Section 1. The labor law is amended by adding a new article 32 to read
2 as follows:

3 ARTICLE 32

4 SEX OFFENDER EMPLOYMENT CHECK ACT

5 SECTION 930. SHORT TITLE.

6 931. DEFINITIONS.

7 932. REQUIREMENT TO CHECK SEX OFFENDER REGISTRY.

8 933. PENALTIES.

9 S 930. SHORT TITLE. THIS ACT SHALL BE KNOWN AND MAY BE CITED AS THE
10 "SEX OFFENDER EMPLOYMENT CHECK ACT".

11 S 931. DEFINITIONS. 1. "SUBSTANTIAL CONTACT WITH CHILDREN" AS USED IN
12 THIS ARTICLE SHALL MEAN WORKING WITH CHILDREN, HAVING OPPORTUNITY TO BE
13 ALONE WITH CHILDREN, SPENDING TIME SPECIFICALLY WITH CHILDREN, PERFORM-
14 ING FOR CHILDREN OR ANY OTHER ACTIVITY THAT IS TARGETED TO INVOLVE CHIL-
15 DREN.

16 2. "EMPLOYER" AS USED IN THIS ARTICLE SHALL MEAN ANY PERSON, FIRM,
17 LIMITED LIABILITY COMPANY, ORGANIZATION, GOVERNMENT ENTITY, ASSOCIATION
18 OR CORPORATION.

19 S 932. REQUIREMENT TO CHECK SEX OFFENDER REGISTRY. 1. (A) EVERY
20 EMPLOYER WHICH EMPLOYS INDIVIDUALS OR ACCEPTS VOLUNTEERS FOR POSITIONS,
21 WHICH BY THE INHERENT NATURE OF THE POSITION PLACES THE POTENTIAL
22 EMPLOYEE OR VOLUNTEER IN SUBSTANTIAL CONTACT WITH CHILDREN, SHALL BE
23 REQUIRED TO ASCERTAIN WHETHER A POTENTIAL EMPLOYEE OR VOLUNTEER SEEKING
24 TO ASSUME SUCH A POSITION, IS LISTED ON THE STATE SEX OFFENDER REGISTRY

EXPLANATION--Matter in ITALICS (underscored) is new; matter in brackets
[] is old law to be omitted.

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PURSUANT TO ARTICLE SIX-C OF THE CORRECTION LAW AND/OR WHETHER SUCH POTENTIAL EMPLOYEE OR VOLUNTEER IS LISTED ON THE STATEWIDE CENTRAL REGISTRY OF CHILD ABUSE AND MALTREATMENT PRIOR TO THE DAY SUCH POTENTIAL EMPLOYEE OR VOLUNTEER COMMENCES WORK FOR THE EMPLOYER AND ANNUALLY THEREAFTER.

(B) EVERY EMPLOYER SHALL BE PROVIDED ACCESS TO THE STATEWIDE CENTRAL REGISTRY OF CHILD ABUSE AND MALTREATMENT FOR THE PURPOSE OF PERFORMING A BACKGROUND CHECK FOR ANY CONVICTIONS OF SEXUAL ABUSE OF A CHILD.

2. EXAMPLES OF SUCH POSITIONS INCLUDE, BUT ARE NOT LIMITED TO:

(A) ANY POSITION IN A SCHOOL INCLUDING TEACHERS, TEACHER-AIDES, ADMINISTRATORS, ASSISTANTS, CAFETERIA WORKERS, JANITORS, NURSES OR ANY OTHER PERSON WORKING IN A SCHOOL THAT WOULD HAVE CONTACT WITH THE CHILDREN ATTENDING A SCHOOL;

(B) ANY POSITION IN A CHILD-CARE FACILITY;

(C) ANY RECREATIONAL POSITION SUCH AS A COACH, MARTIAL ARTS INSTRUCTOR, BOY OR GIRL SCOUT LEADER, CAMP COUNSELOR, LIFEGUARD, INSTRUCTOR OR ANY OTHER RECREATIONAL POSITION IN A PARK, PLAYGROUND, AMUSEMENT PARK, POOL OR ANY OTHER FACILITY THAT WOULD ALLOW SUBSTANTIAL CONTACT WITH CHILDREN; OR

(D) ANY STORE OR RESTAURANT THAT IS SPECIFICALLY TARGETED TOWARDS CHILDREN SUCH AS A TOY STORE OR CHILDREN'S THEME RESTAURANT.

S 933. PENALTIES. 1. ANY EMPLOYER WHO FAILS TO COMPLY WITH THE PROVISIONS OF THIS ARTICLE SHALL BE LIABLE FOR A CIVIL PENALTY NOT TO EXCEED TWO HUNDRED FIFTY DOLLARS FOR THE FIRST VIOLATION, TWENTY-FIVE HUNDRED DOLLARS FOR A SECOND VIOLATION AND FIVE THOUSAND DOLLARS FOR A THIRD AND ALL SUBSEQUENT VIOLATIONS, IN ADDITION TO ANY OTHER DAMAGES FOR WHICH AN EMPLOYER MAY BE LIABLE PURSUANT TO ANY OTHER PROVISION OF LAW. EACH FAILURE TO ASCERTAIN WHETHER A POTENTIAL EMPLOYEE OR VOLUNTEER IS REQUIRED TO MAINTAIN REGISTRATION ON THE STATE SEX OFFENDER REGISTRY OR IS LISTED ON THE STATEWIDE CENTRAL REGISTRY OF CHILD ABUSE AND MALTREATMENT SHALL CONSTITUTE A VIOLATION. THE ATTORNEY GENERAL MAY BRING AN ACTION IN THE SUPREME COURT AGAINST ANY PERSON OR PERSONS ALLEGED TO HAVE VIOLATED THE PROVISIONS OF THIS ARTICLE. SUCH PENALTIES SHALL BE PAID TO THE COMMISSIONER FOR DEPOSIT IN THE TREASURY OF THE STATE.

2. ANY EMPLOYER WHO VIOLATES, OR IF THE EMPLOYER IS A CORPORATION, THE OFFICERS OF A CORPORATION AND STOCKHOLDERS HOLDING TEN PERCENT OR MORE OF THE STOCK OF SUCH CORPORATION WHICH IS NOT PUBLICLY TRADED WHO KNOWINGLY PERMIT THE CORPORATION TO VIOLATE, OR WHO WILLFULLY AND INTENTIONALLY VIOLATES THE PROVISIONS OF THIS ARTICLE SHALL, FOR ALL THIRD AND SUBSEQUENT VIOLATIONS AND UPON CONVICTION THEREOF, BE GUILTY OF A CLASS B MISDEMEANOR.

S 2. Section 168-w of the correction law, as relettered by chapter 604 of the laws of 2005, is relettered section 168-x and a new section 168-w is added to read as follows:

S 168-W. SEX OFFENDERS PROHIBITED FROM WORKING WITH CHILDREN. 1. NO PERSON REQUIRED TO MAINTAIN REGISTRATION UNDER THIS ARTICLE SHALL BE ALLOWED TO ACCEPT A POSITION, EITHER AS PAID EMPLOYMENT OR A VOLUNTEER POSITION, WHICH BY THE INHERENT NATURE OF THE POSITION PLACES THE PERSON IN SUBSTANTIAL CONTACT WITH CHILDREN. THIS SECTION SHALL ALSO APPLY TO ANY PERSON SEEKING A PERMIT OR PERMISSION TO EXECUTE ANY ACTIVITY OR PERFORMANCE THAT WOULD PRESENT DIRECT CONTACT WITH CHILDREN.

2. EXAMPLES OF SUCH POSITIONS INCLUDE, BUT ARE NOT LIMITED TO:

(A) ANY POSITION IN A SCHOOL INCLUDING TEACHERS, TEACHERS-AIDES, ADMINISTRATORS, ASSISTANTS, CAFETERIA WORKERS, JANITORS, NURSES OR ANY

1 OTHER PERSON WORKING IN A SCHOOL THAT WOULD HAVE CONTACT WITH THE CHIL-
2 DREN ATTENDING A SCHOOL;

3 (B) ANY POSITION IN A CHILD-CARE FACILITY;

4 (C) ANY RECREATIONAL POSITION SUCH AS A COACH, MARTIAL ARTS INSTRU-
5 TOR, BOY OR GIRL SCOUT LEADER, CAMP COUNSELOR, LIFEGUARD, INSTRUCTOR OR
6 ANY OTHER RECREATIONAL POSITION IN A PARK, PLAYGROUND, AMUSEMENT PARK,
7 POOL OR ANY OTHER FACILITY THAT WOULD ALLOW SUBSTANTIAL CONTACT WITH
8 CHILDREN; OR

9 (D) ANY STORE OR RESTAURANT THAT IS SPECIFICALLY TARGETED TOWARDS
10 CHILDREN SUCH AS A TOY STORE OR CHILDREN'S THEME RESTAURANT.

11 3. EMPLOYERS SHALL BE PROVIDED ACCESS TO THE STATEWIDE CENTRAL REGIS-
12 TRY OF CHILD ABUSE AND MALTREATMENT FOR THE PURPOSE OF PERFORMING A
13 BACKGROUND CHECK FOR ANY CONVICTIONS OF SEXUAL ABUSE OF A CHILD. EVERY
14 EMPLOYER SHALL CHECK ANY POTENTIAL EMPLOYEES OR VOLUNTEERS SEEKING TO
15 ASSUME A POSITION THAT WILL ALLOW SUBSTANTIAL CONTACT WITH CHILDREN
16 AGAINST BOTH THE STATEWIDE CENTRAL REGISTRY OF CHILD ABUSE AND MALTREAT-
17 MENT AND THE REGISTERED SEX OFFENDERS DATABASE TO ASCERTAIN IF SAID
18 PERSON HAS A CONVICTION FOR SEXUAL ABUSE OF A CHILD.

19 4. "SUBSTANTIAL CONTACT WITH CHILDREN" AS USED IN THIS SECTION SHALL
20 MEAN WORKING WITH CHILDREN, HAVING OPPORTUNITY TO BE ALONE WITH CHIL-
21 DREN, SPENDING TIME SPECIFICALLY WITH CHILDREN, PERFORMING FOR CHILDREN
22 OR ANY OTHER ACTIVITY THAT IS TARGETED TO INVOLVE CHILDREN.

23 5. "EMPLOYER" AS USED IN THIS SECTION SHALL MEAN AND INCLUDE ANY
24 PERSON, FIRM, LIMITED LIABILITY COMPANY, ORGANIZATION, GOVERNMENT ENTI-
25 TY, ASSOCIATION AND CORPORATION.

26 6. (A) ANY REGISTERED SEX OFFENDER WHO SEEKS OR ACCEPTS A POSITION IN
27 VIOLATION OF THIS SECTION SHALL BE GUILTY OF A CLASS A MISDEMEANOR UPON
28 THE FIRST CONVICTION THEREOF, AND UPON A SECOND OR SUBSEQUENT CONVICTION
29 THEREOF SHALL BE GUILTY OF A CLASS D FELONY.

30 (B) ANY EMPLOYER OR ORGANIZATION THAT KNOWINGLY EMPLOYS A SEX OFFENDER
31 IN VIOLATION OF THIS SECTION SHALL, UPON CONVICTION, BE GUILTY OF A
32 CLASS A MISDEMEANOR.

33 S 3. This act shall take effect on the first of November next succeed-
34 ing the date on which it shall have become a law.