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I N A S S E M B L Y

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Introduced by M. of A. TEDISCO, KOLB, OAKS, THIELE, MOLINARO -- Multi-Sponsored by -- M. of A. BUTLER, CALHOUN, CROUCH, McKEVITT -- read once and referred to the Committee on Children and Families

AN ACT to amend the executive law, in relation to requiring a criminal history check for child care employees and volunteers

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

1 Section 1. The executive law is amended by adding a new section 837-s
2 to read as follows:

3 S 837-S. REQUESTS FOR CRIMINAL HISTORY INFORMATION CONCERNING NEW AND
4 PROSPECTIVE CHILD CARE EMPLOYEES. 1. AN EMPLOYER AND VOLUNTEER ORGANIZA-
5 TION SHALL REQUEST AND ARE AUTHORIZED TO RECEIVE FROM THE DIVISION CRIM-
6 INAL HISTORY INFORMATION CONCERNING EACH NEW AND PROSPECTIVE EMPLOYEE
7 AND VOLUNTEER WHO IN CONNECTION WITH SUCH EMPLOYMENT FOR SERVICE WILL BE
8 IN CONTACT WITH PERSONS UNDER THE AGE OF EIGHTEEN, SUBJECT TO THE
9 FOLLOWING RESTRICTIONS:

10 (A) AN EMPLOYER OR VOLUNTEER ORGANIZATION SHALL DESIGNATE ONE PERSON
11 WHO SHALL BE AUTHORIZED TO REQUEST, RECEIVE AND REVIEW CRIMINAL HISTORY
12 INFORMATION, AND ONLY SUCH PERSON AND THE NEW OR PROSPECTIVE EMPLOYEE
13 AND VOLUNTEER WHO IN CONNECTION WITH SUCH EMPLOYMENT FOR SERVICE WILL BE
14 IN CONTACT WITH PERSONS UNDER THE AGE OF EIGHTEEN TO WHICH THE CRIMINAL
15 HISTORY INFORMATION RELATES SHALL HAVE ACCESS TO SUCH INFORMATION;
16 PROVIDED, HOWEVER, THAT CRIMINAL HISTORY INFORMATION MAY BE DISCLOSED TO
17 OTHER PERSONNEL AUTHORIZED BY THE EMPLOYER OR VOLUNTEER ORGANIZATION WHO
18 ARE EMPOWERED BY SUCH EMPLOYER OR VOLUNTEER ORGANIZATION TO MAKE HIRING
19 DECISIONS CONCERNING NEW OR PROSPECTIVE EMPLOYEES OR VOLUNTEERS AND
20 PROVIDED FURTHER THAT SUCH OTHER PERSONNEL SHALL ALSO BE SUBJECT TO THE
21 CONFIDENTIALITY REQUIREMENTS AND ALL OTHER PROVISIONS OF THIS ARTICLE.
22 AN EMPLOYER OR VOLUNTEER ORGANIZATION SHALL NOTIFY THE DIVISION OF EACH
23 PERSON AUTHORIZED TO HAVE ACCESS TO CRIMINAL HISTORY INFORMATION PURSU-
24 ANT TO THIS SECTION;

25 (B) AN EMPLOYER OR VOLUNTEER ORGANIZATION REQUESTING CRIMINAL HISTORY
26 INFORMATION PURSUANT TO THIS SECTION SHALL DO SO BY COMPLETING A FORM
27 DEVELOPED FOR SUCH PURPOSE BY THE DIVISION. SUCH FORM SHALL INCLUDE A

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

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1 SWORN STATEMENT OF THE PERSON DESIGNATED BY THE EMPLOYER OR VOLUNTEER
2 ORGANIZATION TO REQUEST, RECEIVE AND REVIEW CRIMINAL HISTORY INFORMATION
3 PURSUANT TO PARAGRAPH (A) OF THIS SUBDIVISION CERTIFYING THAT (I) THE
4 PERSON WHOSE CRIMINAL HISTORY INFORMATION IS REQUESTED IS NOT PRESENTLY
5 BUT HAS APPLIED TO BE AN EMPLOYEE OR VOLUNTEER, OR IS A NEW EMPLOYEE OR
6 VOLUNTEER; (II) SUCH CRIMINAL HISTORY INFORMATION WILL BE USED BY THE
7 EMPLOYER OR VOLUNTEER ORGANIZATION SOLELY FOR PURPOSES AUTHORIZED BY
8 THIS ARTICLE; AND (III) THE EMPLOYER OR VOLUNTEER ORGANIZATION AND ITS
9 STAFF ARE AWARE OF AND SHALL ABIDE BY THE CONFIDENTIALITY REQUIREMENTS
10 AND ALL OTHER PROVISIONS OF THIS ARTICLE;

11 (C) THE PERSON DESIGNATED BY AN EMPLOYER OR VOLUNTEER ORGANIZATION FOR
12 RECEIPT OF CRIMINAL HISTORY INFORMATION PURSUANT TO PARAGRAPH (A) OF
13 THIS SUBDIVISION SHALL UPON RECEIPT IMMEDIATELY MARK SUCH CRIMINAL
14 HISTORY INFORMATION "CONFIDENTIAL", AND SHALL AT ALL TIMES MAINTAIN SUCH
15 CRIMINAL HISTORY INFORMATION IN A SECURE PLACE. ANY PERSON WHO WILLFUL-
16 LY PERMITS THE RELEASE OF ANY CONFIDENTIAL CRIMINAL HISTORY INFORMATION
17 CONTAINED IN THE REPORT TO PERSONS NOT PERMITTED BY THIS ARTICLE TO
18 RECEIVE SUCH INFORMATION SHALL BE GUILTY OF A MISDEMEANOR.

19 2. NOTWITHSTANDING SUBDIVISION EIGHT-A OF SECTION EIGHT HUNDRED THIR-
20 TY-SEVEN OF THIS ARTICLE THERE SHALL BE NO FEE CHARGED TO AN EMPLOYER OR
21 VOLUNTEER ORGANIZATION OR AN EMPLOYEE OR VOLUNTEER FOR A REQUEST FOR
22 CRIMINAL HISTORY INFORMATION SUBMITTED TO THE DIVISION PURSUANT TO THIS
23 SECTION.

24 3. TO THE EXTENT PERMITTED BY LAW, AN EMPLOYER OR VOLUNTEER ORGANIZA-
25 TION MAY REQUEST FROM A NEW OR PROSPECTIVE EMPLOYEE OR VOLUNTEER A
26 STATEMENT OF HIS OR HER PRIOR CRIMINAL CONVICTIONS IN THIS STATE OR ANY
27 OTHER JURISDICTION. PRIOR TO REQUESTING CRIMINAL HISTORY INFORMATION
28 CONCERNING ANY NEW OR PROSPECTIVE EMPLOYEE OR VOLUNTEER, EACH EMPLOYER
29 OR VOLUNTEER ORGANIZATION SHALL:

30 (A) INFORM THE NEW OR PROSPECTIVE EMPLOYEE OR VOLUNTEER IN WRITING
31 THAT THE EMPLOYER OR VOLUNTEER ORGANIZATION IS REQUIRED TO REQUEST HIS
32 OR HER CRIMINAL HISTORY INFORMATION FROM THE DIVISION AND REVIEW SUCH
33 INFORMATION PURSUANT TO THIS SECTION;

34 (B) INFORM THE NEW OR PROSPECTIVE EMPLOYEE OR VOLUNTEER THAT BEFORE
35 THE EMPLOYER OR VOLUNTEER ORGANIZATION REQUESTS SUCH CRIMINAL HISTORY
36 INFORMATION, THE NEW OR PROSPECTIVE EMPLOYEE OR VOLUNTEER HAS THE RIGHT
37 TO OBTAIN, REVIEW AND SEEK CORRECTION OF HIS OR HER CRIMINAL HISTORY
38 INFORMATION PURSUANT TO REGULATIONS AND PROCEDURES ESTABLISHED BY THE
39 DIVISION;

40 (C) OBTAIN THE SIGNED INFORMED CONSENT OF THE NEW OR PROSPECTIVE
41 EMPLOYEE OR VOLUNTEER ON A FORM SUPPLIED BY THE DIVISION WHICH INDICATES
42 THAT SUCH PERSON HAS:

43 (I) BEEN INFORMED OF THE RIGHT AND PROCEDURES NECESSARY TO OBTAIN,
44 REVIEW AND SEEK CORRECTION OF HIS OR HER CRIMINAL HISTORY INFORMATION;

45 (II) BEEN INFORMED OF THE REASON FOR THE REQUEST FOR HIS OR HER CRIMI-
46 NAL HISTORY INFORMATION;

47 (III) CONSENTED TO SUCH REQUEST; AND

48 (D) UPON RECEIVING SUCH WRITTEN CONSENT, OBTAIN THE FINGERPRINTS OF
49 SUCH NEW OR PROSPECTIVE EMPLOYEE OR VOLUNTEER PURSUANT TO REGULATIONS
50 ESTABLISHED BY THE DIVISION.

51 4. A NEW OR PROSPECTIVE EMPLOYEE OR VOLUNTEER MAY WITHDRAW FROM THE
52 APPLICATION PROCESS, WITHOUT PREJUDICE, AT ANY TIME REGARDLESS OF WHETH-
53 ER OR NOT HE OR SHE HAS REVIEWED HIS OR HER CRIMINAL HISTORY INFORMATION
54 OR THE EMPLOYER OR VOLUNTEER ORGANIZATION HAS RECEIVED CRIMINAL HISTORY
55 INFORMATION. WHERE A NEW OR PROSPECTIVE EMPLOYEE OR VOLUNTEER WITHDRAWS
56 FROM THE APPLICATION PROCESS, ANY FINGERPRINTS AND CRIMINAL HISTORY

1 INFORMATION CONCERNING SUCH NEW OR PROSPECTIVE EMPLOYEE OR VOLUNTEER
2 RECEIVED BY THE EMPLOYER OR VOLUNTEER ORGANIZATION SHALL BE IMMEDIATELY
3 RETURNED TO SUCH NEW OR PROSPECTIVE EMPLOYEE OR VOLUNTEER BY THE PERSON
4 DESIGNATED FOR RECEIPT OF CRIMINAL HISTORY INFORMATION PURSUANT TO PARA-
5 GRAPH (A) OF SUBDIVISION ONE OF THIS SECTION.

6 5. IN ALL CASES THE FINGERPRINTS AND CRIMINAL HISTORY INFORMATION
7 CONCERNING A NEW OR PROSPECTIVE EMPLOYEE OR VOLUNTEER SHALL BE IMME-
8 DIATELY RETURNED TO SUCH PERSON BY THE PERSON DESIGNATED FOR RECEIPT OF
9 CRIMINAL HISTORY INFORMATION UPON THE DENIAL OF EMPLOYMENT OR VOLUNTARY
10 SERVICES OR TERMINATION OF EMPLOYMENT OR VOLUNTARY SERVICES OF SUCH
11 EMPLOYEE OR VOLUNTEER.

12 6. THE DIVISION SHALL PROVIDE REQUESTED CRIMINAL HISTORY INFORMATION
13 AND RETURN FINGERPRINTS TO AN EMPLOYER OR VOLUNTEER ORGANIZATION WITHIN
14 FIFTEEN BUSINESS DAYS AFTER THE RECEIPT OF A REQUEST FOR CRIMINAL HISTO-
15 RY INFORMATION IF SUCH REQUEST IS:

16 (A) MADE BY THE PERSON DESIGNATED BY THE EMPLOYER OR VOLUNTEER ORGAN-
17 IZATION FOR RECEIPT OF CRIMINAL HISTORY INFORMATION PURSUANT TO PARA-
18 GRAPH (A) OF SUBDIVISION ONE OF THIS SECTION AND ACCOMPANIED BY THE
19 CERTIFICATION REQUIRED BY PARAGRAPH (B) OF SUBDIVISION ONE OF THIS
20 SECTION;

21 (B) ACCOMPANIED BY THE COMPLETED FORM DESCRIBED IN PARAGRAPH (C) OF
22 SUBDIVISION THREE OF THIS SECTION; AND

23 (C) ACCOMPANIED BY FINGERPRINTS OF THE NEW OR PROSPECTIVE EMPLOYEE OR
24 VOLUNTEER OBTAINED PURSUANT TO PARAGRAPH (D) OF SUBDIVISION THREE OF
25 THIS SECTION.

26 7. THE COMMISSIONER SHALL PROMULGATE ALL RULES AND REGULATIONS NECES-
27 SARY TO IMPLEMENT THE PROVISIONS OF THIS SECTION, WHICH SHALL INCLUDE
28 CONVENIENT PROCEDURES FOR NEW AND PROSPECTIVE EMPLOYEES AND VOLUNTEERS
29 TO PROMPTLY VERIFY THE ACCURACY OF THEIR CRIMINAL HISTORY INFORMATION
30 AND, TO THE EXTENT AUTHORIZED BY LAW, TO HAVE ACCESS TO RELEVANT DOCU-
31 MENTS RELATED THERETO.

32 S 2. This act shall take effect on the first of January next succeed-
33 ing the date on which it shall have become a law.