S T A T E O F N E W Y O R K

6548

2009-2010 Regular Sessions

I N A S S E M B L Y

March 6, 2009

Introduced by M. of A. SCOZZAFAVA, McDONOUGH -- Multi-Sponsored by -- M. of A. ALFANO, BACALLES, BARCLAY, BARRA, BURLING, CALHOUN, CONTE, CROUCH, ERRIGO, FINCH, FITZPATRICK, GIGLIO, HAYES, KOLB, MILLER, OAKS, O'MARA, QUINN, RABBITT, RAIA, REILICH, SALADINO, SAYWARD, TEDISCO, THIELE, TOWNSEND -- read once and referred to the Committee on Correction

AN ACT to amend the correction law, in relation to prohibiting sex offenders from any position involving substantial contact with children; and to amend the executive law, in relation to requiring a criminal history check for child care employees and volunteers; and making an appropriation therefor

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

Section 1. 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 SHALL NOT BE EMPLOYED IN A POSITION INVOLVING SUBSTANTIAL CONTACT WITH CHILDREN. 1. NO SEX OFFENDER SHALL APPLY FOR OR ACCEPT A POSITION WHICH INVOLVES SUBSTANTIAL CONTACT WITH CHILDREN. SUCH POSITION SHALL INCLUDE ANY JOB, TASK OR OCCUPATION, WHICH BY ITS NATURE, REQUIRES A PERSON TO BE IN SUBSTANTIAL CONTACT WITH CHILDREN IN THE REGULAR PERFORMANCE OF HIS OR HER DUTIES OR DEALINGS IN SAID POSITION. THIS SECTION SHALL ALSO APPLY TO ANY PERSON SEEKING A PERMIT OR PERMISSION TO EXECUTE ANY ACTIVITY OR PERFORMANCE THAT WOULD PRESENT A DIRECT CONTACT WITH CHILDREN.

2. THE DEFINITION OF "POSITION" AS USED IN THIS SECTION SHALL APPLY TO ANY PERSON SEEKING EMPLOYMENT EITHER PAID OR NOT PAID, ANY PERSON SEEKING TO VOLUNTEER, OR ANY PERSON SEEKING A PERMIT OR PERMISSION THAT WOULD PRESENT A SUBSTANTIAL CONTACT WITH CHILDREN.

3. EXAMPLES OF SUCH EMPLOYMENT INCLUDE, BUT ARE NOT LIMITED TO:

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

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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 SAID SCHOOL;

B. ANY POSITION IN A CHILD-CARE FACILITY;

C. ANY RECREATIONAL POSITION SUCH AS A COACH, BOY SCOUT OR GIRL SCOUT LEADER, CAMP COUNSELOR, LIFEGUARD, INSTRUCTORS OR ANY OTHER RECREATIONAL AREA THAT WOULD PRESENT A SUBSTANTIAL CONTACT WITH CHILDREN;

D. ANY POSITION IN A PARK, PLAYGROUND, AMUSEMENT PARK, POOL OR ANY OTHER FACILITY OR AREA WHERE CHILDREN HAVE A PROPENSITY TO INHABIT;

E. ANY STORE OR RESTAURANT THAT IS SPECIFICALLY TARGETED TOWARDS CHILDREN SUCH AS A TOY STORE OR CHILDREN'S THEME RESTAURANT;

F. ANY POSITION WHEREAS A PERSON WOULD BE EMPLOYED IN AN AREA THAT SPECIFICALLY IS TARGETED TOWARDS CHILDREN SUCH AS AN ICE CREAM TRUCK OPERATOR;

G. ANY PERSON APPLYING FOR A PERMIT OR PERMISSION THAT WOULD GRANT SAID PERSON THE ABILITY TO CARRY OUT ANY ACTIVITY OR ACTION THAT IS DIRECTED TOWARDS OR WOULD INVOLVE SUBSTANTIAL CONTACT WITH CHILDREN.

4. EMPLOYERS, ORGANIZATIONS OR GOVERNMENT ENTITIES SHALL HAVE 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. ANY EMPLOYER, ORGANIZATION OR GOVERNMENT ENTITY SHALL CHECK ANY POTENTIAL EMPLOYEES SEEKING TO ASSUME A POSITION THAT WILL BE IN SUBSTANTIAL CONTACT WITH CHILDREN AGAINST BOTH THE STATEWIDE CENTRAL REGISTRY OF CHILD ABUSE AND MALTREATMENT AND THE REGISTERED SEX OFFENDERS DATABASE TO ASCERTAIN IF SAID PERSON MAINTAINS A CONVICTION FOR SEXUAL ABUSE OF A CHILD.

5. "SUBSTANTIAL CONTACT WITH CHILDREN" AS USED IN THIS SECTION MEANS WORKING WITH CHILDREN, HAVING ACCESS TO CHILDREN, HAVING OPPORTUNITY TO BE ALONE WITH CHILDREN, SPENDING TIME WITH CHILDREN, PERFORMING FOR CHILDREN OR ANY OTHER ACTIVITY THAT INVOLVES CHILDREN.

6. A. ANY SEX OFFENDER WHO APPLIES FOR OR ACCEPTS EMPLOYMENT IN VIOLATION OF THIS SECTION SHALL BE GUILTY OF A CLASS A MISDEMEANOR UPON CONVICTION FOR THE FIRST OFFENSE, AND UPON CONVICTION FOR A SECOND OR SUBSEQUENT OFFENSE SHALL BE GUILTY OF A CLASS D FELONY.

B. ANY EMPLOYER WHO KNOWINGLY EMPLOYS A SEX OFFENDER IN VIOLATION OF THIS SECTION SHALL, UPON CONVICTION, BE GUILTY OF A CLASS A MISDEMEANOR.

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

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

(A) AN EMPLOYER OR VOLUNTEER ORGANIZATION SHALL DESIGNATE ONE PERSON WHO SHALL BE AUTHORIZED TO REQUEST, RECEIVE AND REVIEW CRIMINAL HISTORY INFORMATION, AND ONLY SUCH PERSON AND THE NEW OR PROSPECTIVE EMPLOYEE AND VOLUNTEER WHO IN CONNECTION WITH SUCH EMPLOYMENT FOR SERVICE WILL BE IN CONTACT WITH PERSONS UNDER THE AGE OF EIGHTEEN TO WHICH THE CRIMINAL HISTORY INFORMATION RELATES SHALL HAVE ACCESS TO SUCH INFORMATION; PROVIDED, HOWEVER, THAT CRIMINAL HISTORY INFORMATION MAY BE DISCLOSED TO OTHER PERSONNEL AUTHORIZED BY THE EMPLOYER OR VOLUNTEER ORGANIZATION WHO ARE EMPOWERED BY SUCH EMPLOYER OR VOLUNTEER ORGANIZATION TO MAKE HIRING DECISIONS CONCERNING NEW OR PROSPECTIVE EMPLOYEES OR VOLUNTEERS AND

PROVIDED FURTHER THAT SUCH OTHER PERSONNEL SHALL ALSO BE SUBJECT TO THE CONFIDENTIALITY REQUIREMENTS AND ALL OTHER PROVISIONS OF THIS ARTICLE. AN EMPLOYER OR VOLUNTEER ORGANIZATION SHALL NOTIFY THE DIVISION OF EACH PERSON AUTHORIZED TO HAVE ACCESS TO CRIMINAL HISTORY INFORMATION PURSUANT TO THIS SECTION;

(B) AN EMPLOYER OR VOLUNTEER ORGANIZATION REQUESTING CRIMINAL HISTORY INFORMATION PURSUANT TO THIS SECTION SHALL DO SO BY COMPLETING A FORM DEVELOPED FOR SUCH PURPOSE BY THE DIVISION. SUCH FORM SHALL INCLUDE A SWORN STATEMENT OF THE PERSON DESIGNATED BY THE EMPLOYER OR VOLUNTEER ORGANIZATION TO REQUEST, RECEIVE AND REVIEW CRIMINAL HISTORY INFORMATION PURSUANT TO PARAGRAPH (A) OF THIS SUBDIVISION CERTIFYING THAT (I) THE PERSON WHOSE CRIMINAL HISTORY INFORMATION IS REQUESTED IS NOT PRESENTLY BUT HAS APPLIED TO BE AN EMPLOYEE OR VOLUNTEER, OR IS A NEW EMPLOYEE OR VOLUNTEER; (II) SUCH CRIMINAL HISTORY INFORMATION WILL BE USED BY THE EMPLOYER OR VOLUNTEER ORGANIZATION SOLELY FOR PURPOSES AUTHORIZED BY THIS ARTICLE; AND (III) THE EMPLOYER OR VOLUNTEER ORGANIZATION AND ITS STAFF ARE AWARE OF AND WILL ABIDE BY THE CONFIDENTIALITY REQUIREMENTS AND ALL OTHER PROVISIONS OF THIS ARTICLE;

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

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

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

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

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

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

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

(II) BEEN INFORMED OF THE REASON FOR THE REQUEST FOR HIS OR HER CRIMINAL HISTORY INFORMATION;

(III) CONSENTED TO SUCH REQUEST; AND

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

4. A NEW OR PROSPECTIVE EMPLOYEE OR VOLUNTEER MAY WITHDRAW FROM THE APPLICATION PROCESS, WITHOUT PREJUDICE, AT ANY TIME REGARDLESS OF WHETHER OR NOT HE OR SHE HAS REVIEWED HIS OR HER CRIMINAL HISTORY INFORMATION OR THE EMPLOYER OR VOLUNTEER ORGANIZATION HAS RECEIVED CRIMINAL HISTORY INFORMATION. WHERE A NEW OR PROSPECTIVE EMPLOYEE OR VOLUNTEER WITHDRAWS FROM THE APPLICATION PROCESS, ANY FINGERPRINTS AND CRIMINAL HISTORY INFORMATION CONCERNING SUCH NEW OR PROSPECTIVE EMPLOYEE OR VOLUNTEER RECEIVED BY THE EMPLOYER OR VOLUNTEER ORGANIZATION SHALL BE IMMEDIATELY RETURNED TO SUCH NEW OR PROSPECTIVE EMPLOYEE OR VOLUNTEER BY THE PERSON DESIGNATED FOR RECEIPT OF CRIMINAL HISTORY INFORMATION PURSUANT TO PARAGRAPH (A) OF SUBDIVISION ONE OF THIS SECTION.

5. IN ALL CASES THE FINGERPRINTS AND CRIMINAL HISTORY INFORMATION CONCERNING A NEW OR PROSPECTIVE EMPLOYEE OR VOLUNTEER SHALL BE IMMEDIATELY RETURNED TO SUCH PERSON BY THE PERSON DESIGNATED FOR RECEIPT OF CRIMINAL HISTORY INFORMATION UPON THE DENIAL OF EMPLOYMENT OR VOLUNTARY SERVICES OR TERMINATION OF EMPLOYMENT OR VOLUNTARY SERVICES OF SUCH EMPLOYEE OR VOLUNTEER.

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

(A) MADE BY THE PERSON DESIGNATED BY THE EMPLOYER OR VOLUNTEER ORGANIZATION FOR RECEIPT OF CRIMINAL HISTORY INFORMATION PURSUANT TO PARAGRAPH (A) OF SUBDIVISION ONE OF THIS SECTION AND ACCOMPANIED BY THE CERTIFICATION REQUIRED BY PARAGRAPH (B) OF SUBDIVISION ONE OF THIS SECTION;

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

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

7. THE COMMISSIONER SHALL PROMULGATE ALL RULES AND REGULATIONS NECESSARY TO IMPLEMENT THE PROVISIONS OF THIS ARTICLE, WHICH SHALL INCLUDE CONVENIENT PROCEDURES FOR NEW AND PROSPECTIVE EMPLOYEES AND VOLUNTEERS TO PROMPTLY VERIFY THE ACCURACY OF THEIR CRIMINAL HISTORY INFORMATION AND, TO THE EXTENT AUTHORIZED BY LAW, TO HAVE ACCESS TO RELEVANT DOCUMENTS RELATED THERETO.

S 3. The sum of fifty thousand dollars ($50,000), or so much thereof as may be necessary, is hereby appropriated out of moneys in the state treasury in the general fund to the credit of the state purposes account, not otherwise appropriated, and made immediately available to the division of criminal justice services for distribution to non-profit organizations required to perform criminal history checks pursuant to this act. Such moneys shall be payable on the audit and warrant of the comptroller on vouchers certified or approved in the manner prescribed by law.

S 4. This act shall take effect on the first of January next succeeding the date on which it shall have become a law.