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

7358

2009-2010 Regular Sessions

I N A S S E M B L Y

March 31, 2009

Introduced by M. of A. MILLER, TOWNSEND -- Multi-Sponsored by -- M. of A. BURLING -- read once and referred to the Committee on Mental Health, Mental Retardation and Developmental Disabilities

AN ACT to amend the mental hygiene law and the executive law, in relation to requiring mental retardation and developmental disabilities facilities and providers to submit fingerprints of current and prospective employees for the purpose of a search of criminal history records of the division of criminal justice services and establishing a mental retardation and developmental disabilities worker registry

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

Section 1. Title C of the mental hygiene law is amended by adding a new article 14 to read as follows:

ARTICLE 14

REVIEW OF CRIMINAL HISTORY INFORMATION CONCERNING CURRENT AND PROSPECTIVE EMPLOYEES OF MENTAL RETARDATION AND DEVELOPMENTAL DISABILITIES FACILITIES AND PROVIDERS

SECTION 14.01 DEFINITIONS.

14.03 REQUESTS FOR CRIMINAL HISTORY INFORMATION CONCERNING CURRENT AND PROSPECTIVE EMPLOYEES.

14.05 MENTAL RETARDATION AND DEVELOPMENTAL DISABILITIES WORKER REGISTRY.

S 14.01 DEFINITIONS.

FOR THE PURPOSES OF THIS ARTICLE:

1. "CRIMINAL HISTORY INFORMATION" SHALL MEAN A RECORD OF ALL CONVICTIONS OF CRIMES MAINTAINED ON AN INDIVIDUAL BY THE DIVISION OF CRIMINAL JUSTICE SERVICES PURSUANT TO PARAGRAPH (C) OF SUBDIVISION FOUR OF SECTION EIGHT HUNDRED THIRTY-SEVEN OF THE EXECUTIVE LAW.

2. "EMPLOYER" SHALL MEAN ANY FACILITY OR OTHER ENTITY PROVIDING CARE OF OR SERVICES TO ANY PERSON, WHICH FACILITY OR OTHER ENTITY IS UNDER THE JURISDICTION OF THE OFFICE DUE TO ITS HAVING OR BEING REQUIRED TO

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

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HAVE ANY LICENSE, CERTIFICATE, PERMIT, OR OTHER AUTHORIZATION ISSUED BY THE OFFICE. THE TERM "EMPLOYER" INCLUDES THE OFFICE.

3. "EMPLOYEE" SHALL MEAN ANY PERSON EMPLOYED BY AN EMPLOYER OR EMPLOYED BY THE OFFICE IN A CAPACITY IN WHICH SUCH PERSON IS ENGAGED IN THE PROVISION OF CARE OR SERVICES TO A PERSON IN NEED THEREOF.

4. "CURRENT EMPLOYEE" SHALL MEAN AND INCLUDE ANY INDIVIDUAL WHO BECAME AN EMPLOYEE OF AN EMPLOYER PRIOR TO THE EFFECTIVE DATE OF THIS ARTICLE.

5. "PROSPECTIVE EMPLOYEE" SHALL MEAN AND INCLUDE AN INDIVIDUAL NOT CURRENTLY AN EMPLOYEE OF AN EMPLOYER WHO FILES AN APPLICATION FOR EMPLOYMENT AND THE EMPLOYER HAS A REASONABLE EXPECTATION TO HIRE SUCH INDIVIDUAL.

S 14.03 REQUESTS FOR CRIMINAL HISTORY INFORMATION CONCERNING CURRENT AND PROSPECTIVE EMPLOYEES.

1. AN EMPLOYER SHALL REQUEST AND IS AUTHORIZED TO RECEIVE FROM THE DIVISION OF CRIMINAL JUSTICE SERVICES CRIMINAL HISTORY INFORMATION CONCERNING EACH CURRENT AND PROSPECTIVE EMPLOYEE, AND TO CONSIDER SUCH INFORMATION IN ACCORDANCE WITH ARTICLE TWENTY-THREE-A OF THE CORRECTION LAW, SUBJECT TO THE FOLLOWING RESTRICTIONS:

(A) AN EMPLOYER SHALL DESIGNATE ONE PERSON IN ITS EMPLOY WHO SHALL BE AUTHORIZED TO REQUEST, RECEIVE AND REVIEW CRIMINAL HISTORY INFORMATION, AND ONLY SUCH PERSON AND THE NEW OR PROSPECTIVE EMPLOYEE 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 WHO ARE EMPOWERED BY SUCH EMPLOYER TO MAKE HIRING DECISIONS CONCERNING CURRENT OR PROSPECTIVE EMPLOYEES AND PROVIDED FURTHER THAT SUCH OTHER PERSONNEL SHALL ALSO BE SUBJECT TO THE CONFIDENTIALITY REQUIREMENTS AND ALL OTHER PROVISIONS OF THIS ARTICLE. AN EMPLOYER SHALL NOTIFY THE DIVISION OF CRIMINAL JUSTICE SERVICES OF EACH PERSON AUTHORIZED TO HAVE ACCESS TO CRIMINAL HISTORY INFORMATION PURSUANT TO THIS SECTION;

(B) AN EMPLOYER REQUESTING CRIMINAL HISTORY INFORMATION PURSUANT TO THIS SECTION SHALL DO SO BY COMPLETING A FORM DEVELOPED FOR SUCH PURPOSE BY THE DIVISION OF CRIMINAL JUSTICE SERVICES. SUCH FORM SHALL INCLUDE A SWORN STATEMENT OF THE PERSON DESIGNATED BY THE EMPLOYER 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 IS A CURRENT EMPLOYEE; (II) SUCH CRIMINAL HISTORY INFORMATION WILL BE USED BY THE EMPLOYER SOLELY FOR PURPOSES AUTHORIZED BY THIS ARTICLE; AND (III) THE EMPLOYER AND ITS STAFF ARE AWARE OF AND WILL ABIDE BY THE CONFIDENTIALITY REQUIREMENTS AND ALL OTHER PROVISIONS OF THIS ARTICLE; AND

(C) THE PERSON DESIGNATED BY AN EMPLOYER 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. ANY UNAUTHORIZED DISCLOSURE OF FINGERPRINTS OR CRIMINAL HISTORY INFORMATION OBTAINED BY AN EMPLOYER PURSUANT TO THIS ARTICLE SHALL ALSO ENTITLE THE SUBJECT OF SUCH FINGERPRINTS OR CRIMINAL HISTORY INFORMATION TO RECOVER FROM THE EMPLOYER A CIVIL AWARD OF DAMAGES RESULTING FROM SUCH UNAUTHORIZED DISCLOSURE, TOGETHER WITH COSTS AND REASONABLE ATTORNEY'S FEES.

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

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

(B) INFORM THE CURRENT OR PROSPECTIVE EMPLOYEE THAT BEFORE THE EMPLOYER REQUESTS SUCH CRIMINAL HISTORY INFORMATION, THE CURRENT OR PROSPECTIVE EMPLOYEE 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 OF CRIMINAL JUSTICE SERVICES;

(C) OBTAIN THE SIGNED INFORMED CONSENT OF THE CURRENT OR PROSPECTIVE EMPLOYEE ON A FORM SUPPLIED BY THE DIVISION OF CRIMINAL JUSTICE SERVICES 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, GIVEN THE FINGERPRINTS OF SUCH CURRENT OR PROSPECTIVE EMPLOYEE PURSUANT TO REGULATIONS ESTABLISHED BY THE DIVISION OF CRIMINAL JUSTICE SERVICES.

3. A CURRENT OR PROSPECTIVE EMPLOYEE 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 HAS RECEIVED CRIMINAL HISTORY INFORMATION. WHERE A CURRENT OR PROSPECTIVE EMPLOYEE WITHDRAWS FROM THE APPLICATION PROCESS, ANY FINGERPRINTS AND CRIMINAL HISTORY INFORMATION CONCERNING SUCH CURRENT OR PROSPECTIVE EMPLOYEE RECEIVED BY THE EMPLOYER SHALL BE IMMEDIATELY RETURNED TO SUCH CURRENT OR PROSPECTIVE EMPLOYEE BY THE PERSON DESIGNATED FOR RECEIPT OF CRIMINAL HISTORY INFORMATION PURSUANT TO PARAGRAPH (A) OF SUBDIVISION ONE OF THIS SECTION.

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

5. THE DIVISION OF CRIMINAL JUSTICE SERVICES SHALL PROVIDE REQUESTED CRIMINAL HISTORY INFORMATION AND RETURN FINGERPRINTS TO AN EMPLOYER 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 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 TWO OF THIS SECTION; AND

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

6. THE COMMISSIONER OF THE DIVISION OF CRIMINAL JUSTICE SERVICES SHALL PROMULGATE ALL RULES AND REGULATIONS NECESSARY TO IMPLEMENT THE PROVISIONS OF THIS ARTICLE, WHICH SHALL INCLUDE CONVENIENT PROCEDURES FOR CURRENT AND PROSPECTIVE EMPLOYEES 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.

7. NOTHING IN THIS ARTICLE SHALL BE CONSTRUED OR INTERPRETED TO IN ANY WAY DIMINISH THE INTEGRITY OF COLLECTIVE BARGAINING AGREEMENTS NEGOTIATED BETWEEN AN EMPLOYER AND ANY CERTIFIED OR AUTHORIZED COLLECTIVE BARGAINING AGENT FOR AN EMPLOYEE, OR TO DIMINISH RIGHTS WHICH ACCRUE TO SUCH EMPLOYEES PURSUANT TO SUCH AGREEMENTS.

S 14.05 MENTAL RETARDATION AND DEVELOPMENTAL DISABILITIES WORKER REGISTRY.

1. DEFINITIONS. AS USED IN THIS SECTION, "MENTAL RETARDATION AND DEVELOPMENTAL DISABILITIES WORKER REGISTRY" MEANS THE SYSTEM OF INFORMATION PERTAINING TO HOME CARE WORKERS, AS ESTABLISHED BY THE OFFICE UNDER THIS SECTION.

2. THE OFFICE SHALL ESTABLISH, DIRECTLY OR THROUGH CONTRACT, A STATEWIDE MENTAL RETARDATION AND DEVELOPMENTAL DISABILITIES WORKER REGISTRY OF ALL MENTAL RETARDATION AND DEVELOPMENTAL DISABILITIES WORKERS. SUCH REGISTRY SHALL BE AN AUTOMATED SYSTEM WITH IMMEDIATE ACCESS THROUGH TELEPHONE AND ANY OTHER APPROPRIATE TECHNOLOGY. THE MENTAL RETARDATION AND DEVELOPMENTAL DISABILITIES WORKER REGISTRY SHALL INCLUDE THE FOLLOWING INFORMATION PERTAINING TO THE MENTAL RETARDATION AND DEVELOPMENTAL DISABILITIES WORKER:

(A) NAME AND ALIAS OR PREVIOUSLY USED NAME, WHERE APPLICABLE, AND SOCIAL SECURITY NUMBER;

(B) MENTAL RETARDATION AND DEVELOPMENTAL DISABILITIES EMPLOYMENT HISTORY, INCLUDING THE NAME, ADDRESS, PHONE OF THE CURRENT AND PRECEDING EMPLOYER AND EMPLOYERS OVER THE LAST THREE YEARS AND THE APPROXIMATE EMPLOYMENT STARTING AND TERMINATION DATES; AND

(C) NEW YORK STATE APPROVED TRAINING AND CERTIFICATION, INCLUDING APPROXIMATE DATES, AS REQUIRED BY REGULATIONS UNDER THIS ARTICLE.

3. EACH EMPLOYER SHALL, ON A SCHEDULE AS DETERMINED BY THE DEPARTMENT, FILE WITH THE MENTAL RETARDATION AND DEVELOPMENTAL DISABILITIES REGISTRY INFORMATION REQUIRED UNDER SUBDIVISION TWO OF THIS SECTION. THE INFORMATION SHALL BE IN A FORM DETERMINED BY THE OFFICE AND SHALL BE AS CURRENT AND THOROUGH AS REASONABLY POSSIBLE.

4. EACH EMPLOYER PROVIDING TRAINING FOR MENTAL RETARDATION AND DEVELOPMENTAL DISABILITIES WORKERS OR PROSPECTIVE MENTAL RETARDATION AND DEVELOPMENTAL DISABILITIES WORKERS SHALL, ON A SCHEDULE DETERMINED BY THE DEPARTMENT, FILE WITH THE MENTAL RETARDATION AND DEVELOPMENTAL DISABILITIES WORKER REGISTRY INFORMATION REQUIRED UNDER PARAGRAPHS (A) AND (C) OF SUBDIVISION TWO OF THIS SECTION ON PERSONS SUCCESSFULLY COMPLETING A NEW YORK STATE APPROVED PROGRAM OF TRAINING.

5. AS PART OF THE MENTAL RETARDATION AND DEVELOPMENTAL DISABILITIES WORKER EMPLOYMENT APPLICATION PROCESS, AN EMPLOYER SHALL CONTACT THE MENTAL RETARDATION AND DEVELOPMENTAL DISABILITIES WORKER REGISTRY TO ASSIST IN DETERMINING A WORKER'S SUITABILITY FOR EMPLOYMENT. INFORMATION PERTAINING TO THE WORKER CONTAINED IN THE MENTAL RETARDATION AND DEVELOPMENTAL DISABILITIES WORKER REGISTRY SHALL BE PROVIDED PROMPTLY TO THE EMPLOYER TO ASSIST THE EMPLOYER IN MAKING THE EMPLOYMENT DECISION.

6. EACH EMPLOYER SHALL MAKE A GOOD FAITH DOCUMENTED EFFORT TO CHECK ALL REGISTRY-LISTED EMPLOYERS OF A WORKER IN A TIMELY MANNER.

7. (A) EACH EMPLOYER SHALL DESIGNATE ONE PERSON IN ITS EMPLOY WHO SHALL BE AUTHORIZED TO REQUEST, RECEIVE AND REVIEW MENTAL RETARDATION AND DEVELOPMENTAL DISABILITIES WORKER REGISTRY INFORMATION, AND ONLY SUCH PERSON AND THE MENTAL RETARDATION AND DEVELOPMENTAL DISABILITIES WORKER TO WHICH THE INFORMATION RELATES SHALL HAVE ACCESS TO SUCH INFORMATION; PROVIDED, HOWEVER, THAT THE MENTAL RETARDATION AND DEVELOPMENTAL

DISABILITIES WORKER REGISTRY INFORMATION MAY BE DISCLOSED TO OTHER PERSONNEL AUTHORIZED BY THE EMPLOYER TO MAKE HIRING DECISIONS CONCERNING PROSPECTIVE EMPLOYEES AND PROVIDED FURTHER THAT SUCH OTHER PERSONNEL SHALL ALSO BE SUBJECT TO THE CONFIDENTIALITY REQUIREMENTS AND ALL OTHER PROVISIONS OF THIS SECTION. AN EMPLOYER SHALL NOTIFY THE OFFICE OF EACH PERSON AUTHORIZED TO HAVE ACCESS TO CRIMINAL HISTORY INFORMATION PURSUANT TO THIS SECTION;

(B) AN EMPLOYER REQUESTING MENTAL RETARDATION AND DEVELOPMENTAL DISABILITIES WORKER REGISTRY INFORMATION PURSUANT TO THIS SECTION SHALL DO SO BY COMPLETING A FORM DEVELOPED FOR SUCH PURPOSE BY THE OFFICE. SUCH FORM SHALL INCLUDE A SWORN STATEMENT OF THE PERSON DESIGNATED BY THE EMPLOYER TO REQUEST, RECEIVE AND REVIEW MENTAL RETARDATION AND DEVELOPMENTAL DISABILITIES WORKER REGISTRY INFORMATION PURSUANT TO PARAGRAPH (A) OF THIS SUBDIVISION CERTIFYING THAT (I) SUCH MENTAL RETARDATION AND DEVELOPMENTAL DISABILITIES WORKER REGISTRY INFORMATION WILL BE USED BY THE EMPLOYER SOLELY FOR PURPOSES AUTHORIZED BY THIS SECTION; AND (II) THE EMPLOYER AND ITS STAFF ARE AWARE OF AND WILL ABIDE BY THE CONFIDENTIALITY REQUIREMENTS AND ALL OTHER PROVISIONS OF THIS SECTION; AND

(C) THE PERSON DESIGNATED BY AN EMPLOYER FOR RECEIPT OF MENTAL RETARDATION AND DEVELOPMENTAL DISABILITIES WORKER REGISTRY INFORMATION PURSUANT TO PARAGRAPH (A) OF THIS SUBDIVISION SHALL UPON RECEIPT IMMEDIATELY MARK SUCH MENTAL RETARDATION AND DEVELOPMENTAL DISABILITIES WORKER REGISTRY INFORMATION "CONFIDENTIAL", AND SHALL AT ALL TIMES MAINTAIN SUCH MENTAL RETARDATION AND DEVELOPMENTAL DISABILITIES WORKER REGISTRY INFORMATION IN A SECURE PLACE. ANY PERSON WHO WILLFULLY PERMITS THE RELEASE OF CONFIDENTIAL MENTAL RETARDATION AND DEVELOPMENTAL DISABILITIES WORKER REGISTRY INFORMATION TO PERSONS NOT PERMITTED BY THIS SECTION TO RECEIVE SUCH INFORMATION SHALL BE SUBJECT TO A CIVIL PENALTY OF UP TO FIVE THOUSAND DOLLARS. ANY UNAUTHORIZED DISCLOSURE OF MENTAL RETARDATION AND DEVELOPMENTAL DISABILITIES REGISTRY INFORMATION OBTAINED BY AN EMPLOYER PURSUANT TO THIS ARTICLE SHALL ALSO ENTITLE THE EMPLOYEE WHO IS THE SUBJECT OF SUCH INFORMATION TO RECOVER FROM THE EMPLOYER A CIVIL AWARD OF DAMAGES RESULTING FROM SUCH UNAUTHORIZED DISCLOSURE, TOGETHER WITH COSTS AND REASONABLE ATTORNEY'S FEES.

8. EACH EMPLOYER SHALL INFORM THE EMPLOYEE THAT SUCH EMPLOYEE HAS THE RIGHT TO OBTAIN, REVIEW AND SEEK CORRECTION OF HIS OR HER MENTAL RETARDATION AND DEVELOPMENTAL DISABILITIES WORKER REGISTRY INFORMATION PURSUANT TO REGULATIONS AND PROCEDURES ESTABLISHED BY THE OFFICE.

9. (A) THE MENTAL RETARDATION AND DEVELOPMENTAL DISABILITIES WORKER REGISTRY SHALL, ON WRITTEN REQUEST BY AN EMPLOYEE, PROMPTLY GIVE THE WORKER A COPY OF HIS OR HER MENTAL RETARDATION AND DEVELOPMENTAL DISABILITIES WORKER REGISTRY FILE.

(B) IF AN EMPLOYEE DISPUTES ANY INFORMATION IN THE MENTAL RETARDATION AND DEVELOPMENTAL DISABILITIES WORKER REGISTRY, THE MENTAL RETARDATION AND DEVELOPMENTAL DISABILITIES WORKER REGISTRY SHALL PROMPTLY INVESTIGATE AND, WHERE APPROPRIATE, CORRECT THE DISPUTED INFORMATION. THE MENTAL RETARDATION AND DEVELOPMENTAL DISABILITIES WORKER REGISTRY SHALL PROMPTLY NOTIFY THE EMPLOYEE OF THE RESULTS OF THE INVESTIGATION, ITS DECISION AND HIS OR HER RIGHTS UNDER THIS SUBDIVISION, INCLUDING THE RIGHT TO SEEK UNION OR OTHER REPRESENTATION.

(C) IF, AFTER CONDUCTING THE INVESTIGATION, THE MENTAL RETARDATION AND DEVELOPMENTAL DISABILITIES WORKER REGISTRY FINDS THAT AN ITEM IS IN ERROR OR CANNOT BE VERIFIED, IT SHALL:

(I) PROMPTLY EXPUNGE THE ITEM AND OTHERWISE CORRECT THE FILE;

(II) REFRAIN FROM REPORTING THE ITEM IN SUBSEQUENT MENTAL RETARDATION AND DEVELOPMENTAL DISABILITIES WORKER REGISTRY REPORTS;

(III) ADVISE THE EMPLOYEE OF HIS OR HER RIGHT TO REQUEST NOTIFICATION AND, AT THE EMPLOYEE'S REQUEST, PROMPTLY NOTIFY ANY EMPLOYER DESIGNATED BY THE EMPLOYEE WHICH HAS RECEIVED INFORMATION IN THE PREVIOUS THREE YEARS THAT AN ERROR EXISTED, AND SHALL FURNISH SUCH EMPLOYER WITH THE CORRECT INFORMATION; AND

(IV) AT THE EMPLOYEE'S REQUEST, FORWARD HIM OR HER A COPY OF THE CORRECTED MENTAL RETARDATION AND DEVELOPMENTAL DISABILITIES WORKER REGISTRY FILE.

(D) IF, AFTER CONDUCTING THE INVESTIGATION, THE MENTAL RETARDATION AND DEVELOPMENTAL DISABILITIES WORKER REGISTRY IS UNABLE TO RESOLVE THE DISPUTED INFORMATION, IT SHALL:

(I) PROMPTLY INDICATE IN THE FILE THAT THE ITEM IS DISPUTED;

(II) PERMIT THE EMPLOYEE TO FILE A BRIEF STATEMENT CONCERNING THE DISPUTE;

(III) INCLUDE THE EMPLOYEE'S STATEMENT OF THE DISPUTE IN ALL SUBSEQUENT DISCLOSURES CONTAINING THE INFORMATION IN QUESTION;

(IV) CLEARLY NOTE IN ALL SUBSEQUENT DISCLOSURES THAT THE ITEM IS DISPUTED BY THE EMPLOYEE;

(V) ADVISE THE EMPLOYEE OF HIS OR HER RIGHT TO PROMPTLY NOTIFY ANY EMPLOYER DESIGNATED BY THE EMPLOYEE WHICH HAS RECEIVED INFORMATION IN THE PREVIOUS THREE YEARS THAT A STATEMENT CONCERNING THE DISPUTE HAS BEEN FILED, AND SHALL FURNISH SUCH EMPLOYER WITH THE EMPLOYEE'S STATEMENT; AND

(VI) FORWARD TO THE EMPLOYEE A COPY OF HIS OR HER REGISTRY FILE INCLUDING THE STATEMENT CONCERNING THE DISPUTED INFORMATION.

(E) IF ANY ITEM DISPUTED AND REINVESTIGATED IS FOUND TO BE IN ERROR OR CAN NO LONGER BE VERIFIED, UPON COMPLETION OF THE REINVESTIGATION OF ALL ITEMS DISPUTED, THE MENTAL RETARDATION AND DEVELOPMENTAL DISABILITIES WORKER REGISTRY SHALL TAKE THE ACTION SPECIFIED IN SUBPARAGRAPHS (I), (II) AND (III) OF PARAGRAPH (C) OF THIS SUBDIVISION.

10. INFORMATION REGARDING AN EMPLOYEE WHO IS EMPLOYED BY AN EMPLOYER ON THE EFFECTIVE DATE OF THIS SECTION NEED NOT BE FILED IN THE MENTAL RETARDATION AND DEVELOPMENTAL DISABILITIES WORKER REGISTRY UNTIL THREE YEARS AFTER THE EFFECTIVE DATE OF THE INITIAL REGULATION IMPLEMENTING THIS SECTION. WITH REGARD TO SUCH AN EMPLOYEE, AN EMPLOYER SHALL BE REQUIRED TO FILE ONLY SUCH INFORMATION REQUIRED BY PARAGRAPHS (A), (B) AND (C) OF SUBDIVISION TWO OF THIS SECTION AS IS MAINTAINED BY SUCH EMPLOYER AS A REGULAR PART OF THE EMPLOYEE'S PERSONNEL FILE.

11. THE OFFICE SHALL DEVELOP AND PROMULGATE REGULATIONS IN CONSULTATION WITH THE OFFICE OF CHILDREN AND FAMILY SERVICES NECESSARY FOR THE IMPLEMENTATION OF THIS SECTION.

12. THE COMMISSIONER SHALL TRANSMIT TO THE SPEAKER OF THE ASSEMBLY, THE MINORITY LEADER OF THE ASSEMBLY, THE TEMPORARY PRESIDENT OF THE SENATE AND THE MINORITY LEADER OF THE SENATE NO LATER THAN THE FIRST DAY OF APRIL OF EACH YEAR A REPORT ON THE IMPLEMENTATION AND OPERATION OF THE MENTAL RETARDATION AND DEVELOPMENTAL DISABILITIES WORKER REGISTRY. SUCH REPORT SHALL INCLUDE, BUT NOT BE LIMITED TO, AN ANALYSIS OF THE REGISTRANTS ENTERED INTO THE SYSTEM DURING THE PRECEDING YEAR, AN ANALYSIS OF THE COSTS OF IMPLEMENTING AND OPERATING SUCH REGISTRY, THE SOURCES OF THE FUNDS USED TO IMPLEMENT AND OPERATE THE REGISTRY, AND A COMPUTATION OF ANY EXCESS FUNDS COLLECTED FOR SUCH IMPLEMENTATION AND OPERATION.

S 2. Subdivision 8-a of section 837 of the executive law, as amended by chapter 561 of the laws of 2006, is amended to read as follows:

8-a. Charge a fee when, pursuant to statute or the regulations of the division, it conducts a search of its criminal history records and

returns a report thereon in connection with an application for employment or for a license or permit. The division shall adopt and may, from time to time, amend a schedule of such fees which shall be in amounts determined by the division to be reasonably related to the cost of conducting such searches and returning reports thereon but, in no event, shall any such fee exceed twenty-five dollars and an additional surcharge of fifty dollars. The comptroller is hereby authorized to deposit such fees into the general fund, provided, however, that the monies received by the division of criminal justice services for payment of the additional surcharge shall be deposited in equal amounts to the general fund and to the fingerprint identification and technology account. Notwithstanding the foregoing, the division shall not request or accept any fee for searching its records and supplying a criminal history report pursuant to section two hundred fifty-one-b of the general business law relating to participating in flight instruction at any aeronautical facility, flight school or institution of higher learning, NOR FOR SEARCHING ITS RECORDS AND SUPPLYING A CRIMINAL HISTORY REPORT PURSUANT TO ARTICLE FOURTEEN OF THE MENTAL HYGIENE LAW.

S 3. This act shall take effect on the first of January next succeeding the date on which it shall have become a law. The commissioner of mental retardation and developmental disabilities may adopt, amend, suspend or repeal rules or regulations and take other actions prior to and in preparation for the timely implementation of this act on its effective date; provided however, that such rules, regulations and other actions shall not have any legal effect until the effective date of this act.