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

723

2009-2010 Regular Sessions

I N S E N A T E

January 14, 2009

Introduced by Sens. C. JOHNSON, AUBERTINE, DIAZ, ONORATO, PARKER, SAMPSON, VALESKY -- read twice and ordered printed, and when printed to be committed to the Committee on Finance

AN ACT to amend the executive law and the social services law, in relation to permitting access to certain conviction records by chapters of Big Brothers/Big Sisters of America, Inc.

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

Section 1. Legislative findings and intent. The legislature finds and declares that the volunteers who are friends of and role-models for children through chapters of Big Brothers/Big Sisters of America, Inc. provide an important and necessary service to the children of New York state. The legislature further finds that it is vitally important for chapters of Big Brothers/Big Sisters of America, Inc., to screen volunteers in order to determine whether prospective or current volunteers have been convicted of any crimes involving children. In this manner, the risk should be diminished of having persons in volunteer positions directly interacting with children who are also persons with a history of abusing children, either physically or sexually. It is the intent of the legislature to support the already extensive volunteer screening process employed by chapters of Big Brothers/Big Sisters of America, Inc., by making available, upon request, to such chapters the conviction records of all volunteers and prospective volunteers who have or will have any contact with children through such chapters. It is also the intent of the legislature that in providing for access to the conviction records of volunteers or prospective volunteers who have or will have any contact with children through such chapters, the legislature will demonstrate its support for the provisions of the National Child Protection Act of 1993 allowing background checks for individuals with responsibility for the safety and well-being of children.

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

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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 OR RETURNS A NEW YORK STATE CONVICTION REPORT AND/OR A FEDERAL BUREAU OF INVESTIGATION CONVICTION REPORT THEREON AS REQUIRED BY SECTION THREE HUNDRED SEVENTY-EIGHT-B OF THE SOCIAL SERVICES LAW. 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.

S 3. The social services law is amended by adding a new section 378-b to read as follows:

S 378-B. ACCESS TO CONVICTION RECORDS BY NEW YORK STATE CHAPTERS OF BIG BROTHERS/BIG SISTERS OF AMERICA, INC. 1. ANY NEW YORK CHAPTER OF BIG BROTHERS/BIG SISTERS OF AMERICA, INC., WHICH IS A VOLUNTARY ORGANIZATION ORGANIZED UNDER THE NOT-FOR-PROFIT CORPORATION LAW, MAY OBTAIN FROM THE DIVISION OF CRIMINAL JUSTICE SERVICES, THE NEW YORK STATE CONVICTION RECORD OR THE FEDERAL BUREAU OF INVESTIGATION CONVICTION RECORD FOR A VOLUNTEER OR PROSPECTIVE VOLUNTEER, SUBJECT TO THE FOLLOWING RESTRICTIONS:

A. SUCH CHAPTERS SHALL OBTAIN SUCH CONVICTION RECORD ONLY FOR VOLUNTEERS OR PROSPECTIVE VOLUNTEERS WHO HAVE DIRECT CONTACT WITH CHILDREN SERVED BY SUCH CHAPTER;

B. SUCH CHAPTER SHALL DESIGNATE ONE INDIVIDUAL TO REQUEST, RECEIVE AND REVIEW SUCH CONVICTION RECORD, AND ONLY SUCH DESIGNATED PERSON SHALL HAVE ACCESS TO SUCH RECORD. SUCH CHAPTER SHALL REGISTER SUCH DESIGNATED INDIVIDUAL WITH THE DIVISION OF CRIMINAL JUSTICE SERVICES;

C. SUCH DESIGNATED AND REGISTERED INDIVIDUAL IN EACH SUCH CHAPTER SHALL MARK SUCH CONVICTION RECORD "CONFIDENTIAL" UPON RECEIPT, AND SHALL MAINTAIN AT ALL TIMES SUCH CONVICTION RECORD IN A SECURE PLACE IN ORDER TO INSURE CONFIDENTIALITY. A PERSON WHO VIOLATES THE CONFIDENTIALITY REQUIRED BY THIS SUBDIVISION SHALL BE GUILTY OF A CLASS E FELONY; AND

D. SUCH CHAPTER SHALL PAY THE FEE DETERMINED PURSUANT TO SUBDIVISION EIGHT-A OF SECTION EIGHT HUNDRED THIRTY-SEVEN OF THE EXECUTIVE LAW FOR THE RECEIPT OF A NEW YORK STATE CONVICTION RECORD AND/OR THE FEE DETERMINED PURSUANT TO THE CHILD PROTECTION ACT OF 1993 FOR THE RECEIPT OF A FEDERAL BUREAU OF INVESTIGATION CONVICTION RECORD.

2. BEFORE REQUESTING SUCH CONVICTION RECORD FROM THE DIVISION OF CRIMINAL JUSTICE SERVICES, SUCH CHAPTER SHALL:

A. INFORM ANY VOLUNTEER OR PROSPECTIVE VOLUNTEER THAT A REQUEST FOR A CONVICTION RECORD AND A REVIEW THEREOF IS REQUIRED IN ORDER FOR SUCH VOLUNTEER TO CONTINUE IN THE SAME VOLUNTEER CAPACITY OR FOR SUCH PROSPECTIVE VOLUNTEER TO BE ACCEPTED BY SUCH CHAPTER;

B. INFORM SUCH VOLUNTEER OR PROSPECTIVE VOLUNTEER THAT BEFORE SUCH CHAPTER MAKES A REQUEST FOR CONVICTION RECORDS, SUCH VOLUNTEER OR PROSPECTIVE VOLUNTEER HAS THE RIGHT TO OBTAIN AND REVIEW HIS OR HER OWN CONVICTION RECORD, PURSUANT TO THE PROCEDURES OF THE DIVISION OF CRIMINAL JUSTICE SERVICES;

C. OBTAIN THE INFORMED SIGNATURE OF SUCH VOLUNTEER OR PROSPECTIVE VOLUNTEER ON A FORM PROVIDED BY THE DIVISION OF CRIMINAL JUSTICE SERVICES WHICH INDICATES THAT SUCH VOLUNTEER OR PROSPECTIVE VOLUNTEER HAS:

I. BEEN INFORMED OF THE RIGHT TO REVIEW HIS OR HER OWN RECORDS;

II. EXERCISED OR WAIVED SUCH RIGHT TO REVIEW HIS OR HER OWN RECORDS;

III. BEEN INFORMED OF THE REASON FOR SUCH REQUEST FOR HIS OR HER CONVICTION RECORD; AND

IV. CONSENTED TO SUCH REQUEST; AND

D. OBTAIN FINGERPRINTS FROM SUCH VOLUNTEER OR PROSPECTIVE VOLUNTEER, PURSUANT TO THE PROCEDURES OF THE DIVISION OF CRIMINAL JUSTICE SERVICES.

3. A PROSPECTIVE VOLUNTEER MAY WITHDRAW FROM THE APPLICATION PROCESS, WHETHER OR NOT HE OR SHE HAS HAD ACCESS TO HIS OR HER CONVICTION RECORD AND WHETHER OR NOT SUCH RECORD HAS BEEN RECEIVED BY SUCH CHAPTER, WITHOUT PREJUDICE. IF THE CONVICTION RECORD OF SUCH PROSPECTIVE VOLUNTEER HAS BEEN RECEIVED BY SUCH CHAPTER, THE PERSON DESIGNATED BY SUCH CHAPTER TO HAVE ACCESS TO CONVICTION RECORDS SHALL DESTROY SUCH RECORD.

4. THE CONVICTION RECORD OF A VOLUNTEER SHALL BE DESTROYED BY THE PERSON DESIGNATED BY SUCH CHAPTER TO HAVE ACCESS TO CONVICTION RECORDS WHEN SUCH VOLUNTEER NO LONGER HAS DIRECT CONTACT WITH CHILDREN SERVED BY SUCH CHAPTER.

5. THE DIVISION OF CRIMINAL JUSTICE SERVICES SHALL PROVIDE A RESPONSE TO A NEW YORK STATE CHAPTER OF BIG BROTHERS/BIG SISTERS WITHIN FIFTEEN BUSINESS DAYS OF THE RECEIPT OF ANY REQUEST BY SUCH CHAPTER FOR A NEW YORK STATE CONVICTION RECORD AND/OR FEDERAL BUREAU OF INVESTIGATION CONVICTION RECORD IF:

A. SUCH REQUEST IS MADE BY SUCH CHAPTER'S DESIGNATED INDIVIDUAL WHO IS REGISTERED WITH THE DIVISION OF CRIMINAL JUSTICE SERVICES;

B. SUCH REQUEST IS ACCOMPANIED BY A FORM SIGNED BY THE VOLUNTEER OR PROSPECTIVE VOLUNTEER, WHO IS THE SUBJECT OF SUCH REQUEST, CONSENTING TO THE PROVISION OF SUCH RECORD; AND

C. SUCH REQUEST IS ACCOMPANIED BY THE VOLUNTEER'S OR PROSPECTIVE VOLUNTEER'S FINGERPRINTS, OBTAINED PURSUANT TO THE PROCEDURES OF THE DIVISION OF CRIMINAL JUSTICE SERVICES.

6. THE COMMISSIONER OF THE DIVISION OF CRIMINAL JUSTICE SERVICES SHALL PROMULGATE THE RULES AND REGULATIONS NECESSARY TO IMPLEMENT THE PROVISIONS OF THIS SECTION INCLUDING, BUT NOT LIMITED TO, RULES AND REGULATIONS PROVIDING FOR A HEARING FOR A VOLUNTEER OR PROSPECTIVE VOLUNTEER BEFORE REPRESENTATIVES OF SUCH DIVISION AND THE OFFICE OF CHILDREN AND FAMILY SERVICES FOR PURPOSES OF VERIFYING THE ACCURACY OF HIS OR HER CONVICTION RECORD AND FOR ACCESS BY SUCH PERSONS TO PERTINENT DOCUMENTS RELATED THERETO.

7. FOR PURPOSES OF THIS SECTION, "CONVICTION RECORD" SHALL MEAN ANY RECORD MAINTAINED BY THE DIVISION OF CRIMINAL JUSTICE SERVICES OR THE FEDERAL BUREAU OF INVESTIGATION OF CONVICTIONS OF A CRIME IN VIOLATION OF THE PENAL LAW OF THIS OR ANY OTHER STATE.

S 4. This act shall take effect on the one hundred twentieth day after it shall have become a law.