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

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I N A S S E M B L Y

April 23, 2010

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:

Section 1. 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

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

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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 SHALL 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 SECTION, 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 2. This act shall take effect on the first of January next succeeding the date on which it shall have become a law.