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

2037

2009-2010 Regular Sessions

I N  A S S E M B L Y

January 15, 2009

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

AN ACT to amend the mental hygiene law, in relation to providing for the investigation of qualifications of persons employed in programs operated or certified by the office of mental health or the office of mental retardation and developmental disabilities

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

Section 1. Subdivision (d) of section 7.19 of the mental hygiene law, as added by chapter 978 of the laws of 1977, is amended to read as follows:

(d) The commissioner shall establish regulations governing the personnel administration of the department and its facilities. THOSE REGULATIONS SHALL INCLUDE, BUT NOT BE LIMITED TO, PROCEDURES FOR THE THOROUGH INVESTIGATION OF THE QUALIFICATIONS, BACKGROUND AND SUITABILITY OF PROSPECTIVE EMPLOYEES OF PROGRAMS OPERATED OR CERTIFIED BY THE OFFICE. THE INVESTIGATION OF PROSPECTIVE DIRECT CARE EMPLOYEES SHALL, SUBJECT TO THE RULES AND REGULATIONS OF THE DIVISION OF CRIMINAL JUSTICE SERVICES AND THE DEPARTMENT OF CIVIL SERVICE, INCLUDE ACCESS TO AND REVIEW OF CONVICTION RECORDS MAINTAINED BY THE DIVISION OF CRIMINAL JUSTICE SERVICES PURSUANT TO SUBDIVISION SIX OF SECTION EIGHT HUNDRED THIRTY-SEVEN OF THE EXECUTIVE LAW.

S 2. Subdivisions (d) and (e) of section 13.19 of the mental hygiene law are relettered subdivisions (e) and (f) and a new subdivision (d) is added to read as follows:

(D) THE COMMISSIONER SHALL ESTABLISH REGULATIONS GOVERNING THE PERSONNEL ADMINISTRATION OF THE DEPARTMENT AND ITS FACILITIES. THOSE REGULATIONS SHALL INCLUDE, BUT NOT BE LIMITED TO, PROCEDURES FOR THE THOROUGH INVESTIGATION OF THE QUALIFICATIONS, BACKGROUND AND SUITABILITY OF PROSPECTIVE EMPLOYEES OF PROGRAMS OPERATED OR CERTIFIED BY THE OFFICE.

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

LBD05351-01-9

THE INVESTIGATION OF PROSPECTIVE DIRECT CARE EMPLOYEES SHALL, SUBJECT TO THE RULES AND REGULATIONS OF THE DIVISION OF CRIMINAL JUSTICE SERVICES AND THE DEPARTMENT OF CIVIL SERVICE, INCLUDE ACCESS TO AND REVIEW OF CONVICTION RECORDS MAINTAINED BY THE DIVISION OF CRIMINAL JUSTICE SERVICES PURSUANT TO SUBDIVISION SIX OF SECTION EIGHT HUNDRED THIRTY-SEVEN OF THE EXECUTIVE LAW.

S 3. Paragraph 7 of subdivision (c) of section 16.05 of the mental hygiene law, as renumbered by chapter 618 of the laws of 1990, is renumbered paragraph 8 and a new paragraph 7 is added to read as follows:

(7) THE EXISTENCE OF PROCEDURES FOR THE THOROUGH INVESTIGATION BY CERTIFIED AGENCIES OF THE QUALIFICATIONS, BACKGROUND AND SUITABILITY OF PROSPECTIVE EMPLOYEES. THESE PROCEDURES SHALL INCLUDE BUT NOT BE LIMITED TO THE SUBMISSION, SUBJECT TO THE RULES AND REGULATIONS OF THE DIVISION OF CRIMINAL JUSTICE SERVICES, OF FINGERPRINT INFORMATION TO THE DIVISION, FOR THE PURPOSE OF RECEIVING THE CONVICTION RECORDS MAINTAINED BY THE DIVISION, OF PERSONS WHO HAVE APPLIED FOR AND ARE UNDER ACTIVE CONSIDERATION FOR EMPLOYMENT BY SUCH CERTIFIED AGENCIES. A PROSPECTIVE EMPLOYEE SHALL NOT AUTOMATICALLY BE DISQUALIFIED OR BARRED FROM EMPLOYMENT SOLELY ON THE BASIS OF A CRIMINAL CONVICTION. THE REVIEW OF THE CONVICTION RECORD OF A PROSPECTIVE EMPLOYEE AND A DETERMINATION OF FITNESS FOR EMPLOYMENT IN A CERTIFIED PROGRAM SHALL TAKE INTO FULL CONSIDERATION THE FOLLOWING:

(I) THE SPECIFIC DUTIES AND RESPONSIBILITIES NECESSARILY RELATED TO THE EMPLOYMENT SOUGHT;

(II) THE BEARING, IF ANY, THE CRIMINAL OFFENSE OR OFFENSES FOR WHICH THE PERSON WAS CONVICTED WILL HAVE ON HIS FITNESS OR ABILITY TO PERFORM ONE OR MORE SUCH DUTIES AND RESPONSIBILITIES;

(III) THE TIME WHICH HAS ELAPSED SINCE THE OCCURRENCE OF THE CRIMINAL OFFENSE OR OFFENSES;

(IV) THE AGE OF THE PERSON AT THE TIME OF OCCURRENCE OF THE CRIMINAL OFFENSE OR OFFENSES;

(V) THE SERIOUSNESS OF THE CRIMINAL OFFENSE OR OFFENSES;

(VI) ANY INFORMATION PRODUCED BY THE PERSON, OR PRODUCED ON HIS BEHALF, IN REGARD TO HIS REHABILITATION AND GOOD CONDUCT;

(VII) THE LEGITIMATE INTEREST OF THE PROSPECTIVE EMPLOYER IN PROTECTING PROPERTY, AND THE SAFETY AND WELFARE OF CLIENTS BEING SERVED BY THE CERTIFIED PROGRAM;

S 4. Paragraphs 3, 4, 5, 6 and 7 of subdivision (a) of section 31.05 of the mental hygiene law are renumbered paragraphs 4, 5, 6, 7 and 8 and a new paragraph 3 is added to read as follows:

3. THERE EXISTS SATISFACTORY PROCEDURES FOR THE THOROUGH INVESTIGATION BY CERTIFIED AGENCIES OF THE QUALIFICATIONS, BACKGROUND AND SUITABILITY OF PROSPECTIVE EMPLOYEES. THESE PROCEDURES SHALL INCLUDE BUT NOT BE LIMITED TO THE SUBMISSION, SUBJECT TO THE RULES AND REGULATIONS OF THE DIVISION OF CRIMINAL JUSTICE SERVICES, OF FINGERPRINT INFORMATION TO THE DIVISION, FOR THE PURPOSE OF RECEIVING THE CONVICTION RECORDS MAINTAINED BY THE DIVISION, OF PERSONS WHO HAVE APPLIED FOR AND ARE UNDER ACTIVE CONSIDERATION FOR EMPLOYMENT BY SUCH CERTIFIED AGENCIES. A PROSPECTIVE EMPLOYEE SHALL NOT BE AUTOMATICALLY DISQUALIFIED OR BARRED FROM EMPLOYMENT SOLELY ON THE BASIS OF A CRIMINAL CONVICTION. THE REVIEW OF THE CONVICTION RECORD OF A PROSPECTIVE EMPLOYEE AND A DETERMINATION OF FITNESS FOR EMPLOYMENT IN A CERTIFIED PROGRAM SHALL TAKE INTO FULL CONSIDERATION THE FOLLOWING:

(I) THE SPECIFIC DUTIES AND RESPONSIBILITIES NECESSARILY RELATED TO THE EMPLOYMENT SOUGHT;

(II) THE BEARING, IF ANY, THE CRIMINAL OFFENSE OR OFFENSES FOR WHICH THE PERSON WAS CONVICTED WILL HAVE ON HIS FITNESS OR ABILITY TO PERFORM ONE OR MORE OF SUCH DUTIES AND RESPONSIBILITIES;

(III) THE TIME WHICH HAS ELAPSED SINCE THE OCCURRENCE OF THE CRIMINAL OFFENSE OR OFFENSES;

(IV) THE AGE OF THE PERSON AT THE TIME OF OCCURRENCE OF THE CRIMINAL OFFENSE OR OFFENSES;

(V) THE SERIOUSNESS OF THE CRIMINAL OFFENSE OR OFFENSES;

(VI) ANY INFORMATION PRODUCED BY THE PERSON, OR PRODUCED ON HIS BEHALF, IN REGARD TO HIS REHABILITATION AND GOOD CONDUCT;

(VII) THE LEGITIMATE INTEREST OF THE PROSPECTIVE EMPLOYER IN PROTECTING PROPERTY, AND THE SAFETY AND WELFARE OF THE CLIENTS BEING SERVED IN THE CERTIFIED PROGRAM;

S 5. This act shall take effect on the one hundred eightieth day after it shall have become a law; provided however, that effective immediately, the addition, amendment and/or repeal of any rule or regulation necessary for the implementation of the foregoing sections of this act on their effective date are authorized and directed to be made and completed on or before such effective date; provided, however, that the renumbering of paragraph 6 of subdivision (a) of section 31.05 of the mental hygiene law made by section four of this act shall not affect the repeal of such paragraph and shall be deemed repealed therewith.