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

5378

2009-2010 Regular Sessions

I N A S S E M B L Y

February 13, 2009

Introduced by M. of A. ERRIGO, CROUCH, FINCH, GIGLIO, McDONOUGH, TOWNSEND, TOBACCO, WALKER -- Multi-Sponsored by -- M. of A. BARRA, CALHOUN, DUPREY, HAWLEY, JORDAN, McKEVITT, RABBITT -- read once and referred to the Committee on Children and Families

AN ACT to amend the social services law, the executive law and the correction law, in relation to the disclosure of prior criminal records and its consideration in the licensing of child day care providers

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

Section 1. Subdivision 10 of section 390 of the social services law, as amended by chapter 416 of the laws of 2000, is amended to read as follows:

10. Any home or facility providing child day care shall be operated in accordance with applicable statutes and regulations. Any violation of applicable statutes or regulations shall be a basis to deny, limit, suspend, revoke, or terminate a license or registration. Consistent with articles twenty-three and twenty-three-A of the correction law, and guidelines referenced in subdivision two of section four hundred twenty-five of this article, if the office of children and family services is made aware of the existence of a criminal conviction or pending criminal charge concerning an operator of a family day care home, group family day care home, school-age child care program, or child day care center or concerning any assistant, employee or volunteer in such homes, programs or centers, or any persons age eighteen or over who reside in such homes, [such conviction or charge] THE OFFICE OF CHILDREN AND FAMILY SERVICES may [be a basis to] deny, limit, suspend, revoke, reject, or terminate a license or registration. IF SUCH OFFICE IS MADE AWARE OF A CONVICTION OF (A) A VIOLENT FELONY OFFENSE AGAINST A CHILD, (B) A VIOLENT FELONY OFFENSE AS DEFINED BY SUBDIVISION ONE OF SECTION 70.02 OF THE PENAL LAW, (C) ANY OFFENSE DEFINED IN ARTICLE ONE HUNDRED THIRTY OF

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

LBD05896-01-9

THE PENAL LAW, (D) ANY OFFENSE DEFINED IN ARTICLE TWO HUNDRED THIRTY, TWO HUNDRED THIRTY-FIVE OR TWO HUNDRED FORTY-FIVE OF THE PENAL LAW CONCERNING AN OPERATOR, ASSISTANT, EMPLOYEE OR VOLUNTEER OF A FAMILY DAY CARE HOME, SCHOOL-AGE CHILD CARE PROGRAM, OR CHILD DAY CARE CENTER OR ANY PERSON OVER THE AGE OF EIGHTEEN WHO RESIDES IN SUCH FACILITIES, THE OFFICE SHALL DENY, REVOKE, REJECT OR TERMINATE A LICENSE OR REGISTRATION. Before any license issued pursuant to the provisions of this section is suspended or revoked, before registration pursuant to this section is suspended or terminated, or when an application for such license is denied or registration rejected, the applicant for or holder of such registration or license is entitled, pursuant to section twenty-two of this chapter and the regulations of the office of children and family services, to a hearing before the office of children and family services. However, a license or registration shall be temporarily suspended or limited without a hearing upon written notice to the operator of the facility following a finding that the public health, or an individual's safety or welfare, are in imminent danger OR THAT SUCH OPERATOR, ASSISTANT, EMPLOYEE OR VOLUNTEER IN SUCH FACILITY HAS BEEN CONVICTED OF ANY OFFENSE SET FORTH IN PARAGRAPHS (A) THROUGH (D) OF THIS SUBDIVISION. The holder of a license or registrant is entitled to a hearing before the office of children and family services to contest the temporary suspension or limitation. If the holder of a license or registrant requests a hearing to contest the temporary suspension or limitation, such hearing must be scheduled to commence as soon as possible but in no event later than thirty days after the receipt of the request by the office of children and family services. Suspension shall continue until the condition requiring suspension or limitation is corrected or until a hearing decision has been issued. If the office of children and family services determines after a hearing that the temporary suspension or limitation was proper, such suspension or limitation shall be extended until the condition requiring suspension or limitation has been corrected or until the license or registration has been revoked.

S 2. Paragraph (d) of subdivision 2 of section 390 of the social services law is amended by adding a new subparagraph (iii) to read as follows:

(III) SHOULD ANY CHILD DAY CARE PROVIDER REGISTERING WITH THE OFFICE OF CHILDREN AND FAMILY SERVICES AS AN OPERATOR OF A FAMILY DAY CARE HOME, CHILD DAY CARE CENTER, OR SCHOOL-AGE CHILD CARE PROGRAM PURSUANT TO PARAGRAPH (B) OR (C) OF THIS SUBDIVISION, OR ANY CHILD DAY CARE PROVIDER MAKING APPLICATION TO THE OFFICE OF CHILDREN AND FAMILY SERVICES FOR A LICENSE OR RENEWAL OF A LICENSE TO OPERATE A CHILD DAY CARE CENTER AS REQUIRED BY PARAGRAPH (A) OF THIS SUBDIVISION FAIL TO DISCLOSE OR MISREPRESENTS OR FALSIFIES INFORMATION REGARDING WHETHER SUCH PROVIDER HAS EVER BEEN CONVICTED OF ANY OFFENSE SET FORTH IN PARAGRAPHS (A) THROUGH (D) OF SUBDIVISION TEN OF THIS SECTION, SUCH REGISTRATION SHALL BE REJECTED AND SUCH LICENSE SHALL BE DENIED AND, IN THE EVENT THE OFFICE OF CHILDREN AND FAMILY SERVICES IS MADE AWARE OF SUCH FAILURE TO DISCLOSE, OR MISREPRESENTATION OR FALSIFICATION SUBSEQUENT TO THE ISSUANCE OF A LICENSE TO OR ACCEPTANCE OF REGISTRATION FROM SUCH PROVIDER, SUCH REGISTRATION SHALL BE TERMINATED AND SUCH LICENSE REVOKED. ANY SUCH APPLICANT, REGISTRANT OR LICENSEE SHALL BE ENTITLED, PURSUANT TO SECTION TWENTY-TWO OF THIS CHAPTER AND THE REGULATIONS OF THE OFFICE OF CHILDREN AND FAMILY SERVICES, TO A HEARING BEFORE THE OFFICE OF CHILDREN AND FAMILY SERVICES PROVIDED, HOWEVER, THAT SUCH REVIEW SHALL BE LIMITED TO THE ALLEGED FAILURE TO DISCLOSE, OR ALLEGED MISREPRESENTATIONS OR FALSIFICATIONS MADE REGARDING SUCH PROVIDER'S

PRIOR CRIMINAL CONVICTION RECORD. THE REQUEST FOR SUCH HEARING SHALL BE MADE WITHIN THIRTY DAYS OF THE RECEIPT OF WRITTEN NOTICE OF THE REJECTION, DENIAL, TERMINATION OR REVOCATION. SUCH REJECTION, DENIAL, TERMINATION OR REVOCATION SHALL BECOME FINAL IF THE APPLICANT, REGISTRANT OR LICENSEE FAILS TO REQUEST A HEARING WITHIN SUCH THIRTY DAY PERIOD.

S 3. Section 390 of the social services law is amended by adding a new subdivision 2-b to read as follows:

2-B. IN ADDITION TO THE REQUIREMENTS SET FORTH IN SECTION THREE HUNDRED NINETY-A OF THIS TITLE, ANY CHILD DAY CARE PROVIDER REGISTERING WITH THE OFFICE OF CHILDREN AND FAMILY SERVICES AS AN OPERATOR OF A FAMILY DAY CARE HOME, CHILD DAY CARE CENTER, OR SCHOOL-AGE CHILD CARE PROGRAM AND ANY CHILD DAY CARE PROVIDER MAKING APPLICATION TO THE OFFICE OF CHILDREN AND FAMILY SERVICES A LICENSE OR RENEWAL OF A LICENSE TO OPERATE A CHILD DAY CARE CENTER SHALL, AS A COMPONENT OF SUCH REGISTRATION OR LICENSURE PROCESS, BE SUBJECT TO SCREENING PROCEDURES DEVELOPED BY THE OFFICE OF CHILDREN AND FAMILY SERVICES CONSISTENT WITH THE PROVISIONS OF THIS SUBDIVISION. SUCH PROCEDURES SHALL INCLUDE, BUT NOT BE LIMITED TO (A) THE FINGERPRINTING OF APPLICANTS FOR REGISTRATION OR LICENSURE AND ANY PROSPECTIVE ASSISTANT OR EMPLOYEE IN SUCH PROSPECTIVE REGISTERED OR LICENSED HOME, PROGRAM OR CENTER AND (B) REVIEW BY THE OFFICE OF CHILDREN AND FAMILY SERVICES OF THE CRIMINAL CONVICTION RECORDS OF ANY SUCH APPLICANT, PROSPECTIVE ASSISTANT, EMPLOYEE OR VOLUNTEER CONSISTENT WITH THE PROVISIONS OF ARTICLES TWENTY-THREE AND TWENTY-THREE-A OF THE CORRECTION LAW.

S 4. Subdivision 15 of section 296 of the executive law, as amended by chapter 534 of the laws of 2008, is amended to read as follows:

15. It shall be an unlawful discriminatory practice for any person, agency, bureau, corporation or association, including the state and any political subdivision thereof, to deny any license or employment to any individual by reason of his or her having been convicted of one or more criminal offenses, or by reason of a finding of a lack of "good moral character" which is based upon his or her having been convicted of one or more criminal offenses, when such denial is in violation of the provisions of article twenty-three-A of the correction law. Further, there shall be a rebuttable presumption in favor of excluding from evidence the prior incarceration or conviction of any person, in a case alleging that the employer has been negligent in hiring or retaining an applicant or employee, or supervising a hiring manager, if after learning about an applicant or employee's past criminal conviction history, such employer has evaluated the factors set forth in section seven hundred fifty-two of the correction law, and made a reasonable, good faith determination that such factors militate in favor of hire or retention of that applicant or employee PROVIDED, HOWEVER, THAT THE PROVISIONS OF THIS SUBDIVISION SHALL NOT APPLY TO THE LICENSING OR REGISTERING ACTIVITIES OF GOVERNMENTAL BODIES IN RELATION TO THE REGULATION OF CHILD DAY CARE FACILITIES.

S 5. Subdivision 16 of section 296 of the executive law, as amended by chapter 639 of the laws of 2007, is amended to read as follows:

16. It shall be an unlawful discriminatory practice, unless specifically required or permitted by statute, for any person, agency, bureau, corporation or association, including the state and any political subdivision thereof, to make any inquiry about, whether in any form of application or otherwise, or to act upon adversely to the individual involved, any arrest or criminal accusation of such individual not then pending against that individual which was followed by a termination of

that criminal action or proceeding in favor of such individual, as defined in subdivision two of section 160.50 of the criminal procedure law, or by a youthful offender adjudication, as defined in subdivision one of section 720.35 of the criminal procedure law, or by a conviction for a violation sealed pursuant to section 160.55 of the criminal procedure law in connection with the licensing, employment or providing of credit or insurance to such individual; provided, however, that the provisions hereof shall not apply to the licensing activities of governmental bodies in relation to the regulation of guns, firearms and other deadly weapons, THE LICENSING OR REGISTERING ACTIVITIES OF GOVERNMENTAL BODIES IN RELATION TO THE REGULATION OF CHILD DAY CARE FACILITIES, or in relation to an application for employment as a police officer or peace officer as those terms are defined in subdivisions thirty-three and thirty-four of section 1.20 of the criminal procedure law; provided further that the provisions of this subdivision shall not apply to an application for employment or membership in any law enforcement agency with respect to any arrest or criminal accusation which was followed by a youthful offender adjudication, as defined in subdivision one of section 720.35 of the criminal procedure law, or by a conviction for a violation sealed pursuant to section 160.55 of the criminal procedure law.

S 6. Section 752 of the correction law, as amended by chapter 284 of the laws of 2007, is amended to read as follows:

S 752. Unfair discrimination against persons previously convicted of one or more criminal offenses prohibited. No application for any license or employment, and no employment or license held by an individual, to which the provisions of this article are applicable, shall be denied or acted upon adversely by reason of the individual's having been previously convicted of one or more criminal offenses, or by reason of a finding of lack of "good moral character" when such finding is based upon the fact that the individual has previously been convicted of one or more criminal offenses, unless:

(1) there is a direct relationship between one or more of the previous criminal offenses and the specific license or employment sought or held by the individual; or

(2) the issuance or continuation of the license or the granting or continuation of the employment would involve an unreasonable risk to property or to the safety or welfare of specific individuals or the general public; OR

(3) THE ISSUANCE OF THE LICENSE OR REGISTRATION OR THE GRANTING OF THE EMPLOYMENT IS IN RELATION TO THE REGULATION OF CHILD DAY CARE FACILITIES.

S 7. This act shall take effect on the one hundred twentieth day after it shall have become a law except that any rules and regulations necessary for the timely implementation of this act on its effective date shall be promulgated on or before such date.