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

353

2009-2010 Regular Sessions

I N S E N A T E

(PREFILED)

January 7, 2009

Introduced by Sen. KRUGER -- read twice and ordered printed, and when printed to be committed to the Committee on Social Services, Children and Families

AN ACT to amend the social services law, in relation to mandatory screening of applicants for a license or registration to provide child day care and to mandatory screening of personnel of child day care providers

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

Section 1. Section 390 of the social services law is amended by adding a new subdivision 10-a to read as follows:

10-A. (A) ANY PERSON WHO APPLIES FOR A LICENSE TO OPERATE A CHILD DAY CARE CENTER OR GROUP FAMILY DAY CARE PROGRAM, OR ANY PERSON WHO APPLIES FOR REGISTRATION TO OPERATE A FAMILY DAY CARE HOME, CHILD DAY CARE CENTER OR SCHOOL-AGE CHILD CARE PROGRAM WHO KNOWINGLY, WILLFULLY OR INTENTIONALLY FAILS TO DISCLOSE OR FALSIFIES INFORMATION REGARDING PRIOR FELONY CONVICTIONS WHILE APPLYING FOR A LICENSE OR REGISTRATION SHALL BE SUBJECT TO AN IMMEDIATE DENIAL OF SUCH APPLICATION FOR A PERIOD OF ONE YEAR, OR, IF A LICENSE OR REGISTRATION WAS GRANTED TO THE APPLICANT IN RELIANCE BY THE OFFICE OF CHILDREN AND FAMILY SERVICES ON SUCH FALSIFIED APPLICATION SUCH CHILD DAY CARE PROVIDER SHALL BE SUBJECT TO AN IMMEDIATE SUSPENSION OF SUCH LICENSE OR REGISTRATION FOR A PERIOD OF ONE YEAR. IF SUCH FAILURE TO DISCLOSE OR FALSIFICATION CONCERNS ONE OF THE FELONY CONVICTIONS SET FORTH IN SUBDIVISION TEN OF THIS SECTION, SUCH APPLICANT'S APPLICATION SHALL BE PERMANENTLY DENIED OR SUCH CHILD DAY CARE PROVIDER'S LICENSE SHALL BE REVOKED. SUCH DENIAL, SUSPENSION OR REVOCATION SHALL COMMENCE UPON WRITTEN NOTIFICATION BY THE OFFICE TO THE APPLICANT OR CHILD DAY CARE PROVIDER THAT THE OFFICE HAS BEEN MADE AWARE OF SUCH FAILURE TO DISCLOSE OR FALSIFICATION. THE APPLICANT OR CHILD DAY CARE PROVIDER SHALL BE ENTITLED TO A HEARING BEFORE THE OFFICE TO

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

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CONTEST THE ALLEGATIONS REGARDING FALSIFICATION OR FAILURE TO DISCLOSE. SUCH HEARING MUST BE SCHEDULED TO COMMENCE AS SOON AS POSSIBLE BUT IN NO EVENT LATER THAN THIRTY DAYS AFTER THE RECEIPT BY THE DEPARTMENT OF FAMILY ASSISTANCE OF THE REQUEST FOR A HEARING MADE BY THE APPLICANT OR CHILD DAY CARE PROVIDER. DENIAL, SUSPENSION OR REVOCATION SHALL CONTINUE UNTIL A HEARING DECISION HAS BEEN ISSUED. IF THE OFFICE DETERMINES AFTER A HEARING THAT THE DENIAL, SUSPENSION OR REVOCATION WAS PROPER, SUCH DENIAL OR SUSPENSION SHALL CONTINUE FOR A PERIOD OF ONE YEAR FROM ITS COMMENCEMENT, OR SUCH REVOCATION OR PERMANENT DENIAL SHALL BECOME FINAL. THE OFFICE SHALL REVOKE SUCH DENIAL, SUSPENSION OR REVOCATION IF, IN ITS ABSOLUTE DISCRETION, IT DEEMS THAT IN THE INTEREST OF JUSTICE, SUCH DENIAL, SUSPENSION OR REVOCATION SHOULD BE REVOKED.

(B) ANY PERSON WHO APPLIES FOR A POSITION AS AN ASSISTANT, EMPLOYEE OR VOLUNTEER AT A CHILD DAY CARE CENTER, GROUP FAMILY DAY CARE PROGRAM, FAMILY DAY CARE HOME, OR SCHOOL-AGE CHILD CARE PROGRAM WHO KNOWINGLY, WILLFULLY OR INTENTIONALLY FAILS TO DISCLOSE OR FALSIFIES INFORMATION REGARDING PRIOR FELONY CONVICTIONS WHILE APPLYING FOR SUCH POSITION SHALL BE SUBJECT TO AN IMMEDIATE DENIAL OF SUCH APPLICATION, OR, IF A POSITION WAS GRANTED TO THE APPLICANT IN RELIANCE BY A CHILD DAY CARE PROVIDER ON SUCH FALSIFIED APPLICATION SUCH ASSISTANT, EMPLOYEE OR VOLUNTEER SHALL BE SUBJECT TO AN IMMEDIATE DISCHARGE FROM HIS OR HER POSITION. SUCH DENIAL OR DISCHARGE SHALL COMMENCE UPON WRITTEN NOTIFICATION BY THE CHILD DAY CARE PROVIDER TO THE APPLICANT, ASSISTANT, EMPLOYEE OR VOLUNTEER THAT THE CHILD DAY CARE PROVIDER HAS BEEN MADE AWARE OF SUCH FAILURE TO DISCLOSE OR FALSIFICATION. THE APPLICANT, ASSISTANT, EMPLOYEE OR VOLUNTEER SHALL BE ENTITLED TO A HEARING BEFORE THE OFFICE TO CONTEST THE ALLEGATIONS REGARDING FALSIFICATION OR FAILURE TO DISCLOSE. SUCH HEARING MUST BE SCHEDULED TO COMMENCE AS SOON AS POSSIBLE BUT IN NO EVENT LATER THAN THIRTY DAYS AFTER THE RECEIPT BY THE OFFICE OF THE REQUEST FOR A HEARING MADE BY THE APPLICANT, ASSISTANT, EMPLOYEE OR VOLUNTEER. DENIAL OR DISCHARGE SHALL CONTINUE UNTIL A HEARING DECISION HAS BEEN ISSUED. IF THE OFFICE DETERMINES AFTER A HEARING THAT THE DENIAL OR DISCHARGE WAS PROPER, SUCH DENIAL OR DISCHARGE SHALL BECOME FINAL. THE OFFICE SHALL REVOKE SUCH DENIAL OR DISCHARGE IF, IN ITS ABSOLUTE DISCRETION, IT DEEMS THAT IN THE INTEREST OF JUSTICE, SUCH DENIAL OR DISCHARGE SHOULD BE REVOKED.

S 2. Section 390 of the social services law is amended by adding a new subdivision 10-b to read as follows:

10-B. ANY PERSON WHO APPLIES FOR A LICENSE TO OPERATE A CHILD DAY CARE CENTER OR GROUP FAMILY DAY CARE PROGRAM, OR ANY PERSON WHO APPLIES FOR REGISTRATION TO OPERATE A FAMILY DAY CARE HOME, CHILD DAY CARE CENTER OR SCHOOL-AGE CHILD CARE PROGRAM AND ANY OPERATOR OF A FAMILY DAY CARE HOME, GROUP FAMILY DAY CARE HOME, SCHOOL-AGE CHILD CARE PROGRAM, OR CHILD DAY CARE CENTER OR ANY ASSISTANT, EMPLOYEE OR VOLUNTEER IN SUCH HOMES, PROGRAMS OR CENTERS, OR ANY PERSONS OVER THE AGE OF EIGHTEEN WHO RESIDE IN SUCH HOMES SHALL BE SUBJECT TO SCREENING PROCEDURES AS PROVIDED BY THIS SUBDIVISION.

FOR PURPOSES OF THIS SUBDIVISION, PERSONS APPLYING FOR A LICENSE OR REGISTRATION SHALL BE COLLECTIVELY REFERRED TO AS APPLICANTS, AND PERSONS WHO ARE NOT APPLICANTS SHALL BE COLLECTIVELY REFERRED TO AS PERSONNEL.

(A) SCREENING FOR APPLICANTS SHALL BE CARRIED OUT BY THE OFFICE OF CHILDREN AND FAMILY SERVICES IN ACCORDANCE WITH RULES AND REGULATIONS OF THE COMMISSIONER OF THE OFFICE AND SHALL INCLUDE, BUT NOT BE LIMITED TO (1) FINGERPRINTING; (2) REVIEW OF CRIMINAL CONVICTIONS AND PENDING CRIMINAL ACTIONS, PROVIDED THAT THE OFFICE SHALL NOT DENY A LICENSE OR

REGISTRATION OF AN APPLICANT WHO IS THE SUBJECT OF A PENDING CRIMINAL ACTION, BUT SHALL DEFER DECISION ON SUCH APPLICANT UNTIL DISPOSITION OF THE PENDING CRIMINAL ACTION; AND (3) INQUIRE WITH THE STATEWIDE CENTRAL REGISTER OF CHILD ABUSE AND MALTREATMENT. UPON COMPLETION BY THE OFFICE OF THE PROCEDURES SET FORTH IN SUBPARAGRAPHS ONE, TWO AND THREE OF THIS PARAGRAPH, IT SHALL DEFER DECISION ON SUCH APPLICANT'S LICENSE OR REGISTRATION UNTIL THE OFFICE IS IN RECEIPT OF SUCH INFORMATION FROM THE DIVISION OF CRIMINAL JUSTICE SERVICES AND FROM THE STATE CENTRAL REGISTER OF CHILD ABUSE AND MALTREATMENT. IN THE EVENT SUCH INFORMATION REVEALS THE EXISTENCE OF ANY FELONY CONVICTION SET FORTH IN SUBDIVISION TEN OF THIS SECTION OR IF THE APPLICANT IS THE SUBJECT OF AN INDICATED CHILD ABUSE AND MALTREATMENT REPORT, SUCH APPLICANT'S APPLICATION FOR A LICENSE OR REGISTRATION SHALL BE DENIED. ALL CURRENT CHILD CARE PROVIDERS SHALL BE SUBJECT TO THE SCREENING PROCEDURES SET FORTH IN THIS PARAGRAPH AND A FINDING OF THE EXISTENCE OF ANY OF THE FELONY CONVICTIONS SET FORTH IN SUBDIVISION TEN OF THIS SECTION OR A FINDING THAT THE APPLICANT IS THE SUBJECT OF AN INDICATED CHILD ABUSE AND MALTREATMENT REPORT, SUCH CHILD CARE PROVIDER'S LICENSE OR REGISTRATION SHALL BE IMMEDIATELY REVOKED UPON WRITTEN NOTICE TO THE CHILD CARE PROVIDER.

(B) (1) EACH CHILD CARE PROVIDER SHALL BE RESPONSIBLE FOR THE RECRUITMENT OF APPROPRIATE PERSONNEL, THE VERIFICATION OF CREDENTIALS, THE GATHERING OF PERSONAL AND EMPLOYMENT REFERENCES, AND SELECTION AND HIRING OF ALL PERSONNEL NECESSARY TO FURNISH CHILD CARE SERVICES. EACH CHILD DAY CARE PROVIDER AND THE OFFICE OF CHILDREN AND FAMILY SERVICES SHALL COOPERATE WITH REGARD TO THE SCREENING OF ALL CURRENT AND PROSPECTIVE PERSONNEL. THE METHOD OF SCREENING SHALL BE ACCOMPLISHED IN ACCORDANCE WITH RULES AND REGULATIONS OF THE COMMISSIONER OF THE OFFICE. SCREENING SHALL INCLUDE, BUT NOT BE LIMITED TO (I) FINGERPRINTING; (II) REVIEW OF CRIMINAL CONVICTIONS AND PENDING CRIMINAL ACTIONS, PROVIDED THAT THE CHILD CARE PROVIDER SHALL NOT DISMISS OR PERMANENTLY DENY A POSITION TO CURRENT AND PROSPECTIVE PERSONNEL WHO ARE SUBJECTS OF PENDING CRIMINAL ACTIONS, BUT MAY SUSPEND SUCH CURRENT PERSONNEL OR DEFER DECISIONS ON SUCH PROSPECTIVE PERSONNEL UNTIL DISPOSITION OF THE PENDING CRIMINAL ACTION; AND (III) INQUIRY WITH THE STATEWIDE CENTRAL REGISTER OF CHILD ABUSE AND MALTREATMENT.

IN THE EVENT SUCH INQUIRY REVEALS THE EXISTENCE OF ANY FELONY CONVICTION SET FORTH IN SUBDIVISION TEN OF THIS SECTION CONCERNING ANY CURRENT OR PROSPECTIVE PERSONNEL OR IF ANY CURRENT OR PROSPECTIVE PERSONNEL IS THE SUBJECT OF AN INDICATED CHILD ABUSE AND MALTREATMENT REPORT, SUCH CURRENT PERSONNEL SHALL BE DISCHARGED FROM HIS OR HER POSITION AND SUCH PROSPECTIVE PERSONNEL'S APPLICATION FOR EMPLOYMENT, VOLUNTEER WORK OR OTHER ACTIVITY WITH THE CHILD CARE PROVIDER SHALL BE DENIED. PERSONNEL DISCHARGED AND PROSPECTIVE PERSONNEL WHOSE APPLICATIONS HAVE BEEN DENIED PURSUANT TO THIS SUBPARAGRAPH SHALL BE ENTITLED TO A HEARING BEFORE THE OFFICE TO CONTEST SUCH DISCHARGE OR DENIAL. SUCH HEARING MUST BE SCHEDULED TO COMMENCE AS SOON AS POSSIBLE BUT IN NO EVENT LATER THAN THIRTY DAYS AFTER THE RECEIPT BY THE OFFICE OF THE REQUEST FOR A HEARING MADE BY SUCH PERSONNEL OR PROSPECTIVE PERSONNEL. IF THE OFFICE DETERMINES AFTER A HEARING THAT SUCH DENIAL OR DISCHARGE WAS PROPER, SUCH DENIAL OR DISCHARGE SHALL BECOME FINAL.

(2) AS A CONDITION OF EMPLOYMENT AND CONTINUED EMPLOYMENT, THE CHILD CARE PROVIDER SHALL OBTAIN WRITTEN CONSENT FROM ALL CURRENT AND PROSPECTIVE CHILD CARE SERVICES PERSONNEL FOR FINGERPRINTING AND CRIMINAL RECORD REVIEW. DENIAL OF SUCH CONSENT SHALL REQUIRE DISMISSAL OR REFUSAL TO HIRE.

(3) THE OFFICE OF CHILDREN AND FAMILY SERVICES SHALL REQUIRE APPROPRIATE DOCUMENTATION FROM THE CHILD CARE PROVIDER INDICATING COMPLIANCE WITH THIS PARAGRAPH. ANY CHILD CARE PROVIDER, WHO, WITH KNOWLEDGE THAT ANY CURRENT OR PROSPECTIVE PERSONNEL WOULD BE DISQUALIFIED FROM EMPLOYMENT PURSUANT TO THE PROVISIONS OF THIS PARAGRAPH, WILFULLY OR INTENTIONALLY FAILS TO COMPLY WITH THIS PARAGRAPH SHALL BE SUBJECT TO THE IMMEDIATE REVOCATION OF HIS OR HER LICENSE OR REGISTRATION. ANY CHILD CARE PROVIDER, WHO, WITHOUT KNOWLEDGE THAT CURRENT OR PROSPECTIVE PERSONNEL WOULD BE DISQUALIFIED FROM EMPLOYMENT PURSUANT TO THE PROVISIONS OF THIS PARAGRAPH, FAILS TO COMPLY WITH THE PROVISIONS OF THIS PARAGRAPH SHALL BE SUBJECT TO THE IMMEDIATE ONE YEAR SUSPENSION OF HIS OR HER LICENSE OR REGISTRATION.

S 3. This act shall take effect on the first of January next succeeding the date on which it shall have become a law; provided, however, that the adoption, amendment, suspension or repeal of any rule or regulation necessary for timely implementation of this act is directed and authorized to be completed on or before such effective date.