

5066

2011-2012 Regular Sessions

I N A S S E M B L Y

February 11, 2011

Introduced by M. of A. AMEDORE, KOLB, TOBACCO, McDONOUGH, CALHOUN,
BURLING, CROUCH, JOHNS, MURRAY -- Multi-Sponsored by -- M. of A.
MALLIOTAKIS, REILICH, SALADINO -- read once and referred to the
Committee on Children and Families

AN ACT to amend the social services law and the executive law, in
relation to day care for children

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

1 Section 1. The social services law is amended by adding a new section
2 378-b to read as follows:
3 S 378-B. CERTIFICATES AND LICENSES; RECORD ACCESS; PROHIBITIONS. 1.
4 NOTWITHSTANDING THE PROVISIONS OF ANY LAW, RULE OR REGULATION TO THE
5 CONTRARY, NO LICENSE, PERMIT, CERTIFICATE OR REGISTRATION SHALL BE
6 ISSUED BY THE DEPARTMENT OR ANY AUTHORIZED AGENCY TO AN APPLICANT TO
7 OPERATE A CHILD DAY CARE CENTER, HEAD START DAY CARE CENTER PROGRAM
8 FUNDED PURSUANT TO TITLE V OF THE FEDERAL ECONOMIC OPPORTUNITY ACT OF
9 1964, SCHOOL AGE CHILD CARE PROGRAM, GROUP FAMILY DAY CARE HOME, FAMILY
10 DAY CARE HOME, NOR WHERE GRANTED, SHALL ANY SUCH LICENSE, PERMIT,
11 CERTIFICATE OR REGISTRATION BE RENEWED FOR ANY SUCH ENTITY, IF THE
12 APPLICANT AND/OR OPERATOR THEREOF SHALL HAVE BEEN CONVICTED OF A VIOLENT
13 FELONY OFFENSE AS DEFINED IN SECTION 70.02 OF THE PENAL LAW, OR SHALL
14 HAVE BEEN CONVICTED OF A MISDEMEANOR OR FELONY AS DEFINED IN ARTICLES
15 ONE HUNDRED TWENTY, ONE HUNDRED TWENTY-FIVE, ONE HUNDRED THIRTY, ONE
16 HUNDRED THIRTY-FIVE, TWO HUNDRED FIVE, TWO HUNDRED TWENTY, TWO HUNDRED
17 TWENTY-ONE, TWO HUNDRED THIRTY, TWO HUNDRED THIRTY-FIVE, TWO HUNDRED
18 FORTY-FIVE, TWO HUNDRED FIFTY-FIVE, TWO HUNDRED SIXTY, TWO HUNDRED
19 SIXTY-THREE AND TWO HUNDRED SIXTY-FIVE OF THE PENAL LAW.
20 2. NO SUCH ENTITY SHALL EMPLOY ANY ASSISTANT OR EMPLOYEE, NOR SHALL IT
21 ACCEPT ANY PERSON FOR VOLUNTEER ACTIVITY IN ANY SUCH ENTITY, IF SUCH
22 ASSISTANT, EMPLOYEE OR VOLUNTEER HAS BEEN CONVICTED OF ANY OFFENSE AS
23 ENUMERATED IN SUBDIVISION ONE OF THIS SECTION. EVERY SUCH ENTITY, AS

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

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1 ENUMERATED IN SUBDIVISION ONE OF THIS SECTION, MAY OBTAIN, WITH THE
2 CONSENT OF THE VOLUNTEER OR PROSPECTIVE VOLUNTEER OR EMPLOYEE OR
3 PROSPECTIVE EMPLOYEE OF SUCH ENTITY, THE CONVICTION RECORDS MAINTAINED
4 BY THE DIVISION OF CRIMINAL JUSTICE SERVICES PERTAINING TO SUCH VOLUN-
5 TEER OR PROSPECTIVE VOLUNTEER OR EMPLOYEE OR PROSPECTIVE EMPLOYEE;
6 PROVIDED, HOWEVER, THAT CONVICTION RECORDS SHALL BE REQUESTED ONLY FOR
7 VOLUNTEERS OR PROSPECTIVE VOLUNTEERS, EMPLOYEES OR PROSPECTIVE EMPLOYEES
8 WHO HAVE DIRECT CONTACT, AS DETERMINED BY SUCH ENTITY, WITH CHILDREN
9 SERVED BY SUCH ENTITY. THE FEE FOR SUCH RECORD SHALL BE PAID BY SUCH
10 ENTITY.

11 3. THE CONVICTION RECORD SHALL BE MARKED "CONFIDENTIAL" UPON RECEIPT
12 BY THE PERSON WHO HAS REQUESTED SUCH RECORDS. ONLY SUCH PERSON SHALL
13 HAVE ACCESS TO SUCH CONVICTION RECORD, AND SUCH CONVICTION RECORD SHALL
14 AT ALL TIMES BE MAINTAINED IN A SECURE PLACE IN ORDER TO INSURE SUCH
15 CONFIDENTIALITY. A PERSON WHO WILFULLY VIOLATES THE CONFIDENTIALITY
16 REQUIRED BY THIS SUBDIVISION SHALL BE GUILTY OF A CLASS E FELONY.

17 4. PRIOR TO REQUESTING A CONVICTION RECORD OF A VOLUNTEER OR PROSPEC-
18 TIVE VOLUNTEER OR EMPLOYEE OR PROSPECTIVE EMPLOYEE FROM THE DIVISION OF
19 CRIMINAL JUSTICE SERVICES, A REPRESENTATIVE OF SUCH ENTITY SHALL INFORM
20 ANY SUCH PERSON WHO WORKS DIRECTLY WITH CHILDREN IN ANY ACTIVITIES
21 AUTHORIZED BY SUCH ENTITY THAT A REQUEST FOR A CONVICTION RECORD AND
22 REVIEW THEREOF IS REQUIRED IN ORDER FOR SUCH PERSON TO CONTINUE IN THE
23 SAME CAPACITY OR FOR SUCH PROSPECTIVE VOLUNTEER OR EMPLOYEE TO BE
24 ACCEPTED BY SUCH ENTITY. SUCH PERSON SHALL SIGN A FORM PROVIDED BY THE
25 DIVISION OF CRIMINAL JUSTICE SERVICES STATING THAT SUCH PERSON HAS BEEN
26 INFORMED OF THE REASON FOR A REQUEST FOR HIS OR HER CONVICTION RECORD
27 AND CONSENTS TO SUCH REQUEST. SUCH FORM SHALL ACCOMPANY EACH REQUEST FOR
28 A CONVICTION RECORD MADE BY THE PERSON OF SUCH ENTITY REQUESTING THE
29 RECORD.

30 5. AFTER BEING INFORMED OF THE REQUIREMENT FOR SUCH ENTITY TO OBTAIN
31 HIS OR HER CONVICTION RECORD AND BEFORE SUCH PERSON GIVES CONSENT TO THE
32 PROVISION OF SUCH RECORD TO SUCH ENTITY, A PERSON MAY HAVE ACCESS TO HIS
33 OR HER CONVICTION RECORD AS MAINTAINED BY THE DIVISION OF CRIMINAL
34 JUSTICE SERVICES PURSUANT TO THE PROCEDURES OF SUCH DIVISION. SUCH
35 PERSON SHALL BE PROVIDED WITH ALL NECESSARY INFORMATION REGARDING ACCESS
36 TO SUCH RECORDS BY A REPRESENTATIVE OF SUCH ENTITY. SUCH PERSON SHALL
37 ALSO BE PROVIDED BY SUCH DIVISION WITH INFORMATION REGARDING PROCEDURES
38 FOR SUCH PERSON TO VERIFY THE ACCURACY OF SUCH RECORDS. SUCH PERSON
39 SHALL NOTIFY SUCH ENTITY IF HE OR SHE WISHES TO HAVE ACCESS TO HIS OR
40 HER CONVICTION RECORD PRIOR TO GIVING CONSENT TO SUCH ENTITY'S REQUEST
41 FOR SUCH RECORD.

42 6. A PROSPECTIVE VOLUNTEER OR EMPLOYEE MAY WITHDRAW FROM THE APPLICA-
43 TION PROCESS, WHETHER OR NOT HE OR SHE HAS HAD ACCESS TO HIS OR HER
44 CONVICTION RECORD AND WHETHER OR NOT SUCH RECORD HAS BEEN RECEIVED BY
45 SUCH ENTITY, WITHOUT PREJUDICE. IF THE CONVICTION RECORD OF SUCH PERSON
46 HAS BEEN RECEIVED BY SUCH ENTITY, THE PERSON DESIGNATED BY SUCH ENTITY
47 TO HAVE ACCESS TO CONVICTION RECORDS SHALL DESTROY SUCH RECORD IF THE
48 PROSPECTIVE VOLUNTEER OR EMPLOYEE IS NOT HIRED AND/OR ACCEPTED BY SUCH
49 ENTITY OR WITHDRAWS FROM THE APPLICATION PROCESS.

50 7. THE CONVICTION RECORD OF SUCH A PERSON SHALL BE DESTROYED BY THE
51 PERSON DESIGNATED BY SUCH ENTITY TO HAVE ACCESS TO CONVICTION RECORDS
52 WHEN SUCH VOLUNTEER OR EMPLOYEE NO LONGER HAS DIRECT CONTACT WITH CHIL-
53 DREN SERVED BY SUCH ENTITY.

54 8. THE PROVISIONS OF THIS SECTION SHALL NOT, HOWEVER, BE APPLICABLE TO
55 ANY PERSON WHO HAS A MINOR CHILD UNDER THE CARE AND SUPERVISION OF SUCH
56 ENTITY WHERE HE OR SHE VOLUNTEERS OR IS EMPLOYED OR SEEKS EMPLOYMENT.

1 9. THE DIVISION OF CRIMINAL JUSTICE SERVICES SHALL RESPOND TO ANY
2 REQUEST FOR A CONVICTION RECORD WHICH IS ACCOMPANIED BY A FORM SIGNED BY
3 THE SUBJECT OF SUCH REQUEST CONSENTING TO THE PROVISION OF SUCH RECORD
4 MADE PURSUANT TO THIS SECTION WITHIN FOURTEEN DAYS AFTER SUCH INQUIRY IS
5 RECEIVED. THE COMMISSIONER OF SUCH DIVISION SHALL PROMULGATE RULES AND
6 REGULATIONS PROVIDING FOR A HEARING FOR A PROSPECTIVE VOLUNTEER OR
7 VOLUNTEER OR EMPLOYEE OR PROSPECTIVE EMPLOYEE BEFORE REPRESENTATIVES OF
8 SUCH DIVISION AND THE DEPARTMENT FOR PURPOSES OF VERIFYING THE ACCURACY
9 OF HIS OR HER CONVICTION RECORD AND FOR ACCESS BY SUCH PERSONS TO PERTI-
10 NENT DOCUMENTS RELATED THERETO.

11 10. FOR PURPOSES OF THIS SECTION, "CONVICTION RECORD" SHALL MEAN ANY
12 RECORD MAINTAINED BY THE DIVISION OF CRIMINAL JUSTICE SERVICES OF
13 CONVICTIONS OF A CRIME IN VIOLATION OF THE PENAL LAW OR ANY OTHER LAW OF
14 ANOTHER JURISDICTION WHICH, IF COMMITTED IN THIS STATE, WOULD CONSTITUTE
15 A CRIME.

16 S 2. Subdivision 8-a of section 837 of the executive law, as amended
17 chapter 561 of the laws of 2006, is amended to read as follows:

18 8-a. Charge a fee when, pursuant to statute or the regulations of the
19 division, it conducts a search of its criminal history records and
20 returns a report thereon in connection with an application for employ-
21 ment or for a license or permit OR RETURNS A CONVICTION REPORT THEREON
22 AS REQUIRED BY SECTION THREE HUNDRED SEVENTY-EIGHT-B OF THE SOCIAL
23 SERVICES LAW. The division shall adopt and may, from time to time,
24 amend a schedule of such fees which shall be in amounts determined by
25 the division to be reasonably related to the cost of conducting such
26 searches and returning reports thereon but, in no event, shall any such
27 fee exceed twenty-five dollars and an additional surcharge of fifty
28 dollars. The comptroller is hereby authorized to deposit such fees into
29 the general fund, provided, however, that the monies received by the
30 division of criminal justice services for payment of the additional
31 surcharge shall be deposited in equal amounts to the general fund and to
32 the fingerprint identification and technology account. Notwithstanding
33 the foregoing, the division shall not request or accept any fee for
34 searching its records and supplying a criminal history report pursuant
35 to section two hundred fifty-one-b of the general business law relating
36 to participating in flight instruction at any aeronautical facility,
37 flight school or institution of higher learning.

38 S 3. This act shall take effect on the one hundred twentieth day after
39 it shall have become a law provided, however, that the commissioner of
40 the division of criminal justice services shall promulgate rules and
41 regulations prior to such effective date necessary to implement the
42 provisions of this act.