

10478

I N   A S S E M B L Y

May 29, 2012

---

Introduced by M. of A. TENNEY -- read once and referred to the Committee  
on Children and Families

AN ACT to amend the social services law, in relation to creating additional safeguards to protect the welfare of children enrolled in day care programs in New York state

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

1     Section 1. The social services law is amended by adding a new section  
2     390-aa to read as follows:  
3     S 390-AA. REQUIRED DISCLOSURE FOR LEGALLY-EXEMPT CHILD CARE PROVIDERS.  
4     ANY GROUP CHILD CARE PROVIDER THAT IS NOT LICENSED OR REGISTERED BY THE  
5     NEW YORK STATE OFFICE OF CHILDREN AND FAMILY SERVICES SHALL BE REQUIRED  
6     TO DISCLOSE SUCH INFORMATION IN WRITING TO THE PARENT OR GUARDIAN OF A  
7     CHILD PRIOR TO SUCH CHILD'S ENROLLMENT AT THE FACILITY OR FOR CURRENTLY  
8     ENROLLED CHILDREN WITHIN THIRTY DAYS. THE PROVISIONS OF THIS SECTION  
9     SHALL NOT APPLY TO CHILD CARE SERVICES PROVIDED IN THE CHILD'S HOME BY  
10    AN INDIVIDUAL OF THE PARENT'S OR LEGAL GUARDIAN'S CHOOSING.  
11    S 2. Paragraphs (a) and (b) of subdivision 1 of section 390-b of the  
12    social services law, as added by chapter 416 of the laws of 2000, are  
13    amended to read as follows:  
14    (a) Notwithstanding any other provision of law to the contrary, and  
15    subject to rules and regulations of the division of criminal justice  
16    services, the office of children and family services shall perform a  
17    criminal history record check with the division of criminal justice  
18    services regarding any operator, employee or volunteer of a child day  
19    care center or school age child care provider, as defined in paragraphs  
20    (c) and (f) of subdivision one of section three hundred ninety of this  
21    title. FOR THE PURPOSES OF THIS SECTION, CRIMINAL HISTORY RECORDS CHECK  
22    SHALL MEAN A NATIONAL CRIMINAL BACKGROUND CHECK INCLUDING ALL COUNTIES  
23    WITHIN NEW YORK STATE AND ALL STATES THROUGHOUT THE UNITED STATES.  
24    FURTHER, ALL SEARCHES OF THE SEX OFFENDER REGISTRY SHALL INCLUDE MULTI-  
25    PLE VARIATIONS AND SPELLINGS OF NAMES. INDIVIDUALS WHO ARE THE SUBJECT  
26    OF SUCH RECORDS CHECK SHALL FURTHER BE REQUIRED TO FILE A CRIMINAL  
27    CHARGES AND FAMILY COURT ACTIONS DISCLOSURE FORM AS PART OF THEIR APPLI-

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

LBD16056-01-2

1 CATION. SUCH DISCLOSURE FORM SHALL REQUIRE APPLICANTS TO REVEAL IF THEY  
2 HAVE EVER BEEN A PARTY TO AN ARTICLE SIX OR ARTICLE TEN PROCEEDING UNDER  
3 THE NEW YORK STATE FAMILY COURT ACT OR EQUIVALENT PROCEEDINGS IN ANY  
4 OTHER STATE, IF THEY WERE EVER CHARGED WITH, BUT NOT CONVICTED OF A  
5 FELONY, A SEX OFFENSE, CRIME AGAINST A CHILD, OR A CRIME INVOLVING  
6 VIOLENCE, OR A FELONY FOR A DRUG-RELATED OFFENSE. Child day care center  
7 operators, school age child care operators and any employees or volun-  
8 teers, who previously did not have a criminal history record check  
9 performed in accordance with this subdivision shall have such a criminal  
10 history record check performed when the child day care center or school  
11 age child care provider applies for license or registration renewal.  
12 Child day care centers which are not subject to the provisions of  
13 section three hundred ninety of this title, shall not be subject to the  
14 provisions of this section BUT SHALL BE REQUIRED TO DISCLOSE IN WRITING  
15 SUCH FACT TO THE PARENT OR GUARDIAN OF A CHILD PRIOR TO SUCH CHILD'S  
16 ENROLLMENT AT THE FACILITY OR FOR CURRENTLY ENROLLED CHILDREN WITHIN  
17 SIXTY DAYS PURSUANT TO SECTION THREE HUNDRED NINETY-AA OF THIS CHAPTER.  
18 The provisions of this section shall apply to a volunteer only where the  
19 volunteer has the potential for regular and substantial contact with  
20 children enrolled in the program.

21 (b) Notwithstanding any other provision of law to the contrary, and  
22 subject to rules and regulations of the division of criminal justice  
23 services, the office of children and family services shall perform a  
24 criminal history record check AS DEFINED IN PARAGRAPH (A) OF THIS SUBDI-  
25 VISION with the division of criminal justice services regarding the  
26 operator, any assistants, employees or volunteers of a group family day  
27 care home or family day care home, as defined in paragraphs (d) and (e)  
28 of subdivision one of section three hundred ninety of this title, and  
29 any person age eighteen or over residing on the premises of the group  
30 family day care home or family day care home which is to be licensed or  
31 registered in accordance with section three hundred ninety of this  
32 title. Group family day care home operators, family day care home opera-  
33 tors, any assistants, employees or volunteers, and persons who are age  
34 eighteen or over residing on the premises of a licensed group family day  
35 care home or registered family day care home who previously did not have  
36 a criminal history record check performed in accordance with this subdi-  
37 vision shall have such a criminal history record check performed when  
38 the group family day care home or family day care home applies for  
39 renewal of the home's license or registration. The provisions of this  
40 section shall apply to a volunteer only where the volunteer has the  
41 potential for regular and substantial contact with children enrolled in  
42 the program.

43 S 3. Subparagraphs (i) and (ii) of paragraph (a) of subdivision 3 of  
44 section 390-b of the social services law, as added by chapter 416 of the  
45 laws of 2000, are amended to read as follows:

46 (i) Where the criminal history record of an applicant to be an opera-  
47 tor of a child day care center, school age child care program, group  
48 family day care home, family day care home, or any person over the age  
49 of eighteen residing in such a home, reveals a felony conviction at any  
50 time for a sex offense, crime against a child, or a crime involving  
51 violence, THAT SUCH APPLICANT HAD THEIR PARENTAL RIGHTS TERMINATED UNDER  
52 ARTICLE 6 OF THE FAMILY COURT ACT, OR WERE THE RESPONDENT IN A PROCEED-  
53 ING UNDER ARTICLE 10 OF THE FAMILY COURT ACT, or HAVE a felony  
54 conviction within the past five years for a drug-related offense, the  
55 office of children and family services shall deny the application  
56 [unless the office determines, in its discretion, that approval of the

1 application will not in any way jeopardize the health, safety or welfare  
2 of the children in the center, program or home]; or

3 (ii) Where the criminal history record OR CRIMINAL CHARGES AND FAMILY  
4 COURT ACTIONS DISCLOSURE FORM of an applicant to be an operator of a  
5 child day care center, school age child care program, group family day  
6 care home, family day care home, or any person over the age of eighteen  
7 residing in such a home, reveals a conviction for a crime other than one  
8 set forth in subparagraph (i) of this paragraph, the office of children  
9 and family services may deny the application, consistent with article  
10 twenty-three-A of the correction law; or

11 S 4. Clause (D) of subparagraph (ii) of paragraph (a) of subdivision 1  
12 of section 390 of the social services law, as added by chapter 750 of  
13 the laws of 1990, is amended to read as follows:

14 (D) a kindergarten, pre-kindergarten, or nursery school for children  
15 three years of age or older, or after-school program for children oper-  
16 ated by a public school district or by a private school or academy which  
17 is providing elementary or secondary education or both, in accordance  
18 with the compulsory education requirements of the education law,  
19 provided that the kindergarten, pre-kindergarten, nursery school, or  
20 after school program is located on the premises or campus where the  
21 elementary or secondary education is provided. SUCH FACILITIES SHALL  
22 HOWEVER BE SUBJECT TO THE REQUIREMENTS OF SECTION THREE HUNDRED NINETY-  
23 AA OF THIS CHAPTER.

24 S 5. This act shall take effect on the sixtieth day after it shall  
25 have become a law.