

7160

2011-2012 Regular Sessions

I N A S S E M B L Y

April 14, 2011

Introduced by M. of A. J. MILLER -- Multi-Sponsored by -- M. of A.
BURLING -- read once and referred to the Committee on Mental Health

AN ACT to amend the mental hygiene law and the executive law, in relation to requiring office for people with developmental disabilities facilities and providers to submit fingerprints of current and prospective employees for the purpose of a search of criminal history records of the division of criminal justice services and establishing an office for people with developmental disabilities worker registry

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

1 Section 1. Title C of the mental hygiene law is amended by adding a
2 new article 14 to read as follows:

3 ARTICLE 14

4 REVIEW OF CRIMINAL HISTORY INFORMATION CONCERNING CURRENT
5 AND PROSPECTIVE EMPLOYEES OF OFFICE FOR PEOPLE WITH DEVELOPMENTAL
6 DISABILITIES FACILITIES AND PROVIDERS

7 SECTION 14.01 DEFINITIONS.

8 14.03 REQUESTS FOR CRIMINAL HISTORY INFORMATION CONCERNING
9 CURRENT AND PROSPECTIVE EMPLOYEES.

10 14.05 OFFICE FOR PEOPLE WITH DEVELOPMENTAL DISABILITIES WORKER
11 REGISTRY.

12 S 14.01 DEFINITIONS.

13 FOR THE PURPOSES OF THIS ARTICLE:

14 1. "CRIMINAL HISTORY INFORMATION" SHALL MEAN A RECORD OF ALL
15 CONVICTIONS OF CRIMES MAINTAINED ON AN INDIVIDUAL BY THE DIVISION OF
16 CRIMINAL JUSTICE SERVICES PURSUANT TO PARAGRAPH (C) OF SUBDIVISION FOUR
17 OF SECTION EIGHT HUNDRED THIRTY-SEVEN OF THE EXECUTIVE LAW.

18 2. "EMPLOYER" SHALL MEAN ANY FACILITY OR OTHER ENTITY PROVIDING CARE
19 OF OR SERVICES TO ANY PERSON, WHICH FACILITY OR OTHER ENTITY IS UNDER
20 THE JURISDICTION OF THE OFFICE DUE TO ITS HAVING OR BEING REQUIRED TO

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

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HAVE ANY LICENSE, CERTIFICATE, PERMIT, OR OTHER AUTHORIZATION ISSUED BY THE OFFICE. THE TERM "EMPLOYER" INCLUDES THE OFFICE.

3. "EMPLOYEE" SHALL MEAN ANY PERSON EMPLOYED BY AN EMPLOYER OR EMPLOYED BY THE OFFICE IN A CAPACITY IN WHICH SUCH PERSON IS ENGAGED IN THE PROVISION OF CARE OR SERVICES TO A PERSON IN NEED THEREOF.

4. "CURRENT EMPLOYEE" SHALL MEAN AND INCLUDE ANY INDIVIDUAL WHO BECAME AN EMPLOYEE OF AN EMPLOYER PRIOR TO THE EFFECTIVE DATE OF THIS ARTICLE.

5. "PROSPECTIVE EMPLOYEE" SHALL MEAN AND INCLUDE AN INDIVIDUAL NOT CURRENTLY AN EMPLOYEE OF AN EMPLOYER WHO FILES AN APPLICATION FOR EMPLOYMENT AND THE EMPLOYER HAS A REASONABLE EXPECTATION TO HIRE SUCH INDIVIDUAL.

S 14.03 REQUESTS FOR CRIMINAL HISTORY INFORMATION CONCERNING CURRENT AND PROSPECTIVE EMPLOYEES.

1. AN EMPLOYER SHALL REQUEST AND IS AUTHORIZED TO RECEIVE FROM THE DIVISION OF CRIMINAL JUSTICE SERVICES CRIMINAL HISTORY INFORMATION CONCERNING EACH CURRENT AND PROSPECTIVE EMPLOYEE, AND TO CONSIDER SUCH INFORMATION IN ACCORDANCE WITH ARTICLE TWENTY-THREE-A OF THE CORRECTION LAW, SUBJECT TO THE FOLLOWING RESTRICTIONS:

(A) AN EMPLOYER SHALL DESIGNATE ONE PERSON IN ITS EMPLOY WHO SHALL BE AUTHORIZED TO REQUEST, RECEIVE AND REVIEW CRIMINAL HISTORY INFORMATION, AND ONLY SUCH PERSON AND THE NEW OR PROSPECTIVE EMPLOYEE TO WHICH THE CRIMINAL HISTORY INFORMATION RELATES SHALL HAVE ACCESS TO SUCH INFORMATION; PROVIDED, HOWEVER, THAT CRIMINAL HISTORY INFORMATION MAY BE DISCLOSED TO OTHER PERSONNEL AUTHORIZED BY THE EMPLOYER WHO ARE EMPOWERED BY SUCH EMPLOYER TO MAKE HIRING DECISIONS CONCERNING CURRENT OR PROSPECTIVE EMPLOYEES AND PROVIDED FURTHER THAT SUCH OTHER PERSONNEL SHALL ALSO BE SUBJECT TO THE CONFIDENTIALITY REQUIREMENTS AND ALL OTHER PROVISIONS OF THIS ARTICLE. AN EMPLOYER SHALL NOTIFY THE DIVISION OF CRIMINAL JUSTICE SERVICES OF EACH PERSON AUTHORIZED TO HAVE ACCESS TO CRIMINAL HISTORY INFORMATION PURSUANT TO THIS SECTION;

(B) AN EMPLOYER REQUESTING CRIMINAL HISTORY INFORMATION PURSUANT TO THIS SECTION SHALL DO SO BY COMPLETING A FORM DEVELOPED FOR SUCH PURPOSE BY THE DIVISION OF CRIMINAL JUSTICE SERVICES. SUCH FORM SHALL INCLUDE A SWORN STATEMENT OF THE PERSON DESIGNATED BY THE EMPLOYER TO REQUEST, RECEIVE AND REVIEW CRIMINAL HISTORY INFORMATION PURSUANT TO PARAGRAPH (A) OF THIS SUBDIVISION CERTIFYING THAT (I) THE PERSON WHOSE CRIMINAL HISTORY INFORMATION IS REQUESTED IS NOT PRESENTLY BUT HAS APPLIED TO BE AN EMPLOYEE, OR IS A CURRENT EMPLOYEE; (II) SUCH CRIMINAL HISTORY INFORMATION WILL BE USED BY THE EMPLOYER SOLELY FOR PURPOSES AUTHORIZED BY THIS ARTICLE; AND (III) THE EMPLOYER AND ITS STAFF ARE AWARE OF AND WILL ABIDE BY THE CONFIDENTIALITY REQUIREMENTS AND ALL OTHER PROVISIONS OF THIS ARTICLE; AND

(C) THE PERSON DESIGNATED BY AN EMPLOYER FOR RECEIPT OF CRIMINAL HISTORY INFORMATION PURSUANT TO PARAGRAPH (A) OF THIS SUBDIVISION SHALL UPON RECEIPT IMMEDIATELY MARK SUCH CRIMINAL HISTORY INFORMATION "CONFIDENTIAL", AND SHALL AT ALL TIMES MAINTAIN SUCH CRIMINAL HISTORY INFORMATION IN A SECURE PLACE. ANY PERSON WHO WILLFULLY PERMITS THE RELEASE OF ANY CONFIDENTIAL CRIMINAL HISTORY INFORMATION CONTAINED IN THE REPORT TO PERSONS NOT PERMITTED BY THIS ARTICLE TO RECEIVE SUCH INFORMATION SHALL BE GUILTY OF A MISDEMEANOR. ANY UNAUTHORIZED DISCLOSURE OF FINGERPRINTS OR CRIMINAL HISTORY INFORMATION OBTAINED BY AN EMPLOYER PURSUANT TO THIS ARTICLE SHALL ALSO ENTITLE THE SUBJECT OF SUCH FINGERPRINTS OR CRIMINAL HISTORY INFORMATION TO RECOVER FROM THE EMPLOYER A CIVIL AWARD OF DAMAGES RESULTING FROM SUCH UNAUTHORIZED DISCLOSURE, TOGETHER WITH COSTS AND REASONABLE ATTORNEY'S FEES.

1 2. TO THE EXTENT PERMITTED BY LAW, AN EMPLOYER MAY REQUEST FROM A
2 CURRENT OR PROSPECTIVE EMPLOYEE A STATEMENT OF HIS OR HER PRIOR CRIMINAL
3 CONVICTIONS IN THIS STATE OR ANY OTHER JURISDICTION. PRIOR TO REQUESTING
4 CRIMINAL HISTORY INFORMATION CONCERNING ANY CURRENT OR PROSPECTIVE
5 EMPLOYEE, EACH EMPLOYER SHALL:

6 (A) INFORM THE CURRENT OR PROSPECTIVE EMPLOYEE IN WRITING THAT THE
7 EMPLOYER IS REQUIRED TO REQUEST HIS OR HER CRIMINAL HISTORY INFORMATION
8 FROM THE DIVISION OF CRIMINAL JUSTICE SERVICES AND REVIEW SUCH INFORMA-
9 TION PURSUANT TO THIS SECTION;

10 (B) INFORM THE CURRENT OR PROSPECTIVE EMPLOYEE THAT BEFORE THE EMPLOY-
11 ER REQUESTS SUCH CRIMINAL HISTORY INFORMATION, THE CURRENT OR PROSPEC-
12 TIVE EMPLOYEE HAS THE RIGHT TO OBTAIN, REVIEW AND SEEK CORRECTION OF HIS
13 OR HER CRIMINAL HISTORY INFORMATION PURSUANT TO REGULATIONS AND PROCE-
14 DURES ESTABLISHED BY THE DIVISION OF CRIMINAL JUSTICE SERVICES;

15 (C) OBTAIN THE SIGNED INFORMED CONSENT OF THE CURRENT OR PROSPECTIVE
16 EMPLOYEE ON A FORM SUPPLIED BY THE DIVISION OF CRIMINAL JUSTICE SERVICES
17 WHICH INDICATES THAT SUCH PERSON HAS:

18 (I) BEEN INFORMED OF THE RIGHT AND PROCEDURES NECESSARY TO OBTAIN,
19 REVIEW AND SEEK CORRECTION OF HIS OR HER CRIMINAL HISTORY INFORMATION;

20 (II) BEEN INFORMED OF THE REASON FOR THE REQUEST FOR HIS OR HER CRIMI-
21 NAL HISTORY INFORMATION;

22 (III) CONSENTED TO SUCH REQUEST; AND

23 (D) UPON RECEIVING SUCH WRITTEN CONSENT, GIVEN THE FINGERPRINTS OF
24 SUCH CURRENT OR PROSPECTIVE EMPLOYEE PURSUANT TO REGULATIONS ESTABLISHED
25 BY THE DIVISION OF CRIMINAL JUSTICE SERVICES.

26 3. A CURRENT OR PROSPECTIVE EMPLOYEE MAY WITHDRAW FROM THE APPLICATION
27 PROCESS, WITHOUT PREJUDICE, AT ANY TIME REGARDLESS OF WHETHER OR NOT HE
28 OR SHE HAS REVIEWED HIS OR HER CRIMINAL HISTORY INFORMATION OR THE
29 EMPLOYER HAS RECEIVED CRIMINAL HISTORY INFORMATION. WHERE A CURRENT OR
30 PROSPECTIVE EMPLOYEE WITHDRAWS FROM THE APPLICATION PROCESS, ANY FINGER-
31 PRINTS AND CRIMINAL HISTORY INFORMATION CONCERNING SUCH CURRENT OR
32 PROSPECTIVE EMPLOYEE RECEIVED BY THE EMPLOYER SHALL BE IMMEDIATELY
33 RETURNED TO SUCH CURRENT OR PROSPECTIVE EMPLOYEE BY THE PERSON DESIG-
34 NATED FOR RECEIPT OF CRIMINAL HISTORY INFORMATION PURSUANT TO PARAGRAPH
35 (A) OF SUBDIVISION ONE OF THIS SECTION.

36 4. IN ALL CASES THE FINGERPRINTS AND CRIMINAL HISTORY INFORMATION
37 CONCERNING A CURRENT OR PROSPECTIVE EMPLOYEE SHALL BE IMMEDIATELY
38 RETURNED TO SUCH PERSON BY THE PERSON DESIGNATED FOR RECEIPT OF CRIMINAL
39 HISTORY INFORMATION UPON THE DENIAL OF EMPLOYMENT OR TERMINATION OF
40 EMPLOYMENT OF SUCH EMPLOYEE.

41 5. THE DIVISION OF CRIMINAL JUSTICE SERVICES SHALL PROVIDE REQUESTED
42 CRIMINAL HISTORY INFORMATION AND RETURN FINGERPRINTS TO AN EMPLOYER
43 WITHIN FIFTEEN BUSINESS DAYS AFTER THE RECEIPT OF A REQUEST FOR CRIMINAL
44 HISTORY INFORMATION IF SUCH REQUEST IS:

45 (A) MADE BY THE PERSON DESIGNATED BY THE EMPLOYER FOR RECEIPT OF CRIM-
46 INAL HISTORY INFORMATION PURSUANT TO PARAGRAPH (A) OF SUBDIVISION ONE OF
47 THIS SECTION AND ACCOMPANIED BY THE CERTIFICATION REQUIRED BY PARAGRAPH
48 (B) OF SUBDIVISION ONE OF THIS SECTION;

49 (B) ACCOMPANIED BY THE COMPLETED FORM DESCRIBED IN PARAGRAPH (C) OF
50 SUBDIVISION TWO OF THIS SECTION; AND

51 (C) ACCOMPANIED BY FINGERPRINTS OF THE CURRENT OR PROSPECTIVE EMPLOYEE
52 OBTAINED PURSUANT TO PARAGRAPH (D) OF SUBDIVISION TWO OF THIS SECTION.

53 6. THE COMMISSIONER OF THE DIVISION OF CRIMINAL JUSTICE SERVICES SHALL
54 PROMULGATE ALL RULES AND REGULATIONS NECESSARY TO IMPLEMENT THE
55 PROVISIONS OF THIS ARTICLE, WHICH SHALL INCLUDE CONVENIENT PROCEDURES
56 FOR CURRENT AND PROSPECTIVE EMPLOYEES TO PROMPTLY VERIFY THE ACCURACY OF

1 THEIR CRIMINAL HISTORY INFORMATION AND, TO THE EXTENT AUTHORIZED BY LAW,
2 TO HAVE ACCESS TO RELEVANT DOCUMENTS RELATED THERETO.

3 7. NOTHING IN THIS ARTICLE SHALL BE CONSTRUED OR INTERPRETED TO IN ANY
4 WAY DIMINISH THE INTEGRITY OF COLLECTIVE BARGAINING AGREEMENTS NEGOTI-
5 ATED BETWEEN AN EMPLOYER AND ANY CERTIFIED OR AUTHORIZED COLLECTIVE
6 BARGAINING AGENT FOR AN EMPLOYEE, OR TO DIMINISH RIGHTS WHICH ACCRUE TO
7 SUCH EMPLOYEES PURSUANT TO SUCH AGREEMENTS.

8 S 14.05 OFFICE FOR PEOPLE WITH DEVELOPMENTAL DISABILITIES WORKER REGIS-
9 TRY.

10 1. DEFINITIONS. AS USED IN THIS SECTION, "OFFICE FOR PEOPLE WITH
11 DEVELOPMENTAL DISABILITIES WORKER REGISTRY" MEANS THE SYSTEM OF INFORMA-
12 TION PERTAINING TO HOME CARE WORKERS, AS ESTABLISHED BY THE OFFICE UNDER
13 THIS SECTION.

14 2. THE OFFICE SHALL ESTABLISH, DIRECTLY OR THROUGH CONTRACT, A STATE-
15 WIDE OFFICE FOR PEOPLE WITH DEVELOPMENTAL DISABILITIES WORKER REGISTRY
16 OF ALL OFFICE FOR PEOPLE WITH DEVELOPMENTAL DISABILITIES WORKERS. SUCH
17 REGISTRY SHALL BE AN AUTOMATED SYSTEM WITH IMMEDIATE ACCESS THROUGH
18 TELEPHONE AND ANY OTHER APPROPRIATE TECHNOLOGY. THE OFFICE FOR PEOPLE
19 WITH DEVELOPMENTAL DISABILITIES WORKER REGISTRY SHALL INCLUDE THE
20 FOLLOWING INFORMATION PERTAINING TO THE OFFICE FOR PEOPLE WITH DEVELOP-
21 MENTAL DISABILITIES WORKER:

22 (A) NAME AND ALIAS OR PREVIOUSLY USED NAME, WHERE APPLICABLE, AND
23 SOCIAL SECURITY NUMBER;

24 (B) OFFICE FOR PEOPLE WITH DEVELOPMENTAL DISABILITIES EMPLOYMENT
25 HISTORY, INCLUDING THE NAME, ADDRESS, PHONE OF THE CURRENT AND PRECEDING
26 EMPLOYER AND EMPLOYERS OVER THE LAST THREE YEARS AND THE APPROXIMATE
27 EMPLOYMENT STARTING AND TERMINATION DATES; AND

28 (C) NEW YORK STATE APPROVED TRAINING AND CERTIFICATION, INCLUDING
29 APPROXIMATE DATES, AS REQUIRED BY REGULATIONS UNDER THIS ARTICLE.

30 3. EACH EMPLOYER SHALL, ON A SCHEDULE AS DETERMINED BY THE DEPARTMENT,
31 FILE WITH THE OFFICE FOR PEOPLE WITH DEVELOPMENTAL DISABILITIES REGISTRY
32 INFORMATION REQUIRED UNDER SUBDIVISION TWO OF THIS SECTION. THE INFORMA-
33 TION SHALL BE IN A FORM DETERMINED BY THE OFFICE AND SHALL BE AS CURRENT
34 AND THOROUGH AS REASONABLY POSSIBLE.

35 4. EACH EMPLOYER PROVIDING TRAINING FOR OFFICE FOR PEOPLE WITH DEVEL-
36 OPMENTAL DISABILITIES WORKERS OR PROSPECTIVE OFFICE FOR PEOPLE WITH
37 DEVELOPMENTAL DISABILITIES WORKERS SHALL, ON A SCHEDULE DETERMINED BY
38 THE DEPARTMENT, FILE WITH THE OFFICE FOR PEOPLE WITH DEVELOPMENTAL DISA-
39 BILITIES WORKER REGISTRY INFORMATION REQUIRED UNDER PARAGRAPHS (A) AND
40 (C) OF SUBDIVISION TWO OF THIS SECTION ON PERSONS SUCCESSFULLY COMPLET-
41 ING A NEW YORK STATE APPROVED PROGRAM OF TRAINING.

42 5. AS PART OF THE OFFICE FOR PEOPLE WITH DEVELOPMENTAL DISABILITIES
43 WORKER EMPLOYMENT APPLICATION PROCESS, AN EMPLOYER SHALL CONTACT THE
44 OFFICE FOR PEOPLE WITH DEVELOPMENTAL DISABILITIES WORKER REGISTRY TO
45 ASSIST IN DETERMINING A WORKER'S SUITABILITY FOR EMPLOYMENT. INFORMATION
46 PERTAINING TO THE WORKER CONTAINED IN THE OFFICE FOR PEOPLE WITH DEVEL-
47 OPMENTAL DISABILITIES WORKER REGISTRY SHALL BE PROVIDED PROMPTLY TO THE
48 EMPLOYER TO ASSIST THE EMPLOYER IN MAKING THE EMPLOYMENT DECISION.

49 6. EACH EMPLOYER SHALL MAKE A GOOD FAITH DOCUMENTED EFFORT TO CHECK
50 ALL REGISTRY-LISTED EMPLOYERS OF A WORKER IN A TIMELY MANNER.

51 7. (A) EACH EMPLOYER SHALL DESIGNATE ONE PERSON IN ITS EMPLOY WHO
52 SHALL BE AUTHORIZED TO REQUEST, RECEIVE AND REVIEW OFFICE FOR PEOPLE
53 WITH DEVELOPMENTAL DISABILITIES WORKER REGISTRY INFORMATION, AND ONLY
54 SUCH PERSON AND THE OFFICE FOR PEOPLE WITH DEVELOPMENTAL DISABILITIES
55 WORKER TO WHICH THE INFORMATION RELATES SHALL HAVE ACCESS TO SUCH INFOR-
56 MATION; PROVIDED, HOWEVER, THAT THE OFFICE FOR PEOPLE WITH DEVELOPMENTAL

1 DISABILITIES WORKER REGISTRY INFORMATION MAY BE DISCLOSED TO OTHER
2 PERSONNEL AUTHORIZED BY THE EMPLOYER TO MAKE HIRING DECISIONS CONCERNING
3 PROSPECTIVE EMPLOYEES AND PROVIDED FURTHER THAT SUCH OTHER PERSONNEL
4 SHALL ALSO BE SUBJECT TO THE CONFIDENTIALITY REQUIREMENTS AND ALL OTHER
5 PROVISIONS OF THIS SECTION. AN EMPLOYER SHALL NOTIFY THE OFFICE OF EACH
6 PERSON AUTHORIZED TO HAVE ACCESS TO CRIMINAL HISTORY INFORMATION PURSU-
7 ANT TO THIS SECTION;

8 (B) AN EMPLOYER REQUESTING OFFICE FOR PEOPLE WITH DEVELOPMENTAL DISA-
9 BILITIES WORKER REGISTRY INFORMATION PURSUANT TO THIS SECTION SHALL DO
10 SO BY COMPLETING A FORM DEVELOPED FOR SUCH PURPOSE BY THE OFFICE. SUCH
11 FORM SHALL INCLUDE A SWORN STATEMENT OF THE PERSON DESIGNATED BY THE
12 EMPLOYER TO REQUEST, RECEIVE AND REVIEW OFFICE FOR PEOPLE WITH DEVELOP-
13 MENTAL DISABILITIES WORKER REGISTRY INFORMATION PURSUANT TO PARAGRAPH
14 (A) OF THIS SUBDIVISION CERTIFYING THAT (I) SUCH OFFICE FOR PEOPLE WITH
15 DEVELOPMENTAL DISABILITIES WORKER REGISTRY INFORMATION WILL BE USED BY
16 THE EMPLOYER SOLELY FOR PURPOSES AUTHORIZED BY THIS SECTION; AND (II)
17 THE EMPLOYER AND ITS STAFF ARE AWARE OF AND WILL ABIDE BY THE CONFIDEN-
18 TIALITY REQUIREMENTS AND ALL OTHER PROVISIONS OF THIS SECTION; AND

19 (C) THE PERSON DESIGNATED BY AN EMPLOYER FOR RECEIPT OF OFFICE FOR
20 PEOPLE WITH DEVELOPMENTAL DISABILITIES WORKER REGISTRY INFORMATION
21 PURSUANT TO PARAGRAPH (A) OF THIS SUBDIVISION SHALL UPON RECEIPT IMME-
22 DIATELY MARK SUCH OFFICE FOR PEOPLE WITH DEVELOPMENTAL DISABILITIES
23 WORKER REGISTRY INFORMATION "CONFIDENTIAL", AND SHALL AT ALL TIMES MAIN-
24 TAIN SUCH OFFICE FOR PEOPLE WITH DEVELOPMENTAL DISABILITIES WORKER
25 REGISTRY INFORMATION IN A SECURE PLACE. ANY PERSON WHO WILLFULLY PERMITS
26 THE RELEASE OF CONFIDENTIAL OFFICE FOR PEOPLE WITH DEVELOPMENTAL DISA-
27 BILITIES WORKER REGISTRY INFORMATION TO PERSONS NOT PERMITTED BY THIS
28 SECTION TO RECEIVE SUCH INFORMATION SHALL BE SUBJECT TO A CIVIL PENALTY
29 OF UP TO FIVE THOUSAND DOLLARS. ANY UNAUTHORIZED DISCLOSURE OF OFFICE
30 FOR PEOPLE WITH DEVELOPMENTAL DISABILITIES REGISTRY INFORMATION OBTAINED
31 BY AN EMPLOYER PURSUANT TO THIS ARTICLE SHALL ALSO ENTITLE THE EMPLOYEE
32 WHO IS THE SUBJECT OF SUCH INFORMATION TO RECOVER FROM THE EMPLOYER A
33 CIVIL AWARD OF DAMAGES RESULTING FROM SUCH UNAUTHORIZED DISCLOSURE,
34 TOGETHER WITH COSTS AND REASONABLE ATTORNEY'S FEES.

35 8. EACH EMPLOYER SHALL INFORM THE EMPLOYEE THAT SUCH EMPLOYEE HAS THE
36 RIGHT TO OBTAIN, REVIEW AND SEEK CORRECTION OF HIS OR HER OFFICE FOR
37 PEOPLE WITH DEVELOPMENTAL DISABILITIES WORKER REGISTRY INFORMATION
38 PURSUANT TO REGULATIONS AND PROCEDURES ESTABLISHED BY THE OFFICE.

39 9. (A) THE OFFICE FOR PEOPLE WITH DEVELOPMENTAL DISABILITIES WORKER
40 REGISTRY SHALL, ON WRITTEN REQUEST BY AN EMPLOYEE, PROMPTLY GIVE THE
41 WORKER A COPY OF HIS OR HER OFFICE FOR PEOPLE WITH DEVELOPMENTAL DISA-
42 BILITIES WORKER REGISTRY FILE.

43 (B) IF AN EMPLOYEE DISPUTES ANY INFORMATION IN THE OFFICE FOR PEOPLE
44 WITH DEVELOPMENTAL DISABILITIES WORKER REGISTRY, THE OFFICE FOR PEOPLE
45 WITH DEVELOPMENTAL DISABILITIES WORKER REGISTRY SHALL PROMPTLY INVESTI-
46 GATE AND, WHERE APPROPRIATE, CORRECT THE DISPUTED INFORMATION. THE
47 OFFICE FOR PEOPLE WITH DEVELOPMENTAL DISABILITIES WORKER REGISTRY SHALL
48 PROMPTLY NOTIFY THE EMPLOYEE OF THE RESULTS OF THE INVESTIGATION, ITS
49 DECISION AND HIS OR HER RIGHTS UNDER THIS SUBDIVISION, INCLUDING THE
50 RIGHT TO SEEK UNION OR OTHER REPRESENTATION.

51 (C) IF, AFTER CONDUCTING THE INVESTIGATION, THE OFFICE FOR PEOPLE WITH
52 DEVELOPMENTAL DISABILITIES WORKER REGISTRY FINDS THAT AN ITEM IS IN
53 ERROR OR CANNOT BE VERIFIED, IT SHALL:

54 (I) PROMPTLY EXPUNGE THE ITEM AND OTHERWISE CORRECT THE FILE;

55 (II) REFRAIN FROM REPORTING THE ITEM IN SUBSEQUENT OFFICE FOR PEOPLE
56 WITH DEVELOPMENTAL DISABILITIES WORKER REGISTRY REPORTS;

(III) ADVISE THE EMPLOYEE OF HIS OR HER RIGHT TO REQUEST NOTIFICATION AND, AT THE EMPLOYEE'S REQUEST, PROMPTLY NOTIFY ANY EMPLOYER DESIGNATED BY THE EMPLOYEE WHICH HAS RECEIVED INFORMATION IN THE PREVIOUS THREE YEARS THAT AN ERROR EXISTED, AND SHALL FURNISH SUCH EMPLOYER WITH THE CORRECT INFORMATION; AND

(IV) AT THE EMPLOYEE'S REQUEST, FORWARD HIM OR HER A COPY OF THE CORRECTED OFFICE FOR PEOPLE WITH DEVELOPMENTAL DISABILITIES WORKER REGISTRY FILE.

(D) IF, AFTER CONDUCTING THE INVESTIGATION, THE OFFICE FOR PEOPLE WITH DEVELOPMENTAL DISABILITIES WORKER REGISTRY IS UNABLE TO RESOLVE THE DISPUTED INFORMATION, IT SHALL:

(I) PROMPTLY INDICATE IN THE FILE THAT THE ITEM IS DISPUTED;

(II) PERMIT THE EMPLOYEE TO FILE A BRIEF STATEMENT CONCERNING THE DISPUTE;

(III) INCLUDE THE EMPLOYEE'S STATEMENT OF THE DISPUTE IN ALL SUBSEQUENT DISCLOSURES CONTAINING THE INFORMATION IN QUESTION;

(IV) CLEARLY NOTE IN ALL SUBSEQUENT DISCLOSURES THAT THE ITEM IS DISPUTED BY THE EMPLOYEE;

(V) ADVISE THE EMPLOYEE OF HIS OR HER RIGHT TO PROMPTLY NOTIFY ANY EMPLOYER DESIGNATED BY THE EMPLOYEE WHICH HAS RECEIVED INFORMATION IN THE PREVIOUS THREE YEARS THAT A STATEMENT CONCERNING THE DISPUTE HAS BEEN FILED, AND SHALL FURNISH SUCH EMPLOYER WITH THE EMPLOYEE'S STATEMENT; AND

(VI) FORWARD TO THE EMPLOYEE A COPY OF HIS OR HER REGISTRY FILE INCLUDING THE STATEMENT CONCERNING THE DISPUTED INFORMATION.

(E) IF ANY ITEM DISPUTED AND REINVESTIGATED IS FOUND TO BE IN ERROR OR CAN NO LONGER BE VERIFIED, UPON COMPLETION OF THE REINVESTIGATION OF ALL ITEMS DISPUTED, THE OFFICE FOR PEOPLE WITH DEVELOPMENTAL DISABILITIES WORKER REGISTRY SHALL TAKE THE ACTION SPECIFIED IN SUBPARAGRAPHS (I), (II) AND (III) OF PARAGRAPH (C) OF THIS SUBDIVISION.

10. INFORMATION REGARDING AN EMPLOYEE WHO IS EMPLOYED BY AN EMPLOYER ON THE EFFECTIVE DATE OF THIS SECTION NEED NOT BE FILED IN THE OFFICE FOR PEOPLE WITH DEVELOPMENTAL DISABILITIES WORKER REGISTRY UNTIL THREE YEARS AFTER THE EFFECTIVE DATE OF THE INITIAL REGULATION IMPLEMENTING THIS SECTION. WITH REGARD TO SUCH AN EMPLOYEE, AN EMPLOYER SHALL BE REQUIRED TO FILE ONLY SUCH INFORMATION REQUIRED BY PARAGRAPHS (A), (B) AND (C) OF SUBDIVISION TWO OF THIS SECTION AS IS MAINTAINED BY SUCH EMPLOYER AS A REGULAR PART OF THE EMPLOYEE'S PERSONNEL FILE.

11. THE OFFICE SHALL DEVELOP AND PROMULGATE REGULATIONS IN CONSULTATION WITH THE OFFICE OF CHILDREN AND FAMILY SERVICES NECESSARY FOR THE IMPLEMENTATION OF THIS SECTION.

12. THE COMMISSIONER SHALL TRANSMIT TO THE SPEAKER OF THE ASSEMBLY, THE MINORITY LEADER OF THE ASSEMBLY, THE TEMPORARY PRESIDENT OF THE SENATE AND THE MINORITY LEADER OF THE SENATE NO LATER THAN THE FIRST DAY OF APRIL OF EACH YEAR A REPORT ON THE IMPLEMENTATION AND OPERATION OF THE OFFICE FOR PEOPLE WITH DEVELOPMENTAL DISABILITIES WORKER REGISTRY. SUCH REPORT SHALL INCLUDE, BUT NOT BE LIMITED TO, AN ANALYSIS OF THE REGISTRANTS ENTERED INTO THE SYSTEM DURING THE PRECEDING YEAR, AN ANALYSIS OF THE COSTS OF IMPLEMENTING AND OPERATING SUCH REGISTRY, THE SOURCES OF THE FUNDS USED TO IMPLEMENT AND OPERATE THE REGISTRY, AND A COMPUTATION OF ANY EXCESS FUNDS COLLECTED FOR SUCH IMPLEMENTATION AND OPERATION.

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

8-a. Charge a fee when, pursuant to statute or the regulations of the division, it conducts a search of its criminal history records and

1 returns a report thereon in connection with an application for employ-
2 ment or for a license or permit. The division shall adopt and may, from
3 time to time, amend a schedule of such fees which shall be in amounts
4 determined by the division to be reasonably related to the cost of
5 conducting such searches and returning reports thereon but, in no event,
6 shall any such fee exceed twenty-five dollars and an additional
7 surcharge of fifty dollars. The comptroller is hereby authorized to
8 deposit such fees into the general fund, provided, however, that the
9 monies received by the division of criminal justice services for payment
10 of the additional surcharge shall be deposited in equal amounts to the
11 general fund and to the fingerprint identification and technology
12 account. Notwithstanding the foregoing, the division shall not request
13 or accept any fee for searching its records and supplying a criminal
14 history report pursuant to section two hundred fifty-one-b of the gener-
15 al business law relating to participating in flight instruction at any
16 aeronautical facility, flight school or institution of higher learning,
17 NOR FOR SEARCHING ITS RECORDS AND SUPPLYING A CRIMINAL HISTORY REPORT
18 PURSUANT TO ARTICLE FOURTEEN OF THE MENTAL HYGIENE LAW.

19 S 3. This act shall take effect on the first of January next succeed-
20 ing the date on which it shall have become a law. The commissioner of
21 developmental disabilities may adopt, amend, suspend or repeal rules or
22 regulations and take other actions prior to and in preparation for the
23 timely implementation of this act on its effective date; provided howev-
24 er, that such rules, regulations and other actions shall not have any
25 legal effect until the effective date of this act.