

4768

2011-2012 Regular Sessions

I N S E N A T E

April 20, 2011

Introduced by Sen. McDONALD -- read twice and ordered printed, and when printed to be committed to the Committee on Mental Health and Developmental Disabilities

AN ACT to amend the mental hygiene law, in relation to establishing a people with developmental disabilities and mental health worker registry

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

1 Section 1. The mental hygiene law is amended by adding a new section
2 16.34 to read as follows:
3 S 16.34 PEOPLE WITH DEVELOPMENTAL DISABILITIES REGISTRY.
4 1. EVERY PROVIDER OF SERVICES REQUIRED TO REQUEST CRIMINAL HISTORY
5 INFORMATION CONCERNING CERTAIN PROSPECTIVE EMPLOYEES AND VOLUNTEERS
6 PURSUANT TO THE PROVISIONS OF SECTION 16.33 OF THIS ARTICLE SHALL ALSO
7 BE REQUIRED TO SUBMIT TO THE OFFICE A SUMMARY REPORT IN A FORM APPROVED
8 BY THE OFFICE OF THE TERMINATION FOR CAUSE OF ANY EMPLOYEE OR VOLUNTEER
9 WHO WAS SUBJECT TO A CRIMINAL HISTORY BACKGROUND CHECK UNDER SECTION
10 16.33 OF THIS ARTICLE AND WHO IS TERMINATED AS A RESULT OF A FINDING
11 THAT SUCH EMPLOYEE OR VOLUNTEER ENGAGED IN BEHAVIOR THAT CONSTITUTED
12 ABUSE OR NEGLECT OF A CLIENT.
13 2. IF SUCH EMPLOYEE OR VOLUNTEER VOLUNTARILY RESIGNS DURING THE
14 PENDENCY OF AN INVESTIGATION OF AN INCIDENT INVOLVING NEGLECT OR ABUSE
15 OF A CLIENT AND IF SUCH INVESTIGATION DETERMINES THAT SUCH EMPLOYEE OR
16 VOLUNTEER ENGAGED IN BEHAVIOR THAT CONSTITUTED ABUSE OR NEGLECT OF A
17 CLIENT WHICH WOULD HAVE RESULTED IN TERMINATION, SUCH PROVIDER SHALL
18 FILE THE SUMMARY REPORT REQUIRED IN SUBDIVISION ONE OF THIS SECTION.
19 3. THE SUMMARY REPORT REQUIRED TO BE FILED UNDER SUBDIVISION ONE OF
20 THIS SECTION SHALL BE SUBMITTED TO THE OFFICE WITHIN THIRTY DAYS OF THE
21 TERMINATION OR, IF THE EMPLOYEE OR VOLUNTEER RESIGNS, THIRTY DAYS AFTER
22 THE COMPLETION OF THE INVESTIGATION. THE SUMMARY REPORT SHALL INCLUDE
23 THE NAME, HOME ADDRESS, SOCIAL SECURITY NUMBER OF THE EMPLOYEE OR VOLUN-

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

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1 TEER AND A BRIEF DESCRIPTION OF THE CONDUCT INVOLVED IN THE INCIDENT IN
2 A FORM APPROVED BY THE OFFICE.

3 4. WHEN THE OFFICE RECEIVES A SUMMARY REPORT REGARDING AN EMPLOYEE OR
4 VOLUNTEER, THE OFFICE SHALL MAINTAIN SUCH REPORT TOGETHER WITH THE CRIM-
5 INAL HISTORY INFORMATION PREVIOUSLY OBTAINED REGARDING SUCH EMPLOYEE OR
6 VOLUNTEER.

7 5. IF THE OFFICE RECEIVES A REQUEST FOR CRIMINAL HISTORY INFORMATION
8 FOR A PROSPECTIVE EMPLOYEE OR VOLUNTEER FOR WHOM THE OFFICE HAS PREVI-
9 OUSLY RECEIVED A SUMMARY REPORT, THE OFFICE SHALL FURNISH A COPY OF ANY
10 SUMMARY REPORTS AND ANY WRITTEN RESPONSE FROM THE EMPLOYEE OR VOLUNTEER
11 REFERRED TO IN SUBDIVISION EIGHT OF THIS SECTION TO: (A) THE PROVIDER
12 THAT REQUESTED THE CRIMINAL HISTORY INFORMATION WITH RESPECT TO SUCH
13 PROSPECTIVE EMPLOYEE OR VOLUNTEER AND (B) ANY OTHER PROVIDER THAT PREVI-
14 OUSLY REQUESTED CRIMINAL HISTORY INFORMATION PERTAINING TO SUCH EMPLOYEE
15 OR VOLUNTEER EXCEPT IF SUCH PROVIDER HAS NOTIFIED THE OFFICE THAT SUCH
16 EMPLOYEE OR VOLUNTEER IS NO LONGER SUBJECT TO A CHECK PURSUANT TO THE
17 PROVISIONS OF SUBDIVISION EIGHT OF SECTION EIGHT HUNDRED FORTY-FIVE-B OF
18 THE EXECUTIVE LAW.

19 6. THE OFFICE SHALL PROVIDE THE SUMMARY REPORT TO THE AUTHORIZED
20 PERSON AS DEFINED IN PARAGRAPH (B) OF SUBDIVISION ONE OF SECTION EIGHT
21 HUNDRED FORTY-FIVE-B OF THE EXECUTIVE LAW.

22 7. THE SUMMARY REPORT PROVIDED BY THE OFFICE TO A PROVIDER SHALL BE
23 SUBJECT TO THE CONFIDENTIALITY PROVISIONS OF SUBDIVISION SEVEN OF
24 SECTION EIGHT HUNDRED FORTY-FIVE-B OF THE EXECUTIVE LAW.

25 8. THE OFFICE SHALL PROVIDE EACH EMPLOYEE OR VOLUNTEER ABOUT WHOM THE
26 OFFICE RECEIVES A SUMMARY REPORT HEREUNDER WITH WRITTEN NOTIFICATION
27 THAT SUCH EMPLOYEE OR VOLUNTEER HAS THE RIGHT TO OBTAIN AND REVIEW THE
28 SUMMARY REPORT AND SUBMIT A BRIEF WRITTEN STATEMENT IN RESPONSE TO THE
29 SUMMARY REPORT PURSUANT TO REGULATIONS AND PROCEDURES ESTABLISHED BY THE
30 OFFICE. IF THE OFFICE RECEIVES SUCH WRITTEN STATEMENT, THE OFFICE SHALL
31 TRANSMIT SUCH WRITTEN STATEMENT TO ANY PROVIDER TOGETHER WITH THE SUMMA-
32 RY REPORT PROVIDED PURSUANT TO THIS SECTION.

33 9. THE PROVISIONS OF SUBDIVISION NINE OF SECTION EIGHT HUNDRED FORTY-
34 FIVE-B OF THE EXECUTIVE LAW REGARDING LIMITATIONS OF CIVIL AND CRIMINAL
35 LIABILITY AND LIMITATIONS UPON ACTIONS FOR DAMAGES SHALL APPLY WITH
36 RESPECT TO THE SUMMARY REPORTS DISCLOSED BY THE OFFICE TO PROVIDERS TO
37 THE SAME EXTENT AND IN THE SAME MANNER THAT SUCH PROVISIONS APPLY TO
38 CRIMINAL HISTORY INFORMATION PROVIDED UNDER SECTION EIGHT HUNDRED
39 FORTY-FIVE-B OF THE EXECUTIVE LAW.

40 S 2. The mental hygiene law is amended by adding a new section 31.36
41 to read as follows:

42 S 31.36 MENTAL HEALTH REGISTRY.

43 1. EVERY PROVIDER OF SERVICES REQUIRED TO REQUEST CRIMINAL HISTORY
44 INFORMATION CONCERNING CERTAIN PROSPECTIVE EMPLOYEES AND VOLUNTEERS
45 PURSUANT TO THE PROVISIONS OF SECTION 31.35 OF THIS ARTICLE SHALL ALSO
46 BE REQUIRED TO SUBMIT TO THE OFFICE OF MENTAL HEALTH, HEREINAFTER
47 REFERRED TO AS THE OFFICE, A SUMMARY REPORT IN A FORM APPROVED BY THE
48 OFFICE OF THE TERMINATION FOR CAUSE OF ANY EMPLOYEE OR VOLUNTEER WHO WAS
49 SUBJECT TO A CRIMINAL HISTORY BACKGROUND CHECK UNDER SECTION 31.35 OF
50 THIS ARTICLE AND WHO IS TERMINATED AS A RESULT OF A FINDING THAT SUCH
51 EMPLOYEE OR VOLUNTEER ENGAGED IN BEHAVIOR THAT CONSTITUTED ABUSE OR
52 NEGLECT OF A CLIENT.

53 2. IF SUCH EMPLOYEE OR VOLUNTEER VOLUNTARILY RESIGNS DURING THE
54 PENDENCY OF AN INVESTIGATION OF AN INCIDENT INVOLVING NEGLECT OR ABUSE
55 OF A CLIENT AND IF SUCH INVESTIGATION DETERMINES THAT SUCH EMPLOYEE OR
56 VOLUNTEER ENGAGED IN BEHAVIOR THAT CONSTITUTED ABUSE OR NEGLECT OF A

1 CLIENT WHICH WOULD HAVE RESULTED IN TERMINATION, SUCH PROVIDER SHALL
2 FILE THE SUMMARY REPORT REQUIRED IN SUBDIVISION ONE OF THIS SECTION.

3 3. THE SUMMARY REPORT REQUIRED TO BE FILED UNDER SUBDIVISION ONE OF
4 THIS SECTION SHALL BE SUBMITTED TO THE OFFICE WITHIN THIRTY DAYS OF THE
5 TERMINATION OR, IF THE EMPLOYEE OR VOLUNTEER RESIGNS, THIRTY DAYS AFTER
6 THE COMPLETION OF THE INVESTIGATION. THE SUMMARY REPORT SHALL INCLUDE
7 THE NAME, HOME ADDRESS, SOCIAL SECURITY NUMBER OF THE EMPLOYEE OR VOLUN-
8 TEER AND A BRIEF DESCRIPTION OF THE CONDUCT INVOLVED IN THE INCIDENT IN
9 A FORM APPROVED BY THE OFFICE.

10 4. WHEN THE OFFICE RECEIVES A SUMMARY REPORT REGARDING AN EMPLOYEE OR
11 VOLUNTEER, THE OFFICE SHALL MAINTAIN SUCH REPORT TOGETHER WITH THE CRIM-
12 INAL HISTORY INFORMATION PREVIOUSLY OBTAINED REGARDING SUCH EMPLOYEE OR
13 VOLUNTEER.

14 5. IF THE OFFICE RECEIVES A REQUEST FOR CRIMINAL HISTORY INFORMATION
15 FOR A PROSPECTIVE EMPLOYEE OR VOLUNTEER FOR WHOM THE OFFICE HAS PREVI-
16 OUSLY RECEIVED A SUMMARY REPORT, THE OFFICE SHALL FURNISH A COPY OF ANY
17 SUMMARY REPORTS AND ANY WRITTEN RESPONSE FROM THE EMPLOYEE OR VOLUNTEER
18 REFERRED TO IN SUBDIVISION EIGHT OF THIS SECTION TO: (A) THE PROVIDER
19 THAT REQUESTED THE CRIMINAL HISTORY INFORMATION WITH RESPECT TO SUCH
20 PROSPECTIVE EMPLOYEE OR VOLUNTEER AND (B) ANY OTHER PROVIDER THAT PREVI-
21 OUSLY REQUESTED CRIMINAL HISTORY INFORMATION PERTAINING TO SUCH EMPLOYEE
22 OR VOLUNTEER EXCEPT IF SUCH PROVIDER HAS NOTIFIED THE OFFICE THAT SUCH
23 EMPLOYEE OR VOLUNTEER IS NO LONGER SUBJECT TO A CHECK PURSUANT TO THE
24 PROVISIONS OF SUBDIVISION EIGHT OF SECTION EIGHT HUNDRED FORTY-FIVE-B OF
25 THE EXECUTIVE LAW.

26 6. THE OFFICE SHALL PROVIDE THE SUMMARY REPORT TO THE AUTHORIZED
27 PERSON AS DEFINED IN PARAGRAPH (B) OF SUBDIVISION ONE OF SECTION EIGHT
28 HUNDRED FORTY-FIVE-B OF THE EXECUTIVE LAW.

29 7. THE SUMMARY REPORT PROVIDED BY THE OFFICE TO A PROVIDER SHALL BE
30 SUBJECT TO THE CONFIDENTIALITY PROVISIONS OF SUBDIVISION SEVEN OF
31 SECTION EIGHT HUNDRED FORTY-FIVE-B OF THE EXECUTIVE LAW.

32 8. THE OFFICE SHALL PROVIDE EACH EMPLOYEE OR VOLUNTEER ABOUT WHOM THE
33 OFFICE RECEIVES A SUMMARY REPORT HEREUNDER WITH WRITTEN NOTIFICATION
34 THAT SUCH EMPLOYEE OR VOLUNTEER HAS THE RIGHT TO OBTAIN AND REVIEW THE
35 SUMMARY REPORT AND SUBMIT A BRIEF WRITTEN STATEMENT IN RESPONSE TO THE
36 SUMMARY REPORT PURSUANT TO REGULATIONS AND PROCEDURES ESTABLISHED BY THE
37 OFFICE. IF THE OFFICE RECEIVES SUCH WRITTEN STATEMENT, THE OFFICE SHALL
38 TRANSMIT SUCH WRITTEN STATEMENT TO ANY PROVIDER TOGETHER WITH THE SUMMA-
39 RY REPORT PROVIDED PURSUANT TO THIS SECTION.

40 9. THE PROVISIONS OF SUBDIVISION NINE OF SECTION EIGHT HUNDRED FORTY-
41 FIVE-B OF THE EXECUTIVE LAW REGARDING LIMITATIONS OF CIVIL AND CRIMINAL
42 LIABILITY AND LIMITATIONS UPON ACTIONS FOR DAMAGES SHALL APPLY WITH
43 RESPECT TO THE SUMMARY REPORTS DISCLOSED BY THE OFFICE TO PROVIDERS TO
44 THE SAME EXTENT AND IN THE SAME MANNER THAT SUCH PROVISIONS APPLY TO
45 CRIMINAL HISTORY INFORMATION PROVIDED UNDER SECTION EIGHT HUNDRED
46 FORTY-FIVE-B OF THE EXECUTIVE LAW.

47 S 3. This act shall take effect on the first of January next succeed-
48 ing the date on which it shall have become a law; provided, however,
49 that effective immediately the commissioner of developmental disabili-
50 ties and the commissioner of mental health may adopt, amend, suspend or
51 repeal rules or regulations and take other actions prior to and in prep-
52 aration for the timely implementation of this act on its effective date.