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

4672

2013-2014 Regular Sessions

I N A S S E M B L Y

February 7, 2013

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:

Section 1. The social services law is amended by adding a new section 390-aa to read as follows:

S 390-AA. REQUIRED DISCLOSURE FOR LEGALLY-EXEMPT CHILD CARE PROVIDERS. ANY GROUP CHILD CARE PROVIDER THAT IS NOT LICENSED OR REGISTERED BY THE NEW YORK STATE OFFICE OF CHILDREN AND FAMILY SERVICES SHALL BE REQUIRED TO DISCLOSE SUCH INFORMATION IN WRITING TO THE PARENT OR GUARDIAN OF A CHILD PRIOR TO SUCH CHILD'S ENROLLMENT AT THE FACILITY OR FOR CURRENTLY ENROLLED CHILDREN WITHIN THIRTY DAYS. THE PROVISIONS OF THIS SECTION SHALL NOT APPLY TO CHILD CARE SERVICES PROVIDED IN THE CHILD'S HOME BY AN INDIVIDUAL OF THE PARENT'S OR LEGAL GUARDIAN'S CHOOSING.

S 2. Paragraphs (a) and (b) of subdivision 1 of section 390-b of the social services law, as added by chapter 416 of the laws of 2000, are amended to read as follows:

(a) Notwithstanding any other provision of law to the contrary, and subject to rules and regulations of the division of criminal justice services, the office of children and family services shall perform a criminal history record check with the division of criminal justice services regarding any operator, employee or volunteer of a child day care center or school age child care provider, as defined in paragraphs (c) and (f) of subdivision one of section three hundred ninety of this title. FOR THE PURPOSES OF THIS SECTION, CRIMINAL HISTORY RECORDS CHECK SHALL MEAN A NATIONAL CRIMINAL BACKGROUND CHECK INCLUDING ALL COUNTIES WITHIN NEW YORK STATE AND ALL STATES THROUGHOUT THE UNITED STATES. FURTHER, ALL SEARCHES OF THE SEX OFFENDER REGISTRY SHALL INCLUDE MULTI-

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

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PLE VARIATIONS AND SPELLINGS OF NAMES. INDIVIDUALS WHO ARE THE SUBJECT OF SUCH RECORDS CHECK SHALL FURTHER BE REQUIRED TO FILE A CRIMINAL CHARGES AND FAMILY COURT ACTIONS DISCLOSURE FORM AS PART OF THEIR APPLICATION. SUCH DISCLOSURE FORM SHALL REQUIRE APPLICANTS TO REVEAL IF THEY HAVE EVER BEEN A PARTY TO AN ARTICLE SIX OR ARTICLE TEN PROCEEDING UNDER THE NEW YORK STATE FAMILY COURT ACT OR EQUIVALENT PROCEEDINGS IN ANY OTHER STATE, IF THEY WERE EVER CHARGED WITH, BUT NOT CONVICTED OF A FELONY, A SEX OFFENSE, CRIME AGAINST A CHILD, OR A CRIME INVOLVING VIOLENCE, OR A FELONY FOR A DRUG-RELATED OFFENSE. Child day care center operators, school age child care operators and any employees or volunteers, who previously did not have a criminal history record check performed in accordance with this subdivision shall have such a criminal history record check performed when the child day care center or school age child care provider applies for license or registration renewal. Child day care centers which are not subject to the provisions of section three hundred ninety of this title, shall not be subject to the provisions of this section BUT SHALL BE REQUIRED TO DISCLOSE IN WRITING SUCH FACT TO THE PARENT OR GUARDIAN OF A CHILD PRIOR TO SUCH CHILD'S ENROLLMENT AT THE FACILITY OR FOR CURRENTLY ENROLLED CHILDREN WITHIN SIXTY DAYS PURSUANT TO SECTION THREE HUNDRED NINETY-AA OF THIS CHAPTER. The provisions of this section shall apply to a volunteer only where the volunteer has the potential for regular and substantial contact with children enrolled in the program.

(b) Notwithstanding any other provision of law to the contrary, and subject to rules and regulations of the division of criminal justice services, the office of children and family services shall perform a criminal history record check AS DEFINED IN PARAGRAPH (A) OF THIS SUBDIVISION with the division of criminal justice services regarding the operator, any assistants, employees or volunteers of a group family day care home or family day care home, as defined in paragraphs (d) and (e) of subdivision one of section three hundred ninety of this title, and any person age eighteen or over residing on the premises of the group family day care home or family day care home which is to be licensed or registered in accordance with section three hundred ninety of this title. Group family day care home operators, family day care home operators, any assistants, employees or volunteers, and persons who are age eighteen or over residing on the premises of a licensed group family day care home or registered family day care home who previously did not have a criminal history record check performed in accordance with this subdivision shall have such a criminal history record check performed when the group family day care home or family day care home applies for renewal of the home's license or registration. The provisions of this section shall apply to a volunteer only where the volunteer has the potential for regular and substantial contact with children enrolled in the program.

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

(i) Where the criminal history record of an applicant to be an operator of a child day care center, school age child care program, group family day care home, family day care home, or any person over the age of eighteen residing in such a home, reveals a felony conviction at any time for a sex offense, crime against a child, or a crime involving violence, THAT SUCH APPLICANT HAD THEIR PARENTAL RIGHTS TERMINATED UNDER ARTICLE SIX OF THE FAMILY COURT ACT, OR WERE THE RESPONDENT IN A PROCEEDING UNDER ARTICLE TEN OF THE FAMILY COURT ACT, or HAVE a felony

conviction within the past five years for a drug-related offense, the office of children and family services shall deny the application [unless the office determines, in its discretion, that approval of the application will not in any way jeopardize the health, safety or welfare of the children in the center, program or home]; or

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

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

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

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