

STATE OF NEW YORK

3878

2017-2018 Regular Sessions

IN ASSEMBLY

January 30, 2017

Introduced by M. of A. LENTOL -- read once and referred to the Committee on Codes

AN ACT to amend the general business law, the mental hygiene law, the public health law, the social services law and the executive law, in relation to the review of criminal history information by authorized employers; and creates the commission on criminal history information

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

1 Section 1. Section 171 of the general business law is amended by
2 adding two new subdivisions 12 and 13 to read as follows:

3 12. "In-home child care provider" shall mean any person who cares for
4 one or more children in the home of one of such children regardless of
5 the number of hours per week that such child care is provided. A person
6 shall be considered an "in-home child care provider" whether or not such
7 person lives in or outside the home of the child/children for whom
8 he/she is providing care.

9 13. "In-home child care placement agency" shall mean any employment
10 agency which, for a fee, procures or attempts to procure employment for
11 in-home child care providers whether or not the agency procures or
12 attempts to procure other types of employment or engagements.

13 § 2. The general business law is amended by adding a new section 184-b
14 to read as follows:

15 § 184-b. Review of criminal history information concerning certain
16 persons available for placement as in-home child care providers. 1. An
17 in-home child placement agency may request and is authorized to receive
18 from the division of criminal justice services criminal history informa-
19 tion, as such phrase is defined in paragraph a of subdivision one of
20 section eight hundred forty-five-c of the executive law, concerning
21 persons seeking employment as an in-home child care provider pursuant to
22 such agency.

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

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1 2. Access to and the use of such information shall be governed by
2 section eight hundred forty-five-c of the executive law.

3 § 3. The mental hygiene law is amended by adding a new section 16.39
4 to read as follows:

5 § 16.39 Review of criminal history information concerning prospective
6 employees.

7 (a) Every provider of services issued an operating certificate pursu-
8 ant to this article, except a "department facility" as that term is
9 defined in subdivision seven of section 1.03 of this chapter, shall
10 request and is authorized to receive from the division of criminal
11 justice services criminal history information, as such phrase is defined
12 in paragraph a of subdivision one of section eight hundred forty-five-c
13 of the executive law, concerning each prospective employee of such enti-
14 ty who has or will have direct contact or the potential for direct
15 contact with any patient or client of such entity.

16 (b) Access to and the use of such information shall be governed by
17 section eight hundred forty-five-c of the executive law.

18 § 4. The mental hygiene law is amended by adding a new section 31.39
19 to read as follows:

20 § 31.39 Review of criminal history information concerning prospective
21 employees.

22 (a) Every provider of services issued an operating certificate pursu-
23 ant to this article, except a "department facility" as that term is
24 defined in subdivision seven of section 1.03 of this chapter, shall
25 request and is authorized to receive from the division of criminal
26 justice services criminal history information, as such phrase is defined
27 in paragraph a of subdivision one of section eight hundred forty-five-c
28 of the executive law, concerning each prospective employee of such enti-
29 ty who has or will have direct contact or the potential for direct
30 contact with any patient or client of such entity.

31 (b) Access to and the use of such information shall be governed by
32 section eight hundred forty-five-c of the executive law.

33 § 5. Article 28-D of the public health law is amended by adding a new
34 title 2-A to read as follows:

35 TITLE II-A

36 REVIEW OF CRIMINAL HISTORY INFORMATION

37 CONCERNING CERTAIN

38 PROSPECTIVE EMPLOYEES OF

39 NURSING HOMES AND HOME

40 CARE SERVICES AGENCIES

41 Section 2896-p. Review of criminal history information concerning
42 certain prospective employees of nursing homes and home
43 care services agencies.

44 § 2896-p. Review of criminal history information concerning certain
45 prospective employees of nursing homes and home care services agencies.

46 1. Every certified home health agency, licensed home care services agen-
47 cy or long term home health care program certified under article thir-
48 ty-six of this chapter, residential health care facility licensed under
49 this article, home care services agency exempt from certification or
50 licensure under article thirty-six of this chapter, and hospice as
51 defined in section four thousand two of this chapter shall request and
52 is authorized to receive from the division of criminal justice services
53 criminal history information, as such phrase is defined in paragraph a
54 of subdivision one of section eight hundred forty-five-c of the execu-
55 tive law, concerning each prospective employee of such entity who has or

1 will have direct contact or the potential for direct contact with any
2 patient or client of such entity.

3 2. Access to and the use of such information shall be governed by
4 section eight hundred forty-five-c of the executive law.

5 § 6. The social services law is amended by adding a new section 390-k
6 to read as follows:

7 § 390-k. Review of criminal history information regarding child care
8 providers. 1. Every child day care provider required to be licensed or
9 registered with the department pursuant to section three hundred ninety
10 of this title shall request and is authorized to receive from the divi-
11 sion of criminal justice services criminal history information, as such
12 phrase is defined in paragraph a of subdivision one of section eight
13 hundred forty-five-c of the executive law, concerning each prospective
14 employee of such entity who has or will have direct contact or the
15 potential for direct contact with any child under the care of such
16 provider.

17 2. A program, school or facility described in subparagraph (ii) of
18 paragraph (a) of subdivision one of section three hundred ninety of this
19 title may request and is authorized to receive from the division of
20 criminal justice services criminal history information, as such phrase
21 is defined in paragraph a of subdivision one of section eight hundred
22 forty-five-c of the executive law, concerning each prospective employee
23 of such entity who has or will have direct contact or the potential for
24 direct contact with any child under the care of such provider.

25 3. Access to and the use of criminal history information pursuant to
26 subdivisions one and two of this section shall be governed by section
27 eight hundred forty-five-c of the executive law.

28 § 7. Subdivision 9 of section 835 of the executive law, as separately
29 amended by chapters 14 and 155 of the laws of 2012, is amended to read
30 as follows:

31 9. "Qualified agencies" means courts in the unified court system, the
32 administrative board of the judicial conference, probation departments,
33 sheriffs' offices, district attorneys' offices, the state department of
34 corrections and community supervision, the department of correction of
35 any municipality, the financial frauds and consumer protection unit of
36 the state department of financial services, the office of professional
37 medical conduct of the state department of health for the purposes of
38 section two hundred thirty of the public health law, the child protec-
39 tive services unit of a local social services district when conducting
40 an investigation pursuant to subdivision six of section four hundred
41 twenty-four of the social services law, the office of Medicaid inspector
42 general, the temporary state commission of investigation, the commission
43 on criminal history information, police forces and departments having
44 responsibility for enforcement of the general criminal laws of the
45 state, the Onondaga County Center for Forensic Sciences Laboratory when
46 acting within the scope of its law enforcement duties and the division
47 of forensic services of the Nassau county medical examiner's office when
48 acting within the scope of its law enforcement duties.

49 § 8. The executive law is amended by adding three new sections 845-c,
50 845-d and 845-e to read as follows:

51 § 845-c. Requests for criminal history information by authorized
52 employers. 1. As used in this section:

53 a. "Criminal history information" shall mean a record of pending
54 criminal charges, criminal convictions which are not vacated or
55 reversed, and certificates filed pursuant to subdivision two of section
56 seven hundred five of the correction law, and which the division of

1 criminal justice services is authorized to maintain pursuant to subdivi-
2 sion six of section eight hundred thirty-seven of this article.

3 b. "Employer" shall mean a person or entity authorized to request
4 criminal history information pursuant to subdivision two of this
5 section.

6 c. "Prospective employee" shall mean a person who files an application
7 for employment and the employer has a reasonable expectation to hire
8 such person, and for whom the employer is authorized to request criminal
9 history information pursuant to subdivision two of this section.

10 d. "Authorized person" shall mean one individual designated by an
11 employer who is authorized to request, receive and review criminal
12 history information pursuant to this section, except that where the
13 number of applications received by an employer is so great that one
14 person cannot reasonably perform the functions of the authorized person,
15 an employer may designate one or more additional persons to serve as an
16 authorized person pursuant to this section.

17 2. Where an employer is authorized or required to request and review
18 criminal history information pursuant to section one hundred eighty-
19 four-b of the general business law, section 16.39 or 31.39 of the mental
20 hygiene law, section twenty-eight hundred ninety-six-p of the public
21 health law or section three hundred ninety-k of the social services law,
22 such employer shall proceed pursuant to the provisions of this section
23 and in a manner consistent with the provisions of article twenty-three-A
24 of the correction law, subdivisions fifteen and sixteen of section two
25 hundred ninety-six of this chapter and all other applicable laws.

26 3. a. An employer authorized to request and receive criminal history
27 information pursuant to subdivision two of this section shall designate
28 one authorized person who shall request, receive and review criminal
29 history information on behalf of such employer pursuant to this section.
30 Only such authorized person and the prospective employee to whom such
31 criminal history information relates shall have access to such informa-
32 tion; provided, however, that criminal history information received by
33 an employer may be disclosed to other persons who are directly partic-
34 ipating in the decision to employ such prospective employee and provided
35 further that such other persons shall also be subject to the confiden-
36 tiality requirements and all other provisions of this section. Each
37 employer shall specifically identify to the division, in writing, in
38 advance of disclosure, the authorized person and each other such agent
39 or employee of the employer who is permitted to have access to criminal
40 history information pursuant to this section.

41 b. An employer requesting criminal history information pursuant to
42 this section shall do so by completing a form developed for such purpose
43 by the division. Such form shall include a sworn statement of the
44 authorized person certifying that: (i) the person whose criminal history
45 information is requested has applied to be an employee for whom criminal
46 history information is available by law; (ii) the specific type of
47 prospective employment and, where applicable, prospective employment
48 duties which qualify the employer to review criminal history informa-
49 tion; (iii) such criminal history information will be used by the
50 employer solely for purposes authorized by law; and (iv) the employer
51 and its agents and employees are aware of and will abide by the confi-
52 dentiality requirements and all other provisions of this article.

53 c. An employer authorized to request criminal history information
54 pursuant to this section may inquire of the prospective employee in the
55 manner authorized by subdivision sixteen of section two hundred ninety-

1 six of this chapter. Prior to requesting such information, an employer
2 shall:

3 (i) inform the prospective employee in writing that the employer is
4 authorized or, where applicable, required to request his or her criminal
5 history information from the division and review such information pursu-
6 ant to this section;

7 (ii) inform the prospective employee that he or she has the right to
8 obtain, review and seek correction of his or her criminal history infor-
9 mation pursuant to regulations and procedures established by the divi-
10 sion;

11 (iii) obtain the signed, informed consent of the prospective employee
12 on a form supplied by the division of which indicates that such person
13 has:

14 (a) been informed of the right and procedures necessary to obtain,
15 review and seek correction of his or her criminal history information;

16 (b) been informed of the reason for the request for his or her crimi-
17 nal history information;

18 (c) consented to such request for a report; and

19 (d) supplied on the form a current mailing or home address for the
20 prospective employee.

21 Upon receiving such written consent, the employer shall receive or
22 obtain the fingerprints of such prospective employee pursuant to regu-
23 lations established by the division.

24 d. A prospective employee may withdraw his or her application for
25 employment pursuant to this section, without prejudice, at any time
26 before employment is offered or declined, regardless of whether the
27 prospective employee or employer has reviewed such prospective employ-
28 ee's criminal history information.

29 e. The division shall provide requested criminal history information
30 within fifteen business days after the receipt of a request pursuant to
31 this section if such request is:

32 (i) made by an authorized person on behalf of an employer authorized
33 to receive criminal history information pursuant to subdivision two of
34 this section;

35 (ii) accompanied by the completed forms described in this subdivision;

36 (iii) accompanied by fingerprints of the prospective employee
37 obtained pursuant to this subdivision.

38 f. Criminal history information provided by the division pursuant to
39 this section shall be furnished only by mail or other method of secure
40 and confidential delivery, addressed to the authorized person. Such
41 information and the envelope in which it is enclosed shall be prominent-
42 ly marked "confidential", and shall at all times be maintained by the
43 employer in a secure place.

44 g. Any negligent disclosure of a confidential report, received by an
45 employer pursuant to this section, to a person not authorized to review
46 it shall entitle the subject of such report to an award of compensatory
47 damages from the employer, together with the costs of the action. Any
48 reckless disclosure of a confidential report, received by an employer
49 pursuant to this section, to a person not authorized to review it shall
50 entitle the subject of such report to three times the award of compensa-
51 tory damages from the employer, together with the costs of the action.
52 Any intentional disclosure of a confidential report, received by an
53 employer pursuant to this section, to a person not authorized to review
54 it shall entitle the subject of such report to three times the award of
55 compensatory damages from the employer, together with the costs of the
56 action, and such plaintiff may recover punitive damages as well.

1 h. Fingerprints received by the division pursuant to this section
2 shall be used only to assist the division in providing criminal history
3 information to authorized employers pursuant to this section. Such
4 fingerprints shall be returned to the person who is the subject of such
5 fingerprints within ninety days after the division supplies the
6 requested criminal history information or receives notice that the
7 person has withdrawn the application for employment, or at such other
8 time as authorized pursuant to paragraph a of subdivision two of section
9 eight hundred forty-five-e of this article.

10 4. Notwithstanding the provisions of subdivision eight-a of section
11 eight hundred thirty-seven of this article or any other law, no fee
12 shall be charged for any criminal history report provided pursuant to
13 this section or subdivision twenty of section twenty-five hundred nine-
14 ty-h of the education law.

15 5. The commissioner shall, subject to the approval of the commission
16 on criminal history information, promulgate all rules and regulations
17 necessary to implement the provisions of this section, which shall
18 include convenient procedures for persons to promptly verify the accura-
19 cy of their criminal history information and, to the extent authorized
20 by law, to have access to relevant documents related thereto. In addi-
21 tion, any such rule or regulation promulgated by the commissioner prior
22 to the effective date of section eight hundred forty-five-e of this
23 article shall be ineffective and deemed repealed if disapproved by the
24 commission, when formed, by majority vote.

25 6. Nothing herein shall be construed or interpreted to alter the
26 provisions of article twenty-three-A of the correction law or section
27 two hundred ninety-eight of this chapter, nor in any way diminish the
28 integrity of collective bargaining agreements negotiated between an
29 employer and any certified or authorized collective bargaining agent for
30 an employee or prospective employee, nor to diminish rights which accrue
31 to such employees or prospective employees pursuant to such agreements.

32 § 845-d. Commission on criminal history information. There is hereby
33 created in the executive department the commission on criminal history
34 information, which shall consist of the following twelve members who
35 shall be appointed no less than ninety days after the effective date of
36 this section:

37 1. Three members shall be appointed by the governor:

38 a. one such member shall be the commissioner;

39 b. one such member shall be appointed on the recommendation of a
40 statewide organization of employers, whose membership includes employ-
41 ers, as such term is defined in paragraph b of subdivision one of
42 section eight hundred forty-five-c of this article;

43 c. one such member shall be a representative of labor, who shall be
44 appointed on the recommendation of the New York State Federation of the
45 AFL-CIO;

46 2. Three members shall be appointed by the chief judge of the court of
47 appeals:

48 a. one such member shall be a judge or former judge who has substan-
49 tial experience in presiding over courts of criminal jurisdiction;

50 b. one such member shall be an academic expert with significant expe-
51 rience in computer hardware and software applications and computerized
52 access to database information;

53 c. one such member shall be an expert in privacy issues;

54 3. Two members shall be appointed by the temporary president of the
55 senate;

56 4. Two members shall be appointed by the speaker of the assembly;

1 5. One member shall be appointed by the minority leader of the senate;
2 and

3 6. One member shall be appointed by the minority leader of the assem-
4 bly.

5 § 845-e. Powers and duties of the commission on criminal history
6 information. 1. After review and study and inviting and receiving any
7 public comment, the commission on criminal history information, herein-
8 after referred to as the commission, shall promulgate standards and
9 regulations governing the procedures of the division pursuant to section
10 eight hundred forty-five-c of this article, including the provision of
11 criminal history information to authorized employers and employees
12 pursuant to such section. The standards and regulations promulgated by
13 the commission shall include procedures designed to assure that:

14 a. criminal history information provided to authorized employers and
15 prospective employers includes only such information as may be disclosed
16 by law and is accurate, up to date and provided in a timely manner;

17 b. up-to-date status information is maintained so that cases which
18 have been disposed of are accurately reported;

19 c. to the maximum extent possible, all provisions of law concerning
20 the confidentiality of fingerprints and criminal history information are
21 observed by the division, by employers and prospective employers author-
22 ized by law to review such information, and by their agents and assigns;

23 d. frequent audits and reviews of the criminal history database, main-
24 tained pursuant to subdivision six of section eight hundred thirty-seven
25 of this article, are conducted by a qualified, independent, non-govern-
26 mental entity, the results of which shall be made available to the
27 public, and which shall assess and monitor the accuracy, completeness
28 and timeliness of database information, including the division's compli-
29 ance with all applicable laws with respect to the maintenance of such
30 records.

31 2. For each category of employers authorized to have access to crimi-
32 nal history information pursuant to section eight hundred forty-five-c
33 of this article, the commission shall, after review and study and invit-
34 ing and receiving any public comment, promulgate standards and proce-
35 dures for the following matters:

36 a. whether, instead of returning fingerprints upon completion of the
37 initial search, the division shall subject all or selected categories of
38 the fingerprints obtained by the division pursuant to such section to
39 the division's full search and retain procedures; and

40 b. whether such employer, or any one or more subcategory of such
41 person or entity's prospective employees, shall, in addition to such
42 authorized or required state criminal history checks, be authorized or
43 required to submit or cause the submission of fingerprints to the feder-
44 al bureau of investigation for a nationwide criminal history search
45 concerning such person pursuant to applicable federal laws.

46 3. No member of the commission shall be disqualified from holding any
47 public office or employment, nor shall he or she forfeit any such office
48 or employment by virtue of his or her appointment hereunder. Members of
49 the commission shall receive no compensation for their services but
50 shall be allowed their actual and necessary expenses incurred in the
51 performance of their functions hereunder. A member of the commission may
52 be removed by the appointing authority only for good cause, after notice
53 and an opportunity to be heard. Vacancies shall be filled in the same
54 manner as original appointments.

55 4. The commission shall be authorized to:

1 a. call upon any court, agency, department, office, division or public
2 authority of this state to supply it with such information and assist-
3 ance as the commission deems necessary to discharge its responsibil-
4 ities. Each court, agency, department, office, division and public
5 authority of this state shall cooperate with the commission and furnish
6 such information and assistance as it requests to accomplish its
7 purposes;

8 b. conduct public hearings, hear the testimony of witnesses and
9 require the production of any documents the commission deems reasonably
10 necessary to carry out its responsibilities;

11 c. appoint an executive director, a counsel or counsels and such other
12 staff as the commission determines necessary to carry out its responsi-
13 bilities;

14 d. contract with any state or private entity for the provision of such
15 services as the commission determines to be necessary; and

16 e. take such other actions not inconsistent with the purposes of this
17 section as shall enable the commission to carry out its functions.

18 5. Matters before the commission shall be decided by majority vote,
19 except that no action or decision may be approved by the commission
20 pursuant to paragraph a or b of subdivision two of this section unless
21 such action or decision is approved by the affirmative votes of two-
22 thirds or more of the members of such commission. A chairperson of the
23 commission shall be selected from among the members of the commission,
24 by majority vote.

25 6. The commission shall issue an interim report to the governor, chief
26 judge of the court of appeals, the temporary president of the senate,
27 the speaker of the assembly and the minority leaders of the senate and
28 assembly on or before September first, two thousand eighteen and annual
29 reports on each September first thereafter in accordance with the
30 provisions of this section. Such report shall also be made available to
31 the public.

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

34 8-a. Charge a fee when, pursuant to statute or the regulations of the
35 division, it conducts a search of its criminal history records and
36 returns a report thereon in connection with an application for employ-
37 ment or for a license or permit, except as provided in subdivision four
38 of section eight hundred forty-five-c of this article. The division
39 shall adopt and may, from time to time, amend a schedule of such fees
40 which shall be in amounts determined by the division to be reasonably
41 related to the cost of conducting such searches and returning reports
42 thereon but, in no event, shall any such fee exceed twenty-five dollars
43 and an additional surcharge of fifty dollars. The comptroller is hereby
44 authorized to deposit such fees into the general fund, provided, howev-
45 er, that the monies received by the division of criminal justice
46 services for payment of the additional surcharge shall be deposited in
47 equal amounts to the general fund and to the fingerprint identification
48 and technology account. Notwithstanding the foregoing, the division
49 shall not request or accept any fee for searching its records and
50 supplying a criminal history report pursuant to section two hundred
51 fifty-one-b of the general business law relating to participating in
52 flight instruction at any aeronautical facility, flight school or insti-
53 tution of higher learning.

54 § 10. This act shall take effect immediately provided that sections
55 one through six of this act and section 845-e of the executive law as
56 added by section eight of this act shall take effect on the ninetieth

1 day after this act shall have become a law. Effective immediately, any
2 rules and regulations of the division of criminal justice services
3 necessary to implement the provisions of this act may be promulgated
4 prior to such effective date.