STATE OF NEW YORK

1446

2021-2022 Regular Sessions

IN ASSEMBLY

January 11, 2021

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

AN ACT to amend the social services law and the executive law, in relation to day care for children

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 378-b to read as follows:

§ 378-b. Certificates and licenses; record access; prohibitions. 1. Notwithstanding the provisions of any law, rule or regulation to the contrary, no license, permit, certificate or registration shall be issued by the department or any authorized agency to an applicant to operate a child day care center, head start day care center program funded pursuant to title V of the federal economic opportunity act of 1964, school age child care program, group family day care home, family day care home, nor where granted, shall any such license, permit, certificate or registration be renewed for any such entity, if the applicant and/or operator thereof shall have been convicted of a violent felony offense as defined in section 70.02 of the penal law, or shall have been convicted of a misdemeanor or felony as defined in articles one hundred twenty, one hundred twenty-five, one hundred thirty, one hundred thirty-five, two hundred five, two hundred twenty, two hundred twenty-one, two hundred thirty, two hundred thirty-five, two hundred forty-five, two hundred fifty-five, two hundred sixty, two hundred sixty-three and two hundred sixty-five of the penal law.

2. No such entity shall employ any assistant or employee, nor shall it accept any person for volunteer activity in any such entity, if such assistant, employee or volunteer has been convicted of any offense as enumerated in subdivision one of this section. Every such entity, as enumerated in subdivision one of this section, may obtain, with the consent of the volunteer or prospective volunteer or employee or

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

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prospective employee of such entity, the conviction records maintained by the division of criminal justice services pertaining to such volunteer or prospective volunteer or employee or prospective employee; provided, however, that conviction records shall be requested only for volunteers or prospective volunteers, employees or prospective employees who have direct contact, as determined by such entity, with children served by such entity. The fee for such record shall be paid by such entity.

3. The conviction record shall be marked "confidential" upon receipt by the person who has requested such records. Only such person shall have access to such conviction record, and such conviction record shall at all times be maintained in a secure place in order to insure such confidentiality. A person who wilfully violates the confidentiality required by this subdivision shall be guilty of a class E felony.

4. Prior to requesting a conviction record of a volunteer or prospective volunteer or employee or prospective employee from the division of criminal justice services, a representative of such entity shall inform any such person who works directly with children in any activities authorized by such entity that a request for a conviction record and review thereof is required in order for such person to continue in the same capacity or for such prospective volunteer or employee to be accepted by such entity. Such person shall sign a form provided by the division of criminal justice services stating that such person has been informed of the reason for a request for his or her conviction record and consents to such request. Such form shall accompany each request for a conviction record made by the person of such entity requesting the record.

5. After being informed of the requirement for such entity to obtain his or her conviction record and before such person gives consent to the provision of such record to such entity, a person may have access to his or her conviction record as maintained by the division of criminal justice services pursuant to the procedures of such division. Such person shall be provided with all necessary information regarding access to such records by a representative of such entity. Such person shall also be provided by such division with information regarding procedures for such person to verify the accuracy of such records. Such person shall notify such entity if he or she wishes to have access to his or her conviction record prior to giving consent to such entity's request for such record.

6. A prospective volunteer or employee may withdraw from the application process, whether or not he or she has had access to his or her conviction record and whether or not such record has been received by such entity, without prejudice. If the conviction record of such person has been received by such entity, the person designated by such entity to have access to conviction records shall destroy such record if the prospective volunteer or employee is not hired and/or accepted by such entity or withdraws from the application process.

7. The conviction record of such a person shall be destroyed by the person designated by such entity to have access to conviction records when such volunteer or employee no longer has direct contact with children served by such entity.

8. The provisions of this section shall not, however, be applicable to any person who has a minor child under the care and supervision of such entity where he or she volunteers or is employed or seeks employment.

9. The division of criminal justice services shall respond to any request for a conviction record which is accompanied by a form signed by

the subject of such request consenting to the provision of such record made pursuant to this section within fourteen days after such inquiry is received. The commissioner of such division shall promulgate rules and regulations providing for a hearing for a prospective volunteer or volunteer or employee or prospective employee before representatives of such division and the department for purposes of verifying the accuracy of his or her conviction record and for access by such persons to pertinent documents related thereto.

10. For purposes of this section, "conviction record" shall mean any record maintained by the division of criminal justice services of convictions of a crime in violation of the penal law or any other law of another jurisdiction which, if committed in this state, would constitute a crime.

§ 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 returns a report thereon in connection with an application for employment or for a license or permit or returns a conviction report thereon as required by section three hundred seventy-eight-b of the social services law. The division shall adopt and may, from time to time, amend a schedule of such fees which shall be in amounts determined by the division to be reasonably related to the cost of conducting such searches and returning reports thereon but, in no event, shall any such fee exceed twenty-five dollars and an additional surcharge of fifty dollars. The comptroller is hereby authorized to deposit such fees into the general fund, provided, however, that the monies received by the division of criminal justice services for payment of the additional surcharge shall be deposited in equal amounts to the general fund and to the fingerprint identification and technology account. Notwithstanding the foregoing, the division shall not request or accept any fee for searching its records and supplying a criminal history report pursuant to section two hundred fifty-one-b of the general business law relating to participating in flight instruction at any aeronautical facility, flight school or institution of higher learning.

§ 3. This act shall take effect on the one hundred twentieth day after it shall have become a law. Effective immediately, the commissioner of the division of criminal justice services shall promulgate rules and regulations prior to such effective date necessary to implement the provisions of this act.