

HOUSE No. 4310

The Commonwealth of Massachusetts



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March 14, 2018

To the Honorable House of Representatives,

I am pleased to submit for your consideration “An Act to Enhance the Background Record Check Procedures of the Department of Early Education and Care.”

This legislation is necessary to meet new federal regulations governing the Commonwealth’s receipt of Child Care Development Block Grant (“CCDBG”) funding. The Department of Early Education and Care (“EEC”) receives approximately \$277 million annually in CCDBG funding for subsidized high-quality child care for low-income and at-risk families and related services. That amount constitutes more than one-half of EEC’s annual operating budget. To remain eligible for that funding, Massachusetts must update its background record check process relied upon by child care providers by September 30, 2018. A new IT system for EEC is near completion, streamlining business processes and increasing capacity to meet these additional requirements.

Under the existing framework, license-exempt programs and summer camps supported by CCDBG funding are not subject to EEC’s background record checks, and only individuals who have unsupervised contact with children in EEC-licensed programs must complete a background record check. This bill, to comply with the federal mandate, will expand the background record check processes to all licensed child care programs and programs that receive CCDBG funds, and to all individuals working and present in these programs regardless of whether they have unsupervised access to children.

According to current law, individuals who pass record checks of Massachusetts state criminal offender record information, Massachusetts state sex offender record information, and the Department of Children and Families Registry of Alleged Perpetrators can have unsupervised contact with children in a licensed EEC program while fingerprint-based checks of national and state criminal history databases are pending. This legislation permits supervised provisional employment only upon the completion of fingerprint-based checks, as required by CCDBG, and sex offender checks. EEC currently receives only Level 2 and Level 3 sex offender record information. Consistent with CCDBG authorization, this proposal grants EEC access also to Level 1 sex offender record information, providing an additional resource to protect children in child care programs.

To ensure consistent practices relating to the safety of the Commonwealth’s children, this legislation allows for the extension of these federal safeguards beyond child care programs to EEC-licensed residential programs and adoption and foster placement agencies by September 30, 2020. It further permits EEC to delegate its responsibilities for processing certain background record checks directly to the adoption and foster placement agencies. EEC presently receives relevant information from the Department of Criminal Justice Information

Services and, as permitted by statute, passes along that information to the placement agencies without additional review. This bill would eliminate that unnecessary intermediate step.

This legislation satisfies new federal mandates tied to critical funding and provides additional measures for protecting the Commonwealth’s children in our state licensed and funded child care programs. I urge your prompt enactment.

Sincerely,

Charles D. Baker,
Governor

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In the One Hundred and Ninetieth General Court
(2017-2018)

An Act to enhance the Department of Early Education and Care’s background record check procedures.

Whereas, The deferred operation of this act would tend to defeat its purpose, which is to protect forthwith children, therefore it is hereby declared to be an emergency law, necessary for the immediate preservation of the public safety.

Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:

SECTION 1. Subsection (a)(13) of section 172 of chapter 6 of the General Laws, as appearing in the 2016 Official Edition, is hereby amended by inserting after the word “care”, in line 102, the following words:- and adoption and foster placement agencies that it licenses.

SECTION 2. Section 172F of said chapter 6, as so appearing, is hereby amended by striking out, in line 5, the words “non-relative, in-home”.

SECTION 3. Said section 172F of said chapter 6, as so appearing, is hereby further amended by inserting after the word “provider”, in line 6, the following words:- or program exempt from licensure under said chapter 15D.

SECTION 4. Said section 172F of said chapter 6, as so appearing, is hereby further amended by inserting after the first sentence the following sentence:- The same information shall be available, upon request, to adoption and foster placement agencies licensed by the department of early education and care for purposes of evaluating prospective or current adoptive or foster parents and their household members aged 15 and older.

SECTION 5. Said section 172F of said chapter 6, as so appearing, is hereby further amended by inserting after the word “care”, in line 9, the following words:- and adoption and foster placement agencies that it licenses in receipt of such data.

SECTION 6. Subsection (2)(a) of section 178K of said chapter 6, as so appearing, is hereby amended by inserting after the word “probation,” in line 119, the following words:- ,the department of early education and care.

SECTION 7. Subsection (a)(i) of section 7 of chapter 15D, as so appearing, is hereby amended by inserting after the word “information,” in line 13, the following words:- , including all registration forms and documents maintained by the sex offender registry board deemed necessary by the department to investigate background record checks or licensing violations,.

SECTION 8. Said subsection (a)(i) of said section 7 of said chapter 15D, as so appearing, is hereby further amended by inserting after the word “any”, as it first appears in line 17, the following words:- current holder of or.

SECTION 9. Said subsection (a)(i) of said section 7 of said chapter 15D, as so appearing is hereby further amended by inserting after the word “any”, as it last appears in line 17, the following words:- current holder of or.

SECTION 10. Said subsection (a)(i) of said section 7 of said chapter 15D, as so appearing, is hereby further amended by striking out, in lines 23-24, the words “in-home nonrelative department funded caregivers” and inserting in place there of the following words:- caregivers or programs in receipt of federal funding pursuant to section 9858 of Title 42 of the United States Code, consistent with the federal requirements at section 9858f of Title 42 of the United States Code, and department regulations or policies consistent with federal and state law.

SECTION 11. Said subsection (a)(i) of said section 7 of said chapter 15D, as so appearing, is hereby further amended by adding the following sentence:- Additionally, the department shall obtain all available criminal offender record information through the department of criminal justice information services consistent with subsection 172(a)(13) of chapter 6 and section 172F of chapter 6, and all supported findings and pending investigations of abuse or neglect available through the department of children and families consistent with sections 51B, 51E, and 51F of chapter 119.

SECTION 12. Said section 7 of said chapter 15D, as so appearing, is hereby further amended by striking out subsection (a)(ii) and inserting in place thereof the following subsection:-

(ii) As part of the department's licensing and background record check process, the department or an agency authorized by the department shall conduct fingerprint-based checks of the state and national criminal history databases, as authorized by Public Law 92-544, to determine the suitability of all current and prospective candidates for employment, internships and volunteer positions, whether or not such candidates have unsupervised access to children, and any additional individuals with unsupervised access to children in department-licensed or funded programs, unless specifically exempt within department regulations or policies. Such requirements also apply to individuals with unsupervised access to children in funded programs subject to federal requirements of section 9858f of Title 42 of the United States Code. The department shall outline in its regulations or policies the circumstances under which candidates within department-licensed and funded programs must complete a background record check through the department regardless of his or her unsupervised access to children. The fingerprint-based checks shall also be required to determine the suitability of any individual who provides transportation services on behalf of any department-licensed or funded program. Authorized department staff may receive all criminal offender record information and the results of checks of state and national criminal history databases pursuant to Public Law 92-544. When the department obtains the results of checks of state and national criminal history databases, it shall treat the information according to sections 167 to 178, inclusive, of chapter 6 and the regulations thereunder regarding criminal offender record information.

SECTION 13. Subsection (a)(iii) of said section 7 of said chapter 15D, as so appearing, is hereby amended by inserting after the word "department", in line 50, the following words:- or adoptive or foster placement agency that it licenses.

SECTION 14. Subsection (a)(iii) of said section 7 of said chapter 15D, as so appearing, is hereby amended by inserting after the word "staff", in line 55, the following words:- or staff within an authorized adoptive or foster placement agency that it licenses.

SECTION 15. Said subsection (a)(iii) of said section 7 of said chapter 15D, as so appearing, is hereby further amended by inserting after the word "department", in line 58, the following words:- or an authorized adoptive or foster placement agency.

SECTION 16. Subsection (b) of said section 7 of said chapter 15D, as so appearing, is hereby amended by striking out the second paragraph and inserting in place thereof the following paragraph:-

As part of the department's approval process, the department or an agency authorized by the department, prior to issuing any approval, shall: (1) obtain from the sex offender registry board all available sex offender registry information, including all registration forms and documents maintained by the sex offender registry board deemed necessary by the department to investigate background record checks or licensing violations, associated with the address of the center, home or facility; and (2) conduct fingerprint-based checks of the state and national criminal history databases, pursuant to Public Law 92-544, that are required under this subsection.

SECTION 17. Subsection (b) of said section 7 of said chapter 15D, as so appearing, is hereby further amended by adding the following paragraph:-

The fingerprint-based checks of the state and national criminal history databases shall be conducted, pursuant to Public Law 92-544, to determine the suitability of all current or prospective candidates for employment, internships and volunteer positions, whether or not such candidates have unsupervised access to children, and any additional individuals with unsupervised access to children in department-approved programs, unless specifically exempt within department regulations or policies. Such requirements also apply to individuals with unsupervised access to children in funded programs subject to federal requirements of section 9858f of Title 42 of the United States Code. The fingerprint-based checks shall also be required to determine the suitability of any individual who provides transportation services on behalf of any department-approved program. Authorized department staff may receive all criminal offender record information and the results of checks of state and national criminal history information databases pursuant to Public Law 92-544. When the department obtains the results of checks of state and national criminal information databases, it shall treat the information according to sections 167 to 178, inclusive, of chapter 6 and the regulations thereunder regarding criminal offender record information.

SECTION 18. Said section 7 of said chapter 15D, as so appearing, is hereby further amended by inserting after subsection (b) the following subsection:-

(c) With respect to department-licensed, approved and funded child care programs and any other program subject to federal requirements of section 9858 of Title 42 of the United States Code, additional background record checks shall be required by the department's regulations or policies consistent with federal and state law.

SECTION 19. Said section 7 of said chapter 15D, as so appearing, is hereby further amended by striking out, in line 90, the word “(c)” and inserting in place thereof the following word:- (d).

SECTION 20. Subsection (b) of section 8 of said chapter 15D, as so appearing, is hereby amended by striking out, in lines 28-29, the words “licensure or approval” and inserting in place thereof the following words:- department- licensure, approval or funding.

SECTION 21. Subsection (d) of section 8 of said chapter 15D, as so appearing, is hereby further amended by inserting after the word “(d)”, in line 53, the following words:- The timing, scope and nature of the department’s background record check process shall be established by the department in its regulations or policies consistent with federal and state law.

SECTION 22. Said section 8 of said chapter 15D, as so appearing, is hereby further amended by striking out subsection (d)(i) and inserting in place thereof the following subsection:-

(i) a person providing child care or support services or with unsupervised access to children in any program or facility licensed, approved or funded by the department and any household members, age 15 or older, or persons regularly on the premises, age 15 or older, of family child care and large family child care homes shall be subject to a background record check at least every 3 years in accordance with regulations established by the department; provided, however, that a candidate for employment in a department-licensed, approved or funded program who is subject to a fingerprint-based check of the state and national criminal history databases for the same employer that is approved pursuant to chapters 19B or 71B shall submit to a fingerprint-based check under regulations established by the department; provided further, that no person who is considered suitable by the department shall be subject to more than 1 fingerprint-based check every 3 years to maintain employment with the same employer that is department-licensed, approved or funded pursuant to this chapter and is subject to said chapters 19B or 71B and shall not be subject to duplicative fingerprint-based checks for the same employer when fingerprinted for the department first unless an exception described in the regulations or policies of the department applies or an increased frequency is required by state or federal law; and provided further, that the department shall only determine whether an applicant is suitable for affiliation with a department-licensed, approved or funded program;.

SECTION 23. Subsection (d)(iii) of said section 8 of said chapter 15D, as so appearing, is hereby amended by striking out the first paragraph and inserting in place thereof the following paragraph:-

(iii) an applicant for a department-issued license, approval or funding and a candidate for employment, internship or volunteer position in a department-licensed, approved or funded program shall be subject to a fingerprint-based check of the state and national criminal history databases pursuant to Public Law 92-544.

SECTION 24. Said subsection (d)(iii) of said section 8 of said chapter 15D, as so appearing, is hereby further amended by striking out the second paragraph and inserting in place thereof the following paragraph:-

The board shall also adopt regulations establishing that the following individuals shall be subject to a sex offender registry information check pursuant to sections 178I and 178J of chapter 6: (1) each person defined as a candidate of a department-licensed, approved or funded program; (2) individuals who are providing child care or support services with unsupervised access to children in any program or facility licensed, approved or funded by the department when mandated by department regulations or policies consistent with federal and state law; (3) any household members, age 15 or older, or persons regularly on the premises, age 15 or older, of family child care and large family child care homes; (4) any prospective adoptive and foster parents and their household members age 15 or older, with the exception of those applicants and household members subject to said section 26A of said chapter 119; (5) any department-funded caregivers or candidates within programs in receipt of federal funding pursuant to section 9858 of Title 42 of the United States Code, consistent with department regulations or policies; and (6) any individual who provides transportation services on behalf of any department-licensed, funded or approved program. The regulations shall also establish the conditions upon which the department may deny an application for a license, a license renewal or approval, employment or department funding and upon which the department may deny prospective adoptive and foster parents based upon the information obtained from the sex offender registry search. The board shall also adopt regulations establishing an address search of the sex offender registry for the purposes of licensing and license renewal or approval of school-aged child care programs, child care centers, family child care homes, placement agencies or large family child care homes, family foster care that is not supervised and approved by a placement agency, group care facilities or temporary shelter facilities, including the conditions in which the department may deny an application for a license, license renewal, approval or funding based upon the information obtained from the address search of the sex offender registry.

SECTION 25. Subsection (j) of said section 8 of said chapter 15D, as so appearing, is hereby amended by striking out the first paragraph and inserting in place thereof the following paragraph:-

(j) Fingerprints, as referenced in subsections (a) and (b) of section 7 and subsection (d) of this section, shall be submitted to the identification section of the department of state police for a state criminal history check and forwarded to the Federal Bureau of Investigation for a national criminal history check, according to the policies and procedures established by the identification section and by the department of criminal justice information services. Fingerprint submissions may be retained by the Federal Bureau of Investigation, the state identification section and the department of criminal justice information services to assist the department in its review of suitability for initial or continued licensure, certification, approval or funding. The department of criminal justice information services may disseminate the results of a state and national criminal history check to the department of early education and care to determine the suitability of: (1) any current holder of or applicant for a family child care, small group and school age, large group and school age, and residential and placement license, or family child care assistant certificate; (2) current and prospective candidates for employment, internships and volunteer positions in any department-licensed, approved or funded program consistent with department regulations or policies and with federal and state law; (3) all household members, age 15 or older, or all persons, regularly on the premises, age 15 or older, of current family child care providers and applicants for family child care licensure; (4) all department-funded caregivers or candidates within programs in receipt of federal funding pursuant to section 9858 of Title 42 of the United States Code, consistent with department regulations or policies; and (5) any prospective or existing individual who provides transportation services on behalf of or has unsupervised access to children in any department-licensed, approved or funded program consistent with department regulations or policies. If the department receives information from a background record check that does not include any final disposition or is otherwise incomplete, the department may request that a candidate, either new or renewing, provide additional information to assist the department in determining the suitability of the individual for licensure, certification, approval, funding or employment. Additionally, the department of criminal justice information services may disseminate the results of a state and national criminal history check to the adoption and foster placement agencies licensed by the department for purposes of evaluating all adoptive or foster parent applicants and their household members age 15 or older, with the exception of those applicants and household members subject to said section 26A of said chapter 119.

SECTION 26. Said subsection (j) of said section 8 of said chapter 15D, as so appearing, is hereby amended by striking out the second paragraph.

SECTION 27. Said subsection (j) of said section 8 of said chapter 15D, as so appearing, is hereby amended by striking out the third paragraph and inserting in place thereof the following paragraph:-

The board of early education and care shall, in a manner provided by law and under this chapter, promulgate regulations necessary to carry out this subsection. The regulations shall address the circumstances under which a licensed, approved or funded program may hire an individual in “provisional status” consistent with this section, the department’s regulations or policies and the federal requirements of section 9858f of Title 42 of the United States Code.

SECTION 28. Said subsection (j) of said section 8 of said chapter 15D, as so appearing, is hereby amended by striking out the fourth paragraph and inserting in place thereof the following paragraph:-

For the purposes of this subsection, “provisional status” shall mean the standing of a candidate for employment, internships or volunteer positions with a department-licensed, approved or funded program, or a candidate who has access to children in such programs who the department preliminarily approves to have supervised access to children after obtaining the results of a state and national fingerprint-based criminal history check and required sex offender checks consistent with the department’s regulations or policies and federal and state law. A candidate may be hired by the employer in “provisional status” if the employer determines that hiring the candidate is necessary and authorized by department regulations or policies. Candidates in “provisional status” must adhere to the requirements described in department regulations or policies. If a program or transportation provider seeks to hire a candidate in “provisional status”, the department may request that the candidate provide additional information regarding the individual's history of criminal convictions, if any, to assist the department in determining the individual's suitability for “provisional status”; provided, however, that no access to children shall occur prior to the program or transportation provider obtaining the results of a fingerprint-based state and national criminal check and all sex offender registry information checks pursuant to sections 178I and 178J of chapter 6 and mandated by section 9858f of Title 42 of the United States Code and consistent with department regulations and policies and federal and state law.

SECTION 29. Subsection (k) of said section 8 of chapter 15D, as so appearing, is hereby further amended by striking out the second paragraph and inserting in place thereof the following paragraph:-

All persons required to submit fingerprints under this chapter, including but not limited to: (1) any current holder of or applicant for a family child care, small group and school age, large group and school age, and

residential and placement license, or family child care assistant certificate; (2) all current and prospective candidates for employment, internships and volunteer positions in any department-licensed, approved or funded programs consistent with department regulations or policies; (3) all household members, age 15 or older, or persons, age 15 or older, regularly on the premises of current family child care providers and applicants for family child care licensure; (4) all department-funded caregivers or candidates within programs in receipt of federal funding pursuant to section 9858 of Title 42 of the United States Code, consistent with department regulations or policies; (5) all adoptive or foster parent applicants and their household members age 15 or older, with the exception of those applicants and household members subject to said section 26A of said chapter 119; and (6) any current or prospective candidate who provides transportation services on behalf of or has unsupervised access to children in any department-licensed, approved or funded program consistent with department regulations or policies, shall pay a fee, to be established by the secretary of administration and finance in consultation with the secretary of public safety and security and the commissioner, to offset the costs of operating and administering a fingerprint-based criminal background check system. The fee shall not exceed \$35 per person. The secretary of administration and finance, in consultation with the secretary of public safety and security and the commissioner, may increase the fee accordingly if the Federal Bureau of Investigation increases its fingerprint background check service fee. The department-licensed, approved or funded programs may reimburse candidates for employment, internships or volunteer positions, for all or part of the fee on the grounds of financial hardship. Any fees collected from fingerprinting activity pursuant to this chapter shall be deposited into the Fingerprint-Based Background Check Trust Fund, established by section 2HHHH of chapter 29.

SECTION 30. Sections 11, 19, 21 and 30-32 shall take effect immediately.

SECTION 31. Sections 1-3, 5-7, 13-16, 20 and 22-24 shall take effect when the department's revised background record check regulations at 606 CMR 14.00 addressing the requirements at section 9858f of Title 42 of the United States Code are promulgated or September 30, 2018, whichever is sooner.

SECTION 32. Sections 4, 8-10, 12, 17-18 and 25-29 shall apply to all applicants and candidates as described within each section with the exception of residential and placement agencies, as well as adoptive and foster parents and their household member age 15 and older when applicable, whose applications are submitted on or after the date the department's amended background record check regulations at 606 CMR 14.00 are promulgated or September 30, 2018, whichever is sooner. When such regulations are promulgated, all new

applicants and candidates as well as those who are currently licensed, certified, approved or funded by the department of early education and care, with the exception of residential and placement agency candidates, shall comply with the requirements of this act upon submission of request for renewal of licensure, certification, approval or funding or when mandated by the department, but not later than September 30, 2020. Such requirements must be implemented for candidates for licensure, approval, employment, internships, and volunteer positions for residential programs and placement agencies on or before September 30, 2020.