

HOUSE No. 4815

The Commonwealth of Massachusetts

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

An Act relative to the background record check procedures of the department of early education and care..

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:

1 SECTION 1. Clause (13) of subsection (a) of section 172 of chapter 6 of the General
2 Laws, as appearing in the 2016 Official Edition, is hereby amended by inserting after the word
3 “care”, in line 102, the following words:- and adoption and foster placement agencies licensed by
4 the department.

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

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

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

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

18 SECTION 6. Paragraph (a) of subsection (2) of section 178K of said chapter 6, as so
19 appearing, is hereby amended by inserting after the word “probation,” in line 118, the following
20 words:- ,the department of early education and care.

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

26 SECTION 8. Said paragraph (i) of said subsection (a) of said section 7 of said chapter
27 15D, as so appearing, is hereby further amended by inserting after the word “any”, in line 17,
28 each time it appears, the following words, in each instance:- current holder of or.

29 SECTION 9. Said paragraph (i) of said subsection (a) of said section 7 of said chapter
30 15D, as so appearing, is hereby further amended by striking out, in lines 23 and 24, the words
31 “in-home nonrelative department funded caregivers” and inserting in place there of the following

32 words:- caregivers or programs in receipt of federal funding pursuant to 42 U.S.C. section 9858,
33 consistent with the federal requirements of 42 U.S.C. section 9858f, and department regulations
34 or policies consistent with federal and state law.

35 SECTION 10. Said paragraph (i) of subsection (a) of said section 7 of said chapter 15D,
36 as so appearing, is hereby further amended by adding the following sentence:- Additionally, the
37 department shall obtain all available criminal offender record information through the
38 department of criminal justice information services consistent with clause (13) of subsection (a)
39 of section 172 of chapter 6 and section 172F of said chapter 6, and all supported findings and
40 pending investigations of abuse or neglect available through the department of children and
41 families consistent with sections 51B, 51E, and 51F of chapter 119.

42 SECTION 11. Subsection (a) of said section 7 of said chapter 15D, as so appearing, is
43 hereby further amended by striking out paragraph (ii) and inserting in place thereof the following
44 paragraph:-

45 (ii) As part of the department's licensing and background record check process, the
46 department or an agency authorized by the department shall conduct fingerprint-based checks of
47 the state and national criminal history databases, as authorized by Public Law 92-544, to
48 determine the suitability of all current and prospective candidates for employment, internships
49 and volunteer positions, whether or not such candidates have unsupervised access to children,
50 and any additional individuals with unsupervised access to children, in department-licensed or
51 funded programs, unless specifically exempt within department regulations or policies. Such
52 requirements shall also apply to individuals with unsupervised access to children in programs
53 subject to federal requirements of 42 U.S.C. section 9858f. The department shall outline in its

54 regulations or policies the circumstances under which such candidates within department-
55 licensed and funded programs shall complete a background record check through the department
56 regardless of his or her unsupervised access to children. The fingerprint-based checks shall also
57 be required to determine the suitability of any individual who provides transportation services on
58 behalf of any department-licensed or funded program. Authorized department staff may receive
59 all criminal offender record information and the results of checks of state and national criminal
60 history databases pursuant to Public Law 92-544. When the department obtains the results of
61 checks of state and national criminal history databases, it shall treat the information according to
62 sections 167 to 178, inclusive, of chapter 6 and the regulations thereunder regarding criminal
63 offender record information.

64 SECTION 12. Paragraph (iii) of subsection (a) of said section 7 of said chapter 15D, as
65 so appearing, is hereby amended by inserting after the word “department”, in line 50, the
66 following words:- or adoptive or foster placement agency licensed by the department.

67 SECTION 13. Said paragraph (iii) of said subsection (a) of said section 7 of said chapter
68 15D, as so appearing, is hereby further amended by inserting after the word “staff”, in line 55,
69 the following words:- or staff within an authorized adoptive or foster placement agency licensed
70 by the department.

71 SECTION 14. Said paragraph (iii) of said subsection (a) of said section 7 of said chapter
72 15D, as so appearing, is hereby further amended by inserting after the word “department”, in line
73 58, the following words:- or an authorized adoptive or foster placement agency.

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

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

85 SECTION 16. Said subsection (b) of said section 7 of said chapter 15D, as so appearing,
86 is hereby further amended by adding the following paragraph:-

87 The fingerprint-based checks of the state and national criminal history databases shall be
88 conducted, pursuant to Public Law 92-544, to determine the suitability of all current or
89 prospective candidates for employment, internships and volunteer positions, whether or not such
90 candidates have unsupervised access to children, and any additional individuals with
91 unsupervised access to children, in department-approved programs, unless specifically exempt
92 within department regulations or policies. Such requirements shall also apply to individuals with
93 unsupervised access to children in programs subject to federal requirements of section 9858f of
94 Title 42 of the United States Code. The fingerprint-based checks shall also be required to
95 determine the suitability of any individual who provides transportation services on behalf of any

96 department-approved program. Authorized department staff may receive all criminal offender
97 record information and the results of checks of state and national criminal history information
98 databases pursuant to Public Law 92-544. When the department obtains the results of checks of
99 state and national criminal information databases, it shall treat the information according to
100 sections 167 to 178, inclusive, of chapter 6 and the regulations thereunder regarding criminal
101 offender record information.

102 SECTION 17. Said section 7 of said chapter 15D, as so appearing, is hereby further
103 amended by striking out subsection (c) and inserting in place thereof the following 3
104 subsections:-

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

109 (d) The department may issue a provisional license for or may provisionally approve a
110 school-aged child care program, a child care center, family child care home or large family child
111 care home, family foster care which is not supervised and approved by a placement agency,
112 placement agency, group care facility or temporary shelter facility, which has not previously
113 operated, or is operating, but is temporarily unable to meet applicable standards and
114 requirements. A provisional license or approval shall be issued for a period not to exceed 6
115 months, and in no case shall a person operate under a provisional license, provisional approval,
116 or renewal thereof for more than 12 consecutive months.

117 (e) Nothing in this section shall be construed to create a private right of action if a
118 provider has acted in accordance with this section.

119 SECTION 18. Subsection (b) of section 8 of said chapter 15D, as so appearing, is hereby
120 amended by striking out, in lines 28 and 29, the words “licensure or approval” and inserting in
121 place thereof the following words:- department- licensure, approval or funding.

122 SECTION 19. Subsection (d) of said section 8 of said chapter 15D, as so appearing, is
123 hereby further amended by inserting before the word “The”, in line 53, the following 2
124 sentences:- The timing, scope and nature of the department’s background record check process
125 shall be established by the board in its regulations or policies consistent with federal and state
126 law. Nothing in this section shall prevent the department from completing the background record
127 check process in a shorter amount of time than required by federal or state law.

128 SECTION 20. Subsection (d) of said section 8 of said chapter 15D, as so appearing, is
129 hereby further amended by striking out clause (i) and inserting in place thereof the following
130 clause:-

131 (i) a person providing child care or support services or with unsupervised access to
132 children in any program or facility licensed, approved or funded by the department and any
133 household members, age 15 or older, or persons regularly on the premises, age 15 or older, of
134 family child care and large family child care homes shall be subject to a background record
135 check at least every 3 years in accordance with regulations established by the department;
136 provided, however, that a candidate for employment in a department-licensed, approved or
137 funded program who is subject to a fingerprint-based check of the state and national criminal
138 history databases for the same employer that is approved pursuant to chapters 19B or 71B shall

139 submit to a fingerprint-based check under regulations established by the department; provided
140 further, that a person who is considered suitable by the department shall not be subject to more
141 than 1 fingerprint-based check every 3 years to maintain employment with the same employer
142 that is department-licensed, approved or funded pursuant to this chapter and is subject to said
143 chapters 19B or 71B, and shall not be subject to duplicative fingerprint-based checks for the
144 same employer when fingerprinted for the department first unless an exception described in the
145 regulations or policies of the department applies or an increased frequency is required by state or
146 federal law; and provided further, that the department shall only determine whether an applicant
147 is suitable for affiliation with a department-licensed, approved or funded program;.

148 SECTION 21. Subsection (d) of said section 8 of said chapter 15D, as so appearing, is
149 hereby amended by striking out clause (iii) and inserting in place thereof the following clause:-

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

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

157 The board shall adopt regulations establishing that the following individuals shall be
158 subject to a sex offender registry information check pursuant to sections 178I and 178J of
159 chapter 6: (1) each person defined as an applicant of a department-licensed, approved or funded
160 program; (2) individuals who are providing child care or support services with unsupervised

161 access to children in any program or facility licensed, approved or funded by the department
162 when mandated by department regulations or policies consistent with federal and state law; (3)
163 any household members, age 15 or older, or persons regularly on the premises, age 15 or older,
164 of family child care and large family child care homes; (4) any prospective adoptive and foster
165 parents and their household members age 15 or older, except those applicants and household
166 members subject to said section 26A of said chapter 119; (5) any department-funded caregivers
167 or candidates for employment, internships or volunteer positions within programs in receipt of
168 federal funding pursuant to 42 U.S.C section 9858, consistent with department regulations or
169 policies; and (6) any individual who provides transportation services on behalf of any
170 department-licensed, funded or approved program. The regulations shall establish the conditions
171 upon which the department may deny an application for a license, a license renewal or approval,
172 employment or department funding and upon which the department may deny prospective
173 adoptive and foster parents based upon the information obtained from the sex offender registry
174 check. The board shall adopt regulations establishing an address search of the sex offender
175 registry for the purposes of licensing and license renewal or approval of school-aged child care
176 programs, child care centers, family child care homes, placement agencies or large family child
177 care homes, family foster care that is not supervised and approved by a placement agency, group
178 care facilities or temporary shelter facilities, including the conditions in which the department
179 may deny an application for a license, license renewal, approval or funding based upon the
180 information obtained from the address search of the sex offender registry.

181 SECTION 23. Subsection (j) of said section 8 of said chapter 15D, as so appearing, is
182 hereby amended by striking out the first to fourth paragraphs, inclusive, and inserting in place
183 thereof the following 3 paragraphs:-

184 Fingerprints, as referenced in subsections (a) and (b) of section 7 and subsection (d), shall
185 be submitted to the identification section of the department of state police for a state criminal
186 history check and forwarded to the Federal Bureau of Investigation for a national criminal
187 history check, according to the policies and procedures established by the identification section
188 of the department of state police and by the department of criminal justice information services.
189 Fingerprint submissions may be retained by the Federal Bureau of Investigation, the
190 identification section of the department of state police and the department of criminal justice
191 information services to assist the department of early education and care in the department's
192 review of suitability for initial or continued licensure, certification, approval or funding. The
193 department of criminal justice information services may disseminate the results of a state and
194 national criminal history check to the department of early education and care to determine the
195 suitability of: (1) any current holder of or applicant for a family child care, small group and
196 school age, large group and school age and residential and placement license, or family child
197 care assistant certificate; (2) current and prospective candidates for employment, internships and
198 volunteer positions in any department-licensed, approved or funded program consistent with
199 department regulations or policies and with federal and state law; (3) all household members, age
200 15 or older, or all persons, age 15 or older, regularly on the premises, of current family child care
201 providers and applicants for family child care licensure; (4) all department-funded caregivers or
202 candidates within programs in receipt of federal funding pursuant to 42 U.S.C. section 9858,
203 consistent with department regulations or policies; and (5) any prospective or existing individual
204 who provides transportation services on behalf of or has unsupervised access to children in any
205 department-licensed, approved or funded program consistent with department regulations or
206 policies. If the department receives information from a background record check that does not

207 include any final disposition or is otherwise incomplete, the department may request that a
208 candidate, either new or renewing, provide additional information to assist the department in
209 determining the suitability of the individual for licensure, certification, approval, funding or
210 employment. The department of criminal justice information services may disseminate the
211 results of a state and national criminal history check to the adoption and foster placement
212 agencies licensed by the department for purposes of evaluating all adoptive or foster parent
213 applicants and their household members age 15 or older, with the exception of those applicants
214 and household members subject to said section 26A of said chapter 119.

215 The board of early education and care shall, in a manner provided by law and under this
216 chapter, promulgate regulations necessary to carry out this subsection. The regulations shall
217 address the circumstances under which a licensed, approved or funded program may hire an
218 individual in provisional status consistent with this section, the department’s regulations or
219 policies and the federal requirements of 42 U.S.C. section 9858f.

220 For the purposes of this subsection, “provisional status” shall mean the standing of a
221 candidate for employment, an internship or a volunteer position with a department-licensed,
222 approved or funded program, or a candidate who has access to children in such programs who
223 the department preliminarily approves to have supervised access to children after obtaining the
224 results of a state and national fingerprint-based criminal history check and required sex offender
225 checks consistent with federal and state law and the department’s regulations or policies. A
226 candidate may be hired by the employer in provisional status if the employer determines that
227 hiring the candidate is necessary and authorized by department regulations or policies.
228 Candidates in provisional status shall adhere to the requirements described in department
229 regulations or policies. If a program or transportation provider seeks to hire a candidate in

230 provisional status, the department may request that the candidate provide additional information
231 regarding the individual's history of criminal convictions, if any, to assist the department in
232 determining the individual's suitability for provisional status; provided, however, that no access
233 to children shall occur prior to the program or transportation provider obtaining the results of a
234 fingerprint-based state and national criminal check and all sex offender registry information
235 checks pursuant to sections 178I and 178J of chapter 6, mandated by 42 U.S.C. section 9858f
236 and consistent with federal and state law and department regulations and policies.

237 SECTION 24. Said section 8 of chapter 15Dis hereby further amended by striking out
238 subsection (k), inserted by section 5 of chapter 77 of the acts of 2013, and inserting in place
239 thereof the following subsection:-

240 (l) All persons required to submit fingerprints pursuant to this chapter, including but not
241 limited to: (1) any current holder of or applicant for a family child care, small group and school
242 age, large group and school age and residential and placement license, or family child care
243 assistant certificate; (2) all current and prospective candidates for employment, internships and
244 volunteer positions in any department-licensed, approved or funded programs consistent with
245 department regulations or policies; (3) all household members, age 15 or older, or persons, age
246 15 or older, regularly on the premises of current family child care providers and applicants for
247 family child care licensure; (4) all department-funded caregivers or candidates within programs
248 in receipt of federal funding pursuant to 42 U.S.C. section 9858, consistent with department
249 regulations or policies; (5) all adoptive or foster parent applicants and their household members
250 age 15 or older, with the exception of those applicants and household members subject to section
251 26A of chapter 119; and (6) any current or prospective candidate who provides transportation
252 services on behalf of or has unsupervised access to children in any department-licensed,

253 approved or funded program consistent with department regulations or policies, shall pay a fee,
254 to be established by the secretary of administration and finance, in consultation with the
255 secretary of public safety and security and the commissioner, to offset the costs of operating and
256 administering a fingerprint-based criminal background check system. The fee shall not exceed
257 \$35 per person. The secretary of administration and finance, in consultation with the secretary of
258 public safety and security and the commissioner, may increase the fee accordingly if the Federal
259 Bureau of Investigation increases its fingerprint background check service fee. The department-
260 licensed, approved or funded programs may reimburse candidates for employment, internships or
261 volunteer positions, for all or a portion of the fee on the grounds of financial hardship. Any fees
262 collected from fingerprinting activity pursuant to this chapter shall be deposited into the
263 Fingerprint-Based Background Check Trust Fund, established by section 2HHHH of chapter 29.

264 SECTION 25. Said section 8 of chapter 15D, as so appearing, is hereby amended by
265 adding the following 2 subsections:-

266 (m) The department's review process into a person's presumptive and discretionary
267 disqualifications shall include an opportunity for the person to address department personnel, if
268 requested by the person, about any disqualifications. Upon such request, it shall be the discretion
269 of the department to conduct a telephone interview, in-person interview or accept a written
270 statement by the person to make a final suitability determination.

271 (n) Nothing in this section shall be construed to create a private right of action if a
272 provider has acted in accordance with this section.

273 SECTION 26. Sections 1 to 3, inclusive, 5 to 7, inclusive, 12 to 15, inclusive, 18 and 20
274 to 22, inclusive, shall take effect when the department of early education and care promulgates

275 revised background record check regulations relative to the requirements of 42 U.S.C. section
276 9858f or on September 30, 2018, whichever is sooner.

277 SECTION 27. (a) Sections 4, 8, 9, 11, 16, 17, 23 and 24 shall apply to: (i) all applicants
278 and candidates as described within each section and (ii) adoptive and foster parents and their
279 household members age 15 and older when applicable, whose applications are submitted on or
280 after the date the department of early education and care promulgates the amended background
281 record check regulations or September 30, 2018 whichever is sooner.

282 This subsection shall not apply to residential and placement agencies.

283 (b) When the regulations are promulgated, all new applicants and candidates and persons
284 who are currently licensed, certified, approved or funded by the department of early education
285 and care, except residential and placement agency candidates and applicants, shall comply with
286 the requirements of this act upon submission of request for renewal of licensure, certification,
287 approval or funding or when mandated by the department, but not later than September 30, 2020.

288 (c) The department of early education and care shall implement requirements for
289 candidates and applicants for licensure, approval, employment, internships and volunteer
290 positions for residential programs and placement agencies on or before September 30, 2020.