

Acts (2018)

Chapter 202

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:

SECTION 1. 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 licensed by the department.

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 15 years of age 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 licensed by the department in receipt of such data.

SECTION 6. Section 178K of said chapter 6, as so appearing, is hereby amended by inserting after the word “probation”, in line 118, the following words:- , the department of early education and care.

SECTION 7. Section 7 of chapter 15D of the General Laws, as so appearing, is hereby amended by striking out, in line 13, the word “associated” and inserting in place thereof the following words:- , including all registration forms and documents maintained by the sex offender registry board considered necessary by the department to investigate background record checks or licensing violations, associated.

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

SECTION 9. Said section 7 of said chapter 15D, as so appearing, is hereby further amended by striking out, in lines 23 and 24, the words “in-home nonrelative department funded caregivers” and inserting in

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

SECTION 10. Paragraph (i) of subsection (a) of said section 7 of said chapter 15D, as so appearing, is hereby 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 clause (13) of subsection (a) of section 172 of chapter 6 and section 172F of said 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 11. Said subsection (a) of said section 7 of said chapter 15D, as so appearing, is hereby further amended by striking out paragraph (ii) and inserting in place thereof the following paragraph:-

(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 those candidates have unsupervised access to children, and any additional individuals with unsupervised access to children in department-licensed or funded programs, unless specifically exempt by department regulations or policies. These requirements shall also apply to individuals with unsupervised access to children in programs

subject to 42 U.S.C. section 9858f. The department shall outline in its regulations or policies the circumstances under which candidates within department-licensed and funded programs shall complete a background record check through the department regardless of the candidate's unsupervised access to children. The fingerprint-based checks shall also be required to determine the suitability of an individual who provides transportation services on behalf of a department-licensed or funded program. Authorized department staff may receive 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 12. Said section 7 of said chapter 15D, as so appearing, is hereby further amended by inserting after the word "department", in line 50, the following words:- or adoptive or foster placement agency licensed by the department.

SECTION 13. Said section 7 of said chapter 15D, as so appearing, is hereby further amended by inserting after the word "staff", in line 55, the following words:- or staff within an authorized adoptive or foster placement agency licensed by the department.

SECTION 14. 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 15. 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 an approval, shall: (i) 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 considered necessary by the department to investigate background record checks or licensing violations, associated with the address of the center, home or facility; and (ii) 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 16. Said 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 those candidates have unsupervised access to children, and any additional individuals with unsupervised access to children in department-approved programs, unless specifically exempt by department regulations or policies. These requirements shall also apply to individuals with unsupervised access to children in programs subject to 42 U.S.C. section 9858f. The fingerprint-based checks shall also be required to determine the suitability of an individual who provides

transportation services on behalf of a department-approved program. Authorized department staff may receive 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 17. Said section 7 of said chapter 15D, as so appearing, is hereby further amended by striking out subsection (c) and inserting in place thereof the following 3 subsections:-

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

(d) The department may issue a provisional license for or may provisionally approve a school-aged child care program, a child care center, family child care home or large family child care home, family foster care which is not supervised and approved by a placement agency, placement agency, group care facility or temporary shelter facility, which has not previously operated, or is operating, but is temporarily unable to meet applicable standards and requirements. A provisional license or approval shall be issued for a period of not more than 6 months, and a person shall not operate under a provisional license, provisional approval, or renewal thereof for more than 12 consecutive months.

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

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

SECTION 19. Said section 8 of said chapter 15D, as so appearing, is hereby further amended by inserting after the word “The”, in line 53, the following words:- timing, scope and nature of the department’s background record check process shall be established by the board in its regulations or policies, consistent with federal and state law.

Nothing in this section shall prevent the department from completing the background record check process in a shorter amount of time than that required by federal or state law. The.

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

(i) a person providing child care or support services or with unsupervised access to children in a program or facility licensed, approved or funded by the department and 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 not less than 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 a person who is considered suitable by the department shall not 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 21. Said subsection (d) of said section 8 of said chapter 15D, as so appearing, is hereby amended by striking out clause (iii) and inserting in place thereof the following clause:-

(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 22. Said subsection (d) 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 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 an applicant of a department-licensed, approved or funded program; (2) individuals who are providing child care or support services with unsupervised access to children in a program or facility licensed, approved or funded by the department when mandated by department regulations or policies consistent with federal and state law; (3) 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) prospective adoptive and foster parents and their household members age 15 or older, except those applicants and household members subject to section 26A of chapter 119; (5) department-funded caregivers or candidates for employment, internships or volunteer positions within programs in receipt of federal funding pursuant to 42 U.S.C. section 9858, consistent with department regulations or policies; and (6) an individual who provides transportation services on behalf of a department-licensed, funded or approved program. The regulations shall 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 check. The board shall 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 under 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 23. Subsection (j) of said section 8 of said chapter 15D, as so appearing, is hereby amended by striking out the first to fourth paragraphs, inclusive, and inserting in place thereof the following 3 paragraphs:-

Fingerprints, as referenced in subsections (a) and (b) of section 7 and subsection (d), 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 of the department of state police and by the department of criminal justice information services. Fingerprint submissions may be retained by the Federal Bureau of Investigation, the identification section of the department of state police and the department of criminal justice information services to assist the department of early education and care in the department's 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: (i) a 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; (ii) current and prospective candidates for employment,

internships and volunteer positions in a department-licensed, approved or funded program consistent with department regulations or policies and with federal and state law; (iii) household members, age 15 or older, or all persons, age 15 or older, regularly on the premises, of current family child care providers and applicants for family child care licensure; (iv) department-funded caregivers or candidates within programs in receipt of federal funding pursuant to 42 U.S.C. section 9858, consistent with department regulations or policies; and (v) an individual who is a current or prospective provider of transportation services on behalf of, or who has unsupervised access to children in, a 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 a 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. 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 section 26A of chapter 119.

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 42 U.S.C. section 9858f.

For the purposes of this subsection, "provisional status" shall mean the standing of a candidate for employment, an internship or a volunteer position with a department-licensed, approved or funded program, or a candidate who has access to children in those 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 federal and state law and the department's regulations or policies. 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 shall adhere to the requirements 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 access to children shall not 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, mandated by 42 U.S.C. section 9858f and consistent with federal and state law and department regulations and policies.

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

(l) All persons required to submit fingerprints pursuant to this chapter, including, but not limited to: (i) a 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; (ii) current and prospective candidates for employment, internships and volunteer positions in department-licensed, approved or funded programs, consistent with department regulations or policies; (iii) 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; (iv) department-funded caregivers or candidates within programs in receipt of federal funding pursuant to 42 U.S.C. section 9858, consistent with department regulations or policies; (v) adoptive or foster parent applicants and their household members age 15 or older, with the exception of those applicants and household members subject to section 26A of chapter 119; and (vi) a current or prospective candidate who provides transportation services on behalf of, or who has unsupervised access to children in, a 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 be more than 35 dollars 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 a portion of the fee on the grounds of financial hardship. 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 25. Said section 8 of said chapter 15D, as appearing in the 2016 Official Edition, is hereby amended by adding the following 2 subsections:-

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

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

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

background record check regulations relative to the requirements of 42 U.S.C. section 9858f or on September 30, 2018, whichever occurs first.

SECTION 27. (a) Sections 4, 8, 9, 11, 16, 17, 23 and 24 shall apply to:

- (i) all applicants and candidates as described within each section; and
- (ii) adoptive and foster parents and their household members age 15 and older when applicable, whose applications are submitted on or after the date the department of early education and care promulgates the amended background record check regulations, or September 30, 2018, whichever occurs first.

This subsection shall not apply to residential and placement agencies.

(b) When the regulations are promulgated, all new applicants and candidates and persons who are currently licensed, certified, approved or funded by the department of early education and care, except residential and placement agency candidates and applicants, 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.

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

Approved, August 9, 2018.