

2 SHB 1946 - S COMM AMD

3 By Committee on Human Services & Corrections

4

5 Strike everything after the enacting clause and insert the  
6 following:

7 "Sec. 1. RCW 43.43.832 and 1995 c 250 s 2 are each amended to read  
8 as follows:

9 (1) The legislature finds that businesses and organizations  
10 providing services to children, developmentally disabled persons, and  
11 vulnerable adults need adequate information to determine which  
12 employees or licensees to hire or engage. The legislature further  
13 finds that many developmentally disabled individuals and vulnerable  
14 adults desire to hire their own employees directly and also need  
15 adequate information to determine which employees or licensees to hire  
16 or engage. Therefore, the Washington state patrol criminal  
17 identification system ((may)) shall disclose, upon the request of a  
18 business or organization as defined in RCW 43.43.830, a developmentally  
19 disabled person, or a vulnerable adult as defined in RCW 43.43.830 or  
20 his or her guardian, an applicant's record for convictions of offenses  
21 against children or other persons, convictions for crimes relating to  
22 financial exploitation, but only if the victim was a vulnerable adult,  
23 adjudications of child abuse in a civil action, the issuance of a  
24 protection order against the respondent under chapter 74.34 RCW, and  
25 disciplinary board final decisions and any subsequent criminal charges  
26 associated with the conduct that is the subject of the disciplinary  
27 board final decision. ~~((When necessary, applicants may be employed on  
28 a conditional basis pending completion of such a background  
29 investigation.))~~

30 (2) The legislature also finds that the state board of education  
31 may request of the Washington state patrol criminal identification  
32 system information regarding a certificate applicant's record for  
33 convictions under subsection (1) of this section.

34 (3) The legislature also finds that law enforcement agencies, the  
35 office of the attorney general, prosecuting authorities, and the  
36 department of social and health services may request this same

1 information to aid in the investigation and prosecution of child,  
2 developmentally disabled person, and vulnerable adult abuse cases and  
3 to protect children and adults from further incidents of abuse.

4 (4) The legislature further finds that the department of social and  
5 health services(~~(7)~~)must consider the information listed in subsection  
6 (1) of this section in the following circumstances:

7 (a) When considering persons for state positions directly  
8 responsible for the care, supervision, or treatment of children,  
9 developmentally disabled persons, or vulnerable adults (~~(or)~~);

10 (b) When licensing (~~(or authorizing such persons or)~~) agencies  
11 (~~(pursuant to its authority)~~) or facilities with individuals in  
12 positions directly responsible for the care, supervision, or treatment  
13 of children, developmentally disabled persons, or vulnerable adults,  
14 including but not limited to agencies or facilities licensed under  
15 chapter 74.15(~~(7)~~) or 18.51(~~(7, 18.20, or 72.23)~~) RCW(~~(7, or any later-~~  
16 enacted statute which purpose is to license or regulate a facility  
17 which handles vulnerable adults, must consider the information listed  
18 in subsection (1) of this section);

19 (c) When contracting with individuals or businesses or  
20 organizations for the care, supervision, or treatment of children,  
21 developmentally disabled persons, or vulnerable adults, including but  
22 not limited to services contracted for under chapter 18.20, 18.48,  
23 70.127, 70.128, 72.36, or 74.39A RCW or Title 71A RCW. (~~(However, when~~  
24 necessary))

25 (5) Whenever a state conviction record check is required by state  
26 law, persons may be employed or engaged as volunteers or independent  
27 contractors on a conditional basis pending completion of the state  
28 background investigation. Whenever a national criminal record check  
29 through the federal bureau of investigation is required by state law,  
30 a person may be employed or engaged as a volunteer or independent  
31 contractor on a conditional basis pending completion of the national  
32 check. The Washington personnel resources board shall adopt rules to  
33 accomplish the purposes of this subsection as it applies to state  
34 employees.

35 **Sec. 2.** RCW 43.43.842 and 1992 c 104 s 1 are each amended to read  
36 as follows:

37 (1) The secretary of social and health services and the secretary  
38 of health shall adopt additional requirements for the licensure or

1 relicensure of agencies or facilities which provide care and treatment  
2 to vulnerable adults, including nursing pools registered under chapter  
3 18.52C RCW. These additional requirements shall ensure that any person  
4 associated with a licensed agency or facility having direct contact  
5 with a vulnerable adult shall not have been: (a) Convicted of a crime  
6 against persons as defined in RCW 43.43.830, except as provided in this  
7 section; (b) convicted of crimes relating to financial exploitation as  
8 defined in RCW 43.43.830, except as provided in this section; (c) found  
9 in any disciplinary board final decision to have abused a vulnerable  
10 adult under RCW 43.43.830; or (d) the subject in a protective  
11 proceeding under chapter 74.34 RCW.

12 (2) The rules adopted under this section shall permit the licensee  
13 to consider the criminal history of an applicant for employment in a  
14 licensed facility when the applicant has one or more convictions for a  
15 past offense and:

16 (a) The offense was simple assault, assault in the fourth degree,  
17 or the same offense as it may be renamed, and three or more years have  
18 passed between the most recent conviction and the date of application  
19 for employment;

20 (b) The offense was prostitution, or the same offense as it may be  
21 renamed, and three or more years have passed between the most recent  
22 conviction and the date of application for employment;

23 (c) The offense was theft in the third degree, or the same offense  
24 as it may be renamed, and three or more years have passed between the  
25 most recent conviction and the date of application for employment;

26 (d) The offense was theft in the second degree, or the same offense  
27 as it may be renamed, and five or more years have passed between the  
28 most recent conviction and the date of application for employment;

29 (e) The offense was forgery, or the same offense as it may be  
30 renamed, and five or more years have passed between the most recent  
31 conviction and the date of application for employment.

32 The offenses set forth in (a) through (e) of this subsection do not  
33 automatically disqualify an applicant from employment by a licensee.  
34 Nothing in this section may be construed to require the employment of  
35 any person against a licensee's judgment.

36 (3) In consultation with law enforcement personnel, the secretary  
37 of social and health services and the secretary of health shall  
38 investigate, or cause to be investigated, the conviction record and the  
39 protection proceeding record information under chapter 43.43 RCW of

1 (~~each agency or facility and its~~) the staff of each agency or  
2 facility under their respective jurisdictions seeking licensure or  
3 relicensure. The secretaries shall use the information solely for the  
4 purpose of determining eligibility for licensure or relicensure.  
5 Criminal justice agencies shall provide the secretaries such  
6 information as they may have and that the secretaries may require for  
7 such purpose.

8 **Sec. 3.** RCW 43.20A.710 and 1993 c 210 s 1 are each amended to read  
9 as follows:

10 (1) The secretary shall investigate the conviction records, pending  
11 charges or disciplinary board final decisions of:

12 (~~(1)~~) (a) Persons being considered for state employment in  
13 positions directly responsible for the supervision, care, or treatment  
14 of children or individuals with mental illness or developmental  
15 disabilities; and (~~(2)~~)

16 (b) Individual providers who are paid by the state for in-home  
17 services and hired by individuals with physical disabilities,  
18 developmental disabilities, mental illness, or mental impairment,  
19 including but not limited to services provided under chapter 74.39A  
20 RCW.

21 (2) The investigation may include an examination of state and  
22 national criminal identification data (~~and the child abuse and neglect~~  
23 ~~register established under chapter 26.44 RCW. The secretary shall~~  
24 ~~provide the results of the state background check on individual~~  
25 ~~providers to the individuals with physical disabilities, developmental~~  
26 ~~disabilities, mental illness, or mental impairment who hired them and~~  
27 ~~to their legal guardians, if any)). The secretary shall use the~~  
28 ~~information solely for the purpose of determining the character,~~  
29 ~~suitability, and competence of these applicants (except that in the~~  
30 ~~case of individuals with physical disabilities, developmental~~  
31 ~~disabilities, mental illness, or mental impairment who employ~~  
32 ~~individual providers, the)).~~

33 (3) The secretary shall provide the results of the state background  
34 check on individual providers to the individuals with physical  
35 disabilities, developmental disabilities, mental illness, or mental  
36 impairment or to their legal guardians, if any, for their determination  
37 of the character, suitability, and competence of the applicants (shall  
38 be made by the individual with a physical disability, developmental

1 ~~disability, mental illness, or mental impairment)).~~ If an individual  
2 elects to hire or retain an individual provider after receiving notice  
3 from the department that the applicant has a conviction for an offense  
4 that would disqualify the applicant from employment with the  
5 department, then the secretary may deny payment for any subsequent  
6 services rendered by the disqualified individual provider.

7 (4) Criminal justice agencies shall provide the secretary such  
8 information as they may have and that the secretary may require for  
9 such purpose. ~~((If necessary, persons may be employed on a conditional~~  
10 ~~basis pending completion of the background investigation.))~~

11 **Sec. 4.** RCW 18.52C.010 and 1988 c 243 s 1 are each amended to read  
12 as follows:

13 The legislature intends to protect the public's right to high  
14 quality health care by assuring that nursing pools employ, procure or  
15 refer competent and qualified ~~((nursing))~~ health care or long-term care  
16 personnel, and that such ~~((nursing))~~ personnel are provided to health  
17 care facilities, agencies, or individuals in a way to meet the needs of  
18 residents and patients.

19 **Sec. 5.** RCW 18.52C.020 and 1991 c 3 s 130 are each amended to read  
20 as follows:

21 Unless the context clearly requires otherwise, the definitions in  
22 this section apply throughout this chapter.

23 (1) "Secretary" means the secretary of the department of health.

24 (2) "Health care facility" means a nursing home, hospital, hospice  
25 care facility, home health care agency, hospice agency, boarding home,  
26 adult family home, group home, or other entity for the delivery of  
27 health care or long-term care services, including chore services  
28 provided under chapter 74.39A RCW.

29 (3) "Nursing home" means any nursing home facility licensed  
30 pursuant to chapter 18.52 RCW.

31 (4) "Nursing pool" means any person engaged in the business of  
32 providing, procuring, or referring health care or long-term care  
33 personnel for temporary employment in health care facilities, such as  
34 licensed nurses or practical nurses, ((and)) nursing assistants, and  
35 chore service providers. "Nursing pool" does not include an individual  
36 who only engages in providing his or her own services.

1 (5) "Person" includes an individual, firm, corporation,  
2 partnership, or association.

3 **Sec. 6.** RCW 18.52C.040 and 1991 c 3 s 132 are each amended to read  
4 as follows:

5 (1) The nursing pool shall document that each temporary employee or  
6 referred independent contractor provided or referred to health care  
7 facilities currently meets the applicable minimum state credentialing  
8 requirements.

9 (2) The nursing pool shall not require, as a condition of  
10 employment or referral, that employees or independent contractors of  
11 the nursing pool recruit new employees or independent contractors for  
12 the nursing pool from among the permanent employees of the health care  
13 facility to which the nursing pool employee or independent contractor  
14 has been assigned or referred.

15 (3) The nursing pool shall carry professional and general liability  
16 insurance to insure against any loss or damage occurring, whether  
17 professional or otherwise, as the result of the negligence of its  
18 employees, agents or independent contractors for acts committed in the  
19 course of their employment with the nursing pool: PROVIDED, That a  
20 nursing pool that only refers self-employed, independent contractors to  
21 health care facilities shall carry professional and general liability  
22 insurance to cover its own liability as a nursing pool which refers  
23 self-employed, independent contractors to health care facilities: AND  
24 PROVIDED FURTHER, That it shall require, as a condition of referral,  
25 that self-employed, independent contractors carry professional and  
26 general liability insurance to insure against loss or damage resulting  
27 from their own acts committed in the course of their own employment by  
28 a health care facility.

29 (4) The uniform disciplinary act, chapter 18.130 RCW, shall govern  
30 the issuance and denial of registration and the discipline of persons  
31 registered under this chapter. The secretary shall be the disciplinary  
32 authority under this chapter.

33 (5) The nursing pool shall conduct a criminal background check on  
34 all employees and independent contractors as required under RCW  
35 43.43.842 prior to employment or referral of the employee or  
36 independent contractor.

1        NEW SECTION.    **Sec. 7.**    A new section is added to chapter 43.43 RCW  
2 to read as follows:

3        If information is released under this chapter by the state of  
4 Washington, the state and its employees: (1) Make no representation  
5 that the subject of the inquiry has no criminal record or adverse civil  
6 or administrative decisions; (2) make no determination that the subject  
7 of the inquiry is suitable for involvement with a business or  
8 organization; and (3) are not liable for defamation, invasion of  
9 privacy, negligence, or any other claim in connection with any lawful  
10 dissemination of information."

11    **SHB 1946** - S COMM AMD  
12        By Committee on Human Services & Corrections

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14        On page 1, line 1 of the title, after "persons;" strike the  
15 remainder of the title and insert "amending RCW 43.43.832, 43.43.842,  
16 43.20A.710, 18.52C.010, 18.52C.020, and 18.52C.040; and adding a new  
17 section to chapter 43.43 RCW."

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