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HOUSE BILL 1946

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State of Washington

55th Legislature

1997 Regular Session

By Representatives Kenney, Dyer, Cody, Van Luven, Chopp, Cooke, Keiser, Anderson, Cole, Cooper, Veloria, Hatfield, Constantine, Morris, O'Brien, Ogden, Blalock, Costa, Conway and Tokuda

Read first time 02/14/97. Referred to Committee on Children & Family Services.

1 AN ACT Relating to increasing protections for vulnerable persons;  
2 amending RCW 43.43.832, 43.43.842, 43.20A.710, 18.52C.010, 18.52C.020,  
3 and 18.52C.040; adding a new section to chapter 43.20A RCW; and adding  
4 a new section to chapter 43.43 RCW.

5 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

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

8 (1) The legislature finds that businesses and organizations  
9 providing services to children, developmentally disabled persons, and  
10 vulnerable adults need adequate information to determine which  
11 employees or licensees to hire or engage. The legislature further  
12 finds that many developmentally disabled individuals and vulnerable  
13 adults desire to hire their own employees directly and also need  
14 adequate information to determine which employees or licensees to hire  
15 or engage. Therefore, the Washington state patrol criminal  
16 identification system ((may)) shall disclose, upon the request of a  
17 business or organization as defined in RCW 43.43.830, a developmentally  
18 disabled person, or a vulnerable adult as defined in RCW 43.43.830 or  
19 his or her guardian, an applicant's record for convictions of offenses

1 against children or other persons, convictions for crimes relating to  
2 financial exploitation, but only if the victim was a vulnerable adult,  
3 adjudications of child abuse in a civil action, the issuance of a  
4 protection order against the respondent under chapter 74.34 RCW, and  
5 disciplinary board final decisions and any subsequent criminal charges  
6 associated with the conduct that is the subject of the disciplinary  
7 board final decision. When necessary, applicants may be employed on a  
8 conditional basis pending completion of such a background  
9 investigation.

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

14 (3) The legislature also finds that law enforcement agencies, the  
15 office of the attorney general, prosecuting authorities, and the  
16 department of social and health services may request this same  
17 information to aid in the investigation and prosecution of child,  
18 developmentally disabled person, and vulnerable adult abuse cases and  
19 to protect children and adults from further incidents of abuse.

20 (4) The legislature further finds that the department of social and  
21 health services, when considering persons for state positions directly  
22 responsible for the care, supervision, or treatment of children,  
23 developmentally disabled persons, or vulnerable adults or when  
24 licensing ~~((or))~~, authorizing, or contracting such services, persons,  
25 or agencies pursuant to its authority under chapter 74.15, 71A.10,  
26 70.128, 18.51, 18.20, 18.48, 72.36, or 72.23 RCW, or persons receiving  
27 services from home health, hospice, or home care agencies licensed or  
28 required to be licensed under chapter 70.126 RCW, or any later-enacted  
29 statute which purpose is to license or regulate a facility which  
30 handles vulnerable adults, must consider the information listed in  
31 subsection (1) of this section. However, when necessary, persons may  
32 be employed on a conditional basis pending completion of the background  
33 investigation. Conditional employment or volunteer work pending the  
34 completion of the criminal history background check shall only be  
35 authorized if the potential volunteer, employer, or employee verifies  
36 that the background application has been submitted to the appropriate  
37 agency and the applicant shows three positive work or personal  
38 references. The three references must be kept by the agency, or  
39 individual serving as employer, agent, supervisor, or department, as

1 appropriate, and serve only as a means for allowing temporary  
2 employment until an approved criminal history background check has been  
3 received. The three references do not take the place of a clear  
4 criminal history background check. Persons wishing to be employed who  
5 are related to the recipient of the services are subject to the terms  
6 and conditions of this section, however, if the criminal history  
7 background check reveals a disqualifying criminal history, the  
8 recipient of state-funded services shall acknowledge in writing the  
9 results of the criminal history background check and sign a waiver  
10 developed by the department. Upon receipt of the signed waiver from  
11 the department, the individual with the disqualifying criminal history  
12 may be employed by the person receiving state-funded services. The  
13 department shall determine degree of kinship for purposes of this  
14 section. The Washington personnel resources board shall adopt rules to  
15 accomplish the purposes of this subsection as it applies to state  
16 employees.

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

19 (1) The secretary of social and health services and the secretary  
20 of health shall adopt additional requirements for the licensure or  
21 relicensure of agencies providing services under chapter 74.39A RCW and  
22 nursing pools under chapter 18.52C RCW or facilities which provide care  
23 and treatment to vulnerable adults consistent with chapter 74.34 RCW.  
24 These additional requirements shall ensure that any person associated  
25 with a licensed agency or facility having direct contact with a  
26 vulnerable adult shall not have been: (a) Convicted of a crime against  
27 persons as defined in RCW 43.43.830, except as provided in this  
28 section; (b) convicted of crimes relating to financial exploitation as  
29 defined in RCW 43.43.830, except as provided in this section; (c) found  
30 in any disciplinary board final decision to have abused a vulnerable  
31 adult under RCW 43.43.830; or (d) the subject in a protective  
32 proceeding under chapter 74.34 RCW.

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

37 (a) The offense was simple assault, assault in the fourth degree,  
38 or the same offense as it may be renamed, and three or more years have

1 passed between the most recent conviction and the date of application  
2 for employment;

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

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

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

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

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

19 In consultation with law enforcement personnel, the secretary of  
20 social and health services and the secretary of health shall  
21 investigate the conviction record and the protection proceeding record  
22 information under chapter 43.43 RCW of each agency providing services  
23 pursuant to chapters 74.39A and 18.52C RCW, or facility and its staff  
24 under their respective jurisdictions seeking licensure or relicensure.  
25 The secretaries shall use the information solely for the purpose of  
26 determining eligibility for licensure or relicensure. Criminal justice  
27 agencies shall provide the secretaries such information as they may  
28 have and that the secretaries may require for such purpose.

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

31 The secretary shall investigate the conviction records, pending  
32 charges or disciplinary board final decisions of: (1) Persons being  
33 considered for state employment in positions directly responsible for  
34 the supervision, care, or treatment of children or individuals with  
35 mental illness or developmental disabilities; and (2) individual  
36 providers who are paid by the state for in-home services and hired by  
37 individuals with physical disabilities, developmental disabilities,  
38 mental illness, or mental impairment. The investigation may include an

1 examination of state and national criminal identification data and the  
2 child abuse and neglect register established under chapter 26.44 RCW.  
3 The secretary shall provide the results of the state background check  
4 on individual providers to the individuals with physical disabilities,  
5 developmental disabilities, mental illness, or mental impairment who  
6 hired them and to their legal guardians, if any. The secretary shall  
7 use the information solely for the purpose of determining the  
8 character, suitability, and competence of these applicants except that  
9 in the case of individuals with physical disabilities, developmental  
10 disabilities, mental illness, or mental impairment who employ  
11 individual providers, the determination of character, suitability, and  
12 competence of applicants (~~shall~~) may be made by the individual with  
13 a physical disability, developmental disability, mental illness, or  
14 mental impairment, and except that state payment for in-home services  
15 shall be denied if the in-home provider has a disqualifying criminal  
16 history background. Criminal justice agencies shall provide the  
17 secretary such information as they may have and that the secretary may  
18 require for such purpose. If necessary, persons may be employed on a  
19 conditional basis pending completion of the background investigation.  
20 Conditional employment or volunteer work pending the completion of the  
21 criminal history background check shall only be authorized if the  
22 potential volunteer, employer, or employee verifies that the background  
23 application has been submitted to the appropriate agency and the  
24 applicant shows three positive work or personal references. The three  
25 references must be kept by the individual receiving the services and  
26 made available for the department to review. The references shall  
27 serve only as a means for allowing temporary employment until a  
28 criminal history background check has been received. The three  
29 references do not take the place of a clear criminal history background  
30 check. Persons wishing to be employed as an individual provider who  
31 are related to the recipient of state-funded services are subject to  
32 the terms and conditions of this section, however, if the criminal  
33 history background check reveals a disqualifying criminal history, the  
34 recipient of state-funded services shall acknowledge in writing the  
35 results of the criminal history background check and sign a waiver  
36 developed by the department. Upon receipt of the signed waiver from  
37 the department, the individual with the disqualifying background may be  
38 employed by the person receiving state-funded services. The department  
39 shall determine degree of kinship for purposes of this section.

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

3       The legislature intends to protect the public's right to high  
4 quality health care by assuring that nursing pools employ, procure, or  
5 refer competent and qualified nursing or long-term care personnel  
6 providing services pursuant to chapter 74.39A RCW, and that such  
7 nursing or long-term care personnel are provided to individuals,  
8 agencies, or health care facilities in a way to meet the needs of  
9 residents and patients.

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

12       Unless the context clearly requires otherwise, the definitions in  
13 this section apply throughout this chapter.

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

15       (2) "Health care facility" means a nursing home, hospital, hospice  
16 care facility, home health care agency, hospice agency, boarding home,  
17 adult family home, group home, or other entity for the delivery of  
18 health care or long-term care services pursuant to chapter 74.39A RCW  
19 including services provided under the state-funded individual provider  
20 program.

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

23       (4) "Nursing pool" means any person engaged in the business of  
24 providing, procuring, or referring health care personnel for temporary  
25 employment in health care facilities, such as licensed nurses or  
26 practical nurses, and nursing assistants. "Nursing pool" does not  
27 include an individual who only engages in providing his or her own  
28 services.

29       (5) "Person" includes an individual, firm, corporation,  
30 partnership, or association.

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

33       (1) The nursing pool shall document that each temporary employee or  
34 referred independent contractor provided or referred to health care  
35 facilities currently meets the minimum state credentialing  
36 requirements.

1 (2) The nursing pool shall not require, as a condition of  
2 employment or referral, that employees or independent contractors of  
3 the nursing pool recruit new employees or independent contractors for  
4 the nursing pool from among the permanent employees of the health care  
5 facility to which the nursing pool employee or independent contractor  
6 has been assigned or referred.

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

21 (4) The uniform disciplinary act, chapter 18.130 RCW, shall govern  
22 the issuance and denial of registration and the discipline of persons  
23 registered under this chapter. The secretary shall be the disciplinary  
24 authority under this chapter.

25 (5) All nursing pools shall require background checks for employees  
26 or independent contractors of the nursing pools and other individuals  
27 working with unsupervised access to vulnerable adults in compliance  
28 with the requirements of RCW 43.43.830 through 43.43.842.

29 NEW SECTION. Sec. 7. A new section is added to chapter 43.20A RCW  
30 to read as follows:

31 The secretary of social and health services shall adopt additional  
32 requirements for individuals who work independently, or with any agency  
33 or organization providing temporary assistance as a paid or voluntary  
34 employee, or through independent contractors, that brings them into  
35 unsupervised access with vulnerable adults receiving long-term care  
36 services or assistance under chapters 74.39A, 72.23, and 72.36 RCW.

1        NEW SECTION.    **Sec. 8.**    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.

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