

SENATE BILL REPORT

2SHB 1903

As Reported by Senate Committee On:
Human Services & Corrections, March 24, 2011
Ways & Means, April 1, 2011

Title: An act relating to background checks for child care licensees and employees.

Brief Description: Requiring background checks for all child care licensees and employees.

Sponsors: House Committee on Education Appropriations & Oversight (originally sponsored by Representatives Orwall, Goodman, Roberts, Reykdal, Kagi, Kenney and Kelley).

Brief History: Passed House: 3/02/11, 94-3.

Committee Activity: Human Services & Corrections: 3/18/11, 3/24/11 [DPA-WM, DNP].
Ways & Means: 3/31/11, 4/01/11 [DPA].

SENATE COMMITTEE ON HUMAN SERVICES & CORRECTIONS

Majority Report: Do pass as amended and be referred to Committee on Ways & Means.
Signed by Senators Hargrove, Chair; Regala, Vice Chair; Carrell, Harper and McAuliffe.

Minority Report: Do not pass.
Signed by Senator Baxter.

Staff: Kevin Black (786-7747)

SENATE COMMITTEE ON WAYS & MEANS

Majority Report: Do pass as amended.
Signed by Senators Murray, Chair; Kilmer, Vice Chair, Capital Budget Chair; Zarelli, Ranking Minority Member; Parlette, Ranking Minority Member Capital; Baumgartner, Baxter, Brown, Conway, Fraser, Hewitt, Honeyford, Kastama, Keiser, Kohl-Welles, Pflug, Regala, Rockefeller and Schoesler.

Staff: Michael Bezanson (786-7449)

Background: The Department of Early Learning (DEL) conducts criminal background checks in cooperation with the Department of Social and Health Services and the Washington State Patrol on behalf of agencies and employees who apply to provide child care and early

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learning services to children. If the applicant has not resided in the state of Washington during the three-year period prior to the application, the check must be a fingerprint-based background check. The licensed child care provider must bear the cost of a fingerprint-based background check, and may not pass this cost on to the employee or prospective employee, unless the employee is later determined to be unsuitable based on his or her criminal record.

A license to operate a child care agency is issued for a period of three years and is not transferable to a different licensee or to a different location. An application for the renewal of a license must be submitted 90 days before the expiration of the current license. The fee charged for the license may not exceed DEL's cost for the licensure but may include the cost of necessary inspections.

Summary of Bill (Recommended Amendments): DEL is required to establish and maintain an individual-based or portable, background check clearance registry by July 1, 2012.

All new applicants for an agency license or for employment at a child care agency must undergo a fingerprint-based background check effective July 1, 2012. The licensee may, but need not, pay for the costs on behalf of a prospective employee or reimburse the prospective employee for these costs. The costs include the Washington State Patrol fee for the fingerprint-based background check, the cost of the fingerprints, and a new fee set by DEL for the cost of administering the portable background check clearance registry.

No later than July 1, 2013, all child care agency licensees and employees who were licensed before July 1, 2012, must submit a new background application to DEL, and pay an additional fee set by DEL to cover the cost of administering the portable background check clearance registry. The licensee may, but need not, pay for the costs on behalf of a prospective employee or reimburse the prospective employee for these costs.

If the applicant passes the background check, DEL is required to issue a background check clearance card or certificate to the applicant. This clearance card, or certificate, is valid for three years and must be accepted by potential employers. A copy of the background check clearance card or certificate must be kept on-site.

Individuals who have been issued a background clearance card or certificate must provide conviction and non-conviction information to DEL within 24 hours of the event. DEL must investigate and re-determine an applicant or licensee's background clearance if DEL receives a complaint or information from individuals, law enforcement, or other government agencies. If that individual lacks the appropriate character, suitability, or competence to provide child care or early learning services, DEL is authorized to invalidate the background card or certificate or suspend, modify, or revoke any license.

Non-conviction information is defined as any court order or judgment against the applicant in any state, federal, tribal, or foreign jurisdiction which relates to the character, suitability, or competence of the individual to care for or have unsupervised access to children in child care.

Effective July 1, 2011, all DEL licensees must pay a one-time fee established by DEL for the development and administration of the registry. All fees established and collected by DEL for this act are to be deposited into a new account, the individual-based portable background check clearance account. Expenditures from this account may be used only for development, administration, and implementation of the portable background check clearance registry and must be authorized by the Director of DEL or the Director's designee.

To the extent that existing resources are available, DEL, the Office of Superintendent of Public Instruction (OSPI), and educational service districts, are to develop a proposal to coordinate their common background check activities. The proposal is due to the Legislature no later than December 15, 2011.

EFFECT OF CHANGES MADE BY WAYS & MEANS COMMITTEE (Recommended Amendments): Requires DEL to establish and maintain an individual-based background check clearance registry. Adds requirements that all applicants must obtain a fingerprint and criminal history background check, the background check is good for three years, and applicants must report to DEL any conviction/non-conviction information within 24 hours. Creates fees to support the maintenance and development of the registry, and these fees are placed into a new account for this purpose. Specifies that DEL, OSPI, and educational service districts develop a proposal to coordinate common background check activities.

EFFECT OF CHANGES MADE BY HUMAN SERVICES & CORRECTIONS COMMITTEE (Recommended Amendments): DEL must conduct an annual background check for all licensees and employees who may have unsupervised access to children. Language requiring DEL to institute a portable background check registry was removed. Fees, the creation of a new account, the requirement that all new employees must undergo a fingerprint-based background check, and effective dates were removed.

Appropriation: None.

Fiscal Note: Available.

[OFM requested ten-year cost projection pursuant to I-960.]

Committee/Commission/Task Force Created: No.

Effective Date: Ninety days after adjournment of session in which bill is passed.

Staff Summary of Public Testimony on Second Substitute House Bill (Human Services & Corrections): PRO: This bill is designed to make sure that every child care worker undergoes a fingerprint-based background check. Other states have had success with portable background checks. We support the bill but are concerned that the fees to be charged may be excessive. We should make sure that the background check cards are up to date.

CON: We oppose the idea of forcing the employee to pay for the background checks. Employees already face significant costs of employment for a low wage job and cannot afford the extra burden. We don't want to pass the cost of background checks onto our employees. We already require child care workers to be fingerprinted, but we want it to be

done through the Office of the Superintendent of Public Instruction which is more efficient than DEL.

OTHER: The portable license could be a benefit to agencies, which have to utilize double staffing while background checks are being completed, and also a benefit to employees in changing jobs. We have tried to make the fiscal note as streamlined as possible.

Persons Testifying (Human Services & Corrections): PRO: Representative Orwall, prime sponsor; Lonnie Johns-Brown, Service Employees International Union.

CON: Bill Bauman, Children Northwest; Kristi Baker, Southwest Child Care Consortium.

OTHER: Amy Blondin, Bob McLellan, DEL.

Staff Summary of Public Testimony on Recommended Amendments as Passed by HSC (Ways & Means): PRO: We are working on an amendment to this bill with stakeholders to get back to the heart of the bill and improve it. The bill does two things: requires fingerprint checks for all child care workers and it creates a portability system. The intent is not to charge employees or day care providers more than it would cost to manage the system. We hope to reduce potential duplication of effort between OSPI and DEL.

We think the amendment that is being discussed helps clarify and reduces the fiscal impact. The amendment will help make for an easier licensing and relicensing process and make it easier on providers.

OTHER: We support the concept and support the amendment. We are looking to move the recertification process from one year back to three years. We are still working on costs and the fees so that we do not charge more than is needed.

Persons Testifying (Ways & Means): PRO: Representative Orwall, prime sponsor; Lonnie Johns-Brown, Service Employees International Union.

OTHER: Amy Blondin, DEL