
SECOND SUBSTITUTE HOUSE BILL 1903

State of Washington

62nd Legislature

2011 Regular Session

By House Education Appropriations & Oversight (originally sponsored by Representatives Orwall, Goodman, Roberts, Reykdal, Kagi, Kenney, and Kelley)

READ FIRST TIME 02/24/11.

1 AN ACT Relating to background checks for child care licensees and
2 employees; amending RCW 43.215.215; reenacting and amending RCW
3 43.215.010; and adding new sections to chapter 43.215 RCW.

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

5 NEW SECTION. **Sec. 1.** A new section is added to chapter 43.215 RCW
6 to read as follows:

7 Subject to appropriation, the department of early learning shall
8 establish and maintain an individual-based or portable background check
9 clearance registry by July 1, 2012. Any individual seeking a child
10 care license or employment in any child care facility licensed or
11 regulated under current law shall submit a background application on a
12 form prescribed by the department in rule.

13 **Sec. 2.** RCW 43.215.215 and 2007 c 415 s 5 are each amended to read
14 as follows:

15 (1) In determining whether an individual is of appropriate
16 character, suitability, and competence to provide child care and early
17 learning services to children, the department may consider the history
18 of past involvement of child protective services or law enforcement

1 agencies with the individual for the purpose of establishing a pattern
2 of conduct, behavior, or inaction with regard to the health, safety, or
3 welfare of a child. No report of child abuse or neglect that has been
4 destroyed or expunged under RCW 26.44.031 may be used for such
5 purposes. No unfounded or inconclusive allegation of child abuse or
6 neglect as defined in RCW 26.44.020 may be disclosed to a provider
7 licensed under this chapter.

8 (2) In order to determine the suitability of (~~applicants~~)
9 individuals newly applying for an agency license, new licensees, their
10 new employees, and other persons who newly have unsupervised access to
11 children in care, (~~and who have not resided in the state of Washington~~
12 ~~during the three-year period before being authorized to care for~~
13 ~~children,~~) shall be fingerprinted.

14 (a) The fingerprints shall be forwarded to the Washington state
15 patrol and federal bureau of investigation for a criminal history
16 record check.

17 (b) (~~The fingerprint criminal history record checks shall be at~~
18 ~~the expense of the licensee. The licensee may not pass this cost on to~~
19 ~~the employee or prospective employee, unless the employee is determined~~
20 ~~to be unsuitable due to his or her criminal history record.)) (i)
21 Effective July 1, 2012, all individuals applying for first-time agency
22 licenses, all new employees, and other persons who have not been
23 previously qualified by the department to have unsupervised access to
24 children in care must be fingerprinted and obtain a criminal history
25 record check pursuant to this section.~~

26 (ii) Persons required to be fingerprinted and obtain a criminal
27 record check pursuant to this section must pay for the cost of this
28 check as follows: The fee established by the Washington state patrol
29 for the criminal background history check, including the cost of
30 obtaining the fingerprints; and a fee of ten dollars paid to the
31 department for the cost of administering the individual-based/portable
32 background check clearance registry. The ten dollar fee must be paid
33 into the individual-based/portable background check clearance account
34 established in section 5 of this act.

35 (c) The director shall use the fingerprint criminal history record
36 check information solely for the purpose of determining eligibility for
37 a license and for determining the character, suitability, and

1 competence of those persons or agencies, excluding parents, not
2 required to be licensed who are authorized to care for children.

3 (d) Criminal justice agencies shall provide the director such
4 information as they may have and that the director may require for such
5 purpose.

6 (e) No later than July 1, 2013, all agency licensees holding
7 licenses prior to July 1, 2012, persons who were employees before July
8 1, 2012, and persons who have been qualified by the department before
9 July 1, 2012, to have unsupervised access to children in care, must
10 submit a new background application to the department. Persons
11 submitting a new background application pursuant to this subsection
12 (2)(e) must pay a fee of ten dollars to the department for the cost of
13 administering the individual-based/portable background check clearance
14 registry. This fee must be paid into the individual-based/portable
15 background check clearance account established in section 5 of this
16 act.

17 (f) The department shall issue a background check clearance card or
18 certificate to the applicant if after the completion of a background
19 check the department concludes the applicant is qualified for
20 unsupervised access to children in care. The background check
21 clearance card or certificate is valid for three years from the date of
22 issuance. A valid card or certificate must be accepted by a potential
23 employer as proof that the applicant has successfully completed a
24 background check as required under this chapter.

25 (g) The original applicant for an agency license, licensees, their
26 employees, and other persons who have unsupervised access to children
27 in care shall submit a new background check application to the
28 department, on a form determined by the department, one hundred twenty
29 days prior to the expiration date listed on the background check
30 clearance card or certificate.

31 (h) The applicant and agency shall maintain on-site for inspection
32 a copy of the background check clearance card or certificate.

33 (i) Individuals who have been issued a background check clearance
34 card or certificate shall report nonconviction and conviction
35 information to the department within twenty-four hours of the event
36 constituting the nonconviction or conviction information.

37 (j) The department shall investigate and conduct a redetermination
38 of an applicant's or licensee's background clearance if the department

1 receives a complaint or information from individuals, a law enforcement
2 agency, or other federal, state, or local government agency. Subject
3 to the requirements contained in RCW 43.215.300 and 43.215.305 and
4 based on a determination that an individual lacks the appropriate
5 character, suitability, or competence to provide child care or early
6 learning services to children, the department may: (i) Invalidate the
7 background card or certificate; or (ii) suspend, modify, or revoke any
8 license authorized by this chapter.

9 **Sec. 3.** RCW 43.215.010 and 2007 c 415 s 2 and 2007 c 394 s 2 are
10 each reenacted and amended to read as follows:

11 The definitions in this section apply throughout this chapter
12 unless the context clearly requires otherwise.

13 (1) "Agency" means any person, firm, partnership, association,
14 corporation, or facility that provides child care and early learning
15 services outside a child's own home and includes the following
16 irrespective of whether there is compensation to the agency:

17 (a) "Child day care center" means an agency that regularly provides
18 child day care and early learning services for a group of children for
19 periods of less than twenty-four hours;

20 (b) "Early learning" includes but is not limited to programs and
21 services for child care; state, federal, private, and nonprofit
22 preschool; child care subsidies; child care resource and referral;
23 parental education and support; and training and professional
24 development for early learning professionals;

25 (c) "Family day care provider" means a child day care provider who
26 regularly provides child day care and early learning services for not
27 more than twelve children in the provider's home in the family living
28 quarters;

29 (d) "Nongovernmental private-public partnership" means an entity
30 registered as a nonprofit corporation in Washington state with a
31 primary focus on early learning, school readiness, and parental
32 support, and an ability to raise a minimum of five million dollars in
33 contributions;

34 (e) "Service provider" means the entity that operates a community
35 facility.

36 (2) "Agency" does not include the following:

37 (a) Persons related to the child in the following ways:

1 (i) Any blood relative, including those of half-blood, and
2 including first cousins, nephews or nieces, and persons of preceding
3 generations as denoted by prefixes of grand, great, or great-great;
4 (ii) Stepfather, stepmother, stepbrother, and stepsister;
5 (iii) A person who legally adopts a child or the child's parent as
6 well as the natural and other legally adopted children of such persons,
7 and other relatives of the adoptive parents in accordance with state
8 law; or
9 (iv) Spouses of any persons named in (i), (ii), or (iii) of this
10 subsection (2)(a), even after the marriage is terminated;
11 (b) Persons who are legal guardians of the child;
12 (c) Persons who care for a neighbor's or friend's child or
13 children, with or without compensation, where the person providing care
14 for periods of less than twenty-four hours does not conduct such
15 activity on an ongoing, regularly scheduled basis for the purpose of
16 engaging in business, which includes, but is not limited to,
17 advertising such care;
18 (d) Parents on a mutually cooperative basis exchange care of one
19 another's children;
20 (e) Nursery schools or kindergartens that are engaged primarily in
21 educational work with preschool children and in which no child is
22 enrolled on a regular basis for more than four hours per day;
23 (f) Schools, including boarding schools, that are engaged primarily
24 in education, operate on a definite school year schedule, follow a
25 stated academic curriculum, accept only school-age children, and do not
26 accept custody of children;
27 (g) Seasonal camps of three months' or less duration engaged
28 primarily in recreational or educational activities;
29 (h) Facilities providing care to children for periods of less than
30 twenty-four hours whose parents remain on the premises to participate
31 in activities other than employment;
32 (i) Any agency having been in operation in this state ten years
33 before June 8, 1967, and not seeking or accepting moneys or assistance
34 from any state or federal agency, and is supported in part by an
35 endowment or trust fund;
36 (j) An agency operated by any unit of local, state, or federal
37 government or an agency, located within the boundaries of a federally
38 recognized Indian reservation, licensed by the Indian tribe;

1 (k) An agency located on a federal military reservation, except
2 where the military authorities request that such agency be subject to
3 the licensing requirements of this chapter;

4 (l) An agency that offers early learning and support services, such
5 as parent education, and does not provide child care services on a
6 regular basis.

7 (3) "Applicant" means a person who requests or seeks employment in
8 an agency.

9 (4) "Department" means the department of early learning.

10 (5) "Director" means the director of the department.

11 (6) "Employer" means a person or business that engages the services
12 of one or more people, especially for wages or salary to work in an
13 agency.

14 (7) "Enforcement action" means denial, suspension, revocation,
15 modification, or nonrenewal of a license pursuant to RCW 43.215.300(1)
16 or assessment of civil monetary penalties pursuant to RCW
17 43.215.300(3).

18 (8) "Probationary license" means a license issued as a disciplinary
19 measure to an agency that has previously been issued a full license but
20 is out of compliance with licensing standards.

21 (9) "Requirement" means any rule, regulation, or standard of care
22 to be maintained by an agency.

23 (10) "Conviction information" means criminal history record
24 information relating to an incident which has led to a conviction or
25 other disposition adverse to the applicant.

26 (11) "Negative action" means a court order, court judgment, or an
27 adverse action taken by an agency, in any state, federal, tribal, or
28 foreign jurisdiction, which results in a finding against the applicant
29 reasonably related to the individual's character, suitability, and
30 competence to care for or have unsupervised access to children in child
31 care. This may include, but is not limited to:

32 (a) A decision issued by an administrative law judge;

33 (b) A final determination, decision, or finding made by an agency
34 following an investigation;

35 (c) An adverse agency action, including termination, revocation, or
36 denial of a license or certification, or if pending adverse agency
37 action, the voluntary surrender of a license, certification, or
38 contract in lieu of the adverse action;

1 (d) A revocation, denial, or restriction placed on any professional
2 license; or

3 (e) A final decision of a disciplinary board.

4 (12) "Nonconviction information" means arrest, founded allegations
5 of child abuse, or neglect pursuant to chapter 26.44 RCW, or other
6 negative action adverse to the applicant.

7 NEW SECTION. Sec. 4. A new section is added to chapter 43.215 RCW
8 to read as follows:

9 Effective July 1, 2011, all agency licensees shall pay the
10 department a one-time fee of fifty dollars. Fee revenues must be
11 deposited in the individual-based/portable background check clearance
12 account created in section 5 of this act and may be expended only for
13 the costs of developing and administering the individual-based/portable
14 background check clearance registry created in section 1 of this act.

15 NEW SECTION. Sec. 5. A new section is added to chapter 43.215 RCW
16 to read as follows:

17 The individual-based/portable background check clearance account is
18 created in the custody of the state treasurer. All fees collected
19 pursuant to RCW 43.215.215 and section 4 of this act must be deposited
20 in the account. Expenditures from the account may be made only for
21 development and administration, and implementation of the individual-
22 based/portable background check registry established in section 1 of
23 this act. Only the director of the department of early learning or the
24 director's designee may authorize expenditures from the account. The
25 account is subject to allotment procedures under chapter 43.88 RCW, but
26 an appropriation is not required for expenditures.

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