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**SUBSTITUTE SENATE BILL 5714**

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**State of Washington**

**62nd Legislature**

**2011 Regular Session**

**By** Senate Human Services & Corrections (originally sponsored by Senators Kohl-Welles, Litzow, McAuliffe, Harper, and Kline)

READ FIRST TIME 02/21/11.

1 AN ACT Relating to implementing a portable background check  
2 clearance registry for licensed and regulated child care facilities;  
3 amending RCW 43.215.215; and reenacting and amending RCW 43.215.010.

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

5 **Sec. 1.** RCW 43.215.010 and 2007 c 415 s 2 and 2007 c 394 s 2 are  
6 each reenacted and amended to read as follows:

7 The definitions in this section apply throughout this chapter  
8 unless the context clearly requires otherwise.

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

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

16 (b) "Early learning" includes but is not limited to programs and  
17 services for child care; state, federal, private, and nonprofit  
18 preschool; child care subsidies; child care resource and referral;

1 parental education and support; and training and professional  
2 development for early learning professionals;

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

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

12 (e) "Service provider" means the entity that operates a community  
13 facility.

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

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

16 (i) Any blood relative, including those of half-blood, and  
17 including first cousins, nephews or nieces, and persons of preceding  
18 generations as denoted by prefixes of grand, great, or great-great;

19 (ii) Stepfather, stepmother, stepbrother, and stepsister;

20 (iii) A person who legally adopts a child or the child's parent as  
21 well as the natural and other legally adopted children of such persons,  
22 and other relatives of the adoptive parents in accordance with state  
23 law; or

24 (iv) Spouses of any persons named in (i), (ii), or (iii) of this  
25 subsection (2)(a), even after the marriage is terminated;

26 (b) Persons who are legal guardians of the child;

27 (c) Persons who care for a neighbor's or friend's child or  
28 children, with or without compensation, where the person providing care  
29 for periods of less than twenty-four hours does not conduct such  
30 activity on an ongoing, regularly scheduled basis for the purpose of  
31 engaging in business, which includes, but is not limited to,  
32 advertising such care;

33 (d) Parents on a mutually cooperative basis exchange care of one  
34 another's children;

35 (e) Nursery schools or kindergartens that are engaged primarily in  
36 educational work with preschool children and in which no child is  
37 enrolled on a regular basis for more than four hours per day;

1 (f) Schools, including boarding schools, that are engaged primarily  
2 in education, operate on a definite school year schedule, follow a  
3 stated academic curriculum, accept only school-age children, and do not  
4 accept custody of children;

5 (g) Seasonal camps of three months' or less duration engaged  
6 primarily in recreational or educational activities;

7 (h) Facilities providing care to children for periods of less than  
8 twenty-four hours whose parents remain on the premises to participate  
9 in activities other than employment;

10 (i) Any agency having been in operation in this state ten years  
11 before June 8, 1967, and not seeking or accepting moneys or assistance  
12 from any state or federal agency, and is supported in part by an  
13 endowment or trust fund;

14 (j) An agency operated by any unit of local, state, or federal  
15 government or an agency, located within the boundaries of a federally  
16 recognized Indian reservation, licensed by the Indian tribe;

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

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

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

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

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

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

30 (7) "Enforcement action" means denial, suspension, revocation,  
31 modification, or nonrenewal of a license pursuant to RCW 43.215.300(1)  
32 or assessment of civil monetary penalties pursuant to RCW  
33 43.215.300(3).

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

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

1 (10) "Conviction information" means criminal history record  
2 information relating to an incident that has led to a conviction or  
3 other disposition adverse to the subject.

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

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

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

13 (c) An adverse agency action, including termination, revocation, or  
14 denial of a license or certification, or if pending adverse agency  
15 action, the voluntary surrender of a license, certification, or  
16 contract in lieu of the adverse action;

17 (d) A revocation, denial, or restriction placed on any professional  
18 license; and

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

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

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

25 (1) In determining whether an individual is of appropriate  
26 character, suitability, and competence to provide child care and early  
27 learning services to children, the department may consider the history  
28 of past involvement of child protective services or law enforcement  
29 agencies with the individual for the purpose of establishing a pattern  
30 of conduct, behavior, or inaction with regard to the health, safety, or  
31 welfare of a child. No report of child abuse or neglect that has been  
32 destroyed or expunged under RCW 26.44.031 may be used for such  
33 purposes. No unfounded or inconclusive allegation of child abuse or  
34 neglect as defined in RCW 26.44.020 may be disclosed to a provider  
35 licensed under this chapter.

36 (2) In order to determine the suitability of applicants for an  
37 agency license, licensees, their employees, and other persons who have

1 unsupervised access to children in care, and who have not resided in  
2 the state of Washington during the three-year period before being  
3 authorized to care for children, shall be fingerprinted.

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

7 ~~((The fingerprint criminal history record checks shall be at  
8 the expense of the licensee. The licensee may not pass this cost on to  
9 the employee or prospective employee, unless the employee is determined  
10 to be unsuitable due to his or her criminal history record))~~ The  
11 applicant must pay for the costs of obtaining the fingerprint criminal  
12 history record check.

13 (c) The director shall use the information solely for the purpose  
14 of determining eligibility for a license and for determining the  
15 character, suitability, and competence of those persons or agencies,  
16 excluding parents, not required to be licensed who are authorized to  
17 care for children.

18 (d) Criminal justice agencies shall provide the director such  
19 information as they may have and that the director may require for such  
20 purpose.

21 (e) The department shall issue a background check clearance card or  
22 certificate to the applicant if after the completion of a background  
23 check the department concludes the applicant is qualified for  
24 unsupervised access to children in care. The background check  
25 clearance card or certificate is valid for one year from the date of  
26 issuance. The card or certificate must be renewed annually. In  
27 renewing the card or certificate, the department need not conduct  
28 another extensive fingerprint-based background check unless it receives  
29 a complaint that when investigated indicates another fingerprint-based  
30 background check is warranted.

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

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

37 (h) 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 in RCW 43.215.300 and 43.215.305, and based on a  
4 determination that an individual lacks the appropriate character,  
5 suitability, or competence to provide child care or early learning  
6 services to children, the department may invalidate the background card  
7 or certificate, or suspend, modify, or revoke any license authorized by  
8 this chapter.

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