

SSB 6095 - H COMM AMD

By Committee on Early Learning & Human Services

ADOPTED 03/05/2014

1 Strike everything after the enacting clause and insert the
2 following:

3 "Sec. 1. RCW 43.43.842 and 2007 c 387 s 4 are each amended to read
4 as follows:

5 (1)(a) The secretary of social and health services and the
6 secretary of health shall adopt additional requirements for the
7 licensure or relicensure of agencies, facilities, and licensed
8 individuals who provide care and treatment to vulnerable adults,
9 including nursing pools registered under chapter 18.52C RCW. These
10 additional requirements shall ensure that any person associated with a
11 licensed agency or facility having unsupervised access with a
12 vulnerable adult shall not be the respondent in an active protective
13 order under RCW 74.34.130, nor have been: (i) Convicted of a crime
14 against persons as defined in RCW 43.43.830, except as provided in this
15 section; (ii) convicted of crimes relating to financial exploitation as
16 defined in RCW 43.43.830, except as provided in this section; or (iii)
17 found in any disciplinary board final decision to have abused a
18 vulnerable adult under RCW 43.43.830.

19 (b) A person associated with a licensed agency or facility who has
20 unsupervised access with a vulnerable adult shall make the disclosures
21 specified in RCW 43.43.834(2). The person shall make the disclosures
22 in writing, sign, and swear to the contents under penalty of perjury.
23 The person shall, in the disclosures, specify all crimes against
24 children or other persons, all crimes relating to financial
25 exploitation, and all crimes relating to drugs as defined in RCW
26 43.43.830, committed by the person.

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

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

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

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

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

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

17 (f) The department of social and health services reviewed the
18 employee's otherwise disqualifying criminal history through the
19 department of social and health services' background assessment review
20 team process conducted in 2002, and determined that such employee could
21 remain in a position covered by this section; or

22 (g) The otherwise disqualifying conviction or disposition has been
23 the subject of a pardon, annulment, or other equivalent procedure.

24 The offenses set forth in (a) through ~~((e))~~ (g) of this
25 subsection do not automatically disqualify an applicant from employment
26 by a licensee. Nothing in this section may be construed to require the
27 employment of any person against a licensee's judgment.

28 (3) In consultation with law enforcement personnel, the secretary
29 of social and health services and the secretary of health shall
30 investigate, or cause to be investigated, the conviction record and the
31 protection proceeding record information under this chapter of the
32 staff of each agency or facility under their respective jurisdictions
33 seeking licensure or relicensure. An individual responding to a
34 criminal background inquiry request from his or her employer or
35 potential employer shall disclose the information about his or her
36 criminal history under penalty of perjury. The secretaries shall use
37 the information solely for the purpose of determining eligibility for

1 licensure or relicensure. Criminal justice agencies shall provide the
2 secretaries such information as they may have and that the secretaries
3 may require for such purpose.

4 **Sec. 2.** RCW 43.20A.710 and 2012 c 164 s 505 are each amended to
5 read as follows:

6 (1) The secretary shall investigate the conviction records, pending
7 charges and disciplinary board final decisions of:

8 (a) Any current employee or applicant seeking or being considered
9 for any position with the department who will or may have unsupervised
10 access to children, vulnerable adults, or individuals with mental
11 illness or developmental disabilities. This includes, but is not
12 limited to, positions conducting comprehensive assessments, financial
13 eligibility determinations, licensing and certification activities,
14 investigations, surveys, or case management; or for state positions
15 otherwise required by federal law to meet employment standards;

16 (b) Individual providers who are paid by the state and providers
17 who are paid by home care agencies to provide in-home services
18 involving unsupervised access to persons with physical, mental, or
19 developmental disabilities or mental illness, or to vulnerable adults
20 as defined in chapter 74.34 RCW, including but not limited to services
21 provided under chapter 74.39 or 74.39A RCW; and

22 (c) Individuals or businesses or organizations for the care,
23 supervision, case management, or treatment of children, persons with
24 developmental disabilities, or vulnerable adults, including but not
25 limited to services contracted for under chapter 18.20, 70.127, 70.128,
26 72.36, or 74.39A RCW or Title 71A RCW.

27 (2) The secretary shall require a fingerprint-based background
28 check through both the Washington state patrol and the federal bureau
29 of investigation as provided in RCW 43.43.837. Unless otherwise
30 authorized by law, the secretary shall use the information solely for
31 the purpose of determining the character, suitability, and competence
32 of the applicant.

33 (3) Except as provided in subsection (4) of this section, an
34 individual provider or home care agency provider who has resided in the
35 state less than three years before applying for employment involving
36 unsupervised access to a vulnerable adult as defined in chapter 74.34
37 RCW must be fingerprinted for the purpose of investigating conviction

1 records through both the Washington state patrol and the federal bureau
2 of investigation. This subsection applies only with respect to the
3 provision of in-home services funded by medicaid personal care under
4 RCW 74.09.520, community options program entry system waiver services
5 under RCW 74.39A.030, or chore services under RCW 74.39A.110. However,
6 this subsection does not supersede RCW 74.15.030(2)(b).

7 (4) Long-term care workers, as defined in RCW 74.39A.009, who are
8 hired after January 7, 2012, are subject to background checks under RCW
9 74.39A.056, except that the department may require a background check
10 at any time under RCW 43.43.837. For the purposes of this subsection,
11 "background check" includes, but is not limited to, a fingerprint check
12 submitted for the purpose of investigating conviction records through
13 both the Washington state patrol and the federal bureau of
14 investigation.

15 (5) An individual provider or home care agency provider hired to
16 provide in-home care for and having unsupervised access to a vulnerable
17 adult as defined in chapter 74.34 RCW must have no conviction for a
18 disqualifying crime under RCW 43.43.830 and 43.43.842. An individual
19 or home care agency provider must also have no conviction for a crime
20 relating to drugs as defined in RCW 43.43.830. This subsection applies
21 only with respect to the provision of in-home services funded by
22 medicaid personal care under RCW 74.09.520, community options program
23 entry system waiver services under RCW 74.39A.030, or chore services
24 under RCW 74.39A.110.

25 (6) The secretary shall provide the results of the state background
26 check on long-term care workers, including individual providers, to the
27 persons hiring them or to their legal guardians, if any, for their
28 determination of the character, suitability, and competence of the
29 applicants. If the person elects to hire or retain an individual
30 provider after receiving notice from the department that the applicant
31 has a conviction for an offense that would disqualify the applicant
32 from having unsupervised access to persons with physical, mental, or
33 developmental disabilities or mental illness, or to vulnerable adults
34 as defined in chapter 74.34 RCW, then the secretary shall deny payment
35 for any subsequent services rendered by the disqualified individual
36 provider.

37 (7) Criminal justice agencies shall provide the secretary such

1 information as they may have and that the secretary may require for
2 such purpose.

3 (8) Any person whose criminal history would otherwise disqualify
4 the person under this section from a position which will or may have
5 unsupervised access to children, vulnerable adults, or persons with
6 mental illness or developmental disabilities shall not be disqualified
7 if the department of social and health services reviewed the person's
8 otherwise disqualifying criminal history through the department of
9 social and health services' background assessment review team process
10 conducted in 2002 and determined that such person could remain in a
11 position covered by this section, or if the otherwise disqualifying
12 conviction or disposition has been the subject of a pardon, annulment,
13 or other equivalent procedure.

14 NEW SECTION. Sec. 3. A new section is added to chapter 74.15 RCW
15 to read as follows:

16 If an agency operating under contract with the children's
17 administration chooses to hire an individual that would be precluded
18 from employment with the department based on a disqualifying crime or
19 negative action, the department and its officers and employees have no
20 liability arising from any injury or harm to a child or other
21 department client that is attributable to such individual.

22 **Sec. 4.** RCW 74.13.700 and 2013 c 162 s 2 are each amended to read
23 as follows:

24 (1) In determining the character, suitability, and competence of an
25 individual, the department may not:

26 (a) Deny or delay a license or approval of unsupervised access to
27 children to an individual solely because of a crime or civil infraction
28 involving the individual or entity revealed in the background check
29 process that (~~is not on the secretary's list of crimes and negative~~
30 ~~actions and is not related~~) does not fall within the categories of
31 disqualifying crimes described in the adoption and safe families act of
32 1997 or does not relate directly to child safety, permanence, or well-
33 being; or

34 (b) Delay the issuance of a license or approval of unsupervised
35 access to children by requiring the individual to obtain records
36 relating to a crime or civil infraction revealed in the background

1 check process that (~~is not on the secretary's list of crimes and~~
2 ~~negative actions and is not related~~) does not fall within the
3 categories of disqualifying crimes described in the adoption and safe
4 families act of 1997 or does not relate directly to child safety,
5 permanence, or well-being (~~and is not a permanent disqualifier~~
6 ~~pursuant to department rule~~)).

7 (2) If the department determines that an individual does not
8 possess the character, suitability, or competence to provide care or
9 have unsupervised access to a child, it must provide the reasons for
10 its decision in writing with copies of the records or documents related
11 to its decision to the individual within ten days of making the
12 decision.

13 (3) For purposes of this section, "individual" means a relative as
14 defined in RCW 74.15.020(2)(a), an "other suitable person" under
15 chapter 13.34 RCW, a person pursuing licensing as a foster parent, or
16 a person employed or seeking employment by a business or organization
17 licensed by the department or with whom the department has a contract
18 to provide care, supervision, case management, or treatment of children
19 in the care of the department. "Individual" does not include long-term
20 care workers defined in RCW 74.39A.009(17)(a) whose background checks
21 are conducted as provided in RCW 74.39A.056.

22 (4) The department or its officers, agents, or employees may not be
23 held civilly liable based upon its decision to grant or deny
24 unsupervised access to children if the background information it relied
25 upon at the time the decision was made did not indicate that child
26 safety, permanence, or well-being would be a concern."

27 Correct the title.

EFFECT: The striking amendment makes the following changes to the underlying bill:

Removes the ability for DSHS to place a child in the care of a relative or other suitable person after a dependency fact-finding if fingerprint-based background checks have not yet been completed, the ability for DSHS to place with those individuals at shelter care remains.

Specifies that if an agency that contracts with the Children's

Administration chooses to hire an individual who would be precluded from employment with DSHS because of a crime or negative action, DSHS has no liability from injury or harm attributable to that individual.

Replaces the Secretary's list of crimes and negative actions with the categories of crimes provided in the Adoption and Safe Families Act of 1997 as the actions for which DSHS may deny or delay a license or approval of unsupervised access to children.

Specifies that DSHS may also deny or delay a license or approval of unsupervised access to children based on records revealed by a background check that relate to child safety, permanence, or well-being.

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