

SB 5316 - H COMM AMD
By Committee on Appropriations

ADOPTED AND ENGROSSED 04/12/2023

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

3 **"Sec. 1.** RCW 43.43.837 and 2022 c 297 s 954 are each amended to
4 read as follows:

5 (1) Except as provided in subsection (2) of this section, in
6 order to determine the character, competence, and suitability of any
7 applicant or service provider to have unsupervised access, the
8 secretary of the department of social and health services and the
9 secretary of the department of children, youth, and families may
10 require a fingerprint-based background check through both the
11 Washington state patrol and the federal bureau of investigation at
12 any time, but shall require a fingerprint-based background check when
13 the applicant or service provider has resided in the state less than
14 three consecutive years before application, and:

15 (a) Is an applicant or service provider providing services to
16 children or people with developmental disabilities under RCW
17 74.15.030;

18 (b) Is an individual sixteen years of age or older who: (i) Is
19 not under the placement and care authority of the department of
20 children, youth, and families; and (ii) resides in an applicant or
21 service provider's home, facility, entity, agency, or business or who
22 is authorized by the department of children, youth, and families to
23 provide services to children under RCW 74.15.030;

24 (c) Is an individual who is authorized by the department of
25 social and health services to provide services to people with
26 developmental disabilities under RCW 74.15.030; or

27 (d) Is an applicant or service provider providing in-home
28 services funded by:

29 (i) Medicaid personal care under RCW 74.09.520;

30 (ii) Community options program entry system waiver services under
31 RCW 74.39A.030;

32 (iii) Chore services under RCW 74.39A.110; or

1 (iv) Other home and community long-term care programs,
2 established pursuant to chapters 74.39 and 74.39A RCW, administered
3 by the department of social and health services.

4 (2) Long-term care workers, as defined in RCW 74.39A.009, who are
5 hired after January 7, 2012, are subject to background checks under
6 RCW 74.39A.056.

7 (3) To satisfy the shared background check requirements provided
8 for in RCW 43.216.270 and 43.20A.710, the department of children,
9 youth, and families and the department of social and health services
10 shall share federal fingerprint-based background check results as
11 permitted under the law. The purpose of this provision is to allow
12 both departments to fulfill their joint background check
13 responsibility of checking any individual who may have unsupervised
14 access to vulnerable adults, children, or juveniles. Neither
15 department may share the federal background check results with any
16 other state agency or person.

17 (4) The secretary of the department of children, youth, and
18 families shall require a fingerprint-based background check through
19 the Washington state patrol identification and criminal history
20 section and the federal bureau of investigation when the department
21 seeks to approve an applicant or service provider for a foster or
22 adoptive placement of children in accordance with federal and state
23 law. Fees charged by the Washington state patrol and the federal
24 bureau of investigation for fingerprint-based background checks shall
25 be paid by the department of children, youth, and families for
26 ~~((applicant))~~ foster care and child care applicants and service
27 providers ~~((providing foster care as required in RCW 74.15.030))~~.

28 (5) Any secure facility operated by the department of social and
29 health services or the department of children, youth, and families
30 under chapter 71.09 RCW shall require applicants and service
31 providers to undergo a fingerprint-based background check through the
32 Washington state patrol identification and criminal history section
33 and the federal bureau of investigation.

34 (6) Service providers and service provider applicants, except for
35 those long-term care workers exempted in subsection (2) of this
36 section, who are required to complete a fingerprint-based background
37 check may be hired for a one hundred twenty-day provisional period as
38 allowed under law or program rules when:

39 (a) A fingerprint-based background check is pending; and

1 (b) The applicant or service provider is not disqualified based
2 on the immediate result of the background check.

3 (7) Fees charged by the Washington state patrol and the federal
4 bureau of investigation for fingerprint-based background checks shall
5 be paid by the applicable department for applicants or service
6 providers providing:

7 (a) Services to people with a developmental disability under RCW
8 74.15.030;

9 (b) In-home services funded by medicaid personal care under RCW
10 74.09.520;

11 (c) Community options program entry system waiver services under
12 RCW 74.39A.030;

13 (d) Chore services under RCW 74.39A.110;

14 (e) Services under other home and community long-term care
15 programs, established pursuant to chapters 74.39 and 74.39A RCW,
16 administered by the department of social and health services or the
17 department of children, youth, and families; and

18 (f) Services in, or to residents of, a secure facility under RCW
19 71.09.115(~~;~~and

20 ~~(g) For fiscal year 2023, applicants for child care and early~~
21 ~~learning services to children under RCW 43.216.270)).~~

22 ~~(8) ((Service providers licensed under RCW 74.15.030 must pay~~
23 ~~fees charged by the Washington state patrol and the federal bureau of~~
24 ~~investigation for conducting fingerprint-based background checks.~~

25 ~~(9) Department of children, youth, and families service providers~~
26 ~~licensed under RCW 74.15.030 may not pass on the cost of the~~
27 ~~background check fees to their applicants unless the individual is~~
28 ~~determined to be disqualified due to the background information.~~

29 ~~(10))~~ The department of social and health services and the
30 department of children, youth, and families shall develop rules
31 identifying the financial responsibility of service providers,
32 applicants, and the department for paying the fees charged by law
33 enforcement to roll, print, or scan fingerprints-based for the
34 purpose of a Washington state patrol or federal bureau of
35 investigation fingerprint-based background check.

36 ~~((11))~~ (9) For purposes of this section, unless the context
37 plainly indicates otherwise:

38 (a) "Applicant" means a current or prospective department of
39 social and health services, department of children, youth, and
40 families, or service provider employee, volunteer, student, intern,

1 researcher, contractor, or any other individual who will or may have
2 unsupervised access because of the nature of the work or services he
3 or she provides. "Applicant" includes but is not limited to any
4 individual who will or may have unsupervised access and is:

5 (i) Applying for a license or certification from the department
6 of social and health services or the department of children, youth,
7 and families;

8 (ii) Seeking a contract with the department of social and health
9 services, the department of children, youth, and families, or a
10 service provider;

11 (iii) Applying for employment, promotion, reallocation, or
12 transfer;

13 (iv) An individual that a department of social and health
14 services or department of children, youth, and families client or
15 guardian of a department of social and health services or department
16 of children, youth, and families client chooses to hire or engage to
17 provide services to himself or herself or another vulnerable adult,
18 juvenile, or child and who might be eligible to receive payment from
19 the department of social and health services or the department of
20 children, youth, and families for services rendered; or

21 (v) A department of social and health services or department of
22 children, youth, and families applicant who will or may work in a
23 department-covered position.

24 (b) "Authorized" means the department of social and health
25 services or the department of children, youth, and families grants an
26 applicant, home, or facility permission to:

27 (i) Conduct licensing, certification, or contracting activities;

28 (ii) Have unsupervised access to vulnerable adults, juveniles,
29 and children;

30 (iii) Receive payments from a department of social and health
31 services or department of children, youth, and families program; or

32 (iv) Work or serve in a department of social and health services
33 or department of children, youth, and families-covered position.

34 (c) "Secretary" means the secretary of the department of social
35 and health services.

36 (d) "Secure facility" has the meaning provided in RCW 71.09.020.

37 (e) "Service provider" means entities, facilities, agencies,
38 businesses, or individuals who are licensed, certified, authorized,
39 or regulated by, receive payment from, or have contracts or
40 agreements with the department of social and health services or the

1 department of children, youth, and families to provide services to
2 vulnerable adults, juveniles, or children. "Service provider"
3 includes individuals whom a department of social and health services
4 or department of children, youth, and families client or guardian of
5 a department of social and health services or department of children,
6 youth, and families client may choose to hire or engage to provide
7 services to himself or herself or another vulnerable adult, juvenile,
8 or child and who might be eligible to receive payment from the
9 department of social and health services or the department of
10 children, youth, and families for services rendered.

11 **Sec. 2.** RCW 43.216.270 and 2022 c 297 s 960 are each amended to
12 read as follows:

13 (1)(a) In determining whether an individual is of appropriate
14 character, suitability, and competence to provide child care and
15 early learning services to children, the department may consider the
16 history of past involvement of child protective services or law
17 enforcement agencies with the individual for the purpose of
18 establishing a pattern of conduct, behavior, or inaction with regard
19 to the health, safety, or welfare of a child. No report of child
20 abuse or neglect that has been destroyed or expunged under RCW
21 26.44.031 may be used for such purposes. No unfounded or inconclusive
22 allegation of child abuse or neglect as defined in RCW 26.44.020 may
23 be disclosed to a provider licensed under this chapter.

24 (b) The department may not deny or delay a license to provide
25 child care and early learning services under this chapter to an
26 individual solely because of a founded finding of physical abuse or
27 negligent treatment or maltreatment involving the individual revealed
28 in the background check process or solely because the individual's
29 child was found by a court to be dependent as a result of a finding
30 that the individual abused or neglected their child pursuant to RCW
31 13.34.030(6)(b) when that founded finding or court finding is
32 accompanied by a certificate of parental improvement as defined in
33 chapter 74.13 RCW related to the same incident.

34 (2) In order to determine the suitability of individuals newly
35 applying for an agency license, new licensees, their new employees,
36 and other persons who newly have unsupervised access to children in
37 child care, shall be fingerprinted.

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

4 (b) ~~((i))~~ All individuals applying for first-time agency
5 licenses, all new employees, and other persons who have not been
6 previously qualified by the department to have unsupervised access to
7 children in child care must be fingerprinted and obtain a criminal
8 history record check pursuant to this section.

9 ~~((ii) Except during fiscal year 2023, persons required to be
10 fingerprinted and obtain a criminal history record check pursuant to
11 this section must pay for the cost of this check as follows: The fee
12 established by the Washington state patrol for the criminal
13 background history check, including the cost of obtaining the
14 fingerprints; and a fee paid to the department for the cost of
15 administering the individual-based/portable background check
16 clearance registry. The fee paid to the department must be deposited
17 into the individual-based/portable background check clearance account
18 established in RCW 43.216.273. The licensee may, but need not, pay
19 these costs on behalf of a prospective employee or reimburse the
20 prospective employee for these costs. The licensee and the
21 prospective employee may share these costs.))~~

22 (c) The secretary shall use the fingerprint criminal history
23 record check information solely for the purpose of determining
24 eligibility for a license and for determining the character,
25 suitability, and competence of those persons or agencies, excluding
26 parents, not required to be licensed who are authorized to care for
27 children.

28 (d) Criminal justice agencies shall provide the secretary such
29 information as they may have and that the secretary may require for
30 such purpose.

31 (e) No later than July 1, 2013, all agency licensees holding
32 licenses prior to July 1, 2012, persons who were employees before
33 July 1, 2012, and persons who have been qualified by the department
34 before July 1, 2012, to have unsupervised access to children in child
35 care, must submit a new background application to the department.
36 ~~((The department must require persons submitting a new background
37 application pursuant to this subsection (2)(e) to pay a fee to the
38 department for the cost of administering the individual-based/
39 portable background check clearance registry. This fee must be paid
40 into the individual-based/portable background check clearance account~~

1 established in RCW 43.216.273. The licensee may, but need not, pay
2 these costs on behalf of a prospective employee or reimburse the
3 prospective employee for these costs. The licensee and the
4 prospective employee may share these costs.)

5 (f) The department shall issue a background check clearance card
6 or certificate to the applicant if after the completion of a
7 background check the department concludes the applicant is qualified
8 for unsupervised access to children in child care. The background
9 check clearance card or certificate is valid for ~~((three))~~ five years
10 from the date of issuance. A valid card or certificate must be
11 accepted by a potential employer as proof that the applicant has
12 successfully completed a background check as required under this
13 chapter. For purposes of renewal of the background clearance card or
14 certificate, all agency licensees holding a license, persons who are
15 employees, and persons who have been previously qualified by the
16 department, must submit a new background application to the
17 department on a date to be determined by the department. ~~((Except
18 during fiscal year 2023, fee requirements applicable to this section
19 also apply to background clearance renewal applications.))~~

20 (g) The original applicant for an agency license, licensees,
21 their employees, and other persons who have unsupervised access to
22 children in child care shall submit a new background check
23 application to the department, on a form and by a date as determined
24 by the department.

25 (h) ~~((The payment requirements applicable to (a) through (g) of
26 this subsection do not apply to persons who:~~

27 ~~(i) Provide regularly scheduled care for a child or children in
28 the home of the provider or in the home of the child or children for
29 periods of less than twenty-four hours or, if necessary due to the
30 nature of the parent's work, for periods equal to or greater than
31 twenty-four hours;~~

32 ~~(ii) Receive child care subsidies; and~~

33 ~~(iii) Are exempt from licensing under this chapter.~~

34 ~~(i))~~ The applicant and agency shall maintain on-site for
35 inspection a copy of the background check clearance card or
36 certificate.

37 ~~((j))~~ (i) Individuals who have been issued a background check
38 clearance card or certificate shall report nonconviction and
39 conviction information to the department within twenty-four hours of
40 the event constituting the nonconviction or conviction information.

1 ~~((k))~~ (j) The department shall investigate and conduct a
2 redetermination of an applicant's or licensee's background clearance
3 if the department receives a complaint or information from
4 individuals, a law enforcement agency, or other federal, state, or
5 local government agency. Subject to the requirements contained in RCW
6 43.216.325 and 43.216.327 and based on a determination that an
7 individual lacks the appropriate character, suitability, or
8 competence to provide child care or early learning services to
9 children, the department may: (i) Invalidate the background card or
10 certificate; or (ii) suspend, modify, or revoke any license
11 authorized by this chapter.

12 (3) To satisfy the shared background check requirements of the
13 department of children, youth, and families, the office of the
14 superintendent of public instruction, and the department of social
15 and health services, each department shall share federal fingerprint-
16 based background check results as permitted under the law. The
17 purpose of this provision is to allow these departments to fulfill
18 their joint background check responsibility of checking any
19 individual who may have unsupervised access to vulnerable adults,
20 children, or juveniles. These departments may not share the federal
21 background check results with any other state agency or person.

22 (4) Individuals who have completed a fingerprint background check
23 as required by the office of the superintendent of public
24 instruction, consistent with RCW 28A.400.303, and have been
25 continuously employed by the same school district or educational
26 service district, can meet the requirements in subsection (2) of this
27 section by providing a true and accurate copy of their Washington
28 state patrol and federal bureau of investigation background check
29 report results to the department or if the school district or the
30 educational service district provides an affidavit to the department
31 that the individual has been authorized to work by the school
32 district or educational service district after completing a record
33 check consistent with RCW 28A.400.303. The department may require
34 that additional background checks be completed that do not require
35 additional fingerprinting (~~and, except during fiscal year 2023, may
36 charge a fee for these additional background checks~~).

37 **Sec. 3.** RCW 43.216.271 and 2021 c 304 s 12 are each amended to
38 read as follows:

1 (~~Subject to appropriation, the~~) The department shall maintain
2 an individual-based or portable background check clearance registry.
3 Any individual seeking a child care license or employment in any
4 child care facility or outdoor nature-based child care program
5 licensed or regulated under current law shall submit a background
6 application on a form prescribed by the department in rule.

7 NEW SECTION. **Sec. 4.** The following acts or parts of acts are
8 each repealed:

9 (1) RCW 43.216.272 (Fee for developing and administering
10 individual-based/portable background check clearance registry) and
11 2017 3rd sp.s. c 6 s 208 & 2011 c 295 s 4; and

12 (2) RCW 43.216.273 (Individual-based/portable background check
13 clearance account) and 2017 3rd sp.s. c 6 s 209 & 2011 c 295 s 5.

14 NEW SECTION. **Sec. 5.** If specific funding for the purposes of
15 this act, referencing this act by bill or chapter number, is not
16 provided by June 30, 2023, in the omnibus appropriations act, this
17 act is null and void."

18 Correct the title.

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