SPONSOR: Rep. K. Williams & Sen. Poore
Reps. Briggs King, Cooke, Heffernan, K. Johnson, Mitchell, Michael Smith; Sens. Gay, Mantzavinos, Sokola, Walsh, Wilson

HOUSE OF REPRESENTATIVES
151st GENERAL ASSEMBLY

HOUSE SUBSTITUTE NO. 1
FOR
HOUSE BILL NO. 206
AS AMENDED BY
HOUSE AMENDMENT NO. 1

AN ACT TO AMEND TITLE 29 OF THE DELAWARE CODE RELATING TO BACKGROUND CHECKS FOR EMPLOYEES, CONTRACTORS, AND VOLUNTEERS OF THE DEPARTMENT OF HEALTH AND SOCIAL SERVICES.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE:

Section 1. Amend Chapter 79, Title 29 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

Subchapter X. Background Checks for Employees, Contractors, and Volunteers

§ 7998. Purpose; application; definitions

(a) The purpose of this subchapter is to protect the safety and well-being of children who receive services from the Department of Health and Social Services by requiring individuals who visit children in their homes and in the community or have regular, direct access to children or adolescents under the age of 18 to submit to a criminal background check.

(b) All of the following individuals must submit to a criminal background check:

(1) A current employee, contractor, or volunteer of the Department who has not completed a criminal background check.

(2) A current employee of the Department who is seeking a promotion within the same program or another child-serving program.

(3) An individual seeking to become an employee, contractor, or volunteer of the Department.

(4) A current employee, contractor, or volunteer of the Department who the Department has a reasonable basis to suspect has been arrested for a disqualifying crime since becoming employed or commencing work with the Department.

(5) All students volunteering for the Department, including those completing required clinical hours.

(c) As used in this subchapter:

(1) "Child Protection Registry" means as defined under § 921 of Title 16.

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(2) “Criminal background check” means a report of an individual’s federal and state criminal history record from the Delaware State Bureau of Identification and the Federal Bureau of Investigation.

(3) "Conviction" or "convicted" means as defined under § 902 of Title 16.

(3) “Department” means the Department of Health and Social Services.

(4) “Direct access” means the opportunity to have personal, unsupervised contact with persons receiving care or education during the course of one’s assigned duties.

(5) “Disqualifying criminal conviction” means those convictions set forth in § 309(d)(1) of Title 31 and the length of prohibition is the same as that set forth under that paragraph.

(d) This subchapter does not apply to individuals who are otherwise required by state or federal law or regulation to submit to a background check.

§ 7999. Background checks for employees, contractors, and volunteers of the Department.

(a) An employee, contractor, or volunteer of the Department who visits children in their homes and in the community or has regular, direct access to children or adolescents under the age of 18 is required to obtain a background check.

(b) An individual who has a disqualifying criminal conviction or is on the Child Protection Registry at Level III or Level IV may not be an employee, contractor, or volunteer for the Department in any capacity where that individual would visit children in their home or in the community or have regular, direct access to children or adolescents under the age of 18.

(c) An employer may not employ an employee, contractor, or volunteer for work with the Department, if that individual will visit children in their homes and in the community or have regular, direct access to children or adolescents under the age of 18, before obtaining a criminal background check. The criminal history of any individual not employed directly by the Department must be provided to the Department upon the individual’s commencement of work. The Department shall have the right to review every criminal background check obtained under this subchapter and make its own determination of the individual’s qualification for employment. If the Department determines that an individual has a disqualifying criminal conviction, the individual may not continue in employment.

(d) An employer may conditionally hire an employee, contractor or volunteer covered by this subchapter who has been fingerprinted pending the determination of suitability for employment. An employer may not employ or continue to employ an individual with a disqualifying criminal conviction. Subject to the Department’s right to review every background check obtained under this subchapter, each employer is responsible for making the determination of suitability for employment.

(e) Costs associated with obtaining a criminal background check shall be borne by the employee, contractor, or volunteer or prospective employee, contractor, or volunteer.

(f) The Department shall promulgate regulations to implement this subchapter and may develop rules or procedures governing the authorization of a contractor covered by this subchapter to provide the Department with the results of a background check required under this subchapter at the request of a current or potential employee, volunteer, or contractor.

(h) The State Bureau of Identification shall provide the criminal background information and the DSCYF shall provide the Child Protection Registry check information required by this section to the individual and the employer or prospective employer, unless the Department requires that background checks required under this section be processed through the Background Check Center pursuant to § 7972 of this title. The State Bureau of Identification and the Delaware Justice Information System shall provide all subsequent Delaware criminal history of any individual subject to a background check under this section to the employer or prospective employer. If the "Rap Back System" as defined by § 8502 of Title 11 is available to SBI, SBI shall provide all subsequent criminal history record information available through the Rap Back System to the employer or prospective employer.

Section 2. Amend § 7972, Title 29 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 7972. Background Check Center.

§ 7972. Background Check Center.

(f) (1) The Department may require all employees, contractors, and volunteers who are required to secure a background check under § 7999 of this title to process all background checks through the BCC.

(2) If the Department requires use of the BCC under paragraph (f)(1) of this section, the State Bureau of Identification shall provide the criminal background information and the Department of Services for Children, Youth and Their Families shall provide the Child Protection Registry check information to the individual and to the BCC for any background check required by § 7999 of this title.

(3) If the Department requires use of the BCC under paragraph (f)(1) of this section, The State Bureau of Identification and the Delaware Justice Information System shall provide all subsequent Delaware criminal history of any individual subject to a background check under this section to the BCC. If the "Rap Back System" as defined by § 8502 of Title 11 is available to SBI, SBI shall provide all subsequent criminal history record information available through the Rap Back System to the BCC.

~~(d)~~ (e) The Department ~~of Health and Social Services~~ shall establish the appropriate fee to collect from BCC users.

(1) The fee shall approximate and reasonably reflect all costs necessary to defray the maintenance, operation, and development of the BCC.

(2) At the beginning of each calendar year the Department ~~of Health and Social Services~~ shall compute the appropriate fee and determine the effective date of any fee modification.

(3) All revenue generated under this section must be deposited in a special BCC fund account in the ~~Department of Health and Social Services.~~ Department.

~~(e)~~ (f) Due process protections of notice and opportunity to be heard must be provided to an applicant for employment who wishes to appeal BCC errors, or to appeal the imposition of sanctions under § 1141 or § 1145 of Title 16. The hearing process shall be consistent with the Administrative Procedures Act, Chapter 101 of this title.

Section 3. This Act is effective immediately and is to be implemented the earlier of the following:

(1) 1 year from the date of enactment.

(2) Notice by the Secretary of the Department of Health and Social Services published in the Register of Regulations that final regulations to implement this Act have been promulgated.