

SENATE, No. 1323

STATE OF NEW JERSEY

219th LEGISLATURE

INTRODUCED FEBRUARY 10, 2020

Sponsored by:

Senator SHIRLEY K. TURNER

District 15 (Hunterdon and Mercer)

SYNOPSIS

Authorizes criminal background checks for au pairs and nannies.

CURRENT VERSION OF TEXT

As introduced.



1 **AN ACT** concerning criminal history record background checks for
2 certain in-home care givers for children and supplementing Title
3 56 and Title 53 of the Revised Statutes.

4
5 **BE IT ENACTED** *by the Senate and General Assembly of the State*
6 *of New Jersey:*

7
8 1. As used in this act:

9 "Director" means the Director of the Division of Consumer
10 Affairs in the Department of Law and Public Safety.

11 "Division" means the Division of Consumer Affairs in the
12 Department of Law and Public Safety.

13 "In-home care giver" or "care giver" means an unrelated person
14 over the age of 16 who, through the assistance of an in-home child
15 care placement agency, is employed to provide in-home child care.
16 The in-home care giver may live in the home of the employer and
17 may perform, in addition to child care, housekeeping duties. The
18 term shall include au pair and nanny, but shall not include a baby
19 sitter, as defined in section 1 of P.L.1989, c.331 (C.34:8-43).

20 "In-home child care placement agency" or "agency" means a
21 private entity engaged in the business of procuring, or assisting in
22 the procuring of, in-home child care positions for in-home care
23 givers for a fee, charge, or commission, regardless of whether that
24 fee, charge, or commission is collected from the applicant for
25 employment or the applicant for help.

26
27 2. a. The director, after consultation with the Attorney
28 General, shall establish a registry for in-home child care placement
29 agencies engaged in the business of procuring, or assisting in the
30 procuring of, in-home child care positions for care givers within the
31 State. An agency is not required to have an office located within
32 the State in order to register with the division under the provisions
33 of this section.

34 b. An application for registration shall include:

35 (1) the location, address, and telephone number of the agency's
36 principal place of business;

37 (2) the name, address, and telephone number of the chief
38 executive officer of the agency;

39 (3) the name, address, and telephone number of the registered
40 process agent for the agency;

41 (4) a disclosure form stating whether any principal officer of the
42 agency has been convicted of any crime, which for the purposes of
43 this act shall mean a violation of provisions of the "New Jersey
44 Code of Criminal Justice," Title 2C of the New Jersey Statutes, or
45 the equivalent under the laws of any other jurisdiction; and

46 (5) any other information as the director shall deem necessary.

47 c. After review, the director may approve or deny an
48 application. An agency whose application has been approved shall

1 be registered with the division for a period of three years, unless the
2 director shall remove, pursuant to rule and regulation, the agency
3 for any violation of this act or good cause. An application for
4 renewal shall be in the same manner and form as that initially
5 required for registration.

6 An agency whose application for registration has been denied by
7 the director may reapply.

8 d. The director may impose an application fee and an annual
9 registration fee. The fees authorized under this subsection shall not
10 exceed the actual cost to the division in processing agency
11 applications and in establishing and maintaining the agency
12 registry.

13
14 3. An agency registered in accordance with the provisions of
15 this act may request a criminal history record background check on
16 any care giver who is using that agency to procure an in-home child
17 care position in this State.

18 The check shall determine whether information exists on file in
19 the Federal Bureau of Investigation, Identification Division, or in
20 the State Bureau of Identification in the Division of State Police
21 which would reveal that the care giver has been convicted of any
22 crime.

23
24 4. a. A registered agency may not request a criminal history
25 record background check pursuant to the provisions of section 3 of
26 this act without the written consent of that person. The consent
27 required under this section shall be in a manner and form prescribed
28 by the director and shall include, but not be limited to, the care
29 giver's signature, name, address, and fingerprints.

30 b. The division shall act as a clearinghouse for the collection
31 and dissemination of information obtained as a result of conducting
32 criminal history record background checks pursuant to this act. The
33 dissemination of this information shall be consistent with the
34 purposes of this act and in accordance with rules and regulations
35 promulgated by the director.

36 c. The director is authorized to exchange fingerprint data with
37 and receive criminal history record information from the State
38 Bureau of Identification in the Division of State Police and the
39 Federal Bureau of Investigation, consistent with applicable State
40 and federal laws, rules, and regulations, as may be necessary for the
41 purposes of section 3 of this act.

42
43 5. a. Upon receipt of the information relating to a care giver's
44 criminal history record background check, the director shall notify
45 the registered agency of the names of those care givers who have
46 not been convicted of a crime. Along with that notice, the director
47 shall forward a certificate for each person, certifying that the care
48 giver has been subject to a criminal history record background

1 check and that the check has not revealed any record of the care
2 giver being convicted of a crime. The certificate shall be in a form
3 and shall contain additional information as the director may by rule
4 and regulation prescribe.

5 b. If the care giver's criminal history record background check
6 does reveal a criminal conviction, the director shall notify that
7 person. The care giver shall have 30 days from the receipt of that
8 notice to petition the director for a review, citing the reasons for the
9 petition. If, in that review, the care giver shall successfully
10 challenge the accuracy of the criminal history record information
11 indicating the criminal conviction or if the care giver shall
12 demonstrate affirmatively to the director clear and convincing
13 evidence of rehabilitation, the director may issue a certificate, as
14 provided in subsection a. of this section, indicating that the care
15 giver has not been convicted of a crime.

16 c. When determining whether a person has affirmatively
17 demonstrated his rehabilitation, the director shall consider:

- 18 (1) the nature and seriousness of the offense;
- 19 (2) the circumstances under which the offense occurred;
- 20 (3) the date of the offense;
- 21 (4) the age of the care giver when the offense was committed;
- 22 (5) whether the offense was repeated;
- 23 (6) social conditions which may have contributed to the offense;
- 24 and
- 25 (7) any evidence of rehabilitation, including good conduct in the
26 community; counseling, psychological, or psychiatric treatment;
27 additional academic or vocational training; or personal
28 recommendations.

29

30 6. The costs associated with the registration, collection and
31 dissemination of information, criminal history record background
32 checks, and other administrative expenses associated with the
33 implementation of the provisions of this act shall be assumed by the
34 agencies registered under this act and shall be assessed pursuant to
35 a fee schedule promulgated by the director.

36

37 7. The division shall develop and undertake a public education
38 program designed to inform the citizens of this State of the
39 provisions of this act. The program shall publicize the availability
40 of care givers who have undergone criminal background checks and
41 shall encourage prospective employers of in-home care givers to
42 hire those who have been certified by the division in accordance
43 with the provisions of this act.

44

45 8. The director, pursuant to the provisions of the
46 "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et
47 seq.), shall promulgate rules and regulations to effectuate the
48 purposes of this act.

1 certificate for each care giver whose background check does not
2 reveal a criminal past. The certificate, which would certify that the
3 prospective care giver has never been convicted of a crime, would
4 be used by the agency in procuring employment for that person.

5 The bill provides an appeal procedure for a person who questions
6 the accuracy of the information set forth on the records consulted
7 by the investigatory agencies and for those who claim that although
8 they have a criminal past, they have been rehabilitated.

9 The bill also directs the division to develop and undertake a
10 public education program designed to publicize the bill's provisions.
11 The program is to inform prospective employers of the availability
12 of care givers who have undergone criminal history checks and to
13 encourage them to hire persons who have been certified by the
14 division as not having criminal pasts.

15 Finally, the bill provides that the costs associated with the
16 implementation of this program be assessed to the registered
17 agencies through a fee schedule.