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HOUSE BILL 2642

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State of Washington

65th Legislature

2018 Regular Session

By Representatives McCaslin, Pettigrew, Harmsworth, Shea, Dolan,  
Dent, Bergquist, and Holy

1 AN ACT Relating to requiring the department of children, youth,  
2 and families to provide a written explanation for a determination of  
3 unsuitability for unsupervised access to children in care; reenacting  
4 and amending RCW 43.216.270; and providing an effective date.

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

6 **Sec. 1.** RCW 43.216.270 and 2017 3rd sp.s. c 33 s 6 and 2017 3rd  
7 sp.s. c 6 s 206 are each reenacted and amended to read as follows:

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

19 (2) In order to determine the suitability of individuals newly  
20 applying for an agency license, new licensees, their new employees,

1 and other persons who newly have unsupervised access to children in  
2 care, shall be fingerprinted.

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

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

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

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

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

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

1 into the individual-based/portable background check clearance account  
2 established in RCW 43.216.273. The licensee may, but need not, pay  
3 these costs on behalf of a prospective employee or reimburse the  
4 prospective employee for these costs. The licensee and the  
5 prospective employee may share these costs.

6 (f) The department shall issue a background check clearance card  
7 or certificate to the applicant if after the completion of a  
8 background check the department concludes the applicant is qualified  
9 for unsupervised access to children in child care. The background  
10 check clearance card or certificate is valid for three years from the  
11 date of issuance. A valid card or certificate must be accepted by a  
12 potential employer as proof that the applicant has successfully  
13 completed a background check as required under this chapter.

14 (g) The original applicant for an agency license, licensees,  
15 their employees, and other persons who have unsupervised access to  
16 children in care shall submit a new background check application to  
17 the department, on a form and by a date as determined by the  
18 department.

19 (h) The applicant and agency shall maintain on-site for  
20 inspection a copy of the background check clearance card or  
21 certificate.

22 (i) Individuals who have been issued a background check clearance  
23 card or certificate shall report nonconviction and conviction  
24 information to the department within twenty-four hours of the event  
25 constituting the nonconviction or conviction information.

26 (j) The department shall investigate and conduct a  
27 redetermination of an applicant's or licensee's background clearance  
28 if the department receives a complaint or information from  
29 individuals, a law enforcement agency, or other federal, state, or  
30 local government agency. Subject to the requirements contained in RCW  
31 43.216.325 and 43.216.327 and based on a determination that an  
32 individual lacks the appropriate character, suitability, or  
33 competence to provide child care or early learning services to  
34 children, the department may: (i) Invalidate the background card or  
35 certificate; or (ii) suspend, modify, or revoke any license  
36 authorized by this chapter.

37 (k) If the department determines that an individual is not  
38 suitable to be qualified to have unsupervised access to children in  
39 care, the department shall provide that individual with a written

1 explanation detailing the reasons for the department's determination  
2 of unsuitability.

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

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

28 NEW SECTION. **Sec. 2.** This act takes effect July 1, 2018.

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