

**Acts****2013****CHAPTER 77 AN ACT RELATIVE TO BACKGROUND CHECKS.**

*Whereas*, The deferred operation of this act would tend to defeat its purpose, which is to protect forthwith children, therefore it is hereby declared to be an emergency law, necessary for the immediate preservation of the public safety.

*Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same as follows:*

SECTION 1. Section 167A of chapter 6 of the General Laws, as appearing in the 2012 Official Edition, is hereby amended by striking out, in line 68, the word "and" and inserting in place thereof the following words:- (iii) the collection, storage, access, dissemination, content organization and use of fingerprint-based checks of the state and national criminal history databases; and (iv).

SECTION 2. Section 7 of chapter 15D of the General Laws, is hereby amended by striking out subsections (a) and (b), as most recently amended by section 29 of chapter 38 of the acts of 2013, and inserting in place thereof the following subsection:-

(a) The department shall issue and may renew a license to any person other than a department, agency or institution of the commonwealth or any political subdivision thereof, who meets applicable standards and requirements to establish and maintain or to assist in the establishment and maintenance of a school-aged child care program, a child care center, a family child care home, a placement agency, a large family child care home or family foster care which is not supervised and approved by a placement agency, group care facility or temporary shelter facility.

(i) As part of the department's licensing and background record check process, the department, prior to issuing any license, shall: (1) obtain from the sex offender registry board all available sex offender registry information associated with the address of the program, center, facility or home; and (2) conduct fingerprint-based checks of the state and national criminal history databases, as authorized by Public Law 92-544. The fingerprint-based checks shall be conducted on any applicant for a family child care assistant certificate or any applicant seeking a license for: family child care; small group and school age child care; large group and school age child care; a residential program; or a placement agency. The fingerprint-based checks shall also be required for any household member, age 15 or older, or any person, age 15 or older, regularly on the premises of applicants for family child care licensure and for all in-home nonrelative department funded caregivers. Authorized department staff may receive all criminal offender record information and the results of

checks of state and national criminal history databases pursuant to Public Law 92-544. When the department obtains the results of checks of state and national criminal history databases, it shall treat the information according to sections 167 to 178, inclusive, of chapter 6 and the regulations thereunder regarding criminal offender record information.

(ii) As part of the department's licensing and background record check process, the department shall conduct fingerprint-based checks of the state and national criminal history databases, as authorized by Public Law 92-544, to determine the suitability of all applicants for employment, interns and volunteers who have the potential for unsupervised contact with children in any department-licensed or funded program. The fingerprint-based checks shall also be required to determine the suitability of any individual who provides transportation services on behalf of any department-licensed or funded program. Authorized department staff may receive all criminal offender record information and the results of checks of state and national criminal history databases pursuant to Public Law 92-544. When the department obtains the results of checks of state and national criminal history databases, it shall treat the information according to sections 167 to 178, inclusive, of chapter 6 and the regulations thereunder regarding criminal offender record information.

(iii) As part of the department's licensing and background record check process, the department shall conduct fingerprint-based checks of the state and national criminal history databases, as authorized by 42 U.S.C. section 16962, for all applicants to be adoptive or foster parents and their household members age 15 or older. Authorized department staff may receive all criminal offender record information and the results of checks of state and national criminal history databases, pursuant to 42 U.S.C. section 16962. When the department obtains the results of checks of state and national criminal history databases, it shall treat the information according to sections 167 to 178, inclusive, of chapter 6 and the regulations thereunder regarding criminal offender record information.

(b) The department shall issue approval to a department, agency, or institution of the commonwealth or any political subdivision thereof which it determines meets the applicable standards and requirements to establish and maintain a child care center, family child care home or large family child care home, placement agency, group care facility or temporary shelter facility.

As part of the department's approval process, the department, prior to issuing any approval, shall: (1) obtain from the sex offender registry board all available sex offender registry information associated with the address of the center, home or facility; and (2) conduct fingerprint-based checks of the state and national criminal history databases, pursuant to Public Law 92-544, that are required under this subsection. The fingerprint-based checks of the state and national criminal history databases shall be conducted, pursuant to Public Law 92-544, to determine the suitability of all applicants for employment, interns and volunteers who have the potential for unsupervised contact with children in any department-approved program. The fingerprint-based checks shall also be required to determine the suitability of any individual who provides transportation services on behalf of any department-approved

program. Authorized department staff may receive all criminal offender record information and the results of checks of state and national criminal history information databases pursuant to Public Law 92-544. When the department obtains the results of checks of state and national criminal information databases, it shall treat the information according to sections 167 to 178, inclusive, of chapter 6 and the regulations thereunder regarding criminal offender record information.

SECTION 3. Subsection (b) of section 8 of said chapter 15D, as appearing in the 2012 Official Edition, is hereby amended by striking out, in lines 35 to 37, inclusive, the following words “, which shall incorporate all fees associated with conducting fingerprint-based checks of the state and national criminal history databases, under 42 U.S.C. section 16962, as set by the department”.

SECTION 4. Said section 8 of said chapter 15D, as so appearing, is hereby amended by striking out subsection (d) and inserting in place thereof the following subsection:-

(d) The regulations shall provide that: each person providing child care or support services with the potential for unsupervised contact with children in any program or facility licensed or funded by the department, as well as any household members or persons regularly on the premises of family child care and large family child care homes shall be subject to a criminal offender record information check; potential adoptive and foster parents and their household members age 15 or older shall be subject to a fingerprint-based check of the state and national criminal history databases pursuant to 42 U.S.C. section 16962; and all applicants for a department issued license, and applicants for employment, interns and volunteers in any department-licensed, department-funded or department-approved program shall be subject to a fingerprint-based check of the state and national criminal history databases pursuant to Public Law 92-544.

The board shall also adopt regulations establishing that the following individuals shall be subject to a sexual offender registry information check pursuant to sections 178I and 178J of chapter 6: (1) each person providing child care or support services with the potential for unsupervised contact with children in any program or facility licensed, funded or approved by the department; (2) any household members or persons regularly on the premises of family child care and large family child care homes; (3) any prospective adoptive and foster parents and their household members; (4) any department funded caregivers; and (5) any individual who provides transportation services on behalf of any department licensed, funded or approved program. The regulations shall also establish the conditions upon which the department may deny an application for a license, a license renewal or approval, employment or department funding and upon which the department may deny prospective adoptive and foster parents based upon the information obtained from the sex offender registry search. The board shall also adopt regulations establishing an address search of the sex offender registry for the purposes of licensing and license renewal or approval of school-aged child

care programs, child care centers, family child care homes, placement agencies or large family child care homes, family foster care that is not supervised and approved by a placement agency, group care facilities or temporary shelter facilities, including the conditions in which the department may deny an application for a license, license renewal or approval based upon the information obtained from the address search of the sex offender registry.

SECTION 5. Said section 8 of said chapter 15D, as so appearing, is hereby further amended by striking out subsection (j) and inserting in place thereof the following two subsections:-  
(j) Fingerprints, as referenced in subsections (a) and (b) of section 7 and subsection (d) of this section, shall be submitted to the identification section of the department of state police for a state criminal history check and forwarded to the Federal Bureau of Investigation for a national criminal history check, according to the policies and procedures established by the identification section and by the department of criminal justice information services. Fingerprint submissions may be retained by the Federal Bureau of Investigation, the state identification section and the department of criminal justice information services to assist the department in its review of suitability for initial or continued licensure, certification or approval. The department of criminal justice information services may disseminate the results of a state and national criminal history check to the department of early education and care to determine the suitability of: (1) any current holder of or applicant for a family child care, small group and school age, large group and school age, and residential and placement license, or family child care assistant certificate; (2) all current and prospective employees in any department licensed, funded or approved program, who have the potential for unsupervised contact with children; (3) all household members, age 15 or older, or all persons, age 15 or older, regularly on the premises of current family child care providers and applicants for family child care licensure; (4) all in-home nonrelative department-funded caregivers; (5) all adoptive or foster parent applicants and their household members age 15 or older; and (6) any individual who provides transportation services on behalf of any department licensed, funded or approved program. If the department receives information from a fingerprint-based check that does not include any final disposition or is otherwise incomplete, the department may request that an applicant, either new or renewing, provide additional information to assist the department in determining the suitability of the individual for licensure, certification, approval, funding or employment.

Department licensed, funded or approved programs and providers of transportation services on behalf of any department-licensed, funded or approved program may hire individuals without first obtaining the results of a state and national fingerprint-based criminal history check in limited circumstances, as provided by the board of early education and care. The board of early education and care shall, in a manner provided by law and under this chapter, promulgate regulations necessary to carry out this subsection. The regulations shall address the circumstances under which a program or transportation provider may hire a conditional employee.

For the purposes of this subsection, "conditional employee" shall mean an individual who has the potential for unsupervised contact with children and who is part of a department licensed, funded or approved program or a provider of transportation services on behalf of any department licensed, funded or approved program and was hired prior to the obtaining of the results of a state and national fingerprint-based criminal history check because the employer determined that hiring the individual was necessary. If a program or transportation provider seeks to hire a conditional employee, the program or transportation provider may request that the individual provide additional information regarding the individual's history of criminal convictions, if any, to assist the program or transportation provider in determining the individual's suitability for unsupervised contact with children; provided however, that no unsupervised contact with children shall occur prior to the program or transportation provider obtaining the results of a sexual offender registry information check pursuant to sections 178I and 178J of chapter 6.

The department of criminal justice information services shall disseminate the results of the criminal background check to the department. The department of criminal justice information services shall only disseminate information under this section that would otherwise be available to requesting entities pursuant to sections 167 to 178, inclusive, of chapter 6 and the regulations thereto regarding criminal offender record information.

(k) All persons required to submit fingerprints under this chapter, including but not limited to: (1) any current holder of or applicant for a family child care, small group and school age, large group and school age, and residential and placement license, or family child care assistant certificate; (2) all current and prospective employees, interns and volunteers in any department licensed, funded or approved program, who have the potential for unsupervised contact with children; (3) all household members, age 15 or older, or persons, age 15 or older, regularly on the premises of current family child care providers and applicants for family child care licensure; (4) all in-home nonrelative department funded caregivers; (5) all adoptive or foster parent applicants and their household members age 15 or older; and (6) any individual who provides transportation services on behalf of any department licensed, funded or approved program, shall pay a fee, to be established by the secretary of administration and finance in consultation with the secretary of public safety and security and the commissioner, to offset the costs of operating and administering a fingerprint-based criminal background check system. The fee shall not exceed \$35 per person. The secretary of administration and finance, in consultation with the secretary of public safety and security and the commissioner, may increase the fee accordingly if the Federal Bureau of Investigation increases its fingerprint background check service fee. The department licensed, funded or approved programs may reimburse applicants for employment, internship or volunteer positions, for all or part of the fee on the grounds of financial hardship. Any fees collected from fingerprinting activity pursuant to this chapter shall be deposited into the Fingerprint-Based Background Check Trust Fund, established by section 2HHHH of chapter 29.

SECTION 6. Section 2HHHH of chapter 29 of the General Laws, as so appearing, is hereby amended by striking out the first paragraph and inserting in place thereof the following 2 paragraphs:-

There shall be established and set up on the books of the commonwealth a separate fund to be known as the Fingerprint-Based Background Check Trust Fund, which shall consist of all fees collected for the purposes enumerated in sections 7 and 8 of chapter 15D and section 38R of chapter 71. Amounts credited to the fund shall be available, without further appropriation, to the executive office of public safety and security to carry out fingerprint-based state and national criminal background checks for the purposes of employment, professional licensure and other noncriminal justice purposes.

For the purpose of accommodating discrepancies between the receipt of revenue and related expenditures for implementing fingerprint-based checks of the state and national criminal history databases, as authorized in said sections 7 and 8 of said chapter 15D and said section 38R of said chapter 71, the executive office of public safety and security may incur expenses and the comptroller may certify for payment amounts not to exceed the most recent revenue estimate; provided, however, that the fund shall be in balance by the end of the fiscal year. Revenues deposited in the fund that are unexpended at the end of a fiscal year shall not revert to the General Fund and shall be available for expenditure in the following fiscal year.

SECTION 7. Chapter 71 of the General Laws is hereby amended by striking out section 38R and inserting in place thereof the following section:-

Section 38R. In a manner prescribed by the board of elementary and secondary education, the school committee and superintendent of any city, town or regional school district and the principal or other administrator, by whatever title the position may be known, of a public or private school, including a special education school program approved pursuant to chapter 71B, shall obtain periodically, but not less frequently than every 3 years, from the department of criminal justice information services all available criminal offender record information for any current or prospective employee or volunteer within the school district who may have direct and unmonitored contact with children, including any individual who regularly provides school related transportation to children. Said school committee, superintendent or principal or other administrator shall also have access to and may obtain all criminal offender record information for any subcontractor or laborer commissioned by the school committee or school or employed by the city or town to perform work on school grounds, who may have direct and unmonitored contact with children.

The school committee, superintendent of any city, town or regional school district or the principal or other administrator, by whatever title the position may be known, of a public or private school, including a special education school program approved pursuant to chapter 71B, shall also obtain a state and national fingerprint-based criminal background check,

pursuant to 42 U.S.C. section 16962, to determine the suitability of current and prospective school employees who may have direct and unmonitored contact with children. For the purpose of this section, employees shall include any apprentice, intern or student teacher who may have direct and unmonitored contact with children. The school committee shall only obtain a state and national fingerprint-based criminal background check for current and prospective employees for whom the school committee has direct hiring authority. The superintendent, principal or other administrator shall also obtain a state and national fingerprint-based criminal background check for any individual who regularly provides school related transportation to children. The school committee, superintendent or principal or other administrator may obtain a state and national fingerprint-based criminal background check pursuant to 42 U.S.C. section 16962, for any volunteer, subcontractor or laborer commissioned by the school committee or school or employed by the city or town to perform work on school grounds, who may have direct and unmonitored contact with children. Fingerprints shall be submitted to the identification section of the department of state police for a state criminal history check and forwarded to the Federal Bureau of Investigation for a national criminal history check, according to the policies and procedures established by the identification section and by the department of criminal justice information services. Fingerprint submissions may be retained by the Federal Bureau of Investigation, the state identification section and the department of criminal justice information services to assist employers authorized under this chapter to ensure the continued suitability of those individuals. The department of criminal justice information services may disseminate the results of the state and national criminal background checks to: (1) a school committee, superintendent, principal or the designee of the school committee, superintendent or principal, to determine the suitability of current and prospective employees of the school employer; and (2) to the department of elementary and secondary education to determine the suitability of applicants for license and licensed educators who may have direct and unmonitored contact with children. However, the department of criminal justice information services shall only disseminate to a school committee results for current and prospective employees for whom the school committee has direct hiring authority. Entities that receive the results of national criminal background checks shall treat the information according to sections 167 to 178, inclusive, of chapter 6 and the regulations thereunder regarding criminal offender record information. Notwithstanding subsections 9 and 9 ½ of section 4 of chapter 151B, if a school employer receives criminal record information from the state or national fingerprint-based criminal background checks that includes no disposition or is otherwise incomplete, the school employer may request that an individual provide additional information regarding the results of the criminal background checks to assist the school employer in determining the applicant's suitability for direct and unmonitored contact with children. The department of criminal justice information services shall only disseminate information under this section that would otherwise be available to requesting entities under sections 167 through 178, inclusive, of chapter 6 and the regulations

thereunder regarding criminal offender record information. The school committee, superintendent or principal shall notify the commissioner of any criminal record information relevant to the fitness for licensure of any holder of, or applicant for, an educator's license in the commonwealth.

The board of elementary and secondary education shall in a manner provided by law and in accordance with this section and sections 167 to 178, inclusive, of chapter 6 and the regulations thereunder, promulgate regulations necessary to carry out this section. The regulations shall address the circumstances under which a school employer may rely on a suitability determination made by a previous Massachusetts school employer or the department of elementary and secondary education in lieu of obtaining a new state and national criminal history background check. The factors identified in the regulations shall include, but need not be limited to: (1) the date of the previous suitability determination; (2) the individual's employment history; and (3) the individual's states of residence since the previous suitability determination. If an employer chooses to conduct a new state and national finger-print based criminal history background check, rather than rely on a previous suitability determination, the employer shall pay the fees for the new check. The regulations shall provide for the confidentiality of criminal offender record information and the results of fingerprint-based checks of the state and national criminal history databases, pursuant to 42 U.S.C. section 16962 and Public Law 92-544, obtained pursuant to this section. The regulations may reflect a phased-in schedule for the fingerprint-based background checks of individuals whose employment or service began prior to the 2013-2014 school year.

The applicant shall pay a fee, to be established by the secretary of administration and finance, in consultation with the secretary of public safety and security and the commissioner, to offset the costs of operating and administering a fingerprint-based criminal background check system. The fee shall not exceed \$55 for employees who are certified pursuant to section 38G and shall not exceed \$35 for employees who are not certified pursuant to section 38G. The secretary of administration and finance, in consultation with the secretary of public safety and security and the commissioner, may increase the fee accordingly if the Federal Bureau of Investigation increases the fee for its fingerprint background check service. The school committee, superintendent or principal may reimburse applicants all or part of the fee on the grounds of financial hardship. Any fees collected from fingerprinting activity pursuant to this chapter shall be deposited into the Fingerprint-Based Background Check Trust Fund established by section 2HHHH of chapter 29.

SECTION 8. Sections 8C and 9 of chapter 459 of the acts of 2012 are hereby repealed.

SECTION 9. For the purposes of this section, "conditional employee" shall mean an individual who may have direct and unmonitored contact with children who a school employer hires without first obtaining the results of a state and national fingerprint-based criminal history check because the employer determines that hiring the individual is necessary.

Until the commonwealth has fully implemented a system for forwarding fingerprints to the Federal Bureau of Investigation for a national criminal history check and providing the results of those checks to school employers, school employers may hire individuals without first obtaining the results of a state and national fingerprint-based criminal history check if the school employer has obtained from the Massachusetts department of criminal justice information services all available criminal offender record information on such individuals. Once the commonwealth has fully implemented a system for forwarding fingerprints to the Federal Bureau of Investigation for a national criminal history check and providing the results of those checks to school employers school employers shall require employees hired for the 2013-2014 school year or thereafter without the results of a state and national fingerprint-based criminal history check to submit fingerprints for a state and national criminal history check within a reasonable period of time.

School employers may hire individuals without first obtaining the results of a state and national fingerprint-based criminal history check in limited circumstances. The board of elementary and secondary education shall in a manner provided by law and in accordance with this section, promulgate regulations necessary to carry out this section. These regulations shall address the circumstances under which a school employer may hire a conditional employee.

Notwithstanding subsections 9 and 9 ½ of section 4 of chapter 151B of the General Laws, if a school employer seeks to hire a conditional employee, the school employer may request that an individual provide additional information regarding the individual's history of criminal convictions to assist the school employer in determining the applicant's suitability for direct and unmonitored contact with children; provided, however, that the information shall not include juvenile or sealed convictions.

SECTION 10. Subsections (a) and (b) of section 7 of chapter 15D of the General Laws, as amended by section 2, shall apply for: (1) all new applicants for licensure, certification or approval; (2) all household members, age 15 or older, or persons, age 15 or older, regularly on the premises of applicants for family child care licensure; (3) all applicants to be adoptive or foster parents and their household members age 15 or older; and (4) all in-home non-relative department funded caregiver applicants, whose applications are submitted on or after September 1, 2013.

All individuals who are currently licensed, certified or approved by the department of early education and care, all household members, age 15 or older, or persons, age 15 or older, regularly on the premises of family child care licensees, as well as all in-home non-relative department funded caregivers, shall comply with the requirements of this act upon renewal of licensure, certification, approval or funding, but not later than September 1, 2016.

Subsections (a) and (b) of section 7 of chapter 15D of the General Laws, as amended by section 2, shall also apply to prospective employees in any department of early education and care licensed, funded or approved program who have the potential for unsupervised

contact with children, including those providing transportation services on behalf of any department-licensed, funded or approved program, hired to begin employment on or after September 1, 2013.

Employees in any department of early education and care licensed, funded or approved programs who have the potential for unsupervised contact with children, including those providing transportation services on behalf of any early education and care department licensed, funded or approved program hired to begin employment prior to September 1, 2013 shall submit fingerprints for state and national criminal history checks not later than September 1, 2016.

SECTION 11. If a state and national fingerprint-based criminal check is not available through the department of early education and care by September 1, 2013, then all new applications for licensure, certification or approval, all household members, age 15 or older, or persons, age 15 or older, regularly on the premises of applicants for family child care licensure, all applicants to be adoptive or foster parents and their household members age 15 or older, and all in-home non-relative department funded caregiver applicants who apply on or after September 1, 2013, shall undergo a state and national fingerprint-based criminal history check as soon it becomes available.

If a state and national fingerprint-based criminal check is not available through the department of early education and care at the time an application for renewal of a department -issued license, certificate, approval or funding request is due, then the applicant for renewal shall undergo a state and national fingerprint-based criminal check as soon it becomes available, but not later than September 1, 2016.

If a state and national fingerprint-based criminal check is not available through the department of early education and care by September 1, 2013, then any prospective employee in any department-licensed, funded or approved program who has the potential for unsupervised contact with children, including those providing transportation services on behalf of any department-licensed, funded or approved program, hired to begin employment on or after September 1, 2013, shall be hired conditionally as set forth in this act.

If a state and national fingerprint-based criminal check is not available through the department of early education and care by September 1, 2013, then any employee in any department-licensed, funded or approved program who has the potential for unsupervised contact with children, including those providing transportation services on behalf of any department licensed, funded or approved program, hired to begin employment prior to September 1, 2013, who is undergoing a department required periodic criminal offender record information check and a department of children and families background record check investigation, may continue employment conditionally as provided in this act, but shall undergo a state and national fingerprint-based criminal check not later than September 1, 2016.

SECTION 12. Section 38R of chapter 71 of the General Laws and section 9 of this act shall apply to all individuals working in kindergarten through twelfth grade education whose employment or service for a school or district begins during or after the 2013-2014 school year. Individuals working in kindergarten through twelfth grade education whose employment or service began before the 2013-2014 school year shall submit fingerprints for state and national criminal history checks on a phased-in basis prior to the beginning of the 2016-2017 school year.

SECTION 13. For the purposes of this section, "conditional employee" shall mean an individual who has the potential for unsupervised contact with children and who is an employee, volunteer or intern of a department of early education and care licensed, funded or approved program or a provider of transportation services on behalf of any department of early education and care licensed, funded or approved program and was hired prior to the obtaining of the results of a state and national fingerprint-based criminal history check because the employer determined that hiring the individual was necessary.

Notwithstanding chapter 15D of the General Laws, or any other general or special law to the contrary, until the commonwealth has fully implemented a system for forwarding fingerprints to the Federal Bureau of Investigation for a national criminal history check and providing the results of those checks, the department of early education and care, department-licensed, approved or funded programs or the provider of transportation services on behalf of any department-licensed, funded or approved program may hire a conditional employee if the employer has first obtained the results of a criminal offender record information check and a department of children and families background record check, as required by the department, on the individuals.

All department licensed, funded or approved programs and all providers of transportation services on behalf of any department-licensed, funded or approved program, whose employees are subject to a state and national criminal history check under this chapter, shall require such employees hired on or after September 1, 2013 without the results of state and national fingerprint-based criminal history checks to submit fingerprints for state and national criminal history checks within a reasonable period of time.

Approved, September 3, 2013.

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