

CHAPTER 89

AN ACT concerning family day care homes, supplementing chapter 5B of Title 30 of the Revised Statutes , and amending P.L.2000, c.77.

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

C.30:5B-25.5 Definitions relative to family day care homes.

1. As used in this act:

"Certificate of registration" means a certificate of registration as defined in section 3 of P.L.1987, c.27 (C.30:5B-18).

"Family day care home" means a family day care home as defined in section 3 of P.L.1987, c.27 (C.30:5B-18).

"Family day care provider" means a family day care provider as defined in section 3 of P.L.1987, c.27 (C.30:5B-18).

"Family day care sponsoring organization" means a family day care sponsoring organization as defined in section 3 of P.L.1987, c.27 (C.30:5B-18).

"Household member" means a person 18 years of age or older who resides in a family day care home.

C.30:5B-25.6 Criminal history background checks for certain family day care providers.

2. a. By October 1, 2017, and as a condition of issuance or renewal of a certificate of registration thereafter, the Department of Children and Families shall require the following persons to undergo a State and federal criminal history record background check, in accordance with the provisions of section 3 of P.L.2017, c.89 (C.30:5B-25.7): (1) any person who is a prospective or current family day care provider; (2) any assistant provider, substitute provider, or alternate provider of the prospective or current family day care provider; and (3) any household member of the prospective or current family day care provider. The background check shall be conducted by the Division of State Police in the Department of Law and Public Safety, and shall include an examination of State files and the obtaining of a similar examination of federal files by federal authorities.

b. If a criminal history record background check reveals that a person identified in subsection a. of this section has a record of disqualifying convictions, the department shall advise the sponsoring organization, in accordance with the provisions of section 5 of P.L.2017, c.89 (C.30:5B-25.9), of the results of the criminal history record background check, within a time period to be determined by the department.

C.30:5B-25.7 Denial, revocation of registration.

3. a. The department shall not issue a certificate or renewal of registration to a prospective or current family day care provider, and shall revoke the existing registration held by a current family day care provider, as the case may be, if the provider, or any other relevant person listed in subsection a. of section 2 of P.L.2017, c.89 (C.30:5B-25.6):

(1) refuses to consent to, or cooperate in, the securing of a criminal history record background check;

(2) knowingly makes a materially false statement in connection with a criminal history record background check;

(3) is registered, or is required to be registered, on a State sex offender registry or repository, or on the National Sex Offender Registry established under the "Adam Walsh Child Protection and Safety Act of 2006," 42 U.S.C. s.16901 et seq.; or

(4) is found by a criminal history record background check to have a record of conviction for any of the following crimes and offenses:

(a) a crime against a child, including endangering the welfare of a child and child pornography pursuant to N.J.S.2C:24-4, and child molestation as set forth in N.J.S.2C:14-1 et seq.;

(b) abuse, abandonment or neglect of a child pursuant to R.S.9:6-3;

(c) endangering the welfare of an incompetent person pursuant to N.J.S.2C:24-7;

(d) sexual assault, criminal sexual contact or lewdness pursuant to N.J.S.2C:14-2 through N.J.S.2C:14-4;

(e) murder pursuant to N.J.S.2C:11-3 or manslaughter pursuant to N.J.S.2C:11-4;

(f) stalking pursuant to P.L.1992, c.209 (C.2C:12-10);

(g) kidnapping and related offenses including criminal restraint; false imprisonment; interference with custody; criminal coercion; or enticing a child into a motor vehicle, structure, or isolated area pursuant to N.J.S.2C:13-1 through C.2C:13-6;

(h) arson pursuant to N.J.S.2C:17-1, or causing or risking widespread injury or damage, which would constitute a crime of the second degree pursuant to N.J.S.2C:17-2;

(i) terroristic threats pursuant to N.J.S.2C:12-3;

(j) aggravated assault, which would constitute a crime of the second or third degree pursuant to subsection b. of N.J.S.2C:12-1;

(k) robbery, which would constitute a crime of the first degree pursuant to N.J.S.2C:15-1;

(l) burglary, which would constitute a crime of the second degree pursuant to N.J.S.2C:18-2;

(m) domestic violence pursuant to P.L.1991, c.261 (C.2C:25-17 et seq.);

(n) any drug related offense committed within the preceding five-year period; or

(o) an attempt or conspiracy to commit any of the crimes or offenses listed in paragraphs (a) through (n) of this subsection.

b. For the purposes of this section, a person shall be deemed to have a disqualifying record of conviction if the person has been convicted in New Jersey of any of the crimes listed in subsection a. of this section, or if the person has been convicted in any other state or jurisdiction, of conduct which, if committed in New Jersey, would constitute any of the crimes or disorderly persons offenses described in that subsection.

c. Notwithstanding the provisions of this section to the contrary, a prospective or current provider's application for a certificate or renewal of registration shall not be denied under this act on the basis of any conviction disclosed by a criminal history record background check performed pursuant to this act without an opportunity to challenge the accuracy of the disqualifying criminal history record pursuant to subsection c. of section 5 of P.L.2017, c.89 (C.30:5B-25.9).

C.30:5B-25.8 Payment.

4. The Commissioner of Human Services shall pay the cost of the criminal history record background checks conducted pursuant to P.L.2017, c.89 (C.30:5B-25.5 et al.) on behalf of the prospective or current family day care providers, as applicable.

C.30:5B-25.9 Exchange of fingerprint data; notification.

5. a. The Commissioner of Children and Families is authorized to exchange fingerprint data with, and to receive information from, the Division of State Police in the Department of Law and Public Safety and the Federal Bureau of Investigation.

b. Upon receipt of criminal history record information from the Federal Bureau of Investigation and the Division of State Police, for each of the parties identified in subsection a. of section 2 of P.L.2017, c.89 (C.30:5B-25.6), the Department of Children and Families shall notify the family day care provider, in writing, of the department's decision to approve or deny the family day care provider's application for a certificate or renewal of registration, or its decision to revoke the family day care provider's existing registration, as the case may be. The department shall also advise the family day care provider, the family day care sponsoring organization, and any person, other than the provider, who was the subject of the criminal history record background check, within a reasonable timeframe, of the results of any criminal history record background check that is conducted under section 3 of P.L.2017, c.89 (C.30:5B-25.7).

c. If the department denies an application for a certificate or renewal of registration, or revokes an existing registration, because the family day care provider, or other relevant party listed in subsection a. of section 2 of P.L.2017, c.89 (C.30:5B-25.6), has been determined to have a disqualifying record of convictions, as provided by section 3 of P.L.2017, c.89 (C.30:5B-25.7), the convictions that constitute the basis for such denial or revocation shall be identified in the written notice of disqualifying convictions that is provided to all parties under subsection b. of this section. In such a case, the family day care provider or other person who was the subject of the criminal history record background check shall have 14 days from the date of the written notice to challenge the accuracy of the criminal history record information upon which the denial or revocation was based. If no challenge is filed, or if a challenge is filed, but the denial or revocation is upheld, the department shall notify the family day care sponsoring organization that the family day care provider's registration has been denied or revoked on the basis of disqualifying criminal history record information.

d. The Division of State Police shall promptly notify the department whenever a person who was the subject of a criminal history record background check under section 3 of P.L.2017, c.89 (C.30:4B-25.7), is convicted of a crime or offense in this State after the date on which the background check was performed. Upon receipt of such notification, the department shall determine whether to revoke the family day care provider's certificate of registration.

6. Section 5 of P.L.2000, c.77 (C.30:5B-6.14) is amended to read as follows:

C.30:5B-6.14 Record of conviction for certain offenses, disqualification from employment; challenge.

5. a. A current staff member and an individual seeking employment shall be permanently disqualified from employment at, or ownership or sponsorship of, a child care center if the staff member or individual:

(1) refuses to consent to, or cooperate in, the securing of a criminal history record background check;

(2) knowingly makes a materially false statement in connection with a criminal history record background check;

(3) is registered, or is required to be registered, on a State sex offender registry or repository, or in the National Sex Offender Registry established under the "Adam Walsh Child Protection and Safety Act of 2006," 42 U.S.C. s.16901 et seq.; or

(4) is found by a criminal history record background check to have a record of conviction for any of the following crimes and offenses:

(a) a crime against a child, including endangering the welfare of a child and child pornography pursuant to N.J.S.2C:24-4, and child molestation as set forth in N.J.S. 2C:14-1 et seq.;

(b) abuse, abandonment, or neglect of a child pursuant to R.S.9:6-3;

(c) endangering the welfare of an incompetent person pursuant to N.J.S.2C:24-7;

(d) sexual assault, criminal sexual contact, or lewdness pursuant to N.J.S.2C:14-2 through N.J.S.2C:14-4;

(e) murder pursuant to N.J.S.2C:11-3 or manslaughter pursuant to N.J.S.2C:11-4;

(f) stalking pursuant to P.L.1992, c.209 (C.2C:12-10);

(g) kidnapping and related offenses including criminal restraint; false imprisonment; interference with custody; criminal coercion; or enticing a child into a motor vehicle, structure, or isolated area pursuant to N.J.S.2C:13-1 through C.2C:13-6;

(h) arson pursuant to N.J.S.2C:17-1, or causing or risking widespread injury or damage which would constitute a crime of the second degree pursuant to N.J.S.2C:17-2;

(i) terroristic threats pursuant to N.J.S.2C:12-3;

(j) aggravated assault, which would constitute a crime of the second or third degree pursuant to subsection b. of N.J.S.2C:12-1;

(k) robbery, which would constitute a crime of the first degree pursuant to N.J.S.2C:15-1;

(l) burglary, which would constitute a crime of the second degree pursuant to N.J.S.2C:18-2;

(m) domestic violence pursuant to P.L.1991, c.261 (C.2C:25-17 et seq.);

(n) any drug related offense committed within the preceding five-year period; or

(o) an attempt or conspiracy to commit any of the crimes or offenses listed in subparagraphs (a) through (n) of this subsection.

b. For the purposes of this section, a person shall be deemed to have a disqualifying record of conviction if the person has been convicted in New Jersey of any of the crimes listed in subsection a. of this section, or if the person has been convicted in any other state or jurisdiction, of conduct which, if committed in New Jersey, would constitute any of the crimes or disorderly persons offenses described in that subsection.

c. Notwithstanding the provisions of this section to the contrary, an individual shall not be disqualified from employment or ownership or sponsorship under P.L.2000, c.77 (C.30:5B-6.10 et al.) on the basis of any conviction disclosed by a criminal history record background check performed pursuant to P.L.2000, c.77 (C.30:5B-6.10 et al.) without an opportunity to challenge the accuracy of the disqualifying criminal history record pursuant to the provisions of section 8 of P.L.2000, c.77 (C.53:1-20.9b).

C.30:5B-25.10 Rules, regulations.

7. Notwithstanding the provisions of the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.), the Commissioner of Children and Families shall, immediately upon filing proper notice with the Office of Administrative Law, adopt rules and regulations as the commissioner deems necessary to implement the provisions of P.L.2017, c.89 (C.30:5B-25.5 et al.). Such rules and regulations shall remain in effect for a period not to exceed 12 months, and shall, thereafter, be amended, adopted, or readopted by the commissioner in accordance with the requirements of the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.).

8. This act shall take effect on July 1, 2017, except the Commissioner of Children and Families may take such anticipatory administrative action in advance thereof as shall be necessary for the implementation of this act.

Approved June 9, 2017.