

STATE OF MAINE

IN THE YEAR OF OUR LORD
TWO THOUSAND AND EIGHTEEN

H.P. 207 - L.D. 274

**An Act To Implement the Recommendations of the Working Group To
Study Background Checks for Child Care Facilities and Providers**

Be it enacted by the People of the State of Maine as follows:

Sec. 1. 22 MRSA §8302-A, sub-§1, ¶G, as amended by PL 2001, c. 645, §7, is repealed.

Sec. 2. 22 MRSA §8302-A, sub-§1, ¶J, as enacted by PL 2015, c. 497, §2, is repealed and the following enacted in its place:

J. Requiring a criminal background check that meets the requirements of 42 United States Code, Section 9858f(b) for each child care staff member. For the purposes of this paragraph, "child care staff member" means an individual:

(1) Who is employed by a child care facility for compensation, including a contract employee or self-employed individual; or

(2) Whose activities involve the care or supervision of children for a child care facility or unsupervised access to children who are cared for or supervised by a child care facility.

"Child care staff member" does not include an individual who is related to all children for whom child care services are provided or a contractor performing maintenance and repairs at the child care facility who does not have unsupervised access to children who are cared for or supervised by the child care facility.

Sec. 3. 22 MRSA §8302-A, sub-§2, ¶I, as amended by PL 2015, c. 497, §3, is further amended to read:

I. Procedures for waivers of rules and for suspension and revocation of certification; and

Sec. 4. 22 MRSA §8302-A, sub-§2, ¶J, as amended by PL 2015, c. 497, §3, is repealed.

Sec. 5. 22 MRSA §8302-A, sub-§2, ¶K, as enacted by PL 2015, c. 497, §3, is repealed and the following enacted in its place:

K. Requiring a criminal background check that meets the requirements of 42 United States Code, Section 9858f(b) for a family child care provider and each child care staff member. For the purposes of this paragraph, "child care staff member" means an individual:

(1) Who is employed by a family child care provider for compensation, including a contract employee or self-employed individual;

(2) Whose activities involve the care or supervision of children for a family child care provider or unsupervised access to children who are cared for or supervised by a family child care provider; or

(3) Who is 18 years of age or older and who resides in the home of a family child care provider.

"Child care staff member" does not include an individual who is related to all children for whom child care services are provided or a contractor performing maintenance and repairs at the home of a family child care provider who does not have unsupervised access to children who are cared for or supervised by the family child care provider.

Sec. 6. 22 MRSA §8302-A, sub-§3 is enacted to read:

3. Payment for criminal background checks. Fees for the criminal background checks required for a child care staff member pursuant to subsection 1, paragraph J and subsection 2, paragraph K must be paid by the department from the funds available under the federal Child Care and Development Block Grant Act of 1990, as amended by the federal Personal Responsibility and Work Opportunity Reconciliation Act of 1996, Public Law 104-193, 110 Stat. 2105. The fees for the criminal background checks reimbursed under this subsection may not exceed the actual costs for processing and administration.

Sec. 7. 22 MRSA §8302-B, sub-§1, as enacted by PL 1997, c. 494, §11 and affected by §15, is repealed and the following enacted in its place:

1. Investigation. A person who provides day care in that person's home for one or 2 children whose care is paid for by state or federal funds and a child care staff member, as defined in section 8302-A, subsection 2, paragraph K, of the person must pass a criminal background check pursuant to section 8302-C that meets the requirements of 42 United States Code, Section 9858f(b).

Sec. 8. 22 MRSA §8302-B, sub-§1-A is enacted to read:

1-A. Payment for criminal background checks. Fees for and costs related to processing and administering criminal background checks required for a child care staff member pursuant to subsection 1 must be paid by the department from the funds available under the federal Child Care and Development Block Grant Act of 1990, as amended by the federal Personal Responsibility and Work Opportunity Reconciliation Act of 1996, Public Law 104-193, 110 Stat. 2105. The fees for and costs related to processing and

administering criminal background checks reimbursed under this subsection may not exceed the actual costs for processing and administration. A transfer of payment by the department to the Department of Public Safety from the federal Child Care and Development Block Grant Act of 1990, as amended by the federal Personal Responsibility and Work Opportunity Reconciliation Act of 1996, Public Law 104-193, 110 Stat. 2105 must be made pursuant to a schedule agreed upon by the department and the Department of Public Safety, in consultation with the State Controller, and based on documentation of fees and processing and administration costs incurred.

Sec. 9. 22 MRSA §8302-C is enacted to read:

§8302-C. Investigation

A child care provider and any child care staff member subject to a criminal background check pursuant to sections 8302-A and 8302-B must pass a background check conducted in accordance with this section and rules adopted by the department under section 8302-A. As used in this section, "child care provider" means a person who provides child care in a child care facility, a family child care provider and a person who provides day care in that person's home for one or 2 children whose care is paid for by state or federal funds. As used in this section, "child care staff member" has the same meaning as described in section 8302-A, subsection 1, paragraph J and section 8302-A, subsection 2, paragraph K.

1. Investigation. In accordance with the rules adopted by the department, the department shall request a criminal background check for a child care provider and child care staff members of the child care provider. The criminal background check must include criminal history record information obtained from the Maine Criminal Justice Information System and the Federal Bureau of Investigation. The following provisions apply.

A. The criminal history record information obtained from the Maine Criminal Justice Information System must include a record of public criminal history record information as defined in Title 16, section 703, subsection 8.

B. The criminal history record information obtained from the Federal Bureau of Investigation must include other state and national criminal history record information.

C. A person subject to a criminal background check under this section shall submit to having fingerprints taken. The State Police, upon payment of the fee, shall take or cause to be taken the person's fingerprints and shall forward the fingerprints to the State Bureau of Identification so that the bureau can conduct state and national criminal history record checks. Except for the portion of the payment, if any, that constitutes the processing fee charged by the Federal Bureau of Investigation, all money received by the State Police for purposes of this paragraph must be paid over to the Treasurer of State. The money must be applied to the expenses of administration incurred by the Department of Public Safety.

D. The subject of a Federal Bureau of Investigation criminal history record check may obtain a copy of the criminal history record check by following the procedures

outlined in 28 Code of Federal Regulations, Sections 16.32 and 16.33. The subject of a state criminal history record check may inspect and review the criminal history record information pursuant to Title 16, section 709.

E. State and federal criminal history record information may be used by the department for the purpose of screening a child care provider or child care staff member in accordance with this chapter.

F. Information obtained pursuant to this subsection is confidential. The results of criminal background checks received by the department are for official use only and may not be disseminated to any other person or entity.

G. If a person is no longer subject to this chapter that person may request in writing that the State Bureau of Identification remove the person's fingerprints from the bureau's fingerprint file. In response to a written request, the bureau shall remove the person's fingerprints from the fingerprint file and provide written confirmation of that removal.

The department, with the State Bureau of Identification, shall adopt rules to implement this subsection. Rules adopted pursuant to this subsection are routine technical rules as defined in Title 5, chapter 375, subchapter 2-A.

Sec. 10. 25 MRSA §1542-A, sub-§1, ¶L, as amended by PL 2017, c. 204, §3; c. 253, §1; and c. 258, Pt. B, §1, is further amended to read:

L. Who is assigned to provide services to the Department of Administrative and Financial Services, Bureau of Revenue Services pursuant to a contract or subcontract for services to the bureau and whose fingerprints have been required by the State Tax Assessor pursuant to Title 36, section 194-C; or

Sec. 11. 25 MRSA §1542-A, sub-§1, ¶M, as enacted by PL 2017, c. 204, §4; c. 253, §2; and c. 258, Pt. B, §2, is repealed and the following enacted in its place:

M. Who has applied for a guide license under Title 12, section 12853;

Sec. 12. 25 MRSA §1542-A, sub-§1, ¶N, as enacted by PL 2017, c. 253, §2, is amended to read:

N. Who is licensed under Title 32, chapter 48 and has applied for an expedited license under Title 32, section 18506;

Sec. 13. 25 MRSA §1542-A, sub-§1, ¶¶P to R are enacted to read:

P. Who is licensed under Title 32, chapter 36 and has applied for an expedited license under Title 32, section 18506;

Q. Who is an applicant for licensure with the State Board of Nursing as required under Title 32, section 2111, subsection 1; or

R. Who is required to have a criminal background check under Title 22, section 8302-A or 8302-B.

Sec. 14. 25 MRSA §1542-A, sub-§3, ¶L, as enacted by PL 2017, c. 204, §5; c. 253, §3; and c. 258, Pt. B, §3, is repealed and the following enacted in its place:

L. The State Police shall take or cause to be taken the fingerprints of the person named in subsection 1, paragraph M at the request of that person and upon payment of the expenses by that person as required by Title 12, section 12853, subsection 4-A, paragraph B.

Sec. 15. 25 MRSA §1542-A, sub-§3, ¶¶O to Q are enacted to read:

O. The State Police shall take or cause to be taken the fingerprints of the person named in subsection 1, paragraph P at the request of that person and upon payment of the expenses by that person as required by Title 32, section 2571-A.

P. The State Police shall take or cause to be taken the fingerprints of the person named in subsection 1, paragraph Q at the request of that person and upon payment by the person of the fee established in Title 32, section 2111, subsection 1.

Q. The State Police shall take or cause to be taken the fingerprints of the person named in subsection 1, paragraph R at the request of that person or the Department of Health and Human Services under Title 22, section 8302-A or 8302-B.

Sec. 16. 25 MRSA §1542-A, sub-§4, as repealed and replaced by PL 2017, c. 409, Pt. B, §13, is amended to read:

4. Duty to submit to State Bureau of Identification. It is the duty of the law enforcement agency taking the fingerprints as required by subsection 3, paragraphs A, B and G to transmit immediately to the State Bureau of Identification the criminal fingerprint record. Fingerprints taken pursuant to subsection 1, paragraph C, D, E or F or pursuant to subsection 5 may not be submitted to the State Bureau of Identification unless an express request is made by the commanding officer of the State Bureau of Identification. Fingerprints taken pursuant to subsection 1, paragraph G must be transmitted immediately to the State Bureau of Identification to enable the bureau to conduct state and national criminal history record checks for the Department of Education. The bureau may not use the fingerprints for any purpose other than that provided for under Title 20-A, section 6103. The bureau shall retain the fingerprints, except as provided under Title 20-A, section 6103, subsection 9. Fingerprints taken pursuant to subsection 1, paragraph I and subsection 3, paragraph I must be transmitted immediately to the State Bureau of Identification to enable the bureau to conduct state and national criminal history record checks for the court and the Department of Public Safety, Gambling Control Board, respectively. Fingerprints taken pursuant to subsection 1, paragraph J, K or L must be transmitted immediately to the State Bureau of Identification to enable the bureau to conduct state and national criminal history record checks for the Department of Administrative and Financial Services, Bureau of Revenue Services. Fingerprints taken pursuant to subsection 1, paragraph ~~M~~ P must be transmitted immediately to the State Bureau of Identification to enable the bureau to conduct state and national criminal history record checks for the Board of Osteopathic Licensure, established in Title 32, chapter 36. Fingerprints taken pursuant to subsection 1, paragraph N must be transmitted immediately to the State Bureau of Identification to enable the bureau to conduct state and national criminal history record checks for the Board of Licensure in Medicine, established in Title 32, chapter 48. Fingerprints taken pursuant to subsection 1, paragraph ~~M~~ Q must be transmitted immediately to the State Bureau of Identification to enable the bureau to conduct state and national criminal history record

checks for the State Board of Nursing, established in Title 32, chapter 31. Fingerprints taken pursuant to subsection 1, paragraph O must be transmitted immediately to the State Bureau of Identification to enable the bureau to conduct state and national criminal history record checks under Title 28-B, section 204. Fingerprints taken pursuant to subsection 1, paragraph R must be transmitted immediately to the State Bureau of Identification to enable the bureau to conduct state and national criminal history record checks for the Department of Health and Human Services.

Sec. 17. Appropriations and allocations. The following appropriations and allocations are made.

HEALTH AND HUMAN SERVICES, DEPARTMENT OF

Child Care Services 0563

Initiative: Provides an allocation to pay background check fees for child care providers.

FEDERAL BLOCK GRANT FUND	2017-18	2018-19
All Other	\$0	\$540,000
FEDERAL BLOCK GRANT FUND TOTAL	\$0	\$540,000

Child Care Services 0563

Initiative: Provides an allocation to pay background check processing and administration for child care providers.

FEDERAL BLOCK GRANT FUND	2017-18	2018-19
All Other	\$0	\$124,786
FEDERAL BLOCK GRANT FUND TOTAL	\$0	\$124,786

Division of Licensing and Regulatory Services Z036

Initiative: Provides allocations for 2 Identification Specialist II positions to handle additional work from the increase in background checks.

OTHER SPECIAL REVENUE FUNDS	2017-18	2018-19
POSITIONS - LEGISLATIVE COUNT	0.000	2.000
Personal Services	\$0	\$121,078
All Other	\$0	\$17,033
OTHER SPECIAL REVENUE FUNDS TOTAL	\$0	\$138,111

Office of Child and Family Services - District 0452

Initiative: Provides allocations for one Office Associate II Supervisor position to handle additional work from the increase in background checks.

OTHER SPECIAL REVENUE FUNDS	2017-18	2018-19
POSITIONS - LEGISLATIVE COUNT	0.000	1.000
Personal Services	\$0	\$62,365
All Other	\$0	\$6,711
OTHER SPECIAL REVENUE FUNDS TOTAL	\$0	\$69,076

HEALTH AND HUMAN SERVICES, DEPARTMENT OF DEPARTMENT TOTALS	2017-18	2018-19
OTHER SPECIAL REVENUE FUNDS	\$0	\$207,187
FEDERAL BLOCK GRANT FUND	\$0	\$664,786
DEPARTMENT TOTAL - ALL FUNDS	\$0	\$871,973

PUBLIC SAFETY, DEPARTMENT OF

State Police 0291

Initiative: Provides funding for one Identification Specialist II position and related costs to process additional fingerprint checks.

GENERAL FUND	2017-18	2018-19
POSITIONS - LEGISLATIVE COUNT	0.000	1.000
Personal Services	\$0	\$42,135
All Other	\$0	\$2,107
GENERAL FUND TOTAL	\$0	\$44,242

HIGHWAY FUND	2017-18	2018-19
Personal Services	\$0	\$22,688
All Other	\$0	\$1,562
HIGHWAY FUND TOTAL	\$0	\$24,250

OTHER SPECIAL REVENUE FUNDS	2017-18	2018-19
All Other	\$0	\$188,313
OTHER SPECIAL REVENUE FUNDS TOTAL	\$0	\$188,313

PUBLIC SAFETY, DEPARTMENT OF DEPARTMENT TOTALS	2017-18	2018-19
GENERAL FUND	\$0	\$44,242
HIGHWAY FUND	\$0	\$24,250
OTHER SPECIAL REVENUE FUNDS	\$0	\$188,313
DEPARTMENT TOTAL - ALL FUNDS	\$0	\$256,805

SECTION TOTALS	2017-18	2018-19
GENERAL FUND	\$0	\$44,242
HIGHWAY FUND	\$0	\$24,250
OTHER SPECIAL REVENUE FUNDS	\$0	\$395,500
FEDERAL BLOCK GRANT FUND	\$0	\$664,786
SECTION TOTAL - ALL FUNDS	\$0	\$1,128,778