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HEALTH AND HUMAN SERVICES

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**STATE OF MAINE
HOUSE OF REPRESENTATIVES
128TH LEGISLATURE
FIRST REGULAR SESSION**

COMMITTEE AMENDMENT “ ” to H.P. 207, L.D. 274, Bill, “An Act To Implement the Recommendations of the Working Group To Study Background Checks for Child Care Facilities and Providers”

Amend the bill by striking out everything after the enacting clause and before the summary and inserting the following:

Sec. 1. 22 MRSA §8302-A, sub-§1, ¶G, as amended by PL 2001, c. 645, §7, is repealed.

Sec. 2. 22 MRSA §8302-A, sub-§1, ¶J, as enacted by PL 2015, c. 497, §2, is repealed and the following enacted in its place: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

(1) Is not related to all children for whom child care services are provided in a child care facility;

(2) Has access to children who are cared for or supervised by a child care facility while they are being cared for or supervised by the child care facility; and

(3) Is not under constant visual supervision of a person who has passed a criminal background check under this paragraph.

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Sec. 4. 22 MRSA §8302-A, sub-§2, ¶J, as amended by PL 2015, c. 497, §3, is repealed.

COMMITTEE AMENDMENT

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2 repealed and the following enacted in its place:

3 K. Requiring a criminal background check pursuant to section 8302-C that meets the
4 requirements of 42 United States Code, Section 9858f(b) for a family child care
5 provider and each child care staff member. For the purposes of this paragraph, "child
6 care staff member" means an individual who is 18 years of age or older and who
7 resides in the home of a family child care provider, or an individual who:

8 (1) Is not related to all children for whom child care services are provided by a
9 family child care provider;

10 (2) Has access to children cared for or supervised by a family child care provider
11 while they are being cared for or supervised by the family child care provider;
12 and

13 (3) Is not under constant visual supervision of a person who has passed a
14 criminal background check under this paragraph.

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

16 **3. Payment for criminal background checks.** Fees for the criminal background
17 checks required for a child care staff member pursuant to subsection 1, paragraph J and
18 subsection 2, paragraph K must be paid by the department from the federal Child Care
19 and Development Block Grant Act of 1990, as amended by the federal Personal
20 Responsibility and Work Opportunity Reconciliation Act of 1996, Public Law 104-193,
21 110 Stat. 2105. The fees for the criminal background checks reimbursed under this
22 subsection may not exceed the actual costs for processing and administration.

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

25 **1. Investigation.** A person who provides day care in that person's home for one or 2
26 children whose care is paid for by state or federal funds must pass a criminal background
27 check pursuant to section 8302-C that meets the requirements of 42 United States Code,
28 Section 9858f(b).

29 **Sec. 8. 22 MRSA §8302-C** is enacted to read:

30 **§8302-C. Investigation**

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

40 **1. Investigation.** In accordance with the rules adopted by the department, the
41 department shall request a criminal background check for a child care provider and child

1 care staff members of the child care provider. The criminal background check must
2 include criminal history record information obtained from the Maine Criminal Justice
3 Information System and the Federal Bureau of Investigation. The following provisions
4 apply.

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

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

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

20 D. The subject of a Federal Bureau of Investigation criminal history record check
21 may obtain a copy of the criminal history record check by following the procedures
22 outlined in 28 Code of Federal Regulations, Sections 16.32 and 16.33. The subject of
23 a state criminal history record check may inspect and review the criminal history
24 record information pursuant to Title 16, section 709.

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

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

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

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

39 **2. Waiver.** A child care provider required to pass a criminal background check or to
40 have child care staff members pass a criminal background check pursuant to sections
41 8302-A and 8302-B may request a temporary waiver from the department from the
42 criminal background check requirements. The department may grant a waiver when this
43 requirement presents a hardship for the child care provider for reasons that include but are

1 not limited to an inability to meet other licensing requirements because of medical
2 reasons or because of a delay in processing the criminal background check. The
3 department shall adopt routine technical rules as defined by Title 5, chapter 375,
4 subchapter 2-A to implement the provisions of this subsection. The rules must minimize
5 the impact of the temporary waiver on the safety of the children receiving child care
6 services.

7 **Sec. 9. 25 MRSA §1542-A, sub-§1, ¶¶K and L**, as enacted by PL 2015, c. 300,
8 Pt. B, §3, are amended to read:

9 K. Who has applied for employment with the Department of Administrative and
10 Financial Services, Bureau of Revenue Services, Office of Tax Policy and whose
11 fingerprints have been required by the Associate Commissioner for Tax Policy
12 pursuant to Title 36, section 194-B; or

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

17 **Sec. 10. 25 MRSA §1542-A, sub-§1, ¶M** is enacted to read:

18 M. Who is required to have a criminal background check under Title 22, section
19 8302-A or 8302-B.

20 **Sec. 11. 25 MRSA §1542-A, sub-§3, ¶L** is enacted to read:

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

24 **Sec. 12. 25 MRSA §1542-A, sub-§4**, as amended by PL 2015, c. 300, Pt. B, §5,
25 is further amended to read:

26 **4. Duty to submit to State Bureau of Identification.** It is the duty of the law
27 enforcement agency taking the fingerprints as required by subsection 3, paragraphs A, B
28 and G to transmit immediately to the State Bureau of Identification the criminal
29 fingerprint record. Fingerprints taken pursuant to subsection 1, paragraph C, D, E or F or
30 pursuant to subsection 5 may not be submitted to the State Bureau of Identification unless
31 an express request is made by the commanding officer of the State Bureau of
32 Identification. Fingerprints taken pursuant to subsection 1, paragraph G must be
33 transmitted immediately to the State Bureau of Identification to enable the bureau to
34 conduct state and national criminal history record checks for the Department of
35 Education. The bureau may not use the fingerprints for any purpose other than that
36 provided for under Title 20-A, section 6103. The bureau shall retain the fingerprints,
37 except as provided under Title 20-A, section 6103, subsection 9. Fingerprints taken
38 pursuant to subsection 1, paragraph I and subsection 3, paragraph I must be transmitted
39 immediately to the State Bureau of Identification to enable the bureau to conduct state
40 and national criminal history record checks for the court and the Department of Public
41 Safety, Gambling Control Board, respectively. Fingerprints taken pursuant to subsection
42 1, paragraph J, K or L must be transmitted immediately to the State Bureau of
43 Identification to enable the bureau to conduct state and national criminal history record

1 checks for the Department of Administrative and Financial Services, Bureau of Revenue
 2 Services. Fingerprints taken pursuant to subsection 1, paragraph M must be transmitted
 3 immediately to the State Bureau of Identification to enable the bureau to conduct state
 4 and national criminal history record checks for the Department of Health and Human
 5 Services.

6 **Sec. 13. Appropriations and allocations.** The following appropriations and
 7 allocations are made.

8 **HEALTH AND HUMAN SERVICES, DEPARTMENT OF (FORMERLY DHS)**

9 **Child Care Services 0563**

10 Initiative: Provides allocations to pay background check fees for child care providers.

11	FEDERAL BLOCK GRANT FUND	2017-18	2018-19
12	All Other	\$540,000	\$216,000
13			
14	FEDERAL BLOCK GRANT FUND TOTAL	<u>\$540,000</u>	<u>\$216,000</u>

15 **Division of Licensing and Regulatory Services Z036**

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

18	OTHER SPECIAL REVENUE FUNDS	2017-18	2018-19
19	POSITIONS - LEGISLATIVE COUNT	2.000	2.000
20	Personal Services	\$121,078	\$124,394
21	All Other	\$17,033	\$17,144
22			
23	OTHER SPECIAL REVENUE FUNDS TOTAL	<u>\$138,111</u>	<u>\$141,538</u>

24 **Office of Child and Family Services - District 0452**

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

27	GENERAL FUND	2017-18	2018-19
28	POSITIONS - LEGISLATIVE COUNT	1.000	1.000
29	Personal Services	\$51,139	\$52,885
30	All Other	\$5,155	\$5,155
31			
32	GENERAL FUND TOTAL	<u>\$56,294</u>	<u>\$58,040</u>

1	OTHER SPECIAL REVENUE FUNDS	2017-18	2018-19
2	Personal Services	\$11,226	\$11,609
3	All Other	\$1,543	\$1,556
4			
5	OTHER SPECIAL REVENUE FUNDS TOTAL	<u>\$12,769</u>	<u>\$13,165</u>
6	HEALTH AND HUMAN SERVICES,		
7	DEPARTMENT OF (FORMERLY DHS)		
8	DEPARTMENT TOTALS	2017-18	2018-19
9			
10	GENERAL FUND	\$56,294	\$58,040
11	OTHER SPECIAL REVENUE FUNDS	\$150,880	\$154,703
12	FEDERAL BLOCK GRANT FUND	\$540,000	\$216,000
13			
14	DEPARTMENT TOTAL - ALL FUNDS	<u>\$747,174</u>	<u>\$428,743</u>
15	PUBLIC SAFETY, DEPARTMENT OF		
16	State Police 0291		
17	Initiative: Provides funding for one Identification Specialist II position and related costs		
18	to process additional fingerprint checks.		
19	GENERAL FUND	2017-18	2018-19
20	POSITIONS - LEGISLATIVE COUNT	1.000	1.000
21	Personal Services	\$40,908	\$42,135
22	All Other	\$2,107	\$2,107
23			
24	GENERAL FUND TOTAL	<u>\$43,015</u>	<u>\$44,242</u>
25	HIGHWAY FUND	2017-18	2018-19
26	Personal Services	\$22,027	\$22,688
27	All Other	\$1,550	\$1,562
28			
29	HIGHWAY FUND TOTAL	<u>\$23,577</u>	<u>\$24,250</u>
30	OTHER SPECIAL REVENUE FUNDS	2017-18	2018-19
31	All Other	\$188,313	\$75,325
32			
33	OTHER SPECIAL REVENUE FUNDS TOTAL	<u>\$188,313</u>	<u>\$75,325</u>

1	PUBLIC SAFETY, DEPARTMENT OF		
2	DEPARTMENT TOTALS	2017-18	2018-19
3			
4	GENERAL FUND	\$43,015	\$44,242
5	HIGHWAY FUND	\$23,577	\$24,250
6	OTHER SPECIAL REVENUE FUNDS	\$188,313	\$75,325
7			
8	DEPARTMENT TOTAL - ALL FUNDS	\$254,905	\$143,817

9	SECTION TOTALS	2017-18	2018-19
10			
11	GENERAL FUND	\$99,309	\$102,282
12	HIGHWAY FUND	\$23,577	\$24,250
13	OTHER SPECIAL REVENUE FUNDS	\$339,193	\$230,028
14	FEDERAL BLOCK GRANT FUND	\$540,000	\$216,000
15			
16	SECTION TOTAL - ALL FUNDS	\$1,002,079	\$572,560
17			

18 **SUMMARY**

19 This amendment, which is one of 2 minority reports of the committee, provides that
 20 an individual who is not supervised by a child care staff member of a family child care
 21 provider or child care facility who has passed the required criminal background check
 22 under the Maine Revised Statutes, Title 22, sections 8302-A and 8302-B and who has
 23 access to children who are cared for or supervised by a child care facility or family child
 24 care provider is required to pass a criminal background check pursuant to 42 United
 25 States Code, Section 9858f(b). It also provides that a person who provides day care in
 26 that person's home for one or 2 children whose care is paid for by state or federal funds is
 27 required to pass a criminal background check pursuant to 42 United States Code, Section
 28 9858f(b). It provides that the cost of the required criminal background checks under Title
 29 22, sections 8302-A and 8302-B be paid for by the Department of Health and Human
 30 Services from the federal Child Care and Development Block Grant Act of 1990, as
 31 amended by the federal Personal Responsibility and Work Opportunity Reconciliation
 32 Act of 1996, Public Law 104-193, 110 Stat. 2105. It grants the Department of Health and
 33 Human Services the authority to request state and national criminal history information,
 34 including fingerprint-based criminal history information, for certain child care providers
 35 and staff members. It establishes a temporary waiver process when the background check
 36 requirement presents a hardship for the child care provider. The rules adopted by the
 37 department must minimize the impact of the temporary waiver on the safety of the
 38 children receiving child care services. This amendment adds an appropriations and
 39 allocations section.

40 **FISCAL NOTE REQUIRED**

41 **(See attached)**