

MAINE STATE LEGISLATURE

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L.D. 1689

Date: 4/13/16

(Filing No. H-671)

JUDICIARY

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**STATE OF MAINE
HOUSE OF REPRESENTATIVES
127TH LEGISLATURE
SECOND REGULAR SESSION**

COMMITTEE AMENDMENT "A" to H.P. 1154, L.D. 1689, Bill, "An Act To Protect Children in the State from Possible Sexual, Physical and Emotional Abuse by Persons Who Have Been Convicted of Crimes"

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

Emergency preamble. Whereas, acts and resolves of the Legislature do not become effective until 90 days after adjournment unless enacted as emergencies; and

Whereas, the safety of children cared for and supervised by child care providers in this State is of the utmost importance; and

Whereas, child care facilities and family child care providers, as well as the families who rely on them, need to know that the providers of care and staff members do not have disqualifying criminal records from other states; and

Whereas, the 2014 reauthorization of the Child Care and Development Fund program through the federal Child Care and Development Block Grant Act of 2014 has identified that best practices for background checks include fingerprint-based national criminal background checks for all child care providers who supervise children and all persons who have unsupervised access to children who are cared for or supervised by a child care provider; and

Whereas, the transition to the criminal background check process required by federal law raises significant questions, not the least of which are the employment needs of child care providers while waiting for background check results and the costs involved in the more rigorous criminal background checks than the checks currently required under state law; and

Whereas, it is the intent of the Legislature to ensure that the additional criminal background check process will be cost-effective and will not create an undue burden on parents or child care providers; and

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Whereas, the development of major substantive rules to comply with the federal Child Care and Development Block Grant Act of 2014 by September 2017 should include the participation of child care facilities and family child care providers; and

Whereas, in the judgment of the Legislature, these facts create an emergency within the meaning of the Constitution of Maine and require the following legislation as immediately necessary for the preservation of the public peace, health and safety; now, therefore,

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

Sec. 1. 22 MRSA §7702-A, sub-§3, ¶C, as enacted by PL 1999, c. 363, §3, is amended to read:

C. Section 8302-A, subsection 1, paragraphs B to I and subsection 2, paragraphs A to F and H to J K.

Sec. 2. 22 MRSA §8302-A, sub-§1, as amended by PL 2005, c. 530, §8, is further amended to read:

1. Rules for child care facilities. Rules for child care facilities must include, but are not limited to, rules pertaining to the following:

- A. Child to staff ratios;
- B. The health and safety of the children and staff, including training on communicable diseases;
- C. Water for drinking and cooking;
- D. Wastewater;
- E. Rabies vaccinations for pets;
- F. The quality of the program provided;
- G. The age, criminal record and personal history of the provider of care for children and staff members;
- H. The administration of medication; ~~and~~
- I. Licensing procedures; and

- J. Requiring a criminal background check for:
 - (1) Each child care staff member whose activities involve the care or supervision of children; and
 - (2) Each adult who has unsupervised access to children who are cared for or supervised by a child care facility.

The criminal background check must meet the requirements of 42 United States Code, Section 9858f(b).

Rules adopted pursuant to this subsection are routine technical rules pursuant to Title 5, chapter 375, subchapter 2-A, except that rules adopted pursuant to paragraph J to comply

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1 with 42 United States Code, Section 9858f(b) are major substantive rules pursuant to
2 Title 5, chapter 375, subchapter 2-A.

3 **Sec. 3. 22 MRSA §8302-A, sub-§2**, as amended by PL 2005, c. 530, §8, is
4 further amended to read:

5 **2. Rules for family child care providers.** Rules for family child care providers
6 must include, and are limited to, rules pertaining to the following:

- 7 A. Cardiopulmonary resuscitation;
- 8 B. Water for drinking and cooking;
- 9 C. Wastewater;
- 10 D. Rabies vaccinations for pets;
- 11 E. Recording the times, reasons and numbers of children involved when more than
12 12 children are cared for;
- 13 F. Ongoing training for providers on health and safety issues, including training on
14 communicable diseases. This training must be offered at times that are convenient to
15 the providers;
- 16 G. Child to staff ratios;
- 17 H. Health and safety of the children and staff;
- 18 I. Procedures for waivers of rules and for suspension and revocation of certification;
19 ~~and~~
- 20 J. The age, criminal record and personal history of the family child care provider,
21 staff and members of the household; and
- 22 K. Requiring a criminal background check for:
 - 23 (1) The family child care provider;
 - 24 (2) Each child care staff member whose activities involve the care or supervision
25 of children; and
 - 26 (3) Each adult who has unsupervised access to children who are cared for or
27 supervised by the family child care provider.

28 The criminal background check must meet the requirements of 42 United States
29 Code, Section 9858f(b).

30 Rules adopted pursuant to paragraphs A to F are routine technical rules pursuant to Title
31 5, chapter 375, subchapter 2-A and rules adopted pursuant to paragraphs G to J K are
32 major substantive rules pursuant to Title 5, chapter 375, subchapter 2-A.

33 **Sec. 4. Department of Health and Human Services; adoption of rules.**
34 The Department of Health and Human Services shall adopt rules required by the Maine
35 Revised Statutes, Title 22, section 8302-A, subsections 1 and 2 to require criminal
36 background checks for all providers of care and staff members of child care facilities and
37 family child care providers, to be effective September 1, 2017. The rules must be
38 provisionally adopted and submitted to the Legislature for review by the joint standing

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COMMITTEE AMENDMENT "A" to H.P. 1154, L.D. 1689

1 committee of the Legislature having jurisdiction over judiciary matters no later than
2 January 12, 2017. The department may submit to the committee recommendations for
3 legislation to support the rules to implement changes in criminal background checks in a
4 manner that is effective for the department and child care facilities and family child care
5 providers.

6 **Sec. 5. Implementing legislation.** The joint standing committee of the
7 Legislature having jurisdiction over judiciary matters may submit a bill, including
8 recommendations provided by the department pursuant to section 4, to the First Regular
9 Session of the 128th Legislature to implement the criminal background checks required
10 by 42 United States Code, Section 9858f(b). In developing the bill, the committee shall
11 take into account the concerns of child care providers, including but not limited to
12 employment needs while waiting for background check results, and shall explore options,
13 including the application of federal grant funds, to defray all or some of the initial and
14 ongoing additional costs.

15 **Emergency clause.** In view of the emergency cited in the preamble, this
16 legislation takes effect when approved.'

17 **SUMMARY**

18 This amendment replaces the bill. It directs the Department of Health and Human
19 Services to adopt rules to require criminal background checks for all family child care
20 providers and staff members of child care facilities and family child care providers, to be
21 effective September 1, 2017. The required criminal background checks must meet the
22 requirements of 42 United States Code, Section 9858f(b) for all family child care
23 providers, all child care staff members whose activities involve the care or supervision of
24 children for a child care facility or a family child care provider and all adults who have
25 unsupervised access to children who are cared for or supervised by a child care facility or
26 family child care provider. The rules are major substantive rules and must be
27 provisionally adopted and submitted for legislative review by the joint standing
28 committee of the Legislature having jurisdiction over judiciary matters by January 12,
29 2017.

30 The joint standing committee of the Legislature having jurisdiction over judiciary
31 matters may submit to the 128th Legislature a bill necessary to implement the criminal
32 background check requirements.

33 This amendment includes an emergency preamble and an emergency clause.

34 **FISCAL NOTE REQUIRED**

35 (See attached)

COMMITTEE AMENDMENT



127th MAINE LEGISLATURE

LD 1689

LR 2792(02)

**An Act To Protect Children in the State from Possible Sexual, Physical and Emotional Abuse by
Persons Who Have Been Convicted of Crimes**

Fiscal Note for Bill as Amended by Committee Amendment 'A' (H-671)

Committee: Judiciary

Fiscal Note Required: Yes

Fiscal Note

Minor cost increase – General Fund

Fiscal Detail and Notes

Any additional costs to the Department of Health and Human Services to implement the provisions of this bill are expected to be minor and can be absorbed within existing budgeted resources.