

MAINE STATE LEGISLATURE

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SMG
R. of A.

L.D. 274

Date: 3/26/18

(Filing No. H-686)

HEALTH AND HUMAN SERVICES

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

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Sec. 1. 22 MRSA §8302-A, sub-§1, ¶G, as amended by PL 2001, c. 645, §7, is repealed.

Sec. 2. 22 MRSA §8302-A, sub-§1, ¶J, as enacted by PL 2015, c. 497, §2, is repealed and the following enacted in its place: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

H. of S.

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2 repealed.

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4 repealed and the following enacted in its place:

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

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

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

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

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

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

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

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

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

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

37 **1-A. Payment for criminal background checks.** Fees for the criminal background
38 checks required for a child care staff member pursuant to subsection 1 must be paid by
39 the department from the funds available under the federal Child Care and Development
40 Block Grant Act of 1990, as amended by the federal Personal Responsibility and Work
41 Opportunity Reconciliation Act of 1996, Public Law 104-193, 110 Stat. 2105. The fees

1 for the criminal background checks reimbursed under this subsection may not exceed the
2 actual costs for processing and administration.

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

4 **§8302-C. Investigation**

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

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

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

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

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

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

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

2.05

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

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

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

12 **Sec. 10. 25 MRSA §1542-A, sub-§1, ¶L**, as amended by PL 2017, c. 204, §3; c.
13 253, §1; and c. 258, Pt. B, §1, is further amended to read:

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

18 **Sec. 11. 25 MRSA §1542-A, sub-§1, ¶M**, as enacted by PL 2017, c. 204, §4; c.
19 253, §2; and c. 258, Pt. B, §2, is repealed and the following enacted in its place:

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

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

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

25 **Sec. 13. 25 MRSA §1542-A, sub-§1, ¶¶O to Q** are enacted to read:

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

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

30 Q. Who is required to have a criminal background check under Title 22, section
31 8302-A or 8302-B.

32 **Sec. 14. 25 MRSA §1542-A, sub-§3, ¶L**, as enacted by PL 2017, c. 204, §5; c.
33 253, §3; and c. 258, Pt. B, §3, is repealed and the following enacted in its place:

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

38 **Sec. 15. 25 MRSA §1542-A, sub-§3, ¶¶N to P** are enacted to read:

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

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

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

10 **Sec. 16. 25 MRSA §1542-A, sub-§4, as amended by PL 2017, c. 253, §4 and c.**
11 **258, Pt. B, §4, is repealed and the following enacted in its place:**

12 **4. Duty to submit to State Bureau of Identification.** It is the duty of the law
13 enforcement agency taking the fingerprints as required by subsection 3, paragraphs A, B
14 and G to transmit immediately to the State Bureau of Identification the criminal
15 fingerprint record. Fingerprints taken pursuant to subsection 1, paragraph C, D, E or F or
16 pursuant to subsection 5 may not be submitted to the State Bureau of Identification unless
17 an express request is made by the commanding officer of the State Bureau of
18 Identification. Fingerprints taken pursuant to subsection 1, paragraph G must be
19 transmitted immediately to the State Bureau of Identification to enable the bureau to
20 conduct state and national criminal history record checks for the Department of
21 Education. The bureau may not use the fingerprints for any purpose other than that
22 provided for under Title 20-A, section 6103. The bureau shall retain the fingerprints,
23 except as provided under Title 20-A, section 6103, subsection 9. Fingerprints taken
24 pursuant to subsection 1, paragraph I and subsection 3, paragraph I must be transmitted
25 immediately to the State Bureau of Identification to enable the bureau to conduct state
26 and national criminal history record checks for the court and the Department of Public
27 Safety, Gambling Control Board, respectively. Fingerprints taken pursuant to subsection
28 1, paragraph J, K or L must be transmitted immediately to the State Bureau of
29 Identification to enable the bureau to conduct state and national criminal history record
30 checks for the Department of Administrative and Financial Services, Bureau of Revenue
31 Services. Fingerprints taken pursuant to subsection 1, paragraph O must be transmitted
32 immediately to the State Bureau of Identification to enable the bureau to conduct state
33 and national criminal history record checks for the Board of Osteopathic Licensure,
34 established in Title 32, chapter 36. Fingerprints taken pursuant to subsection 1, paragraph
35 N must be transmitted immediately to the State Bureau of Identification to enable the
36 bureau to conduct state and national criminal history record checks for the Board of
37 Licensure in Medicine, established in Title 32, chapter 48. Fingerprints taken pursuant to
38 subsection 1, paragraph P must be transmitted immediately to the State Bureau of
39 Identification to enable the bureau to conduct state and national criminal history record
40 checks for the State Board of Nursing, established in Title 32, chapter 31. Fingerprints
41 taken pursuant to subsection 1, paragraph Q must be transmitted immediately to the State
42 Bureau of Identification to enable the bureau to conduct state and national criminal
43 history record checks for the Department of Health and Human Services.

44 **Sec. 17. Appropriations and allocations.** **The following appropriations and**
45 **allocations are made.**

H.M.S.

COMMITTEE AMENDMENT "D" to H.P. 207, L.D. 274

1 **HEALTH AND HUMAN SERVICES, DEPARTMENT OF**
2 **Child Care Services 0563**

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

| | | | |
|---|---------------------------------------|----------------|------------------|
| 4 | FEDERAL BLOCK GRANT FUND | 2017-18 | 2018-19 |
| 5 | All Other | \$0 | \$540,000 |
| 6 | | | |
| 7 | FEDERAL BLOCK GRANT FUND TOTAL | \$0 | \$540,000 |

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

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

| | | | |
|----|------------------------------------------|----------------|------------------|
| 11 | OTHER SPECIAL REVENUE FUNDS | 2017-18 | 2018-19 |
| 12 | POSITIONS - LEGISLATIVE COUNT | 0.000 | 2.000 |
| 13 | Personal Services | \$0 | \$121,078 |
| 14 | All Other | \$0 | \$17,033 |
| 15 | | | |
| 16 | OTHER SPECIAL REVENUE FUNDS TOTAL | \$0 | \$138,111 |

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

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

| | | | |
|----|-------------------------------|----------------|-----------------|
| 20 | GENERAL FUND | 2017-18 | 2018-19 |
| 21 | POSITIONS - LEGISLATIVE COUNT | 0.000 | 1.000 |
| 22 | Personal Services | \$0 | \$51,139 |
| 23 | All Other | \$0 | \$5,155 |
| 24 | | | |
| 25 | GENERAL FUND TOTAL | \$0 | \$56,294 |

| | | | |
|----|------------------------------------------|----------------|-----------------|
| 26 | OTHER SPECIAL REVENUE FUNDS | 2017-18 | 2018-19 |
| 27 | Personal Services | \$0 | \$11,226 |
| 28 | All Other | \$0 | \$1,556 |
| 29 | | | |
| 30 | OTHER SPECIAL REVENUE FUNDS TOTAL | \$0 | \$12,782 |

| | | | |
|----|----------------------------------------------------------------------------------------------|----------------|------------------|
| 1 | HEALTH AND HUMAN SERVICES, | | |
| 2 | DEPARTMENT OF | | |
| 3 | DEPARTMENT TOTALS | 2017-18 | 2018-19 |
| 4 | | | |
| 5 | GENERAL FUND | \$0 | \$56,294 |
| 6 | OTHER SPECIAL REVENUE FUNDS | \$0 | \$150,893 |
| 7 | FEDERAL BLOCK GRANT FUND | \$0 | \$540,000 |
| 8 | | | |
| 9 | DEPARTMENT TOTAL - ALL FUNDS | \$0 | \$747,187 |
| 10 | PUBLIC SAFETY, DEPARTMENT OF | | |
| 11 | State Police 0291 | | |
| 12 | Initiative: Provides funding for one Identification Specialist II position and related costs | | |
| 13 | to process additional fingerprint checks. | | |
| 14 | GENERAL FUND | 2017-18 | 2018-19 |
| 15 | POSITIONS - LEGISLATIVE COUNT | 0.000 | 1.000 |
| 16 | Personal Services | \$0 | \$42,135 |
| 17 | All Other | \$0 | \$2,107 |
| 18 | | | |
| 19 | GENERAL FUND TOTAL | \$0 | \$44,242 |
| 20 | HIGHWAY FUND | 2017-18 | 2018-19 |
| 21 | Personal Services | \$0 | \$22,688 |
| 22 | All Other | \$0 | \$1,562 |
| 23 | | | |
| 24 | HIGHWAY FUND TOTAL | \$0 | \$24,250 |
| 25 | OTHER SPECIAL REVENUE FUNDS | 2017-18 | 2018-19 |
| 26 | All Other | \$0 | \$188,313 |
| 27 | | | |
| 28 | OTHER SPECIAL REVENUE FUNDS TOTAL | \$0 | \$188,313 |
| 29 | PUBLIC SAFETY, DEPARTMENT OF | | |
| 30 | DEPARTMENT TOTALS | 2017-18 | 2018-19 |
| 31 | | | |
| 32 | GENERAL FUND | \$0 | \$44,242 |
| 33 | HIGHWAY FUND | \$0 | \$24,250 |
| 34 | OTHER SPECIAL REVENUE FUNDS | \$0 | \$188,313 |
| 35 | | | |

| | | | |
|----|-------------------------------------|----------------|--------------------|
| 1 | DEPARTMENT TOTAL - ALL FUNDS | \$0 | \$256,805 |
| 2 | SECTION TOTALS | 2017-18 | 2018-19 |
| 3 | | | |
| 4 | GENERAL FUND | \$0 | \$100,536 |
| 5 | HIGHWAY FUND | \$0 | \$24,250 |
| 6 | OTHER SPECIAL REVENUE FUNDS | \$0 | \$339,206 |
| 7 | FEDERAL BLOCK GRANT FUND | \$0 | \$540,000 |
| 8 | | | |
| 9 | SECTION TOTAL - ALL FUNDS | \$0 | \$1,003,992 |
| 10 | | | |

11 **SUMMARY**

12 This amendment strikes and replaces the bill. It excludes from the criminal
 13 background check requirement in the bill a contractor performing maintenance and repair
 14 at a child care facility or at the home of a child care provider who does not have
 15 unsupervised access to children. It provides that the cost of the required criminal
 16 background checks for child care staff members under the Maine Revised Statutes, Title
 17 22, sections 8302-A and 8302-B be paid for by the Department of Health and Human
 18 Services from the funds available under the federal Child Care and Development Block
 19 Grant Act of 1990, as amended by the federal Personal Responsibility and Work
 20 Opportunity Reconciliation Act of 1996, Public Law 104-193, 110 Stat. 2105. It grants
 21 the Department of Health and Human Services the authority to request state and national
 22 criminal history records, including fingerprint-based criminal history records, for certain
 23 child care providers and staff members.

24 The amendment corrects lettering and numbering problems created by Public Law
 25 2017, chapters 204, 253 and 258.

26 The amendment also adds an appropriations and allocations section.

27 **FISCAL NOTE REQUIRED**

28 (See attached)



128th MAINE LEGISLATURE

LD 274

LR 332(08)

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

Fiscal Note for Bill as Amended by Committee Amendment "D" (H-686)
Committee: Health and Human Services

Fiscal Note Required: Yes

Fiscal Note

| | FY 2017-18 | FY 2018-19 | Projections FY 2019-20 | Projections FY 2020-21 |
|-----------------------------------|------------|------------|---------------------------|---------------------------|
| Net Cost (Savings) | | | | |
| General Fund | \$0 | \$100,536 | \$103,546 | \$106,663 |
| Highway Fund | \$0 | \$24,250 | \$24,942 | \$25,655 |
| Appropriations/Allocations | | | | |
| General Fund | \$0 | \$100,536 | \$103,546 | \$106,663 |
| Highway Fund | \$0 | \$24,250 | \$24,942 | \$25,655 |
| Other Special Revenue Funds | \$0 | \$339,206 | \$230,042 | \$233,986 |
| Federal Block Grant Fund | \$0 | \$540,000 | \$216,000 | \$216,000 |
| Revenue | | | | |
| Other Special Revenue Funds | \$0 | \$540,000 | \$216,000 | \$216,000 |
| Federal Block Grant Fund | \$0 | \$540,000 | \$216,000 | \$216,000 |

Fiscal Detail and Notes

This fiscal note assumes 5000 background checks the 1st year, 2000 annually after that. These checks include fingerprint checks by the Department of Public Safety (DPS) and information searches by the Maine Background Check Center at the Department of Health and Human Services (DHHS).

The bill includes a General Fund appropriation of \$44,242 in fiscal year 2018-19 and a Highway Fund allocation \$24,250 in fiscal year 2018-19 and an Other Special Revenue Funds (OSRF) allocation of \$188,313 in fiscal year 2018-19 to the DPS for one Identification Specialist II position and related costs to process additional fingerprint checks. OSRF revenue will increase by \$260,000 in fiscal year 2018-19 from fees received at DPS for fingerprint checks.

The bill also includes General Fund appropriations of \$56,294 in fiscal year 2018-19 and OSRF allocations of \$12,782 in fiscal year 2018-19 to the DHHS for one Office Associate II Supervisor position to handle additional work from the increase in background checks. It also includes OSRF allocations of \$138,111 in fiscal year 2018-19 for 2 Identification Specialist II positions to handle additional work from the increase in background checks. OSRF revenue will increase by \$280,000 in fiscal year 2018-19 for the Maine Background Check Center fees. Additionally, the Federal Block Grant Fund allocations and revenue will increase to cover the costs of all fees for background checks provided by both the DPS and the DHHS.