

HOUSE No. 4307

The Commonwealth of Massachusetts

In the Year Two Thousand Twelve

An Act relative to background checks.

Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:

1 SECTION 1. Subsection (a) of section 7 of chapter 15D of the General Laws, as
2 appearing in the 2010 Official Edition, is hereby amended by inserting at the end thereof the
3 following paragraph:-

4 As part of the department’s licensure and Background Record Check process, the
5 department shall conduct fingerprint-based checks of the state and national criminal history
6 databases, pursuant to section 16962 of chapter 42 of the United States Code, before issuing any
7 license. Said fingerprint-based checks shall be conducted on any applicant for a family child
8 care, small group and school age, large group and school age, residential and placement license
9 or family child care assistant certificate. In addition, said fingerprint based checks shall be
10 conducted for all applicants for employment, who have the potential for unsupervised contact
11 with children, in any department licensed or funded program and for all household members or
12 persons regularly on the premises, aged 15 and older, of applicants for family child care
13 licensure. Such fingerprint-based checks shall also be required for all in-home non-relative
14 department funded caregivers, and for all applicants to be adoptive or foster parents. Authorized

15 department staff may receive and appropriately disseminate all criminal offender record
16 information and the results of checks of state and national criminal information databases,
17 pursuant to section 16962 of chapter 42 of the United States Code, in accordance with the law.
18 When the department obtains the results of checks of state and national criminal information
19 databases, it shall treat such information in keeping with the provisions of sections 167 through
20 178, inclusive, of chapter 6 and the regulations thereto, regarding criminal offender record
21 information.

22 SECTION 2. Subsection (b) of section 7 of said chapter 15D of the General Laws, as so
23 appearing, is hereby amended by inserting at the end thereof the following paragraph:-

24 As part of the department's approval process, the department shall conduct fingerprint-
25 based checks of the national crime information databases pursuant to section 16962 of chapter 42
26 of the United States Code before issuing any approval. Said fingerprint based checks shall be
27 conducted for all applicants for employment, who have the potential for unsupervised contact
28 with children, in any department approved program. Authorized department staff may receive
29 and appropriately disseminate all criminal offender record information and the results of checks
30 of state and national criminal information databases, pursuant to section 16962 of chapter 42 of
31 the United States Code, in accordance with the law. When the department obtains the results of
32 checks of state and national criminal information databases, it shall treat such information in
33 keeping with the provisions of sections 167 through 178, inclusive, of chapter 6 and the
34 regulations thereto, regarding criminal offender record information.

35 SECTION 3. Subsection (b) of section 8 of said chapter 15D of the General Laws, as so
36 appearing, is hereby amended by inserting after the word "fees", in line 35, the following words:-

37 “which shall incorporate all fees associated with conducting fingerprint-based checks of the state
38 and national criminal history databases, pursuant to section 16962 of chapter 42 of the United
39 States Code, as set by the department,”

40 SECTION 4. Subsection (d) of section 8 of said chapter 15D of the General Laws, as so
41 appearing, is hereby amended by inserting after the word “check”, in line 55, the following
42 words:- “and fingerprint-based checks of the state and national criminal history databases
43 pursuant to section 16962 of chapter 42 of the United States Code.”

44 SECTION 5. Section 8 of said chapter 15D of the General Laws, as so appearing, is
45 hereby amended by inserting at the end thereof the following new subsection:-

46 (j) Fingerprints, as referenced in subsections (a) and (b) of section 7 and subsections (b)
47 and (d) of section 8 of chapter 15D will be submitted to the identification section of the
48 department of state police for a state criminal history check and forwarded to the Federal Bureau
49 of Investigation for a national criminal history check, according to the policies and procedures
50 established by the identification section and by the department of criminal justice information
51 services. Fingerprint submissions and national criminal history checks may be retained by the
52 department of criminal justice information services for the purposes of ensuring the continued
53 suitability for licensure, certification, approval or employment of those individuals, provided that
54 said department is authorized to disseminate the results of a national criminal history check to
55 the department of early education and care for the purpose of determining the suitability of
56 current and prospective employees in any department licensed or funded program and for all
57 household members or persons regularly on the premises, aged 15 or older, of applicants for

58 family child care licensure, all in-home non-relative department funded caregivers, and for all
59 applicants to be adoptive or foster parents.

60 The department of criminal justice information services shall disseminate the results of
61 the criminal background check to the department. Said department of criminal justice
62 information services shall only disseminate information under this section that would otherwise
63 be available to requesting entities under the provisions of sections 167 through 178, inclusive, of
64 chapter 6 and the regulations thereto, regarding criminal offender record information.

65 The department, with approval from the board, shall amend its Background Record
66 Check regulations in a manner necessary to carry out the provisions of this section, provided that
67 the regulations may reflect a phased-in schedule for the fingerprint-based background checks,
68 provided, however, that such phase-in shall not begin prior to September 1, 2013.

69 Any and all persons required to undergo the fingerprinting process described in this
70 chapter, including but not limited to any applicant for department licensure or for employment at
71 a department licensed or funded program, or any household member or person regularly on the
72 premises, aged fifteen and above in a family child care program, any prospective foster or
73 adoptive parent, and any in-home non-relative caregiver, shall pay a fee, to be established by the
74 department in consultation with the secretary of public safety and security, to offset the costs of
75 operating and administering a fingerprint-based criminal background check system, provided
76 that said fee shall not exceed 35 dollars per person; provided, further, that the fee may increase
77 accordingly if the federal bureau of investigation increases its fees for fingerprint background
78 checks services. The department licensed or funded programs may reimburse applicants for
79 employment for all or part of the fee on grounds of financial hardship. The fee shall be

80 deposited into the Fingerprint-Based Background Check Trust Fund established under section
81 2FFFF of chapter 29.

82 SECTION 6. Chapter 29 of the General Laws is hereby amended by inserting after
83 section 2EEEE the following section: -

84 Section 2FFFF. There is hereby established and set up on the books of the
85 commonwealth a separate fund to be known as the Fingerprint-Based Background Check Trust
86 Fund to which shall be credited any appropriations or other monies authorized by the general
87 court and specifically designated to be credited thereto, and any additional funds designated for
88 deposit into the fund, including any private donations made available for deposit into the fund.
89 Amounts credited to such fund shall be available, without further appropriation, to the executive
90 office of public safety and security to carry out fingerprint-based state and national background
91 criminal checks for the purposes of employment, professional licensure and other non-criminal
92 justice purposes.

93 The fund shall be utilized for the sole purpose of carrying out state and national criminal
94 background checks and verifications, including, but not limited to, obtaining or contracting to
95 obtain fingerprints and fees from subjects, making payments charged by the Federal Bureau of
96 Investigation or other entity, staffing the department of state police and the department of
97 criminal justice information services to submit fingerprints and to obtain, verify and disseminate
98 the results of background checks, and maintaining the public safety information systems used to
99 obtain access to fingerprint-based state and national criminal background information.

100 The department of criminal justice information services shall report annually to the house
101 and senate committees on ways and means and the joint committee on education on the cost of

102 operating and administering the fingerprint-based criminal background check system, including
103 expenditures from the fund and their purposes.

104 SECTION 7. Section 38R of said chapter 71 of the General Laws, as so appearing, is
105 hereby amended by striking out the first and second paragraphs and inserting in place thereof the
106 following paragraphs:-

107 In a manner prescribed by the board of elementary and secondary education, the school
108 committee and superintendent of any city, town or regional school district and the principal or
109 other administrator, by whatever title the position be known, of a public or private school,
110 including a chapter 71B approved special education school program, shall obtain periodically,
111 but not less than every 3 years, from the department of criminal justice information services all
112 available criminal offender record information for any current or prospective employee or
113 volunteer of the school district, or for any subcontractor or laborer commissioned by the school
114 committee or school to perform work on school grounds, who may have direct and unmonitored
115 contact with children, including any individual who regularly provides school related
116 transportation to children.

117 Said school committee, superintendent of any city, town or regional school district or the
118 principal or other administrator, by whatever title the position be known, of a public or private
119 school, including a chapter 71B approved special education school program, shall also obtain a
120 state and national fingerprint-based criminal background check, as authorized by Public Law 92-
121 544, for the purpose of determining the suitability of current and prospective employees of the
122 school department who may have direct and unmonitored contact with children, provided,
123 however, that school committees shall only obtain a state and national fingerprint-based criminal

124 background check for current and prospective employees for whom they have direct hiring
125 authority. Said superintendent, principal or other administrator shall also obtain such a check for
126 any individual who regularly provides school related transportation to children and any
127 subcontractor or laborer commissioned by the school committee or school to perform work on
128 school grounds who may have direct and unmonitored contact with children. Fingerprints will
129 be submitted to the identification section of the department of state police for a state criminal
130 history check and forwarded to the Federal Bureau of Investigation for a national criminal
131 history check, according to the policies and procedures established by the identification section
132 and by the department of criminal justice information services. Fingerprint submissions and
133 national criminal history checks may be retained by the department of criminal justice
134 information services for the purpose of ensuring the continued suitability of those individuals,
135 provided that said department is authorized to disseminate the results of a national criminal
136 history check to a school committee, superintendent or principal, or their designees, for the
137 purpose of determining the suitability of current and prospective employees of the school
138 department, and to the department of elementary and secondary education for the purpose of
139 determining the suitability of applicants for licensure and licensed educators who may have
140 direct and unmonitored contact with children; provided, however, that the department of criminal
141 justice information services is authorized to disseminate to school committees only those results
142 for current and prospective employees for whom they have direct hiring authority.

143 The department of criminal justice information services shall disseminate the results of
144 the criminal background check to the school committee, superintendent or principal or the
145 designee of the school committee, superintendent or principal, provided, however, that said
146 department of criminal justice information services shall disseminate to school committees only

147 those results for current and prospective employees for whom they have direct hiring authority.
148 Entities that receive the results of national criminal background checks shall treat such
149 information in keeping with the provisions of sections 167 through 178, inclusive, of chapter 6
150 and the regulations thereto, regarding criminal offender record information. Said department of
151 criminal justice information services shall only disseminate information under this section that
152 would otherwise be available to requesting entities under the provisions of sections 167 through
153 178, inclusive, of chapter 6 and the regulations thereto regarding criminal offender record
154 information. Said school committee, superintendent or principal shall notify the commissioner
155 of any criminal record information relevant to the fitness for licensure of any holder of, or
156 applicant for, a Massachusetts educator's license.

157 The board shall in a manner provided by law and in accordance with this section and
158 sections 167 through 178, inclusive, of chapter 6 and the regulations thereto, promulgate
159 regulations necessary to carry out this section. The regulations shall provide for the
160 confidentiality of criminal offender record information and the results of finger-print based
161 checks of the state and national criminal history databases, pursuant to section 16962 of chapter
162 42 of the United States Code, obtained pursuant to this section. The regulations may also address
163 how fingerprint based background checks shall be conducted for student teacher candidates, and
164 may reflect a phased-in schedule for the fingerprint-based background checks, provided,
165 however, that such phase-in shall not begin prior to September 1, 2013.

166 The applicant shall pay a fee, to be established by the secretary of administration and
167 finance in consultation with the secretary of public safety and security and the commissioner, to
168 offset the costs of operating and administering a fingerprint-based criminal background check
169 system, provided that the fee shall not exceed 55 dollars for employees who are certified

170 pursuant to section 38G and shall not exceed 35 dollars for employees who are not certified
171 pursuant to section 38G, provided further, that said fee may increase accordingly if the federal
172 bureau of investigations increases its fee for fingerprint background check services. The school
173 committee, superintendent or principal may reimburse applicants all or part of the fee on grounds
174 of financial hardship. The fee shall be deposited into the Fingerprint-Based Background Check
175 Trust Fund established under section 2FFFF of chapter 29.

176 SECTION 8. Subsection (l) of section 51B of chapter 119 of the General Laws, as
177 appearing in the 2010 Official Edition, is hereby amended by inserting after the word “part,” in
178 line 124, the following words: -“or was committed by an individual the department has reason to
179 believe was licensed”; and further amended by inserting after the words “youth services”, in line
180 127, the following words: - “, or was employed at a facility approved or licensed by the
181 department of early education and care”.

182 SECTION 9. Sections 1, 2 and 7 of this act shall take effect for the 2013-2014 school
183 year for new employees, provided that employees hired before that time shall submit fingerprints
184 for federal background checks within 3 years. If an individual subject to section 1, 2 or 7 applies
185 to work with another school district or Department of Early Education and Care licensed facility
186 and has previously submitted a fingerprint based background check, the employer shall be
187 authorized to access the individual’s original background check from the department of criminal
188 justice information services in order to determine the applicant’s suitability for employment.