

STATE OF MAINE

—
IN THE YEAR OF OUR LORD
TWO THOUSAND AND SIXTEEN

—
H.P. 1154 - L.D. 1689

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

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

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 ¶ J and subsection 2, paragraphs A to F and H to ¶ 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 with 42 United States Code, Section 9858f(b) are major substantive rules pursuant to Title 5, chapter 375, subchapter 2-A.

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

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

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

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

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

Sec. 4. Department of Health and Human Services; adoption of rules.

The Department of Health and Human Services shall adopt rules required by the Maine Revised Statutes, Title 22, section 8302-A, subsections 1 and 2 to require criminal background checks for all providers of care and staff members of child care facilities and family child care providers, to be effective September 1, 2017. The rules must be provisionally adopted and submitted to the Legislature for review by the joint standing committee of the Legislature having jurisdiction over judiciary matters no later than January 12, 2017. The department may submit to the committee recommendations for

legislation to support the rules to implement changes in criminal background checks in a manner that is effective for the department and child care facilities and family child care providers.

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

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