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Introduced and read first time: January 20, 2005  
Assigned to: Health and Government Operations

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A BILL ENTITLED

1 AN ACT concerning

2 **Child Care Centers and Family Day Care Homes - Employees - Background**  
3 **Checks**

4 FOR the purpose of authorizing the Child Care Administration of the Department of  
5 Human Resources to disclose to the operator of a child care center or to a family  
6 day care provider reports and records concerning child abuse and neglect for a  
7 certain purpose; requiring the Department of Public Safety and Correctional  
8 Services to provide an initial and a revised statement of a certain applicant's  
9 State criminal record to the Child Care Administration; requiring the  
10 Department of Public Safety and Correctional Services to submit a certain  
11 printed statement concerning a certain employee to the Child Care  
12 Administration; specifying that certain requirements of this Act apply only to  
13 certain employees; requiring that each employee of a child care center apply to  
14 the Child Care Administration, on or before a certain date, for a child abuse and  
15 neglect clearance; authorizing the Child Care Administration to prohibit the  
16 operator of a child care center from employing a certain individual; requiring  
17 the operator of a child care center to immediately notify the Child Care  
18 Administration of a certain criminal history records check of an employee; and  
19 generally relating to child care centers and family day care homes.

20 BY repealing and reenacting, with amendments,  
21 Article 88A - Department of Human Resources  
22 Section 6  
23 Annotated Code of Maryland  
24 (2003 Replacement Volume and 2004 Supplement)

25 BY repealing and reenacting, without amendments,  
26 Article - Family Law  
27 Section 5-560 and 5-561(a) and (b)

1 Annotated Code of Maryland  
2 (2004 Replacement Volume)

3 BY repealing and reenacting, with amendments,  
4 Article - Family Law  
5 Section 5-564  
6 Annotated Code of Maryland  
7 (2004 Replacement Volume)

8 BY adding to  
9 Article - Family Law  
10 Section 5-580.3  
11 Annotated Code of Maryland  
12 (2004 Replacement Volume)

13 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF  
14 MARYLAND, That the Laws of Maryland read as follows:

15 **Article 88A - Department of Human Resources**

16 6.

17 (a) Except in accordance with a court order or to an authorized officer or  
18 employee of the State, another state or local government, or the United States, or a  
19 fiduciary institution having a right thereto in an official capacity, and as necessary to  
20 discharge responsibilities to administer public assistance, medical assistance, or  
21 social services programs, it shall be unlawful for any person or persons to divulge or  
22 make known in any manner any information concerning any applicant for or recipient  
23 of social services, child welfare services, cash assistance, food stamps, or medical  
24 assistance, directly or indirectly derived from the records, papers, files, investigations  
25 or communications of the State, county or city, or subdivisions or agencies thereof, or  
26 acquired in the course of the performance of official duties.

27 (b) Except as otherwise provided in Title 5, Subtitle 7 of the Family Law  
28 Article, § 6A of this subtitle, and this section, all records and reports concerning child  
29 abuse or neglect are confidential, and their unauthorized disclosure is a criminal  
30 offense subject to the penalty set out in subsection (e) of this section. Reports or  
31 records concerning child abuse or neglect:

32 (1) Shall be disclosed:

33 (i) Under a court order; or

34 (ii) Under an order of an administrative law judge, if the request for  
35 disclosure concerns a case pending before the Office of Administrative Hearings and  
36 provisions are made to comply with other State or federal confidentiality laws and to  
37 protect the identity of the reporter or other person whose life or safety is likely to be  
38 endangered by disclosure; [and]

- 1                   (2)     May be disclosed on request:
- 2                   (i)     To personnel of local or State departments of social services, law  
3 enforcement personnel, and members of multidisciplinary case consultation teams,  
4 who are investigating a report of known or suspected child abuse or neglect or who  
5 are providing services to a child or family that is the subject of the report;
- 6                   (ii)    To local or State officials responsible for the administration of  
7 child protective services or child care, foster care, and adoption licensing, approval, or  
8 regulations as necessary to carry out their official functions;
- 9                   (iii)   To the State Council on Child Abuse and Neglect, the State  
10 Citizens Review Board for Children, or their designees, or a child fatality review team  
11 as necessary to carry out their official functions;
- 12                  (iv)    To a person who is the alleged child abuser or the person who is  
13 suspected of child neglect if that person is responsible for the child's welfare and  
14 provisions are made for the protection of the identity of the reporter or any other  
15 person whose life or safety is likely to be endangered by disclosing the information;
- 16                  (v)     To a licensed practitioner who, or an agency, institution, or  
17 program which, is providing treatment or care to a child who is the subject of a report  
18 of child abuse or neglect for a purpose relevant to the provision of the treatment or  
19 care;
- 20                  (vi)    To a parent or other person who has permanent or temporary  
21 care and custody of a child, if provisions are made for the protection of the identity of  
22 the reporter or any other person whose life or safety is likely to be endangered by  
23 disclosing the information;
- 24                  (vii)   To the appropriate public school superintendent for the purpose  
25 of carrying out appropriate personnel or administrative actions following a report of  
26 suspected child abuse involving a student committed by:
- 27                               1.     A public school employee in that school system;
- 28                               2.     An independent contractor who supervises or works  
29 directly with students in that school system; or
- 30                               3.     An employee of an independent contractor, including a bus  
31 driver or bus assistant, who supervises or works directly with students in that school  
32 system;
- 33                  (viii)   To the director of a licensed child care facility or licensed child  
34 placement agency for the purpose of carrying out appropriate personnel actions  
35 following a report of suspected child neglect or abuse alleged to have been committed  
36 by an employee of the facility or agency and involving a child who is currently or who  
37 was previously under that facility's or agency's care; or

1 (ix) To the Office of the Independent Juvenile Justice Monitor  
2 established under Article 49D of the Code; AND

3 (3) MAY BE DISCLOSED BY THE CHILD CARE ADMINISTRATION OF THE  
4 DEPARTMENT OF HUMAN RESOURCES TO THE OPERATOR OF A CHILD CARE CENTER  
5 THAT IS REQUIRED TO BE LICENSED OR TO HOLD A LETTER OF COMPLIANCE UNDER  
6 TITLE 5, SUBTITLE 5, PART VII OF THE FAMILY LAW ARTICLE OR TO A FAMILY DAY  
7 CARE PROVIDER WHO IS REQUIRED TO BE REGISTERED UNDER TITLE 5, SUBTITLE 5,  
8 PART V OF THE FAMILY LAW ARTICLE FOR THE PURPOSE OF DETERMINING THE  
9 SUITABILITY OF AN INDIVIDUAL FOR EMPLOYMENT IN THE CHILD CARE CENTER OR  
10 FAMILY DAY CARE HOME.

11 (c) Nothing in this section shall be construed to prohibit:

12 (1) The publication, for administrative or research purposes, of statistics  
13 or other data so classified as to prevent the identification of particular persons or  
14 cases;

15 (2) The Department of Human Resources from obtaining an individual's  
16 financial records from a fiduciary institution in the course of verifying the  
17 individual's eligibility for public assistance; or

18 (3) Disclosures as permitted by § 1-303 of the Financial Institutions  
19 Article.

20 (d) The Department of Human Resources shall issue regulations governing  
21 access to and use of confidential information which is in the possession of the  
22 Department or local departments of social services.

23 (e) Any offense against the provisions of this section shall be a misdemeanor  
24 and shall be punishable by a fine not exceeding \$500 or imprisonment for not  
25 exceeding 90 days, or both, in the discretion of the court.

26 **Article - Family Law**

27 5-560.

28 (a) In this Part VI of this subtitle, the following words have the meanings  
29 indicated.

30 (b) "Conviction" means a plea or verdict of guilty or a plea of nolo contendere.

31 (c) "Department" means the Department of Public Safety and Correctional  
32 Services.

33 (d) (1) "Employee" means a person that for compensation is employed to  
34 work in a facility identified in § 5-561 of this subtitle and who:

35 (i) cares for or supervises children in the facility; or

1 (ii) has access to children who are cared for or supervised in the  
2 facility.

3 (2) "Employee" includes a person who:

4 (i) participates in a pool described in subsection (e)(2) of this  
5 section;

6 (ii) for compensation will be employed on a substitute or temporary  
7 basis to work in a facility identified in § 5-561(b)(1) or (2) of this subtitle; and

8 (iii) will care for or supervise children in the facility or will have  
9 access to children who are cared for or supervised in the facility.

10 (3) "Employee" does not include any person employed to work for  
11 compensation by the Department of Juvenile Services.

12 (e) (1) "Employer" means an owner, operator, proprietor, or manager of a  
13 facility identified in § 5-561 of this subtitle who has frequent contact with children  
14 who are cared for or supervised in the facility.

15 (2) For purposes of §§ 5-561(g), 5-563(b)(1), 5-564(a)(2)(i) and (d)(1)(i)  
16 and (2), and 5-567 of this subtitle, "employer" includes a child care resource and  
17 referral center, an association of registered family day care providers, and an  
18 association of licensed child care centers to the extent that the center or association  
19 establishes and maintains a pool of individuals who are qualified to work as  
20 substitute or temporary employees in a facility identified in § 5-561(b)(1) or (2) of this  
21 subtitle.

22 (3) "Employer" does not include a State or local agency responsible for  
23 the temporary or permanent placement of children in a facility identified in § 5-561 of  
24 this subtitle.

25 (f) "Secretary" means the Secretary of Public Safety and Correctional  
26 Services.

27 5-561.

28 (a) Notwithstanding any provision of law to the contrary, an employee and  
29 employer in a facility identified in subsection (b) of this section and persons identified  
30 in subsection (c) of this section shall apply for a national and State criminal history  
31 records check at any designated law enforcement office in this State.

32 (b) The following facilities shall require employees and employers to obtain a  
33 criminal history records check under this Part VI of this subtitle:

34 (1) a child care center required to be licensed under Part VII of this  
35 subtitle;

1 (2) a family day care home required to be registered under Part V of this  
2 subtitle;

3 (3) a child care home required to be licensed under this subtitle or under  
4 Article 83C of the Code;

5 (4) a child care institution required to be licensed under this subtitle or  
6 under Article 83C of the Code;

7 (5) a juvenile detention, correction, or treatment facility provided for in  
8 Article 83C of the Code;

9 (6) a public school as defined in Title 1 of the Education Article;

10 (7) a private or nonpublic school required to report annually to the State  
11 Board of Education under Title 2 of the Education Article;

12 (8) a foster care family home or group facility as defined under this  
13 subtitle;

14 (9) a recreation center or recreation program operated by State or local  
15 government primarily serving minors; or

16 (10) a day or residential camp, as defined in Title 10, Subtitle 16 of the  
17 Code of Maryland Regulations, primarily serving minors.

18 5-564.

19 (a) (1) (i) The Department shall conduct the criminal history records  
20 check and issue the printed statement provided for under this Part VI of this subtitle.

21 (ii) It shall update an initial criminal history records check for an  
22 employee, employer, or individual identified in § 5-561(c), (d), (e), or (f) of this subtitle  
23 and issue a revised printed statement, listing any convictions, probation before  
24 judgment dispositions, not criminally responsible dispositions, or pending criminal  
25 charges occurring in the State after the date of the initial criminal history records  
26 check.

27 (2) The Department shall adopt regulations requiring:

28 (i) employers to verify periodically the continuing employment of  
29 an employee and the continuing assignment of a volunteer;

30 (ii) State or local agencies that license, register, approve, or certify  
31 any of the facilities identified in § 5-561(b) of this subtitle to verify periodically the  
32 continuing licensure, registration, approval, or certification of a facility or the  
33 continuing assignment of individuals identified in § 5-561(e) of this subtitle; and

34 (iii) local departments of social services and licensed child  
35 placement agencies that place a child as described in § 5-561(c) of this subtitle to

1 verify periodically the continuing participation or presence of individuals identified in  
2 § 5-561(c) of this subtitle.

3 (3) The employee, employer, volunteer, or other individual identified in §  
4 5-561 of this subtitle is not responsible for payment of any fee to update criminal  
5 history records checks.

6 (b) (1) The Department shall provide an initial and a revised statement of  
7 the applicant's State criminal record to:

8 (I) the recipients of the acknowledgments specified in § 5-563(b) of  
9 this subtitle; AND

10 (II) THE CHILD CARE ADMINISTRATION OF THE DEPARTMENT OF  
11 HUMAN RESOURCES IF THE APPLICANT IS AN EMPLOYEE OF:

12 1. A CHILD CARE CENTER THAT IS REQUIRED TO BE  
13 LICENSED OR TO HOLD A LETTER OF COMPLIANCE UNDER PART VII OF THIS  
14 SUBTITLE; OR

15 2. A FAMILY DAY CARE HOME THAT IS REQUIRED TO BE  
16 REGISTERED UNDER PART V OF THIS SUBTITLE.

17 (2) The Department shall:

18 (i) record on a printed statement the existence of a conviction, a  
19 probation before judgment disposition, a not criminally responsible disposition, or  
20 pending charge reported in the criminal history record information received from the  
21 FBI Identification Division; and

22 (ii) distribute the printed statement in accordance with federal law  
23 and regulations on dissemination of FBI identification records.

24 (c) The recording of the existence of a conviction, a probation before judgment  
25 disposition, a not criminally responsible disposition, or pending charge, contained in  
26 the criminal history record information received from the FBI Identification Division:

27 (1) may not identify or disclose to a private entity the specific crime or  
28 attempted crime in the employee's, employer's, or applicant's criminal history record;  
29 and

30 (2) shall disclose to a private entity the existence of a conviction, a  
31 probation before judgment disposition, a not criminally responsible disposition, or  
32 pending charges for any of the crimes, attempted crimes, or a criminal offense that is  
33 equivalent to those enumerated in the regulations adopted by the Department.

34 (d) (1) Upon completion of the criminal history records check of an  
35 employee, the Department shall submit the printed statement to:

1 (i) the employee's current or prospective employer at the facility or  
2 program; [and]

3 (ii) the employee; AND

4 (III) FOR AN EMPLOYEE OF A CHILD CARE CENTER THAT IS  
5 REQUIRED TO BE LICENSED OR TO HOLD A LETTER OF COMPLIANCE UNDER PART VII  
6 OF THIS SUBTITLE OR AN EMPLOYEE OF A FAMILY DAY CARE HOME THAT IS  
7 REQUIRED TO BE REGISTERED UNDER PART V OF THIS SUBTITLE, THE CHILD CARE  
8 ADMINISTRATION OF THE DEPARTMENT OF HUMAN RESOURCES.

9 (2) Upon receiving a written request from an employee, the Department  
10 shall submit the printed statement to additional employers, if the criminal history  
11 records check was completed during the prior 180 days.

12 (3) Upon completion of the criminal history records check of an employer,  
13 the Department shall submit the printed statement to:

14 (i) the appropriate State or local agency responsible for the  
15 licensure, registration, approval, or certification of the employer's facility; and

16 (ii) the employer.

17 (4) Upon completion of the criminal history records check of an  
18 individual identified in § 5-561(c), (d), (e), or (f) of this subtitle, the Department shall  
19 submit the printed statement to the appropriate local department of social services,  
20 registering agency, or licensed placement agency.

21 (e) Information obtained from the Department under this Part VI of this  
22 subtitle shall be confidential and may be disseminated only to the individual who is  
23 the subject of the criminal history records check and to the participants in the hiring  
24 or approval process.

25 (f) Information obtained from the Department under this Part VI of this  
26 subtitle may not:

27 (1) be used for any purpose other than that for which it was  
28 disseminated; or

29 (2) be redisseminated.

30 (g) Information obtained from the Department under this Part VI of this  
31 subtitle shall be maintained in a manner to insure the security of the information.

32 5-580.3.

33 (A) (1) THE REQUIREMENTS OF THIS SUBSECTION APPLY ONLY TO AN  
34 EMPLOYEE HIRED ON OR AFTER OCTOBER 1, 2005.

35 (2) EACH EMPLOYEE, AS DEFINED IN § 5-560 OF THIS SUBTITLE, OF A  
36 CHILD CARE CENTER THAT IS REQUIRED TO BE LICENSED OR TO HOLD A LETTER OF



1 COMPLIANCE UNDER THIS SUBTITLE SHALL APPLY TO THE CHILD CARE  
2 ADMINISTRATION, ON OR BEFORE THE FIRST DAY OF ACTUAL EMPLOYMENT, FOR A  
3 CHILD ABUSE AND NEGLECT CLEARANCE.

4 (B) THE CHILD CARE ADMINISTRATION MAY PROHIBIT THE OPERATOR OF A  
5 CHILD CARE CENTER THAT IS REQUIRED TO BE LICENSED OR TO HOLD A LETTER OF  
6 COMPLIANCE UNDER THIS SUBTITLE FROM EMPLOYING AN INDIVIDUAL WHO:

7 (1) HAS RECEIVED A CONVICTION, A PROBATION BEFORE JUDGMENT  
8 DISPOSITION, A NOT CRIMINALLY RESPONSIBLE DISPOSITION, OR A PENDING  
9 CHARGE FOR ANY CRIME OR ATTEMPTED CRIME ENUMERATED IN THE  
10 REGULATIONS ADOPTED BY THE DEPARTMENT OF PUBLIC SAFETY AND  
11 CORRECTIONAL SERVICES UNDER PART VI OF THIS SUBTITLE; OR

12 (2) HAS BEEN IDENTIFIED AS RESPONSIBLE FOR CHILD ABUSE OR  
13 NEGLECT.

14 (C) THE OPERATOR OF A CHILD CARE CENTER THAT IS REQUIRED TO BE  
15 LICENSED OR TO HOLD A LETTER OF COMPLIANCE UNDER THIS SUBTITLE SHALL  
16 IMMEDIATELY NOTIFY THE CHILD CARE ADMINISTRATION OF A CRIMINAL HISTORY  
17 RECORDS CHECK OF AN EMPLOYEE THAT REPORTS A CONVICTION, A PROBATION  
18 BEFORE JUDGMENT DISPOSITION, A NOT CRIMINALLY RESPONSIBLE DISPOSITION,  
19 OR A PENDING CHARGE FOR ANY CRIME OR ATTEMPTED CRIME ENUMERATED IN  
20 THE REGULATIONS ADOPTED BY THE DEPARTMENT OF PUBLIC SAFETY AND  
21 CORRECTIONAL SERVICES UNDER PART VI OF THIS SUBTITLE.

22 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect  
23 October 1, 2005.