

IN THE SENATE

SENATE BILL NO. 1296

BY HEALTH AND WELFARE COMMITTEE

AN ACT

RELATING TO BACKGROUND CHECKS; AMENDING SECTION 56-1004A, IDAHO CODE, TO RE-
MOVE OBSOLETE LANGUAGE REGARDING A FEDERAL PILOT PROJECT.

Be It Enacted by the Legislature of the State of Idaho:

SECTION 1. That Section 56-1004A, Idaho Code, be, and the same is hereby
amended to read as follows:

56-1004A. CRIMINAL HISTORY AND BACKGROUND CHECKS. (1) To assist in the
protection of children and vulnerable adults, the legislature hereby autho-
rizes the department of health and welfare to conduct criminal history and
background checks of individuals who provide care or services to vulnera-
ble adults or children and are identified in rule as being required to have a
criminal history and background check.

(2) To further assist in the protection of vulnerable adults, the de-
partment of health and welfare may:

(a) Conduct criminal history and background checks of those seeking
guardianship or conservatorship and those who reside in an incapaci-
tated person's proposed residence;

(b) Make the findings of such criminal history and background checks
available to visitors, guardians ad litem and evaluation committees ap-
pointed pursuant to chapter 5, title 15 or chapter 4, title 66, Idaho
Code; and

(c) Promulgate such rules as are necessary to carry out the provisions
of this section.

The provisions of subsection (6) of this section shall not apply to criminal
history and background checks conducted pursuant to this subsection.

(3) Criminal history and background checks will be conducted by the de-
partment of health and welfare when:

(a) Required or ordered by the court pursuant to chapter 5, title 15 or
chapter 4, title 66, Idaho Code;

(b) Requested by those required to undergo such checks; and

(c) Paid for in full by those required to undergo such checks.

(4) The criminal history and background check will be a fingerprint-
based check of state and national records and may include information from
the following:

(a) Statewide criminal identification bureau;

(b) Federal bureau of investigation (FBI);

(c) National crime information center;

(d) Statewide sex offender registry;

(e) Idaho transportation department driving records;

(f) Adult and child protection registries;

(g) Nurse aide registry; and

1 (h) Department of health and human services office of the inspector
2 general list of excluded individuals and entities.

3 (5) The department of health and welfare shall promulgate rules to fur-
4 ther define those individuals who are required to have a criminal history and
5 background check and the effective date. Each individual shall complete an
6 application, which includes a notarized signature, on forms provided by the
7 department. The completed application authorizes the department to obtain
8 and release information in accordance with state and federal law. The appli-
9 cant must disclose all information requested, including information on past
10 convictions, driver's license revocations, and known adult or child protec-
11 tion findings. Once an application has been completed, the employer, at its
12 discretion, may allow the individual to provide care or services prior to the
13 individual completing fingerprinting and pending completion of the criminal
14 history and background check by the department. The department shall pro-
15 mulgate rules defining the time frame for submitting the application. Under
16 no circumstances may the individual be allowed to provide care or services
17 where the employer has reviewed the completed application and the individual
18 has disclosed a designated crime as set forth in rule.

19 (6) The department shall review the information received from the crim-
20 inal history and background check and determine whether the applicant has
21 a criminal or other relevant record that would disqualify the individual.
22 The department shall determine which crimes disqualify the applicant and
23 for what period of time according to promulgated rules. The process for the
24 check and the issuance of a clearance or denial is set forth in department
25 rules. The applicant shall be provided an opportunity for a formal review
26 of a denial. The department shall communicate clearance or denial to the
27 applicant and the applicant's employer.

28 (7) Applicants are responsible for the cost of the criminal history and
29 background check except where otherwise provided by department rules.

30 (8) The department, or an employer of an applicant, who acts in reason-
31 able reliance on the results of the criminal history and background check in
32 making an employment decision, is immune from liability for that decision
33 when it is based on such results.

34 (9) The department, its officers and employees are immune from liabil-
35 ity for the consequences of including or excluding classes of individuals in
36 the criminal history and background check process.

37 (10) Clearance through the criminal history and background check
38 process is not a determination of suitability for employment.

39 ~~(11) Effective until September 30, 2007, or when federal funding is~~
40 ~~no longer available, the legislature hereby authorizes the department of~~
41 ~~health and welfare to participate in a federal pilot project to conduct~~
42 ~~criminal history and background checks of providers, employees and contrac-~~
43 ~~tors who have access to patients in long-term care settings. Long-term care~~
44 ~~facilities or providers include nursing facilities, institutional care fa-~~
45 ~~cilities for people with intellectual disabilities, residential or assisted~~
46 ~~living facilities, long-term care hospitals or hospitals with swing beds,~~
47 ~~and home health and hospice providers. The criminal history and background~~
48 ~~checks for the long-term care providers, employees and contractors will be~~
49 ~~funded through the federal grant at no cost to the long-term care providers,~~

~~1 employees or contractors until September 30, 2007, or the federal funding is~~
~~2 no longer available.~~