

HOUSE BILL 2265

By Jones S

AN ACT to amend Tennessee Code Annotated, Title 71,
Chapter 2, Part 4 and Title 71, Chapter 3, Part 5,
relative to the protection of vulnerable persons.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. Tennessee Code Annotated, Section 71-2-403(a)(1), is amended by adding the language “and a review of the vulnerable persons registry pursuant to title 68, chapter 11, part 10, and the state’s sex offender registry and a review of the records of indicated perpetrators of abuse of children or adults maintained by the department of children’s services and the department of human services pursuant to § 71-3-515” immediately following the language “Criminal background checks” in the first sentence.

SECTION 2. Tennessee Code Annotated, Section 71-2-403(a)(1), is amended by adding the punctuation and language “, or with a history on the vulnerable persons registry pursuant to title 68, chapter 11, part 10 or on the state’s sex offender registry, or, with a history as an indicated perpetrator of abuse of children or adults in the records of the department of children’s services or the department of human services” immediately following the language “exclusions of persons with a criminal history” in the second sentence.

SECTION 3. Tennessee Code Annotated, Section 71-2-403(a)(1), is amended by adding the language “ or a verified exclusionary history on the vulnerable persons registry pursuant to title 68, chapter 11, part 10 or on the state’s sex offender registry, or a verified exclusionary history as a perpetrator of abuse of children or adults in the records of the department of children’s services or the department of human services” immediately following the language “a verified criminal background” in the second sentence.

SECTION 4. Tennessee Code Annotated, Section 71-2-403(c), is amended by deleting the language “or the identification of any person on the department of health's vulnerable persons registry pursuant to title 68, chapter 11, part 10,” and by substituting the language and punctuation “or the identification of any person on the department of health's vulnerable persons registry pursuant to title 68, chapter 11, part 10, or on the state’s sex offender registry, and identification as a perpetrator of abuse of children or adults in the records of the department of children’s services or the department of human services,”.

SECTION 5. Tennessee Code Annotated, Section 71-3-507(a)(1), is amended by deleting all of the language in subdivision (a)(1) immediately following the language “following initial licensure” and by substituting the language “a disclosure form approved by the department disclosing criminal and juvenile history and records and the status of such person on the department of health's vulnerable persons registry pursuant to title 68, chapter 11, part 10, the state’s sex offender registry, and status as an indicated perpetrator of abuse in the records of the department of children’s services and the department of human services or in any jurisdiction, and shall agree to release all such records to the child care agency and the department to verify the accuracy of the information contained on the disclosure form.

SECTION 6. Tennessee Code Annotated, Section 71-3-507, is amended by deleting the language “criminal history disclosure form” wherever found in § 71-3-507 and by substituting the language “disclosure form”.

SECTION 7. Tennessee Code Annotated, Section 71-3-507(a)(2)(A), is amended by deleting the period (.) at the end of subdivision (a)(2)(A) and by adding the following punctuation and language:

, the state sex offender registry and, pursuant to § 71-3-515, a review of such person’s status in the department of children’s services and the department of human services records of indicated perpetrators of abuse of children or adults.

SECTION 8. Tennessee Code Annotated, Section 71-3-507(a)(3)(C), is amended by deleting subdivision (a)(3)(C) in its entirety and by substituting the following;

(C) Disclosure of information relative to violations of the law, including criminal or juvenile charges of any kind, and any conviction, including a suspended sentence, and a release by the person of all criminal, juvenile and records relative to such person's status on the department of health's vulnerable persons registry pursuant to title 68, chapter 11, part 10, on the state's sex offender registry and the status of such person as an indicated perpetrator of abuse of a child or adult as determined by any agency of this state or any other jurisdiction" immediately following the language "criminal background history".

SECTION 9. Tennessee Code Annotated, Section 71-3-507(a)(3)(D), is amended by deleting the language "criminal history" and by substituting instead the language "criminal, juvenile, registry or records history".

SECTION 10. Tennessee Code Annotated, Section 71-3-507(a)(4), is amended by deleting subdivision (a)(4) in its entirety and by substituting the language:

(4) The form shall notify the person that falsification of required information may subject the person to criminal prosecution and that the person's employment, licensing or other status or circumstances in the child care agency is dependent upon the person's criminal and juvenile record history status, the person's status on the department of health's vulnerable persons registry pursuant to title 68, chapter 11, part 10 and, on the state's sex offender registry, and, pursuant to § 71-3-515, such person's status as an indicated perpetrator of abuse of children or adults as contained in the records of the department of children's services and the department of human services.

SECTION 11. Tennessee Code Annotated, Section 71-3-507, is amended by deleting subsection (c) in its entirety and by substituting the following language:

(c) All persons subject to the provisions of subsection (a), and employees of the department's licensing division, shall also be subject to a review by the department of their status on the department of health's vulnerable persons registry pursuant to title 68, chapter 11, part 10, on the state's sex offender registry and, a review conducted pursuant § 71-3-515, of their status in the department of children's services and the department of human services records of indicated perpetrators of abuse of children or adults. The department of human services shall also conduct the review for license applicants and operators. The results of the inquiry to the registries and the departments' records shall be maintained in the person's records at the agency and with the department.

SECTION 12. Tennessee Code Annotated, Section 71-3-507(d), is amended by deleting subsection (d) in its entirety and by substituting the following language:

(d) The child care agency or the department shall not permit a person to assume any role described in subdivision (a)(1) prior to the completion of the criminal history review, including available juvenile records, the fingerprint background check, review of the department of health's vulnerable person's registry and the state's sex offender registry, and, pursuant to § 71-3-515, a review of the department of children's services and the department of human services records of indicated perpetrators of abuse of children or adults, that demonstrate that the person is not subject to a criminal history or a history on the registries or in such records that would, as described in this part, disqualify or otherwise exclude the person from any role described in subdivision (a)(1) or from access to children in the child care agency.

SECTION 13. Tennessee Code Annotated, Section, 71-3-507(e)(1)(A)(i), is amended by adding the word "or", immediately following subdivision (e)(1)(A)(i)(c), and is further amended by deleting subdivision (e)(1)(A)(i)(d) in its entirety and by substituting the following language:

(d) The identification of such person on the department of health's vulnerable persons registry under title 68, chapter 11, part 10, or in the state's sex offender registry, or, whose status, pursuant to a review under § 71-3-515, of the department of children's services and the department of human services records of indicated perpetrators of abuse of children or adults, demonstrate a history that would require the person's exclusion under this part.

SECTION 14. Tennessee Code Annotated, Section, 71-3-507(e)(1)(B), is amended by deleting subdivision (e)(1)(B) in its entirety and by substituting the following language:

(B)

(i) Upon receipt from the department of the criminal and juvenile background report or other information regarding the criminal, juvenile, vulnerable persons or sex offender registry or perpetrator record history of a person, the child care agency shall immediately review the report or information to determine if the person for whom the criminal and juvenile background, vulnerable persons or sex offender registry or abuse perpetrator records check was requested discloses a status that is within the prohibited categories under subdivision (e)(1)(A), and, if necessary, shall immediately consult with the department to further determine if the individual is within the prohibited categories in subdivision (e)(1)(A).

(ii) The child care agency, and the department for its employees, shall immediately exclude a person from employment, from substitute or volunteer services or from any access whatsoever to children in the child care agency or, if a resident of a child care agency, the agency shall exclude the resident from access to children in the child care agency, if the results of the criminal and juvenile background history of the person, or a review of the vulnerable person's

or sex offender registry, or, pursuant to § 71-3-515, a review of the department of children's services and the department of human services records of indicated perpetrators of abuse of children or adults, disclose that the criminal, juvenile, registry or records history of such person is within the prohibited categories established in subdivision (e)(1)(A). The department shall suspend, deny, or revoke the license or operator status of any such person. If an exemption from the exclusion is provided for by rule of the department pursuant to subsection (f), such individual shall remain excluded or that person's license or operator status shall remain suspended, denied or revoked until it is determined by the department whether there is a basis for an exception from the exclusion.

(iii) The failure of a child care agency to exclude a person with a prohibited criminal, juvenile, vulnerable persons or sex offender or registry or perpetrator records history at a child care agency from employment with the agency, or from the provision of substitute or volunteer services to children in the agency, or the failure, as determined by the department, to adequately restrict the access of a resident or any other person with a disqualifying history in a child care agency to children being cared for by the agency, shall subject the child care agency to immediate suspension of the agency's license by the department.

SECTION 15. Tennessee Code Annotated, Section 71-3-507(e)(2), is amended by deleting the language "criminal history" and by substituting the language "any background, registry or records review pursuant to this part".

SECTION 16. Tennessee Code Annotated, Section 71-3-507(e)(4), is amended by deleting the word "conviction" and by substituting the word "record".

SECTION 17. Tennessee Code Annotated, Section, 71-3-507(f)(1), is amended by adding the punctuation and language ", or sex offender registry or indicated perpetrator records

review” immediately following the language “vulnerable persons registry review” in the first sentence of subdivision (f)(1), and by deleting the language “criminal history of the person” in the third sentence of subdivision (f)(1) and by substituting the language “criminal, juvenile, registry or perpetrator records of the person”.

SECTION 18. Tennessee Code Annotated, Section 71-3-507(f)(3), is amended by deleting the language “criminal history” and by substituting the language “criminal, juvenile, registry or records history pursuant to this part”.

SECTION 19. Tennessee Code Annotated, Section, 71-3-507(g)(1)(B)(iii), is amended by adding the language “and juvenile” immediately following the language “criminal” wherever it is found in subdivision (g)(1)(B)(iii), and by deleting the semicolon (;) at the end of subdivision (g)(1)(B)(iii) and by adding the punctuation and language “, a review of the state’s sex offender registry or, pursuant to § 71-3-515, a review of the department of children’s services and the department of human services records of indicated perpetrators of abuse of children or adults.”.

SECTION 20. Tennessee Code Annotated, Section, 71-3-507(g)(1)(C), is amended by adding the language “and juvenile” immediately following the word “criminal” wherever it is found in subdivision (g)(1)(C), and by adding the language “or other registry or records checks” immediately following the language “statutorily required criminal background checks”.

SECTION 21. Tennessee Code Annotated, Section 71-3-507(g)(4), is amended by deleting subdivisions (C) and (D) in their entireties, and by substituting the following language:

(C)

(i) For a person who was not subject to a criminal, sex offender or vulnerable persons registry or perpetrator records screening prior to assuming a role described in subdivision (g)(1)(B), the person's existing status in such role shall be conditional upon the satisfactory outcome of any requested criminal and juvenile history review or fingerprint record background check, and any

department of health vulnerable persons or state sex offender registry check and any review of the perpetrator records of the departments of children's and human services; provided, however, that if a person is initially applying to assume any type of role described in subdivision (g)(1)(B), and an entity described in subdivision (g)(1)(A) utilizes this subsection (g) as a pre-employment screening procedure, the person may not assume the role until satisfactory completion of the criminal and juvenile history review and fingerprint-based background check, and review of the department of health's vulnerable persons and the state's sex offender registry, and review of the indicated perpetrator records of the departments of children's and human services as otherwise required by this part.

(ii) In either circumstance in subdivision (g)(4)(C)(i), the criminal and juvenile history and fingerprint-based background check, the vulnerable persons and sex offender registry background check, and any review of the perpetrator records of the departments of children's and human services, must demonstrate that the person is not subject to a criminal or juvenile history, or a history on the registries or in such records, that would, as described in this part, disqualify or otherwise exclude the person from any role described in subdivision (g)(1)(B). If the background check or any other information from any registry or record source confirms that subsection (e) is applicable, that person shall not be permitted to have further contact with children in such role, except as otherwise permitted by this section.

(iii) A person's employment or contract status shall not remain in a conditional status for a position with any state agency for which federal law or regulations do not permit the state agency to license or approve the position until

all necessary licensing requirements are met, unless specifically authorized by state or federal law or regulation to the contrary.

(iv) The employment status of persons for whom a post-employment criminal background check, or other records review, was conducted, or the status of existing licensees or operators, substitutes, volunteers or residents of a child care agency for whom a criminal background check, or other registry or records review, was conducted after license approval, and who were not otherwise subject to a pre-status applicant background check or records review and to the exclusionary provisions provided in this section, shall be governed by any regulations that may govern their status in a regulated entity or, if the review is requested by an non-regulated entity, by applicable employment or contract law.

(D) The results of the inquiry to the Tennessee bureau of investigation and other records review shall be documented in the records of the entity requesting the criminal background history or registry or records checks. If the entity is regulated by, or is a contractor to, the state of Tennessee, the entity shall immediately report the results of the background check to its regulatory or contracting state agency.

SECTION 22. Tennessee Code Annotated, Section 71-3-507(g), is amended by deleting subdivision (5) in its entirety and by substituting the following language:

(5) The requesting entity may also utilize the information on the form to conduct an inquiry of the department of health's vulnerable persons registry pursuant to title 68, chapter 11, part 10, and the state's sex offender registry and to request a review of the department of children's services and the department of human services records of indicated perpetrators of abuse of children or adults as permitted by § 71-3-515. The results of the inquiry to the registry or the records of the departments of children's and

human services shall be maintained in the applicant's, employee's, substitute's, volunteer's or resident's records.

SECTION 23. Tennessee Code Annotated, Section 71-3-507(i), is amended by adding the punctuation and language “, juvenile, registry or other records” immediately following the word “criminal” wherever it appears in subsection (i).

SECTION 24. Tennessee Code Annotated, Section 71-3-507(j), is amended by adding the punctuation and language “, juvenile, registry or other records” immediately following the word “criminal”.

SECTION 25. Tennessee Code Annotated, Section 71-3-507(k), is amended by adding the language “or registry or abuse records history that would disqualify the person under this section” immediately following the language “juvenile proceeding background”.

SECTION 26. Tennessee Code Annotated, Title 71, Chapter 3, Part 5, is amended by adding the following as a new, appropriately designated section:

71-3-515.

(a) The department of children's services and the department of human services shall develop a procedure whereby the names of all potential employees of the department of human services in that department's licensing division and adult protective services program and any persons who are subject to the provisions of § 71-2-403 or § 71-3-507, and who, under those provisions, may have contact with children in a child care agency or with adults in an adult day care agency licensed by the department of human services, shall be submitted to the department of children's services to determine if the potential employees or other persons subject to those provisions were found by the department of children's services to have perpetrated abuse or neglect of a child.

(b) No person shall be reported as an indicated perpetrator of abuse or neglect for purposes of this part or title 71, chapter 2, part 4 by either the department of children's services or the department of human services' adult protective services program unless it is determined that the due process rights of each such person were either offered, but not accepted, or were fully concluded pursuant to the rules of the department of children's services or the department of human services and applicable state and federal law.

SECTION 27. This act shall take effect upon becoming a law, the public welfare requiring it.