

SECTION 63-13-40. Background checks for employment.

(A) No childcare center, group childcare home, family childcare home, or church or religious childcare center may employ a person or engage the services of a caregiver who is required to register under the sex offender registry act pursuant to Section 23-3-430 or who has been convicted of:

- (1) a crime listed in Chapter 3 of Title 16, Offenses Against the Person;
- (2) a crime listed in Chapter 15 of Title 16, Offenses Against Morality and Decency;
- (3) the crime of contributing to the delinquency of a minor, contained in Section 16-17-490;
- (4) the felonies classified in Section 16-1-10(A), except that this prohibition does not apply to Section 56-5-2930, the Class F felony of driving under the influence pursuant to Section 56-5-2940(4) if the conviction occurred at least ten years prior to the application for employment and the following conditions are met:

(a) the person has not been convicted in this State or any other state of an alcohol or drug violation during the previous ten-year period;

(b) the person has not been convicted of and has no charges pending in this State or any other state for a violation of driving while his license is canceled, suspended, or revoked during the previous ten-year period; and

(c) the person has completed successfully an alcohol or drug assessment and treatment program provided by the South Carolina Department of Alcohol and Other Drug Abuse Services or an equivalent program designated by that agency.

A person who has been convicted of a first-offense violation of Section 56-5-2930 must not drive a motor vehicle or provide transportation while in the official course of his duties as an employee of a childcare center, group childcare home, family childcare home, or church or religious childcare center.

If the person subsequently is convicted of, receives a sentence upon a plea of guilty or of nolo contendere, or forfeits bail posted for a violation of Section 56-5-2930 or for a violation of another law or ordinance of this State or any other state or of a municipality of this State or any other state that prohibits a person from operating a motor vehicle while under the influence of intoxicating liquor, drugs, or narcotics, the person's employment must be terminated;

(5) the offenses enumerated in Section 16-1-10(D); or

(6) a criminal offense similar in nature to the crimes listed in this subsection committed in other jurisdictions or under federal law.

This section does not prohibit employment or provision of caregiver services when a conviction or plea of guilty or nolo contendere for one of the crimes enumerated in this subsection has been pardoned. However, notwithstanding the entry of a pardon, an operator or the department may consider all information available, including the person's pardoned convictions or pleas and the circumstances surrounding them, to determine whether the applicant is unfit or otherwise unsuited for employment or to provide caregiver services.

(B) A person who has been convicted of a crime enumerated in subsection (A) who applies for employment with, is employed by, or is a caregiver at a childcare center, group childcare home, family childcare home, or church or religious childcare center is guilty of a misdemeanor and, upon conviction, must be fined not more than five thousand dollars or imprisoned not more than one year, or both.

(C) Application forms for employment at childcare centers, group childcare homes, family childcare homes, or church or religious childcare centers must include, at the top of the form in large bold type, a statement indicating that a person who has been convicted of a crime enumerated in subsection (A) who applies for employment with, is employed by, or seeks to provide caregiver services or is a caregiver at a facility is guilty of a misdemeanor and, upon conviction, must be fined not more than five thousand dollars or imprisoned not more than one year, or both.

(D)(1) To be employed by or to provide caregiver services at a childcare facility licensed, registered, or approved under this subarticle, a person first shall undergo a state fingerprint-based background check to be conducted by the State Law Enforcement Division (SLED) to determine any state criminal history, a fingerprint-based background check to be conducted by the Federal Bureau of Investigation to determine

any other criminal history, and a Central Registry check to be conducted by the department to determine any abuse or neglect perpetrated by the person upon a child.

(2) However, a person may be provisionally employed or may provisionally provide caregiver services after the favorable completion of the State Law Enforcement Division name and date of birth-based background check until such time as the SLED and Federal Bureau of Investigation fingerprint-based background checks, and the Central Registry check are completed if the person executes a sworn statement on a form provided by the department that he or she has not been convicted of any crime enumerated in this section and that he or she is not on the Central Registry for having perpetrated abuse or neglect upon a child. A person provisionally employed must be directly supervised by a nonprovisionally employed person at all times when providing direct care to children.

(3) Provisional status will be repealed if the requests for the Central Registry check and SLED and FBI fingerprint-based background checks are not sent by facsimile, mail, or another manner approved by the department by the end of the next business day after the person was employed.

(4) If the director of a childcare facility violates the terms of provisional employment, for a first offense, the facility may not employ a person provisionally for twelve months. For a second or subsequent offense, the facility may not employ a person provisionally for twenty-four months. The penalty shall apply to any facility that may employ the director of the facility during the period of suspension. A childcare facility owner with five or more facilities that sustains violations in twenty-five percent or more of facilities owned in the State during a period of two years may not employ a person provisionally in any facility for twenty-four months. The department shall have authority to determine that a violation has occurred and shall notify the owner and the director in writing of the violation and the penalty. The owner or director under penalty may appeal this determination through the process provided in this subarticle for appeal of the revocation or denial of a childcare license. Authority to employ persons in provisional status must remain suspended while the appeal is pending. Upon disposition of the appeal in favor of the appellant, authority to use provisional status must be restored.

(5) The results of the fingerprint-based background checks are valid and reviews are not required to be repeated as long as the person remains employed by or continues providing caregiver services in a childcare center, group childcare home, family childcare home, or church or religious childcare center; however, if a person is not employed or does not provide caregiver services for one year or longer, the fingerprint reviews must be repeated.

(6) For provisional employment under this section, the department must complete the Central Registry check within two business days of receipt of the request. For other employment under this section, the department must complete the Central Registry check within five business days of receipt of the request. If the department notifies the provider that research into other records is required, these deadlines may be extended for up to ten additional business days.

(E) Unless otherwise required by law, this section does not apply to volunteers in a childcare center, group childcare home, family childcare home, or church or religious childcare center. For purposes of this section, "volunteer" means a person who:

(1) provides services without compensation relating to the operation of a childcare center, group childcare home, family childcare home, or church or religious childcare center; and

(2) is in the presence of an operator, employee, or caregiver when providing direct care to children.

"Volunteer" includes, but is not limited to, parents, grandparents, students, and student teachers.

(F) Unless otherwise required by law, this section applies to:

(1) an employee who provides care to the child or children without the direct personal supervision of a person licensed, registered, or approved under this chapter; and

(2) any other employee at a facility licensed, registered, or approved under this chapter who has direct access to a child outside the immediate presence of a person who has undergone the fingerprint review required under this chapter.

HISTORY: 2008 Act No. 361, Section 2; 2008 Act No. 262, Section 2.