VOLUNTEER EMPLOYEE CRIMINAL HISTORY SYSTEM ACT

Act 23 of 2023

AN ACT to create the volunteer employee criminal history system program; to impose a fee for conducting a national and state criminal history record information check; and to provide for the powers and duties of certain state and local governmental officers and entities.

History: 2023, Act 23, Eff. May 1, 2023

The People of the State of Michigan enact:

CAUTION! This document is from an archive and may contain outdated information.

28.831 Short title.

Sec. 1.

This act may be cited as the "volunteer employee criminal history system act".

History: 2023, Act 23, Eff. May 1, 2023

28.832 Definitions.

Sec. 2.

As used in this act:

(a) "Care or care placement services" means the provision of care, treatment, education, training, instruction, supervision, or recreation to a child, an elderly individual, or an individual with a disability.

(b) "Child" means an individual who is less than 18 years of age and is not emancipated by operation of law as provided in section 4 of 1968 PA 293, MCL 722.4.

(c) "Covered individual" means an individual who meets any of the following requirements:

(i) Is employed by a qualified entity and has, seeks to have, or may have supervised or unsupervised access to a child, an elderly individual, or individual with a disability for whom the qualified entity provides care or care placement services.

(ii) Is a volunteer of a qualified entity and has, seeks to have, or may have supervised or unsupervised access to a child, an elderly individual, or individual with a disability for whom the qualified entity provides care or care placement services.

(iii) Owns, operates, or seeks to own or operate a qualified entity.

(d) "Criminal history record information" means that term as defined in section 1a of 1925 PA 289, MCL 28.241a.

(e) "Department" means the department of state police.

(f) "Elderly individual" means an individual who is 65 years of age or older.

(g) "Individual with a disability" means an individual with a mental or physical impairment who requires assistance to perform 1 or more daily living tasks.

(h) "Program" means the volunteer employee criminal history system program created in section 3.

(i) "Qualified entity" means a business or organization, whether public, private, operated for profit, or operated not for profit that provides care or care placement services. A qualified entity includes a business or organization that licenses or certifies others to provide care or care placement services.

(j) "Rap back program" means a state or federal record of arrest and prosecution background program that enables qualified entities to receive ongoing status notifications of any criminal history reported on covered individuals whose fingerprints are registered in the system thereby eliminating the need for repeated background checks on covered individuals by qualified entities.

History: 2023, Act 23, Eff. May 1, 2023

28.833 Volunteer employee criminal history system program; duties of department.

Sec. 3.

(1) The volunteer employee criminal history system program is created in the department for the purpose of authorizing a national and state criminal history record information of a qualified entity's covered individuals.

(2) The department shall do both of the following:

(a) Develop the application, approval, and compliance process and standards necessary to operate and manage the program.

(b) Develop the application form and any other forms required for a qualified entity's registration and participation in the program.

CAUTION! This document is from an archive and may contain outdated information.

History: 2023, Act 23, Eff. May 1, 2023

28.834 Request for criminal history record; registration of qualified entity; compliance audit.

Sec. 4.

(1) A qualified entity may submit a request to the department for a covered individual's national and state criminal history record information under the program. The request submitted under this subsection, for each covered individual, must include a copy of the covered individual's signed and submitted statement required under section 6(3) and the covered individual's fingerprints.

(2) A qualified entity that submits a request for a covered individual's national and state criminal history record information under subsection (1) shall register with the department. As part of the registration process, the qualified entity shall agree to comply with state and federal law, including, but not limited to, the national child protection act of 1993, 34 USC 40101 to 40104.

(3) The department may, in its sole discretion, audit a registered qualified entity to ensure that the registered qualified entity is complying with state and federal law, including, but not limited to, the national child protection act of 1993, 34 USC 40101 to 40104.

History: 2023, Act 23, Eff. May 1, 2023

28.835 Rap back program.

Sec. 5.

A qualified entity may participate in a rap back program. A qualified entity that participates in a rap back program shall notify a covered individual that is subject to a national and state criminal history record information under this act that the individual's fingerprints may be retained by the department's automated fingerprint identification system and the Federal Bureau of Investigation for all purposes authorized for fingerprint submissions subject to ongoing monitoring.

History: 2023, Act 23, Eff. May 1, 2023

28.836 Determination of fitness; fingerprinting and written statement requirements; waiver; notice; maintenance of records.

Sec. 6.

(1) A qualified entity may require a covered individual to submit the individual's fingerprints under this section to determine whether the national and state criminal history record information shows that the covered individual has been convicted of or is under pending indictment for any crime that bears on the individual's fitness to be responsible for the safety and well-being of a child, an elderly individual, or individual with a disability.

(2) The determination of the covered individual's fitness must be made solely by the qualified entity. This section does not require the department to make a fitness determination on behalf of a qualified entity. The national and state criminal history record information received under this section may only be used by the qualified entity for the purpose of determining the fitness of a covered individual, as described in this section.

(3) A qualified entity may not submit a request for a national and state criminal history record information to the department under this section unless the covered individual has provided the individual's fingerprints and a completed and signed written statement to the qualified entity that includes, but is not limited to, all of the following:

(a) The name, address, and date of birth of the covered individual as it appears on a valid identification document. As used in this subdivision, "identification document" means a document that is intended or commonly accepted for the purpose of identifying an individual and is made or issued by or under the authority of the United States government, a state, political subdivision of a state, sponsoring entity of an event designated as a special event of national significance, foreign government, political subdivision of a foreign government, or an international governmental or an international quasi-governmental organization.

(b) Notice that the covered individual's fingerprints may be used to conduct a national and state criminal history record information of the covered individual and that the criminal history record may be used by the qualified entity to deny the individual's supervised or unsupervised access to a child, an elderly individual, or individual with a disability for whom the qualified entity provides care or care placement services.

(c) A waiver permitting the qualified entity to request and receive the national and state criminal history record information of a covered individual for the purpose of determining the

CAUTION! This document is from an archive and may contain outdated information.

individual's fitness to provide care or care placement services for a child, an elderly individual, or individual with a disability.

(d) A disclosure stating whether the covered individual has ever been convicted or is the subject of pending charges for a criminal offense and, if convicted, a description of the offense and the result of the conviction.

(e) Notice of the covered individual's right to obtain a copy of any background screening report, including the national and state criminal history record information, if any, contained in the report, and of the right to challenge the accuracy or completeness of any information contained in the report and to obtain a prompt determination as to the validity of the challenge before a final determination regarding the individual's fitness is made by the qualified entity reviewing the national and state criminal history record information. A covered individual may only challenge the information contained in the national and state criminal history record information as provided in 28 CFR 16.34.

(4) A qualified entity shall maintain in its records the statement provided under subsection (3) that is completed and signed by the covered individual.

CAUTION! This document is from an archive and may contain outdated information.

History: 2023, Act 23, Eff. May 1, 2023

28.837 Fingerprint identification system database; storage and retention of fingerprints; disclosure of criminal history record information to qualified entity.

Sec. 7.

(1) The department shall store and retain all fingerprints submitted under this act in an automated fingerprint identification system database that searches against latent fingerprints. The department shall forward all fingerprints submitted to it under this section to the Federal Bureau of Investigation to be retained in the next generation identification system or its successor system.

(2) The department shall provide directly to the qualified entity the state criminal history record information that is not exempt from disclosure under section 2a of 1925 PA 289, MCL 28.242a, or otherwise confidential under state or federal law. The department shall provide directly to the qualified entity the national and state criminal history record information as authorized by law and the covered individual's signed and written statement required under section 6(3).

History: 2023, Act 23, Eff. May 1, 2023

28.838 Fees.

Sec. 8.

The department may charge a fee for a national and state criminal history record information conducted under this act that does not exceed the actual and reasonable cost of conducting the check, plus the amount prescribed by the Federal Bureau of Investigation for the national criminal history record information in compliance with the national child protection act of 1993, 34 USC 40101 to 40104.

History: 2023, Act 23, Eff. May 1, 2023

28.839 Application of screening criteria.

Sec. 9.

If a federal or state law requires a qualified entity to apply screening criteria to the national and state criminal history record information of a covered individual, including any right to contest or request an exemption from disqualification, the qualified entity shall apply the screening criteria under that other law to the national and state criminal history record information received for a covered individual that is subject to the required screening.

History: 2023, Act 23, Eff. May 1, 2023

28.840 Application of act; liability.

Sec. 10.

(1) This act does not do either of the following:

(a) Create additional duties or obligations for a qualified entity to obtain the national and state criminal history record information authorized under this act.

(b) Relieve a qualified entity of its duty to obtain a covered individual's criminal history or any other information in accordance with the requirements of any other applicable law.

(2) This state, a political subdivision of this state, or any agency, officer, or employee of this state or a political subdivision is not liable for damages to a covered individual for the timely provision of an accurate national and state criminal history record information requested under this act.

CAUTION! This document is from an archive and may contain outdated information.

History: 2023, Act 23, Eff. May 1, 2023

28.841 Program not entitlement or right; administration of program subject to appropriation.

Sec. 11.

This program does not create an entitlement or right to use the program. The department is not required to administer this program unless the legislature appropriates sufficient funds for the program. The department may administer the program subject to any limitations the department considers necessary or appropriate in the absence of the legislature appropriating funds for the program.

History: 2023, Act 23, Eff. May 1, 2023