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**HOUSE BILL NO. 52**

Offered January 12, 2000

Prefiled December 28, 1999

*A BILL to amend the Code of Virginia by adding in Chapter 23 of Title 19.2 a section numbered 19.2-392.02, relating to national criminal background checks by businesses and organizations regarding employees and volunteers in child care positions.*

Patron—Crittenden

Referred to Committee for Courts of Justice

**Be it enacted by the General Assembly of Virginia:**

**1. That the Code of Virginia is amended by adding in Chapter 23 of Title 19.2 a section numbered 19.2-392.02 as follows:**

*§ 19.2-392.02. National criminal background checks by businesses and organizations regarding employees or volunteers in child care positions.*

*A. For purposes of this section:*

*"Barrier crime" means any of the offenses set forth in §§ 16.1-283 or 63.1-198.1.*

*"Barrier crime information" means the following facts concerning a person who has been arrested for, or has been convicted of, a barrier crime, regardless of whether the person was a juvenile or adult at the time of the arrest or conviction: full name, race, sex, date of birth, height, weight, fingerprints, a brief description of the barrier crime or offenses for which the person has been arrested or has been convicted, the disposition of the charge, and any other information which may be useful in identifying persons arrested for or convicted of a barrier crime.*

*"Care" means the provision of care, treatment, education, training, instruction, supervision, or recreation to children.*

*"Department" means the Department of State Police.*

*"Identification document" means a document made or issued by or under the authority of the United States government, a state, a political subdivision of a state, a foreign government, political subdivision of a foreign government, an international governmental or an international quasi-governmental organization which, when completed with information concerning a particular individual, is of a type intended or commonly accepted for the purpose of identification of individuals.*

*"Provider" means a person who (i) is employed by or volunteers with a qualified entity, (ii) seeks to be employed by or volunteer with a qualified entity, (iii) owns or operates or seeks to own or operate a qualified entity, or (iv) has, seeks to have, or may have unsupervised access to a child to whom the qualified entity provides child care.*

*"Qualified entity" means a business or organization, whether public, private, for profit, nonprofit, or voluntary, that provides care to children.*

*B. Notwithstanding §§ 63.1-198.1 and 63.1-198.2, a qualified entity may request the Department of State Police to conduct a national criminal background check on any provider who works or volunteers at such entity or who desires to work or volunteer at such entity. No qualified entity may request a national criminal background check on a provider until such provider has:*

*1. Been fingerprinted at any local or state law-enforcement agency and provided a set of the fingerprints to the qualified entity; and*

*2. Completed and signed a statement, furnished by the entity, that includes (i) his name, address, and date of birth as it appears on a valid identification document, (ii) a disclosure of whether or not the provider has ever been convicted of or is the subject of pending charges for a criminal offense within or outside the Commonwealth, and if the provider has been convicted of a crime, a description of the crime and the particulars of the conviction, (iii) a notice to the provider that the entity may request a background check, (iv) a notice to the provider that he is entitled to obtain a copy of any background check report, to challenge the accuracy and completeness of any information contained in any such report, and to obtain a prompt determination as to the validity of such challenge before a final determination is made by the Department, and (v) a notice to the provider that prior to the completion of the background check the qualified entity may choose to deny the provider unsupervised access to children for whom the qualified entity provides care.*

*C. Upon receipt of (i) a qualified entity's written request to conduct a background check on a provider, (ii) the provider's fingerprints, and (iii) a completed, signed statement as described in subsection B, the Department shall make a determination whether the provider has been convicted of or is the subject of charges of a barrier crime. To conduct its determination regarding the provider's*

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60 *barrier crime information, the Department shall access the national criminal history background check*  
61 *system which is maintained by the Federal Bureau of Investigation and is based on fingerprints and*  
62 *other methods of identification, and shall access the Central Criminal Records Exchange maintained by*  
63 *the Department. If the Department receives a background report lacking disposition data, the*  
64 *Department shall conduct research in whatever state and local record-keeping systems are available in*  
65 *order to obtain complete data. The Department shall make reasonable efforts to respond to a qualified*  
66 *entity's inquiry within fifteen business days.*

67 *D. Any background check conducted pursuant to this section and the results thereof shall be handled*  
68 *in accordance with the requirements of Public Law 92-544.*

69 *E. In the case of a provider who desires to volunteer at a qualified entity and who is subject to a*  
70 *national criminal background check, the Department and the Federal Bureau of Investigation may each*  
71 *charge the provider the lesser of eighteen dollars or the actual cost to the entity of the background*  
72 *check conducted with the fingerprints.*