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SENATE BILL NO. 603

Offered January 24, 2000

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.

Patrons—Ticer, Barry, Byrne, Couric, Hawkins, Howell, Lucas, Marsh, Maxwell, Miller, Y.B., Newman, Norment, Potts, Puller, Rerras, Saslaw and Williams; Delegates: Albo, Amundson, Bolvin, Darner, Plum and Watts

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:

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

"Child abuse crime" means an offense set forth in § 63.1-198.1;

"Child abuse crime information" means the following facts concerning a person who has been arrested for, or has been convicted of, a child abuse crime: full name, race, sex, date of birth, height, weight, fingerprints, a brief description of the child abuse 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 child abuse crime;

"Department" means the Department of State Police;

"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 or seeks to have, or may have unsupervised access to a child to whom the qualified entity provides child care; and

"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 entity:

1. Requires the provider to provide a set of fingerprints to the qualified entity; the provider shall be fingerprinted at any local or state law-enforcement agency; and

2. Requires the provider to complete and sign a statement that includes (i) his name, address, and date of birth as it appears on a valid identification document as defined in 18 U.S.C. § 1028, (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, (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 child abuse crime. To conduct its determination regarding the provider's child abuse crime information, the Department shall access the national criminal history background check system which is maintained by the Federal Bureau of Investigation and is based on fingerprints and other methods of identification, and shall access the Central Criminal Records Exchange maintained by the Department. If the Department receives a background report lacking disposition data, the Department shall conduct research in whatever state and local recordkeeping systems are available in

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60 order to obtain complete data. The Department shall make reasonable efforts to respond to a qualified
61 entity's inquiry within fifteen business days.

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

64 E. A qualified entity shall not be liable in an action for civil damages solely for the failure to
65 request a criminal background check on a provider, nor shall the Commonwealth, its localities, nor any
66 agency, officer, or employee thereof, be liable in an action for civil damages for the failure of a
67 qualified entity to take action adverse to a provider who was the subject of the background check.

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