

VIRGINIA ACTS OF ASSEMBLY -- 2001 SESSION

CHAPTER 778

An Act to amend and reenact § 63.1-198.1 of the Code of Virginia, relating to child welfare agencies; criminal background checks.

[H 1595]

Approved March 26, 2001

Be it enacted by the General Assembly of Virginia:

1. That § 63.1-198.1 of the Code of Virginia is amended and reenacted as follows:

§ 63.1-198.1. Employment for compensation of persons or use of volunteers convicted of certain offenses prohibited; criminal records and central registry checks required; suspension or revocation of license.

On or after July 1, 1992, a child welfare agency licensed or registered in accordance with the provisions of this chapter shall not hire for compensated or voluntary employment nor shall private child-placing agencies approve as foster or adoptive parents or family day systems approve as caretakers persons who have been (i) convicted of murder as set out in Article 1 (§ 18.2-30 et seq.) of Chapter 4 of Title 18.2, malicious wounding by mob as set out in § 18.2-41, abduction as set out in § 18.2-47 A, abduction for immoral purposes as set out in § 18.2-48, assault and bodily wounding as set out in Article 4 (§ 18.2-51 et seq.) of Chapter 4 of Title 18.2, robbery as set out in § 18.2-58, car jacking as set out in § 18.2-58.1, extortion by threat as set out in § 18.2-60, any felony stalking violation as set out in § 18.2-60.3, sexual assault as set out in Article 7 (§ 18.2-61 et seq.) of Chapter 4 of Title 18.2, arson as set out in Article 1 (§ 18.2-77 et seq.) of Chapter 5 of Title 18.2, burglary as set out in Article 2 (§ 18.2-89 et seq.) of Chapter 5 of Title 18.2, any felony violation relating to possession or distribution of drugs as set out in Article 1 (§ 18.2-247 et seq.) of Chapter 7 of Title 18.2, drive by shooting as set out in § 18.2-286.1, use of a machine gun in a crime of violence as set out in § 18.2-289, aggressive use of a machine gun as set out in § 18.2-290, use of a sawed-off shotgun in a crime of violence as set out in § 18.2-300 A, pandering as set out in § 18.2-355, crimes against nature involving children as set out in § 18.2-361, incest as set out in § 18.2-366, taking indecent liberties with children as set out in § 18.2-370 or § 18.2-370.1, abuse and neglect of children as set out in § 18.2-371.1, failure to secure medical attention for an injured child as set out in § 18.2-314, obscenity offenses as set out in § 18.2-374.1, possession of child pornography as set out in § 18.2-374.1:1, electronic facilitation of pornography as set out in § 18.2-374.3, abuse and neglect of incapacitated adults as set out in § 18.2-369, employing or permitting a minor to assist in an act constituting an offense under Article 5 (§ 18.2-372 et seq.) of Chapter 8 of Title 18.2 as set out in § 18.2-379, delivery of drugs to prisoners as set out in § 18.2-474.1, escape from jail as set out in § 18.2-477, felonies by prisoners as set out in § 53.1-203, or an equivalent offense in another state; (ii) convicted of any other felony in the five years prior to the application date for employment; or (iii) the subject of a founded complaint of child abuse or neglect within or outside the Commonwealth. *Notwithstanding any provision to the contrary contained in this section, a child placing agency may approve as an adoptive parent an applicant convicted of not more than one misdemeanor as set out in § 18.2-57 not involving abuse, neglect or moral turpitude, provided ten years have elapsed following conviction.*

For purposes of this section, convictions shall include prior adult convictions and juvenile convictions and adjudications of delinquency based on an offense which would have been at the time of conviction a felony conviction if committed by an adult within or outside the Commonwealth.

Any person desiring to work or volunteer at a child welfare agency or desiring to be a foster or adoptive parent with a private child-placing agency or desiring to be a family day home provider approved by a family day system shall provide the hiring or approving facility or agency with a sworn statement or affirmation disclosing whether or not the applicant has ever been (i) convicted of or is the subject of pending charges for any offense specified in this section within the Commonwealth or any equivalent offense outside the Commonwealth, (ii) convicted of or is the subject of pending charges for any other felony in the five years prior to the application date for employment, or (iii) the subject of a founded complaint of child abuse or neglect within or outside the Commonwealth. Further dissemination of the information provided is prohibited other than to the Commissioner's representative or a federal or state authority or court as may be required to comply with an express requirement of law for such further dissemination. Any person making a materially false statement regarding any such offense shall be guilty of a Class 1 misdemeanor.

A child welfare agency shall obtain for any compensated employees and any volunteers within twenty-one days of employment or commencement of volunteer service, (i) a copy of the information from the central registry and (ii) an original criminal record clearance with respect to convictions for offenses specified in this section or an original criminal history record from the Central Criminal

Records Exchange. Prior to the approval of the applicant, licensed private child-placing agencies and family day systems shall obtain (i) a copy of the information from the central registry and (ii) a criminal record clearance with respect to convictions for offenses specified in this section or an original criminal history record from the Central Criminal Records Exchange for all persons applying to be foster or adoptive parents or family day home providers and any other adult living in the home of the family day home provider. Failure to obtain information from the central registry and a criminal record clearance or criminal history record from the Central Criminal Records Exchange for each employee, volunteer, foster or adoptive parent, family day home provider and any other adult living in the home of the family day home provider and the disclosure statement required by this section shall be grounds for denial, suspension or revocation of a license or registration pursuant to this chapter. If an applicant is denied employment or approval because of information from the central registry or convictions appearing on his criminal history record, the child welfare agency shall provide a copy of the information obtained from the central registry or the Central Criminal Records Exchange or both to the applicant.

The provisions of this section referring to volunteers shall apply only to volunteers who will be alone with any child in the performance of their duties and shall not apply to a parent-volunteer of a child attending such licensed or registered facility whether or not such parent-volunteer will be alone with any child in the performance of his duties. A parent-volunteer is someone supervising, without pay, a group of children which includes the parent-volunteer's own child in a program which operates no more than four hours per day, provided that the parent-volunteer works under the direct supervision of a person who has received a clearance pursuant to this section.

The provisions of this section shall not apply to any child-caring institution licensed pursuant to § 63.1-196, which instead shall comply with the background investigation requirements contained in § 63.1-248.7:2.