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**HOUSE BILL NO. 435**

Offered January 9, 2002

Prefiled January 8, 2002

*A BILL to amend and reenact §§ 19.2-392.02 and 22.1-296.3 of the Code of Virginia, relating to criminal record checks for private school employees.*

Patrons—Janis and Drake

Referred to Committee on Militia, Police and Public Safety

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

**1. That §§ 19.2-392.02 and 22.1-296.3 of the Code of Virginia are amended and reenacted as follows:**

§ 19.2-392.02. National criminal background checks by businesses and organizations regarding employees or volunteers providing care to children, the elderly and disabled.

A. For purposes of this section:

"Barrier crime" means any offense set forth in § 63.1-198.1 or § 63.1-248.7:2.

"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 that 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, the elderly or disabled.

"Department" means the Department of State Police.

"Employed by" means any person who is employed by, volunteers for, seeks to be employed by, or seeks to volunteer for a qualified entity.

"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 that, 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 a qualified entity, and has, seeks to have, or may have unsupervised access to a child or to an elderly or disabled person to whom the qualified entity provides care or (ii) owns, operates or seeks to own or operate a qualified entity.

"Qualified entity" means a business or organization that provides care to children, the elderly or disabled, whether governmental, private, for profit, nonprofit or voluntary, except organizations exempt pursuant to subdivision A 10 of § 63.1-196.001.

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 is employed by 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 two sets 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, the elderly or disabled 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

INTRODUCED

HB435

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

67 D. Any background check conducted pursuant to this section for a provider employed by a private  
68 entity shall be screened by the Department of State Police. If the provider has been convicted of or is  
69 under indictment for a barrier crime, the qualified entity shall be notified that the provider is not  
70 qualified to work or volunteer in a position that involves unsupervised access to children, the elderly or  
71 disabled.

72 E. Any background check conducted pursuant to this section for a provider employed by a  
73 governmental entity shall be provided to that entity.

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

78 G. The failure to request a criminal background check pursuant to subsection B shall not be  
79 considered negligence per se in any civil action.

80 *H. Compliance with the provisions of § 22.1-296.3 by any private or parochial elementary or*  
81 *secondary schools that are accredited by a statewide accrediting organization recognized, prior to*  
82 *January 1, 1996, by the State Board of Education shall be deemed to constitute compliance with the*  
83 *provisions of this section.*

84 § 22.1-296.3. Certain private school employees subject to fingerprinting and criminal records checks.

85 A. As a condition of employment, the governing boards or administrators of private or parochial  
86 elementary or secondary schools which are accredited by a statewide accrediting organization  
87 recognized, prior to January 1, 1996, by the State Board of Education shall require any applicant who  
88 accepts employment for the first time after July 1, 1998, whether full-time or part-time, permanent or  
89 temporary, to submit to fingerprinting and to provide personal descriptive information to be forwarded  
90 along with the applicant's fingerprints through the Central Criminal Records Exchange to the Federal  
91 Bureau of Investigation for the purpose of obtaining criminal history record information regarding such  
92 applicant.

93 The Central Criminal Records Exchange, upon receipt of an applicant's record or notification that no  
94 record exists, shall report to the governing board or administrator, or to a private organization  
95 coordinating such records on behalf of such governing board or administrator pursuant to a written  
96 agreement with the Department of State Police, that the applicant meets the criteria or does not meet the  
97 criteria for employment based on whether or not the applicant has ever been convicted of the following  
98 crimes or their equivalent if from another jurisdiction: murder, abduction for immoral purposes as set  
99 out in § 18.2-48, sexual assault as set out in Article 7 (§ 18.2-61 et seq.) of Chapter 4 of Title 18.2,  
100 failing to secure medical attention for an injured child, pandering as set out in § 18.2-355, crimes against  
101 nature involving children as set out in § 18.2-361, taking indecent liberties with children as set out in  
102 § 18.2-370 or § 18.2-370.1, neglect of children as set out in § 18.2-371.1, or obscenity offenses as set  
103 out in § 18.2-374.1 or § 18.2-379, possession or distribution of drugs as set out in Article 1 (§ 18.2-247  
104 et seq.) of Chapter 7 of Title 18.2, arson as set out in Article 1 (§ 18.2-77 et seq.) of Chapter 5 of Title  
105 18.2, any offense set forth in §§ 63.1-198.1 or 63.1-248.7:2, use of a firearm in the commission of a  
106 felony as set out in § 18.2-53.1, or an equivalent offense in another state.

107 B. The Central Criminal Records Exchange shall not disclose information to such governing board,  
108 administrator, or private organization coordinating such records regarding charges or convictions of any  
109 crimes. If any applicant is denied employment because of information appearing on the criminal history  
110 record and the applicant disputes the information upon which the denial was based, the Central Criminal  
111 Records Exchange shall, upon request, furnish the applicant the procedures for obtaining a copy of the  
112 criminal history record from the Federal Bureau of Investigation. The information provided to the  
113 governing board, administrator, or private organization coordinating such records shall not be  
114 disseminated except as provided in this section. A governing board or administrator employing or  
115 previously employing a temporary teacher or a private organization coordinating such records on behalf  
116 of such governing board or administrator pursuant to a written agreement with the Department of State  
117 Police may disseminate, at the written request of such temporary teacher, whether such teacher meets the  
118 criteria or does not meet the criteria for employment pursuant to subsection A to the governing board or  
119 administrator of another accredited private or parochial elementary or secondary school in which such  
120 teacher has accepted employment. Such governing board, administrator, or private organization

transferring criminal records information pursuant to this section shall be immune from civil liability for any official act, decision or omission done or made in the performance of such transfer, when such acts or omissions are taken in good faith and are not the result of gross negligence or willful misconduct.

In addition to the fees assessed by the Federal Bureau of Investigation, the Department of State Police may assess a fee for responding to requests required by this section which shall not exceed fifteen dollars per request for a criminal records check.

For purposes of this section, "governing board" or "administrator" means the unit or board or person designated to supervise operations of a system of private or parochial schools or a private or parochial school accredited by a statewide accrediting organization recognized, prior to January 1, 1996, by the State Board of Education.

*Any such private or parochial elementary or secondary school that has complied with the requirements of this section shall be deemed to have complied with § 19.2-392.02.*

Nothing in this section or § 19.2-389 shall be construed to require any private or parochial school which is not so accredited to comply with this section.