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## SENATE BILL NO. 421

## AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the House Committee for Courts of Justice  
on March 1, 2006)

(Patron Prior to Substitute—Senator Hanger)

A BILL to amend and reenact §§ 32.1-126.01, 32.1-162.9:1, 63.2-1720, 63.2-1721, 63.2-1724, and 63.2-1725 of the Code of Virginia, relating to national criminal records checks by State Police for prevention of sex offender access to children and others; penalties.

Be it enacted by the General Assembly of Virginia:

1. That §§ 32.1-126.01, 32.1-162.9:1, 63.2-1720, 63.2-1721, 63.2-1724, and 63.2-1725 of the Code of Virginia are amended and reenacted as follows:

§ 32.1-126.01. Employment for compensation of persons convicted of certain offenses prohibited; criminal records check required; suspension or revocation of license.

A. A licensed nursing home shall not hire for compensated employment, persons who have been convicted of murder or manslaughter 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 subsection A of § 18.2-47, abduction for immoral purposes as set out in § 18.2-48, assaults and bodily woundings 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, carjacking as set out in § 18.2-58.1, threats of death or bodily injury as set out in § 18.2-60, felony stalking 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, 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 subsection A of § 18.2-300, 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. However, a licensed nursing home may hire an applicant who has been convicted of one misdemeanor specified in this section not involving abuse or neglect or moral turpitude, provided five years have elapsed following the conviction.

Any person desiring to work at a licensed nursing home, beginning on or after July 1, 2007, shall provide the hiring facility with a sworn statement or affirmation disclosing any criminal convictions or any pending criminal charges, whether within or without the Commonwealth. Any person making a materially false statement when providing such sworn statement or affirmation regarding any such offense shall be guilty upon conviction of a Class 1 misdemeanor. Further dissemination of the information provided pursuant to this section is prohibited other than to a federal or state authority or court as may be required to comply with an express requirement of law for such further dissemination.

B. A nursing home shall, within 30 days of employment, obtain for any compensated employees 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. The applicant shall submit to fingerprinting and provide personal descriptive information to be forwarded along with the applicant's fingerprints through the Central Criminal Records Exchange to the Federal Bureau of Investigation for the purpose of obtaining a national criminal history record information check regarding such applicant. The Central Criminal Records Exchange, upon receipt of an applicant's record or notification that no record exists, shall make a report to the nursing home that the applicant meets the criteria or does not meet the criteria for employment based on whether or not the applicant has ever been convicted of any offense set forth in subsection A or an equivalent offense in another state. The Central Criminal Records Exchange shall not disclose information to a nursing home regarding charges or convictions of any crimes. If any applicant is denied employment because of information appearing on the criminal history record and the applicant disputes the information upon which the denial was based, the Central Criminal Records Exchange shall, upon request, furnish the applicant the procedures for obtaining a copy of the criminal history record from the Central Criminal Records Exchange or Federal Bureau of Investigation. The information provided to the nursing home shall not be disseminated except as provided in this section.

HOUSE SUBSTITUTE

SB421H1

60 *In addition to the fees assessed by the Federal Bureau of Investigation, the Department of State*  
61 *Police may assess a fee for responding to requests required by this section. The provisions of this*  
62 *section shall be enforced by the Commissioner. If an applicant is denied employment because of*  
63 *convictions appearing on his criminal history record, the nursing home shall provide a copy of the*  
64 *information obtained from the Central Criminal Records Exchange to the applicant.*

65 The provisions of this section shall not apply to volunteers who work with the permission or under  
66 the supervision of a person who has received a clearance pursuant to this section.

67 *BC. A person who complies in good faith with the provisions of this section shall not be liable for*  
68 *any civil damages for any act or omission in the performance of duties under this section unless the act*  
69 *or omission was the result of gross negligence or willful misconduct.*

70 *CD. A licensed nursing home shall notify and provide to all students a copy of the provisions of this*  
71 *section prior to or upon enrollment in a certified nurse aide program operated by such nursing home.*

72 *E. Any business or organization specified by this section that knowingly and willfully fails to conduct*  
73 *a background check as required herein shall be assessed a civil penalty of not more than \$500 by the*  
74 *Commissioner and is subject to the provisions set forth in § 32.1-135.*

75 § 32.1-162.9:1. Employment for compensation of persons convicted of certain offenses prohibited;  
76 criminal records check required; suspension or revocation of license.

77 A. A licensed home care organization as defined in § 32.1-162.7 or any home care organization  
78 exempt from licensure under subdivision 3 a, b, or c of § 32.1-162.8 or any licensed hospice as defined  
79 in § 32.1-162.1 shall not hire for compensated employment, persons who have been convicted of murder  
80 or manslaughter as set out in Article 1 (§ 18.2-30 et seq.) of Chapter 4 of Title 18.2, malicious  
81 wounding by a mob as set out in § 18.2-41, abduction as set out in subsection A of § 18.2-47, abduction  
82 for immoral purposes as set out in § 18.2-48, assaults and bodily woundings as set out in Article 4  
83 (§ 18.2-51 et seq.) of Chapter 4 of Title 18.2, robbery as set out in § 18.2-58, carjacking as set out in  
84 § 18.2-58.1, threats of death or bodily injury as set out in § 18.2-60, felony stalking as set out in  
85 § 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  
86 set out in Article 1 (§ 18.2-77 et seq.) of Chapter 5 of Title 18.2, drive by shooting as set out in  
87 § 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  
88 machine gun as set out in § 18.2-290, use of a sawed-off shotgun in a crime of violence as set out in  
89 subsection A of § 18.2-300, pandering as set out in § 18.2-355, crimes against nature involving children  
90 as set out in § 18.2-361, incest as set out in § 18.2-366, taking indecent liberties with children as set out  
91 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  
92 medical attention for an injured child as set out in § 18.2-314, obscenity offenses as set out in  
93 § 18.2-374.1, possession of child pornography as set out in § 18.2-374.1:1, electronic facilitation of  
94 pornography as set out in § 18.2-374.3, abuse and neglect of incapacitated adults as set out in  
95 § 18.2-369, employing or permitting a minor to assist in an act constituting an offense under Article 5  
96 (§ 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  
97 set out in § 18.2-474.1, escape from jail as set out in § 18.2-477, felonies by prisoners as set out in  
98 § 53.1-203, or an equivalent offense in another state.

99 However, a home care organization or hospice may hire an applicant convicted of one misdemeanor  
100 specified in this section not involving abuse or neglect or moral turpitude, provided five years have  
101 elapsed since the conviction.

102 Any person desiring to work at a licensed home care organization as defined in § 32.1-162.7 or any  
103 home care organization exempt from licensure under subdivision 3 a, b, or c of § 32.1-162.8 or any  
104 licensed hospice as defined in § 32.1-162.1, *beginning on or after July 1, 2007*, shall provide the hiring  
105 facility with a sworn statement or affirmation disclosing any criminal convictions or any pending  
106 criminal charges, whether within or without the Commonwealth. Any person making a materially false  
107 statement when providing such sworn statement or affirmation regarding any such offense shall be guilty  
108 upon conviction of a Class 1 misdemeanor. Further dissemination of the information provided pursuant  
109 to this section is prohibited other than to a federal or state authority or court as may be required to  
110 comply with an express requirement of law for such further dissemination.

111 B. Such home care organization or hospice shall, within 30 days of employment, obtain for any  
112 compensated employees an original criminal record clearance with respect to convictions for offenses  
113 specified in this section ~~or an original criminal history record from the Central Criminal Records~~  
114 ~~Exchange. The applicant shall submit to fingerprinting and provide personal descriptive information to~~  
115 ~~be forwarded along with the applicant's fingerprints through the Central Criminal Records Exchange to~~  
116 ~~the Federal Bureau of Investigation for the purpose of obtaining a national criminal history record~~  
117 ~~information check regarding such applicant. The Central Criminal Records Exchange, upon receipt of~~  
118 ~~an applicant's record or notification that no record exists, shall make a report to the home care~~  
119 ~~organization or hospice that the applicant meets the criteria or does not meet the criteria for~~  
120 ~~employment based on whether or not the applicant has ever been convicted of any offense set forth in~~  
121 ~~subsection A or an equivalent offense in another state. The Central Criminal Records Exchange shall~~

not disclose information to a home care organization or hospice regarding charges or convictions of any crimes. If any applicant is denied employment because of information appearing on the criminal history record and the applicant disputes the information upon which the denial was based, the Central Criminal Records Exchange shall, upon request, furnish the applicant the procedures for obtaining a copy of the criminal history record from the Central Criminal Records Exchange or Federal Bureau of Investigation. The information provided to the home care organization or hospice shall not be disseminated except as provided in this section.

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. The provisions of this section shall be enforced by the Commissioner. If an applicant is denied employment because of convictions appearing on his criminal history record, the home care organization or hospice shall provide a copy of the information obtained from the Central Criminal Records Exchange to the applicant.

The provisions of this section shall not apply to volunteers who work with the permission or under the supervision of a person who has received a clearance pursuant to this section.

BC. A person who complies in good faith with the provisions of this section shall not be liable for any civil damages for any act or omission in the performance of duties under this section unless the act or omission was the result of gross negligence or willful misconduct.

CD. A licensed home care organization or hospice shall notify and provide all students a copy of the provisions of this section prior to or upon enrollment in a certified nurse aide program operated by such home care organization or hospice.

E. Any business or organization specified by this section that knowingly and willfully fails to conduct a background check as required herein shall be assessed a civil penalty of not more than \$500 by the Commissioner and is subject to the provisions set forth in §§ 32.1-162.6 and 32.1-162.13.

§ 63.2-1720. Employment for compensation of persons or use of volunteers convicted of certain offenses prohibited; background check required; penalty.

A. An assisted living facility, adult day care center, or child welfare agency licensed or registered in accordance with the provisions of this chapter, or family day homes approved by family day systems, shall not hire for compensated employment persons who have an offense as defined in § 63.2-1719. Such employees, whose employment commences on or after July 1, 2007, shall undergo background checks pursuant to subsection D. In the case of child welfare agencies, the provisions of this section shall apply to employees who are involved in the day-to-day operations of such agency or who are alone with, in control of, or supervising one or more children.

B. A licensed assisted living facility or adult day care center may hire an applicant convicted of one misdemeanor barrier crime not involving abuse or neglect or moral turpitude, provided five years have elapsed following the conviction.

C. Notwithstanding the provisions of subsection A, a child day center may hire for compensated employment persons who have been convicted of not more than one misdemeanor offense under § 18.2-57 if 10 years have elapsed following the conviction, unless the person committed such offense while employed in a child day center or the object of the offense was a minor.

D. Background checks pursuant to this section require:

1. A sworn statement or affirmation disclosing whether the person has a criminal conviction or is the subject of any pending criminal charges within or outside the Commonwealth and, in the case of child welfare agencies, whether or not the person has been the subject of a founded complaint of child abuse or neglect within or outside the Commonwealth;

2. A criminal history record check through the Central Criminal Records Exchange pursuant to § 19.2-389; and The applicant to submit to fingerprinting and to provide personal descriptive information to be forwarded along with the applicant's fingerprints through the Central Criminal Records Exchange to the Federal Bureau of Investigation for the purpose of obtaining a national criminal history record information check regarding such applicant. The Central Criminal Records Exchange, upon receipt of an applicant's record or notification that no record exists, shall make a report to an assisted living facility, adult day care center, or child welfare agency that the applicant meets the criteria or does not meet the criteria for employment based on whether or not the applicant has ever been convicted of any offense set forth in § 63.2-1719 or an equivalent offense in another state. The Central Criminal Records Exchange shall not disclose information to an assisted living facility, adult day care center, or child welfare agency regarding charges or convictions of any crimes. If any applicant is denied employment because of information appearing on the criminal history record and the applicant disputes the information upon which the denial was based, the Central Criminal Records Exchange shall, upon request, furnish the applicant the procedures for obtaining a copy of the criminal history record from the Central Criminal Records Exchange or Federal Bureau of Investigation. The information provided to the assisted living facility, adult day care center, or child welfare agency shall not be disseminated except as provided in this section.

183 *In addition to the fees assessed by the Federal Bureau of Investigation, the Department of State*  
184 *Police may assess a fee for responding to requests required by this section; and*

185 3. In the case of child welfare agencies, a search of the central registry maintained pursuant to  
186 § 63.2-1515 for any founded complaint of child abuse and neglect.

187 E. Any person desiring to work as a compensated employee at a licensed assisted living facility,  
188 licensed adult day care center, a licensed or registered child welfare agency, or a family day home  
189 approved by a family day system shall provide the hiring or approving facility, center or agency with a  
190 sworn statement or affirmation pursuant to subdivision D 1. Any person making a materially false  
191 statement regarding the sworn statement or affirmation provided pursuant to subdivision D 1 shall be  
192 guilty of a Class 1 misdemeanor.

193 F. A licensed assisted living facility, licensed adult day care center, a licensed or registered child  
194 welfare agency, or a family day home approved by a family day system shall, ~~obtain~~ for any  
195 compensated employees ~~employee~~ within 30 days of employment, ~~(i) an original criminal record~~  
196 ~~clearance with respect to convictions for offenses specified in § 63.2-1719 or an original criminal history~~  
197 ~~record from the Central Criminal Records Exchange and (ii) require the employee to submit to a~~  
198 ~~national criminal record background check as provided in subdivision D 2, and in addition, in the case~~  
199 ~~of licensed or registered child welfare agencies or family day homes approved by family day systems, a~~  
200 ~~copy of the information from the central registry and shall require the compensated employee to submit~~  
201 ~~to a national criminal record background check as provided in subdivision D 2. If an applicant is~~  
202 ~~denied employment because of information from the central registry or convictions appearing on his~~  
203 ~~criminal history record, the assisted living facility, adult day care center or child welfare agency shall~~  
204 ~~provide a copy of the information obtained from the central registry the Central Criminal Records~~  
205 ~~Exchange or both to the applicant.~~

206 G. No volunteer who has an offense as defined in § 63.2-1719 shall be permitted to serve in a  
207 licensed or registered child welfare agency or a family day home approved by a family day system. Any  
208 person desiring to volunteer at such a child welfare agency shall provide the agency with a sworn  
209 statement or affirmation pursuant to subdivision D 1. Such child welfare agency shall obtain for any  
210 volunteers, within 30 days of commencement of volunteer service, a copy of ~~(i) the information from~~  
211 ~~the central registry and shall require the volunteer to submit to a national criminal record background~~  
212 ~~check as provided in subdivision D 2. and (ii) an original criminal record clearance with respect to~~  
213 ~~offenses specified in § 63.2-1719 or an original criminal history record from the Central Criminal~~  
214 ~~Records Exchange. Any person making a materially false statement regarding the sworn statement or~~  
215 ~~affirmation provided pursuant to subdivision D 1 shall be guilty of a Class 1 misdemeanor. If a~~  
216 ~~volunteer is denied service because of information from the central registry or convictions appearing on~~  
217 ~~his criminal history record, such child welfare agency shall provide a copy of the information obtained~~  
218 ~~from the central registry or the Central Criminal Records Exchange or both to the volunteer. The~~  
219 ~~provisions of this subsection shall apply only to volunteers who will be alone with any child in the~~  
220 ~~performance of their duties and shall not apply to a parent-volunteer of a child attending a licensed or~~  
221 ~~registered child welfare agency, or a family day home approved by a family day system, whether or not~~  
222 ~~such parent-volunteer will be alone with any child in the performance of his duties. A parent-volunteer~~  
223 ~~is someone supervising, without pay, a group of children that includes the parent-volunteer's own child~~  
224 ~~in a program that operates no more than four hours per day, provided that the parent-volunteer works~~  
225 ~~under the direct supervision of a person who has received a clearance pursuant to this section.~~

226 H. No volunteer shall be permitted to serve in a licensed assisted living facility or licensed adult day  
227 care center without the permission or under the supervision of a person who has received a clearance  
228 pursuant to this section.

229 I. Further dissemination of the background check information is prohibited other than to the  
230 Commissioner's representative or a federal or state authority or court as may be required to comply with  
231 an express requirement of law for such further dissemination.

232 J. A licensed assisted living facility shall notify and provide all students a copy of the provisions of  
233 this article prior to or upon enrollment in a certified nurse aide program operated by such assisted living  
234 facility.

235 K. The provisions of this section shall not apply to any children's residential facility licensed  
236 pursuant to § 63.2-1701, which instead shall comply with the background investigation requirements  
237 contained in § 63.2-1726.

238 L. A person who complies in good faith with the provisions of this section shall not be liable for any  
239 civil damages for any act or omission in the performance of duties under this section unless the act or  
240 omission was the result of gross negligence or willful misconduct.

241 M. Any business or organization specified by this section that knowingly and willfully fails to  
242 conduct a background check as required herein shall be assessed a civil penalty of not more than \$500  
243 by the Commissioner and is subject to the provisions set forth in §§ 63.2-1709.1, 63.2-1709.2 and  
244 63.2-1722.

§ 63.2-1721. Background check upon application for licensure or registration as child welfare agency; background check of foster or adoptive parents approved by child-placing agencies and family day homes approved by family day systems; penalty.

A. Upon application for licensure or registration as a child welfare agency, (i) all applicants; (ii) agents at the time of application who are or will be involved in the day-to-day operations of the child welfare agency or who are or will be alone with, in control of, or supervising one or more of the children; and (iii) any other adult living in the home of an applicant for licensure or registration as a family day home shall undergo a background check. Upon application for licensure as an assisted living facility, all applicants shall undergo a background check. In addition, foster or adoptive parents requesting approval by child-placing agencies and operators of family day homes requesting approval by family day systems, and any other adult residing in the family day home or existing employee or volunteer of the family day home, shall undergo background checks pursuant to subsection B prior to their approval.

B. Background checks pursuant to this section require:

1. A sworn statement or affirmation disclosing whether the person has a criminal conviction or is the subject of any pending criminal charges within or outside the Commonwealth and whether or not the person has been the subject of a founded complaint of child abuse or neglect within or outside the Commonwealth;

2. ~~A criminal history record check through the Central Criminal Records Exchange pursuant to § 19.2-389; and The applicant to submit to fingerprinting and to provide personal descriptive information to be forwarded along with the applicant's fingerprints through the Central Criminal Records Exchange to the Federal Bureau of Investigation for the purpose of obtaining a national criminal history record information check regarding such applicant. The Central Criminal Records Exchange, upon receipt of an applicant's record or notification that no record exists, shall make a report to the child welfare agency that the applicant meets the criteria or does not meet the criteria for licensure, registration or approval based on whether or not the applicant has ever been convicted of any offense set forth in § 63.2-1719 or an equivalent offense in another state. The Central Criminal Records Exchange shall not disclose information to a child welfare agency regarding charges or convictions of any crimes. If any applicant is denied licensure, registration or approval because of information appearing on the criminal history record and the applicant disputes the information upon which the denial was based, the Central Criminal Records Exchange shall, upon request, furnish the applicant the procedures for obtaining a copy of the criminal history record from the Central Criminal Records Exchange or the Federal Bureau of Investigation. The information provided to the child welfare agency shall not be disseminated except as provided in this section.~~

~~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; and~~

3. In the case of child welfare agencies or adoptive or foster parents, a search of the central registry maintained pursuant to § 63.2-1515 for any founded complaint of child abuse and neglect.

C. The character and reputation investigation pursuant to § 63.2-1702 shall include background checks pursuant to subsection B of persons specified in subsection A. ~~The applicant shall submit the background check information required in subsection B to the Commissioner's representative prior to issuance of a license, registration or approval. The applicant shall provide an original criminal record clearance with respect to offenses specified in § 63.2-1719 or an original criminal history record from the Central Criminal Records Exchange. Any person making a materially false statement regarding the sworn statement or affirmation provided pursuant to subdivision B 1 shall be guilty of a Class 1 misdemeanor. If any person specified in subsection A required to have a background check has any offense as defined in § 63.2-1719, and such person has not been granted a waiver by the Commissioner pursuant to § 63.2-1723 or is not subject to an exception in subsections E or F, (i) the Commissioner shall not issue a license or registration to a child welfare agency; (ii) the Commissioner shall not issue a license to an assisted living facility; (iii) a child-placing agency shall not approve an adoptive or foster home; or (iv) a family day system shall not approve a family day home.~~

D. No person specified in subsection A shall be involved in the day-to-day operations of the child welfare agency or shall be alone with, in control of, or supervising one or more of the children without first having completed background checks pursuant to subsection B.

E. Notwithstanding any provision to the contrary contained in this section, a child-placing agency may approve as an adoptive or foster parent an applicant convicted of not more than one misdemeanor as set out in § 18.2-57 not involving abuse, neglect, moral turpitude, or a minor, provided 10 years have elapsed following the conviction.

F. Notwithstanding any provision to the contrary contained in this section, a child-placing agency may approve as a foster parent an applicant convicted of statutory burglary for breaking and entering a dwelling home or other structure with intent to commit larceny, who has had his civil rights restored by

the Governor, provided 25 years have elapsed following the conviction.

G. If an applicant is denied licensure, registration or approval because of information from the central registry ~~or convictions appearing on his criminal history record~~, the Commissioner shall provide a copy of the information obtained from the central registry ~~or the Central Criminal Records Exchange or both~~ to the applicant.

H. Further dissemination of the background check information 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.

I. The provisions of this section referring to a sworn statement or affirmation and to prohibitions on the issuance of a license for any offense shall not apply to any children's residential facility licensed pursuant to § 63.2-1701, which instead shall comply with the background investigation requirements contained in § 63.2-1726.

*J. Any business or organization specified by this section that knowingly and willfully fails to conduct a background check as required herein shall be assessed a civil penalty of not more than \$500 by the Commissioner and is subject to the provisions set forth in §§ 63.2-1709.1, 63.2-1709.2 and 63.2-1722. Any business or organization that commits such a violation of this section after having been previously found in violation is guilty of a Class 3 misdemeanor and may be denied a license or registration to operate such business or organization in the Commonwealth.*

§ 63.2-1724. Records check by unlicensed child day center; penalty.

Any child day center that is exempt from licensure pursuant to § 63.2-1716 shall require a prospective employee or volunteer or any other person who is expected to be alone with one or more children enrolled in the child day center to obtain within 30 days of employment or commencement of volunteer service, a search of the central registry maintained pursuant to § 63.2-1515 on any founded complaint of child abuse or neglect and a *national* criminal records check as provided in subdivision B 2 of § 63.2-1721 ~~A 11 of § 19.2-389~~ and shall refuse employment or service to any person who has any offense defined in § 63.2-1719. Such center shall also require a prospective employee or volunteer or any other person who is expected to be alone with one or more children in the child day center to provide a sworn statement or affirmation disclosing whether or not the applicant has ever been (i) the subject of a founded complaint of child abuse or neglect, or (ii) convicted of a crime or is the subject of pending criminal charges for any offense within the Commonwealth or any equivalent offense outside the Commonwealth. The foregoing provisions shall not apply to a parent or guardian who may be left alone with his or her own child. For purposes of this section, convictions shall include prior adult convictions and juvenile convictions or adjudications of delinquency based on a crime that would have been a felony if committed by an adult within or outside the Commonwealth. Any person making a materially false statement regarding any such offense shall be guilty of a Class 1 misdemeanor. If an applicant is denied employment or service because of information from the central registry ~~or convictions appearing on his criminal history record~~, the child day center shall provide a copy of the information obtained from the central registry ~~or Central Criminal Records Exchange or both~~ to the applicant. Further dissemination of the information provided to the facility is prohibited.

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 the child day center 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 that includes the parent-volunteer's own child, in a program that operates no more than four hours per day, where the parent-volunteer works under the direct supervision of a person who has received a clearance pursuant to this section.

*Any business or organization specified by this section that knowingly and willfully fails to conduct a background check as required herein shall be assessed a civil penalty of not more than \$500 by the Commissioner and is subject to the provisions set forth in §§ 63.2-1709.1, 63.2-1709.2 and 63.2-1722. Any business or organization that commits such a violation of this section after having been previously found in violation is guilty of a Class 3 misdemeanor and may be required to forfeit its license to operate such business or organization in the Commonwealth.*

§ 63.2-1725. Records checks of child day centers or family day homes receiving federal, state or local child care funds; penalty.

Whenever any child day center or family day home that has not met the requirements of §§ 63.2-1720, 63.2-1721 and 63.2-1724 applies to enter into a contract with a local department to provide child care services to clients of the local department, the local department shall require a *national* criminal records check pursuant to subdivision B 2 of § 63.2-1721 ~~A 11 of § 19.2-389~~, as well as a search of the central registry maintained pursuant to § 63.2-1515, on any child abuse or neglect investigation, of the applicant; any employee; prospective employee; volunteers; agents involved in the day-to-day operation; all agents who are alone with, in control of, or supervising one or more of the children; and any other adult living in a family day home. The applicant shall provide the local

department with copies of these records checks. The child day center or family day home shall not be permitted to enter into a contract with a local department for child care services when an applicant; any employee; a prospective employee; a volunteer, an agent involved in the day-to-day operation; an agent alone with, in control of, or supervising one or more children; or any other adult living in a family day home has any offense as defined in § 63.2-1719. The child day center or family day home shall also require the above individuals to provide a sworn statement or affirmation disclosing whether or not the person has ever been (i) the subject of a founded case of child abuse or neglect or (ii) convicted of a crime or is the subject of any pending criminal charges within the Commonwealth or any equivalent offense outside the Commonwealth. Any person making a materially false statement regarding any such offense shall be guilty of a Class 1 misdemeanor. If a person is denied employment or work because of information from the central registry or convictions appearing on his criminal history record, the child day center or family day program shall provide a copy of such information obtained from the central registry or Central Criminal Records Exchange or both to the person. Further dissemination of the information provided to the facility, beyond dissemination to the local department, is prohibited.

*Any business or organization specified by this section that knowingly and willfully fails to conduct a background check as required herein shall be assessed a civil penalty of not more than \$500 by the Commissioner and is subject to the provisions set forth in §§ 63.2-1709.1, 63.2-1709.2 and 63.2-1722. Any business or organization that commits such a violation of this section after having been previously found in violation is guilty of a Class 3 misdemeanor and may be required to forfeit its license to operate such business or organization in the Commonwealth.*

**2. That the provisions of the first enactment of this act shall not become effective unless an appropriation of funds effectuating the purposes of this act is included in the general appropriation act for the period of July 1, 2006, through July 30, 2008, and passed during the 2007 Session of the General Assembly and signed into law by the Governor. If such funds are appropriated, then the provisions of this act shall become affective July 1, 2007.**