

060497732

SENATE BILL NO. 421

AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the Senate Committee on Rehabilitation and Social Services
on February 3, 2006)

(Patron Prior to Substitute—Senator Hanger)

A BILL to amend and reenact §§ 19.2-392.02, 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 criminal records checks for care workers.

Be it enacted by the General Assembly of Virginia:

1. That §§ 19.2-392.02, 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:

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

A. For purposes of this section:

"Barrier crime" means any offense set forth in § 63.2-1719 or 63.2-1726.

"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 §63.2-1715.~~

B. Notwithstanding §§ 63.2-1719 to 63.2-1721 and 63.2-1724, 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 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 is the subject of charges of a barrier crime. To conduct its determination regarding the provider's barrier crime information, the Department shall access the national criminal history background check system,

60 which is maintained by the Federal Bureau of Investigation and is based on fingerprints and other
61 methods of identification, and shall access the Central Criminal Records Exchange maintained by the
62 Department. If the Department receives a background report lacking disposition data, the Department
63 shall conduct research in whatever state and local record-keeping systems are available in order to obtain
64 complete data. The Department shall make reasonable efforts to respond to a qualified entity's inquiry
65 within 15 business days.

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

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

73 F. In the case of a provider who desires to volunteer at a qualified entity and who is subject to a
74 national criminal background check, the Department and the Federal Bureau of Investigation may each
75 charge the provider the lesser of \$18 or the actual cost to the entity of the background check conducted
76 with the fingerprints.

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

79 § 32.1-126.01. Employment for compensation of persons convicted of certain offenses prohibited;
80 criminal records check required; suspension or revocation of license.

81 A. A licensed nursing home shall not hire for compensated employment, persons who have been
82 convicted of murder or manslaughter as set out in Article 1 (§ 18.2-30 et seq.) of Chapter 4 of Title
83 18.2, malicious wounding by mob as set out in § 18.2-41, abduction as set out in subsection A of
84 § 18.2-47, abduction for immoral purposes as set out in § 18.2-48, assaults and bodily woundings as set
85 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
86 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
87 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,
88 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
89 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
90 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
91 subsection A of § 18.2-300, pandering as set out in § 18.2-355, crimes against nature involving children
92 as set out in § 18.2-361, incest as set out in § 18.2-366, taking indecent liberties with children as set out
93 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
94 medical attention for an injured child as set out in § 18.2-314, obscenity offenses as set out in
95 § 18.2-374.1, possession of child pornography as set out in § 18.2-374.1:1, electronic facilitation of
96 pornography as set out in § 18.2-374.3, abuse and neglect of incapacitated adults as set out in
97 § 18.2-369, employing or permitting a minor to assist in an act constituting an offense under Article 5
98 (§ 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
99 set out in § 18.2-474.1, escape from jail as set out in § 18.2-477, felonies by prisoners as set out in
100 § 53.1-203, or an equivalent offense in another state. However, a licensed nursing home may hire an
101 applicant who has been convicted of one misdemeanor specified in this section not involving abuse or
102 neglect or moral turpitude, provided five years have elapsed following the conviction.

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

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

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

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

A. A licensed home care organization as defined in § 32.1-162.7 or any home care organization exempt from licensure under subdivision 3 a, b, or c of § 32.1-162.8 or any licensed hospice as defined in § 32.1-162.1 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 a 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 home care organization or hospice may hire an applicant convicted of one misdemeanor specified in this section not involving abuse or neglect or moral turpitude, provided five years have elapsed since the conviction.

Any person desiring to work at a licensed home care organization as defined in § 32.1-162.7 or any home care organization exempt from licensure under subdivision 3 a, b, or c of § 32.1-162.8 or any licensed hospice as defined in § 32.1-162.1, 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. Such home care organization or hospice 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 home care

183 organization or hospice that the applicant meets the criteria or does not meet the criteria for
184 employment based on whether or not the applicant has ever been convicted of any offense set forth in
185 subsection A or an equivalent offense in another state. The Central Criminal Records Exchange shall
186 not disclose information to a home care organization or hospice regarding charges or convictions of
187 any crimes. If any applicant is denied employment because of information appearing on the criminal
188 history record and the applicant disputes the information upon which the denial was based, the Central
189 Criminal Records Exchange shall, upon request, furnish the applicant the procedures for obtaining a
190 copy of the criminal history record from the Central Criminal Records Exchange or Federal Bureau of
191 Investigation. The information provided to the home care organization or hospice shall not be
192 disseminated except as provided in this section.

193 In addition to the fees assessed by the Federal Bureau of Investigation, the Department of State
194 Police may assess a fee for responding to requests required by this section. The provisions of this
195 section shall be enforced by the Commissioner. If an applicant is denied employment because of
196 convictions appearing on his criminal history record, the home care organization or hospice shall provide
197 a copy of the information obtained from the Central Criminal Records Exchange to the applicant.

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

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

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

206 § 63.2-1720. Employment for compensation of persons or use of volunteers convicted of certain
207 offenses prohibited; background check required; penalty.

208 A. An assisted living facility, adult day care center, or child welfare agency licensed or registered in
209 accordance with the provisions of this chapter, or family day homes approved by family day systems,
210 shall not hire for compensated employment persons who have an offense as defined in § 63.2-1719 or
211 63.2-1726. Such employees, whose employment commences on or after July 1, 2007, shall undergo
212 background checks pursuant to subsection D. In the case of child welfare agencies, the provisions of this
213 section shall apply to employees who are involved in the day-to-day operations of such agency or who
214 are alone with, in control of, or supervising one or more children.

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

218 C. Notwithstanding the provisions of subsection A, a child day center may hire for compensated
219 employment persons who have been convicted of not more than one misdemeanor offense under
220 § 18.2-57 if 10 years have elapsed following the conviction, unless the person committed such offense
221 while employed in a child day center or the object of the offense was a minor.

222 D. Background checks pursuant to this section require:

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

227 2. A criminal history record check through the Central Criminal Records Exchange pursuant to
228 § 19.2-389; and The applicant to submit to fingerprinting and to provide personal descriptive
229 information to be forwarded along with the applicant's fingerprints through the Central Criminal
230 Records Exchange to the Federal Bureau of Investigation for the purpose of obtaining a national
231 criminal history record information check regarding such applicant. The Central Criminal Records
232 Exchange, upon receipt of an applicant's record or notification that no record exists, shall make a
233 report to an assisted living facility, adult day care center, or child welfare agency that the applicant
234 meets the criteria or does not meet the criteria for employment based on whether or not the applicant
235 has ever been convicted of any offense set forth in § 63.2-1719 or 63.2-1726 or an equivalent offense in
236 another state. The Central Criminal Records Exchange shall not disclose information to an assisted
237 living facility, adult day care center, or child welfare agency regarding charges or convictions of any
238 crimes. If any applicant is denied employment because of information appearing on the criminal history
239 record and the applicant disputes the information upon which the denial was based, the Central
240 Criminal Records Exchange shall, upon request, furnish the applicant the procedures for obtaining a
241 copy of the criminal history record from the Central Criminal Records Exchange or Federal Bureau of
242 Investigation. The information provided to the assisted living facility, adult day care center, or child
243 welfare agency shall not be disseminated except as provided in this section.

244 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, a search of the central registry maintained pursuant to § 63.2-1515 for any founded complaint of child abuse and neglect.

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

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

G. No volunteer who has an offense as defined in § 63.2-1719 *or 63.2-1726* shall be permitted to serve in a licensed or registered child welfare agency or a family day home approved by a family day system. Any person desiring to volunteer at such a child welfare agency shall provide the agency with a sworn statement or affirmation pursuant to subdivision D 1. Such child welfare agency shall obtain for any volunteers, within 30 days of commencement of volunteer service, a copy of (i) the information from the central registry *and shall require the volunteer to submit to a national criminal record background check as provided in subdivision D 2* ~~and (ii) 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 D 1 shall be guilty of a Class 1 misdemeanor. If a volunteer is denied service because of information from the central registry ~~or convictions appearing on his criminal history record~~, such 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 volunteer~~. The provisions of this subsection 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 a licensed or registered child welfare agency, or a family day home approved by a family day system, 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, provided that the parent-volunteer works under the direct supervision of a person who has received a clearance pursuant to this section.

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

I. 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.

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

K. The provisions of this section 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.

L. 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.

§ 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 employment based on whether or not the applicant has ever been convicted of any offense set forth in § 63.2-1719 or 63.2-1726 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 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 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 or 63.2-1726, 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.

§ 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 § 49.2-389~~ and shall refuse employment or service to any person who has any offense defined in § 63.2-1719 *or* 63.2-1726. 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.

§ 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 § 49.2-389~~, 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 *or* 63.2-1726. 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.

2. That the provisions of this act that amend the Code of Virginia by amending and reenacting in Chapter 5 of Title 32.1, sections numbered 32.1-126.01 and 32.1-162.9:1, and in Chapter 17 of Title 63.2, sections numbered 63.2-1720, 63.2-1721, 63.2-1724, and 63.2-1725 shall become effective on July 1, 2007.

429 3. That the Secretary of Health and Human Resources, in collaboration with the Secretary of
430 Public Safety, and with the advice and input from the Office of the Attorney General, shall seek
431 consultation and information from all relevant agencies of government concerning the most
432 efficient manner of complying with a requirement for a national criminal background check for
433 new employees and volunteers of entities licensed to provide services to children and adult
434 populations and to ensure the requirement extends, but is not necessarily limited, to: child welfare
435 agencies, family day homes, assisted living facilities, adult day care centers, nursing facilities, home
436 health organizations, and hospice facilities. This investigation shall also assess the number of
437 entities, new employees, and volunteers affected and the most cost-effective way to implement these
438 requirements.

439 In carrying out this investigation, the Secretary of Health and Human Resources shall convene a
440 task force consisting of affected entities and interested parties including, but not limited to, the
441 Department for the Aging, the Department of Health, the Department of Social Services, the
442 Department of Rehabilitative Services, the Department of Mental Health, Mental Retardation and
443 Substance Abuse Services, the Department of State Police, the Department of Medical Assistance
444 Services, the Office of the Attorney General, as well as advocates for the aging adult populations,
445 and the provider community including, but not limited to, child welfare agencies, family day
446 homes, assisted living facilities, adult day care centers, nursing facilities, home health agencies, and
447 hospice facilities. The Secretary shall submit the findings and recommendations of the task force to
448 the Governor, and the Chairman of the Senate Committee on Rehabilitation and Social Services
449 and the Chairman of the House Committee on Health, Welfare and Institutions by November 10,
450 2006.

451 4. That the provisions of this act shall not become effective unless an appropriation of funds
452 effectuating the purposes of this act is included in the general appropriation act for the period of
453 July 1, 2006, through July 30, 2008, passed during the 2007 Session of the General Assembly and
454 signed into law by the Governor.