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SENATE BILL NO. 278

Offered January 8, 2014

Prefiled January 5, 2014

A BILL to amend and reenact §§ 63.2-901.1 and 63.2-1721 of the Code of Virginia, relating to foster care; approval of applicant whose household includes certain individuals convicted of an offense.

 Patron—Favola

 Referred to Committee on Rehabilitation and Social Services

Be it enacted by the General Assembly of Virginia:

- 1. That §§ 63.2-901.1 and 63.2-1721 of the Code of Virginia are amended and reenacted as follows:**
§ 63.2-901.1. Criminal history and central registry check for placements of children.

A. Each local board and licensed child-placing agency shall obtain, in accordance with regulations adopted by the Board, criminal history record information from the Central Criminal Records Exchange and the Federal Bureau of Investigation through the Central Criminal Records Exchange and the results of a search of the child abuse and neglect central registry of any individual with whom the local board or licensed child-placing agency is considering placing a child on an emergency, temporary or permanent basis, including the birth parent of a child in foster care placement, unless the birth parent has revoked an entrustment agreement pursuant to § 63.2-1223 or 63.2-1817 or a local board or birth parent revokes a placement agreement while legal custody remains with the parent, parents, or guardians pursuant to § 63.2-900. The local board or licensed child-placing agency shall also obtain such background checks on all adult household members residing in the home of the individual with whom the child is to be placed pursuant to subsection B. Such state criminal records or registry search shall be at no cost to the individual. The local board or licensed child-placing agency shall pay for the national fingerprint criminal history record check or may require such individual to pay the cost of the fingerprinting or the national fingerprinting criminal history record check or both. In addition to the fees assessed by the Federal Bureau of Investigation, the designated state agency may assess a fee for responding to requests required by this section.

B. Background checks pursuant to this section require the following:

1. A sworn statement or affirmation disclosing whether or not the individual has a criminal conviction or is the subject of any pending criminal charges within or outside the Commonwealth and whether or not the individual has been the subject of a founded complaint of child abuse or neglect within or outside the Commonwealth;
2. That the individual submit to fingerprinting and provide personal descriptive information to be forwarded along with the individual's fingerprints through the Central Criminal Records Exchange to the Federal Bureau of Investigation for the purpose of obtaining criminal history record information. The local board or licensed child-placing agency shall inform the individual that he is entitled to obtain a copy of any background check report and to challenge the accuracy and completeness of any such report and obtain a prompt resolution before a final decision is made of the individual's fitness to have responsibility for the safety and well-being of children.

The Central Criminal Records Exchange, upon receipt of an individual's record or notification that no record exists, shall forward it to the designated state agency. The state agency shall, upon receipt of an individual's record lacking disposition data, conduct research in whatever state and local recordkeeping systems are available in order to obtain complete data. The state agency shall report to the local board or licensed child-placing agency whether the individual meets the criteria for having responsibility for the safety and well-being of children based on whether or not the individual has ever been convicted of or is the subject of pending charges set forth in § 63.2-1719 or an equivalent set forth in another state. Copies of any information received by a local board or licensed child-placing agency pursuant to this section shall be available to the state agency that regulates or operates such a child-placing agency but shall not be disseminated further; and

3. A search of the central registry maintained pursuant to § 63.2-1515 for any founded complaint of child abuse or neglect. In addition, a search of the child abuse and neglect registry maintained by any other state pursuant to the Adam Walsh Child Protection and Safety Act of 2006, Pub. L. 109-248, in which a prospective parent or other adult in the home has resided in the preceding five years.

C. In emergency circumstances, each local board may obtain, from a criminal justice agency, criminal history record information from the Central Criminal Records Exchange and the Federal Bureau of Investigation through the Virginia Criminal Information Network (VCIN) for the criminal records search authorized by this section. Within three days of placing a child, the local board shall require the

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59 individual for whom a criminal history record information check was requested to submit to
60 fingerprinting and provide personal descriptive information to be forwarded along with the fingerprints
61 through the Central Criminal Records Exchange to the Federal Bureau of Investigation for the purpose
62 of obtaining criminal record history information, pursuant to subsection B. The child shall be removed
63 from the home immediately if any adult resident fails to provide such fingerprints and written
64 permission to perform a criminal history record check when requested.

65 D. Any individual with whom the local board is considering placing a child on an emergency basis
66 shall submit to a search of the central registry maintained pursuant to § 63.2-1515 and the Adam Walsh
67 Child Protection and Safety Act of 2006, Pub. L. 109-248 for any founded complaint of child abuse or
68 neglect. The search of the central registry must occur prior to emergency placement. Such central
69 registry search shall be at no cost to the individual. Prior to emergency placement, the individual shall
70 provide a written statement of affirmation disclosing whether he has ever been the subject of a founded
71 case of child abuse or neglect within or outside the Commonwealth. Child-placing agencies shall not
72 approve individuals with a founded complaint of child abuse as foster or adoptive parents.

73 E. The child-placing agency shall not approve a foster or adoptive home if any individual has a
74 record of an offense defined in § 63.2-1719 or a founded complaint of abuse or neglect as maintained
75 in registries pursuant to § 63.2-1515 and 42 U.S.C.S. 16901 et seq. ~~A child-placing agency may approve~~
76 ~~as a foster parent an applicant convicted of not more than one misdemeanor as set out in § 18.2-57, not~~
77 ~~involving the abuse, neglect, or moral turpitude of a minor, provided 10 years have elapsed following~~
78 ~~the conviction.~~

79 *F. Notwithstanding the provisions of subsection E, a child-placing agency may approve as a foster*
80 *parent an applicant (i) who has been convicted of not more than one misdemeanor as set out in*
81 *§ 18.2-57 not involving the abuse, neglect, or moral turpitude of a minor, provided 10 years have*
82 *elapsed following the conviction, and (ii) whose household includes an adult who has been convicted of*
83 *burglary as set out in § 18.2-89, provided (a) the adult was a juvenile when the offense occurred, (b)*
84 *the adult was in foster care at the time he turned 18 years of age, (c) the offense occurred prior to the*
85 *adult being committed to the custody of the child-placing agency or local board, (d) the adult was*
86 *placed in the home of the applicant by a child-placing agency or local department for the purposes of*
87 *foster care prior to turning 18 years of age, (e) the adult has not been convicted of or found to be*
88 *delinquent based on an offense since entering foster care, and (f) the child-placing agency makes a*
89 *specific finding that approving the applicant would not adversely affect the safety or well-being of any*
90 *child placed with the applicant for the purposes of foster care.*

91 G. A local board or child-placing agency may approve as a kinship foster care parent an applicant
92 convicted of the following offenses, provided that 10 years have elapsed from the date of the conviction
93 and the local board or child-placing agency makes a specific finding that approving the kinship foster
94 care placement would not adversely affect the safety and well-being of the child: (i) a felony conviction
95 for possession of drugs as set out in Article 1 (§ 18.2-247 et seq.) of Chapter 7 of Title 18.2, but not
96 including a felony conviction for possession of drugs with the intent to distribute; (ii) a misdemeanor
97 conviction for arson as set out in Article 1 (§ 18.2-77 et seq.) of Chapter 5 of Title 18.2; or (iii) an
98 equivalent offense in another state.

99 **§ 63.2-1721. Background check upon application for licensure or registration as child welfare**
100 **agency; background check of foster or adoptive parents approved by child-placing agencies and**
101 **family day homes approved by family day systems; penalty.**

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

112 B. Background checks pursuant to this section require:

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

117 2. A criminal history record check through the Central Criminal Records Exchange pursuant to
118 § 19.2-389; and

119 3. In the case of child welfare agencies or adoptive or foster parents, a search of the central registry
120 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, F, or G (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. 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 felony possession of drugs, who has had his civil rights restored by the Governor, provided 10 years have elapsed following the conviction.

H. *Notwithstanding any provision to the contrary contained in this section, a child-placing agency may approve as a foster parent an applicant whose household includes an adult who has been convicted of burglary as set out in 18.2-89, provided (i) the adult was a juvenile when the offense occurred, (ii) the adult was in foster care at the time he turned 18 years of age, (iii) the offense occurred prior to the adult being committed to the custody of the child-placing agency or local board, (iv) the adult was placed in the home of the applicant by a child-placing agency or local department for the purposes of foster care prior to the adult turning 18 years of age, (v) the adult has not been convicted of or found to be delinquent based on an offense since entering foster care, and (vi) the child-placing agency makes a specific finding that approving the applicant would not adversely affect the safety or well-being of any child placed with the applicant for the purposes of foster care.*

I. 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.

J. 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.

K. 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.