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**SENATE BILL NO. 818**

Offered January 14, 2015

Prefiled January 2, 2015

*A BILL to amend and reenact §§ 19.2-389, 19.2-392.02, 63.2-100, 63.2-1506, 63.2-1515, 63.2-1708, 63.2-1720, 63.2-1721, 63.2-1722, 63.2-1809, and 63.2-1809.1 of the Code of Virginia and to repeal § 63.2-1704 of the Code of Virginia, relating to licensure of family day homes.*

Patrons—Favola and Ebbin

Referred to Committee on Rehabilitation and Social Services

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

**1. That §§ 19.2-389, 19.2-392.02, 63.2-100, 63.2-1506, 63.2-1515, 63.2-1708, 63.2-1720, 63.2-1721, 63.2-1722, 63.2-1809, and 63.2-1809.1 of the Code of Virginia are amended and reenacted as follows:**

**§ 19.2-389. Dissemination of criminal history record information.**

A. Criminal history record information shall be disseminated, whether directly or through an intermediary, only to:

1. Authorized officers or employees of criminal justice agencies, as defined by § 9.1-101, for purposes of the administration of criminal justice and the screening of an employment application or review of employment by a criminal justice agency with respect to its own employees or applicants, and dissemination to the Virginia Parole Board, pursuant to this subdivision, of such information on all state-responsible inmates for the purpose of making parole determinations pursuant to subdivisions 1, 2, 3, and 5 of § 53.1-136 shall include collective dissemination by electronic means every 30 days;

2. Such other individuals and agencies that require criminal history record information to implement a state or federal statute or executive order of the President of the United States or Governor that expressly refers to criminal conduct and contains requirements or exclusions expressly based upon such conduct, except that information concerning the arrest of an individual may not be disseminated to a noncriminal justice agency or individual if an interval of one year has elapsed from the date of the arrest and no disposition of the charge has been recorded and no active prosecution of the charge is pending;

3. Individuals and agencies pursuant to a specific agreement with a criminal justice agency to provide services required for the administration of criminal justice pursuant to that agreement which shall specifically authorize access to data, limit the use of data to purposes for which given, and ensure the security and confidentiality of the data;

4. Individuals and agencies for the express purpose of research, evaluative, or statistical activities pursuant to an agreement with a criminal justice agency that shall specifically authorize access to data, limit the use of data to research, evaluative, or statistical purposes, and ensure the confidentiality and security of the data;

5. Agencies of state or federal government that are authorized by state or federal statute or executive order of the President of the United States or Governor to conduct investigations determining employment suitability or eligibility for security clearances allowing access to classified information;

6. Individuals and agencies where authorized by court order or court rule;

7. Agencies of any political subdivision of the Commonwealth, public transportation companies owned, operated or controlled by any political subdivision, and any public service corporation that operates a public transit system owned by a local government for the conduct of investigations of applicants for employment, permit, or license whenever, in the interest of public welfare or safety, it is necessary to determine under a duly enacted ordinance if the past criminal conduct of a person with a conviction record would be compatible with the nature of the employment, permit, or license under consideration;

7a. Commissions created pursuant to the Transportation District Act of 1964 (§ 33.2-1900 et seq.) of Title 33.2 and their contractors, for the conduct of investigations of individuals who have been offered a position of employment whenever, in the interest of public welfare or safety and as authorized in the Transportation District Act of 1964, it is necessary to determine if the past criminal conduct of a person with a conviction record would be compatible with the nature of the employment under consideration;

8. Public or private agencies when authorized or required by federal or state law or interstate compact to investigate (i) applicants for foster or adoptive parenthood or (ii) any individual, and the adult members of that individual's household, with whom the agency is considering placing a child or from whom the agency is considering removing a child due to abuse or neglect, on an emergency,

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SB818

59 temporary, or permanent basis pursuant to §§ 63.2-901.1 and 63.2-1505, subject to the restriction that  
60 the data shall not be further disseminated to any party other than a federal or state authority or court as  
61 may be required to comply with an express requirement of law;

62 9. To the extent permitted by federal law or regulation, public service companies as defined in  
63 § 56-1, for the conduct of investigations of applicants for employment when such employment involves  
64 personal contact with the public or when past criminal conduct of an applicant would be incompatible  
65 with the nature of the employment under consideration;

66 10. The appropriate authority for purposes of granting citizenship and for purposes of international  
67 travel, including, but not limited to, issuing visas and passports;

68 11. A person requesting a copy of his own criminal history record information as defined in  
69 § 9.1-101 at his cost, except that criminal history record information shall be supplied at no charge to a  
70 person who has applied to be a volunteer with (i) a Virginia affiliate of Big Brothers/Big Sisters of  
71 America; (ii) a volunteer fire company; (iii) the Volunteer Emergency Families for Children; (iv) any  
72 affiliate of Prevent Child Abuse, Virginia; (v) any Virginia affiliate of Compeer; or (vi) any board  
73 member or any individual who has been offered membership on the board of a Crime Stoppers, Crime  
74 Solvers or Crime Line program as defined in § 15.2-1713.1;

75 12. Administrators and board presidents of and applicants for licensure ~~or registration~~ as a child  
76 welfare agency as defined in § 63.2-100 for dissemination to the Commissioner of Social Services'  
77 representative pursuant to § 63.2-1702 for the conduct of investigations with respect to employees of and  
78 volunteers at such facilities, caretakers, and other adults living in family day ~~care~~ homes ~~or homes~~  
79 ~~approved by family day care systems~~, and foster and adoptive parent applicants of private child-placing  
80 agencies, pursuant to §§ 63.2-1719, 63.2-1720, and 63.2-1721, subject to the restriction that the data  
81 shall not be further disseminated by the facility or agency to any party other than the data subject, the  
82 Commissioner of Social Services' representative or a federal or state authority or court as may be  
83 required to comply with an express requirement of law for such further dissemination;

84 13. The school boards of the Commonwealth for the purpose of screening individuals who are  
85 offered or who accept public school employment and those current school board employees for whom a  
86 report of arrest has been made pursuant to § 19.2-83.1;

87 14. The Virginia Lottery for the conduct of investigations as set forth in the Virginia Lottery Law  
88 (§ 58.1-4000 et seq.), and the Department of Agriculture and Consumer Services for the conduct of  
89 investigations as set forth in Article 1.1:1 (§ 18.2-340.15 et seq.) of Chapter 8 of Title 18.2;

90 15. Licensed nursing homes, hospitals and home care organizations for the conduct of investigations  
91 of applicants for compensated employment in licensed nursing homes pursuant to § 32.1-126.01, hospital  
92 pharmacies pursuant to § 32.1-126.02, and home care organizations pursuant to § 32.1-162.9:1, subject to  
93 the limitations set out in subsection E;

94 16. ~~Licensed homes for adults, licensed district homes for adults, assisted living facilities and~~  
95 ~~licensed adult day care centers~~ for the conduct of investigations of applicants for compensated  
96 employment in ~~licensed homes for adults pursuant to § 63.2-1720, in licensed district homes for adults~~  
97 ~~pursuant to § 63.1-189.1, and in licensed assisted living facilities and licensed adult day care centers~~  
98 ~~pursuant to § 63.2-1720~~, subject to the limitations set out in subsection F;

99 17. The Alcoholic Beverage Control Board for the conduct of investigations as set forth in  
100 § 4.1-103.1;

101 18. The State Board of Elections and authorized officers and employees thereof and general registrars  
102 appointed pursuant to § 24.2-110 in the course of conducting necessary investigations with respect to  
103 voter registration, limited to any record of felony convictions;

104 19. The Commissioner of Behavioral Health and Developmental Services for those individuals who  
105 are committed to the custody of the Commissioner pursuant to §§ 19.2-169.2, 19.2-169.6, 19.2-182.2,  
106 19.2-182.3, 19.2-182.8, and 19.2-182.9 for the purpose of placement, evaluation, and treatment planning;

107 20. Any alcohol safety action program certified by the Commission on the Virginia Alcohol Safety  
108 Action Program for (i) assessments of habitual offenders under § 46.2-360, (ii) interventions with first  
109 offenders under § 18.2-251, or (iii) services to offenders under § 18.2-51.4, 18.2-266, or 18.2-266.1;

110 21. Residential facilities for juveniles regulated or operated by the Department of Social Services, the  
111 Department of Education, or the Department of Behavioral Health and Developmental Services for the  
112 purpose of determining applicants' fitness for employment or for providing volunteer or contractual  
113 services;

114 22. The Department of Behavioral Health and Developmental Services and facilities operated by the  
115 Department for the purpose of determining an individual's fitness for employment pursuant to  
116 departmental instructions;

117 23. Pursuant to § 22.1-296.3, the governing boards or administrators of private or religious  
118 elementary or secondary schools which are accredited by a statewide accrediting organization  
119 recognized, prior to January 1, 1996, by the State Board of Education or a private organization  
120 coordinating such records information on behalf of such governing boards or administrators pursuant to

121 a written agreement with the Department of State Police;

122 24. Public and nonprofit private colleges and universities for the purpose of screening individuals  
123 who are offered or accept employment;

124 25. Members of a threat assessment team established by a public institution of higher education  
125 pursuant to § 23-9.2:10 or by a private nonprofit institution of higher education, for the purpose of  
126 assessing or intervening with an individual whose behavior may present a threat to safety; however, no  
127 member of a threat assessment team shall redisclose any criminal history record information obtained  
128 pursuant to this section or otherwise use any record of an individual beyond the purpose that such  
129 disclosure was made to the threat assessment team;

130 26. Executive directors of community services boards or the personnel director serving the  
131 community services board for the purpose of determining an individual's fitness for employment  
132 pursuant to §§ 37.2-506 and 37.2-607;

133 27. Executive directors of behavioral health authorities as defined in § 37.2-600 for the purpose of  
134 determining an individual's fitness for employment pursuant to §§ 37.2-506 and 37.2-607;

135 28. The Commissioner of Social Services for the purpose of locating persons who owe child support  
136 or who are alleged in a pending paternity proceeding to be a putative father, provided that only the  
137 name, address, demographics and social security number of the data subject shall be released;

138 29. Authorized officers or directors of agencies licensed pursuant to Article 2 (§ 37.2-403 et seq.) of  
139 Chapter 4 of Title 37.2 by the Department of Behavioral Health and Developmental Services for the  
140 purpose of determining if any applicant who accepts employment in any direct care position has been  
141 convicted of a crime that affects his fitness to have responsibility for the safety and well-being of  
142 individuals with mental illness, intellectual disability, or substance abuse pursuant to §§ 37.2-416,  
143 37.2-506, and 37.2-607;

144 30. The Commissioner of the Department of Motor Vehicles, for the purpose of evaluating applicants  
145 for and holders of a motor carrier certificate or license subject to the provisions of Chapters 20  
146 (§ 46.2-2000 et seq.) and 21 (§ 46.2-2100 et seq.) of Title 46.2;

147 31. The chairmen of the Committees for Courts of Justice of the Senate or the House of Delegates  
148 for the purpose of determining if any person being considered for election to any judgeship has been  
149 convicted of a crime;

150 32. Heads of state agencies in which positions have been identified as sensitive for the purpose of  
151 determining an individual's fitness for employment in positions designated as sensitive under Department  
152 of Human Resource Management policies developed pursuant to § 2.2-1201.1. Dissemination of criminal  
153 history record information to the agencies shall be limited to those positions generally described as  
154 directly responsible for the health, safety and welfare of the general populace or protection of critical  
155 infrastructures;

156 33. The Office of the Attorney General, for all criminal justice activities otherwise permitted under  
157 subdivision A 1 and for purposes of performing duties required by the Civil Commitment of Sexually  
158 Violent Predators Act (§ 37.2-900 et seq.);

159 34. Shipyards, to the extent permitted by federal law or regulation, engaged in the design,  
160 construction, overhaul, or repair of nuclear vessels for the United States Navy, including their subsidiary  
161 companies, for the conduct of investigations of applications for employment or for access to facilities,  
162 by contractors, leased laborers, and other visitors;

163 35. Any employer of individuals whose employment requires that they enter the homes of others, for  
164 the purpose of screening individuals who apply for, are offered, or have accepted such employment;

165 36. Public agencies when and as required by federal or state law to investigate (i) applicants as  
166 providers of adult foster care and home-based services or (ii) any individual with whom the agency is  
167 considering placing an adult on an emergency, temporary, or permanent basis pursuant to § 63.2-1601.1,  
168 subject to the restriction that the data shall not be further disseminated by the agency to any party other  
169 than a federal or state authority or court as may be required to comply with an express requirement of  
170 law for such further dissemination, subject to limitations set out in subsection G;

171 37. The Department of Medical Assistance Services, or its designee, for the purpose of screening  
172 individuals who, through contracts, subcontracts, or direct employment, volunteer, apply for, are offered,  
173 or have accepted a position related to the provision of transportation services to enrollees in the  
174 Medicaid Program or the Family Access to Medical Insurance Security (FAMIS) Program, or any other  
175 program administered by the Department of Medical Assistance Services;

176 38. The State Corporation Commission for the purpose of investigating individuals who are current  
177 or proposed members, senior officers, directors, and principals of an applicant or person licensed under  
178 Chapter 16 (§ 6.2-1600 et seq.) or Chapter 19 (§ 6.2-1900 et seq.) of Title 6.2. Notwithstanding any  
179 other provision of law, if an application is denied based in whole or in part on information obtained  
180 from the Central Criminal Records Exchange pursuant to Chapter 16 or 19 of Title 6.2, the  
181 Commissioner of Financial Institutions or his designee may disclose such information to the applicant or

182 its designee;

183 39. The Department of Professional and Occupational Regulation for the purpose of investigating  
184 individuals for initial licensure pursuant to § 54.1-2106.1;

185 40. The Department for Aging and Rehabilitative Services and the Department for the Blind and  
186 Vision Impaired for the purpose of evaluating an individual's fitness for various types of employment  
187 and for the purpose of delivering comprehensive vocational rehabilitation services pursuant to Article 11  
188 (§ 51.5-170 et seq.) of Chapter 14 of Title 51.5 that will assist the individual in obtaining employment;

189 41. Bail bondsmen, in accordance with the provisions of § 19.2-120;

190 42. The State Treasurer for the purpose of determining whether a person receiving compensation for  
191 wrongful incarceration meets the conditions for continued compensation under § 8.01-195.12;

192 43. The Department of Social Services and directors of local departments of social services for the  
193 purpose of screening individuals seeking to enter into a contract with the Department of Social Services  
194 or a local department of social services for the provision of child care services for which child care  
195 subsidy payments may be provided; and

196 44. Other entities as otherwise provided by law.

197 Upon an ex parte motion of a defendant in a felony case and upon the showing that the records  
198 requested may be relevant to such case, the court shall enter an order requiring the Central Criminal  
199 Records Exchange to furnish the defendant, as soon as practicable, copies of any records of persons  
200 designated in the order on whom a report has been made under the provisions of this chapter.

201 Notwithstanding any other provision of this chapter to the contrary, upon a written request sworn to  
202 before an officer authorized to take acknowledgments, the Central Criminal Records Exchange, or the  
203 criminal justice agency in cases of offenses not required to be reported to the Exchange, shall furnish a  
204 copy of conviction data covering the person named in the request to the person making the request;  
205 however, such person on whom the data is being obtained shall consent in writing, under oath, to the  
206 making of such request. A person receiving a copy of his own conviction data may utilize or further  
207 disseminate that data as he deems appropriate. In the event no conviction data is maintained on the data  
208 subject, the person making the request shall be furnished at his cost a certification to that effect.

209 B. Use of criminal history record information disseminated to noncriminal justice agencies under this  
210 section shall be limited to the purposes for which it was given and may not be disseminated further.

211 C. No criminal justice agency or person shall confirm the existence or nonexistence of criminal  
212 history record information for employment or licensing inquiries except as provided by law.

213 D. Criminal justice agencies shall establish procedures to query the Central Criminal Records  
214 Exchange prior to dissemination of any criminal history record information on offenses required to be  
215 reported to the Central Criminal Records Exchange to ensure that the most up-to-date disposition data is  
216 being used. Inquiries of the Exchange shall be made prior to any dissemination except in those cases  
217 where time is of the essence and the normal response time of the Exchange would exceed the necessary  
218 time period. A criminal justice agency to whom a request has been made for the dissemination of  
219 criminal history record information that is required to be reported to the Central Criminal Records  
220 Exchange may direct the inquirer to the Central Criminal Records Exchange for such dissemination.  
221 Dissemination of information regarding offenses not required to be reported to the Exchange shall be  
222 made by the criminal justice agency maintaining the record as required by § 15.2-1722.

223 E. Criminal history information provided to licensed nursing homes, hospitals and to home care  
224 organizations pursuant to subdivision A 15 shall be limited to the convictions on file with the Exchange  
225 for any offense specified in §§ 32.1-126.01, 32.1-126.02, and 32.1-162.9:1.

226 F. Criminal history information provided to licensed assisted living facilities, ~~licensed district homes~~  
227 ~~for adults~~, and licensed adult day care centers pursuant to subdivision A 16 shall be limited to the  
228 convictions on file with the Exchange for any offense specified in ~~§ 63.1-189.1 or~~ 63.2-1720.

229 G. Criminal history information provided to public agencies pursuant to subdivision A 36 shall be  
230 limited to the convictions on file with the Exchange for any offense specified in § 63.2-1719.

231 H. Upon receipt of a written request from an employer or prospective employer, the Central Criminal  
232 Records Exchange, or the criminal justice agency in cases of offenses not required to be reported to the  
233 Exchange, shall furnish at the employer's cost a copy of conviction data covering the person named in  
234 the request to the employer or prospective employer making the request, provided that the person on  
235 whom the data is being obtained has consented in writing to the making of such request and has  
236 presented a photo-identification to the employer or prospective employer. In the event no conviction data  
237 is maintained on the person named in the request, the requesting employer or prospective employer shall  
238 be furnished at his cost a certification to that effect. The criminal history record search shall be  
239 conducted on forms provided by the Exchange.

240 **§ 19.2-392.02. National criminal background checks by businesses and organizations regarding**  
241 **employees or volunteers providing care to children or the elderly or disabled.**

242 A. For purposes of this section:

243 "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; *or* 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; *or* 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~~, 63.2-1720, 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; *or* 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, which is maintained by the Federal Bureau of Investigation and is based on fingerprints and other methods of identification, and shall access the Central Criminal Records Exchange maintained by the Department. If the Department receives a background report lacking disposition data, the Department shall conduct research in whatever state and local record-keeping systems are available in order to obtain complete data. The Department shall make reasonable efforts to respond to a qualified entity's inquiry within 15 business days.

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

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

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

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

**§ 63.2-100. Definitions.**

As used in this title, unless the context requires a different meaning:

"Abused or neglected child" means any child less than 18 years of age:

1. Whose parents or other person responsible for his care creates or inflicts, threatens to create or inflict, or allows to be created or inflicted upon such child a physical or mental injury by other than accidental means, or creates a substantial risk of death, disfigurement, or impairment of bodily or mental functions, including, but not limited to, a child who is with his parent or other person responsible for his care either (i) during the manufacture or attempted manufacture of a Schedule I or II controlled substance, or (ii) during the unlawful sale of such substance by that child's parents or other person responsible for his care, where such manufacture, or attempted manufacture or unlawful sale would constitute a felony violation of § 18.2-248;

2. Whose parents or other person responsible for his care neglects or refuses to provide care necessary for his health. However, no child who in good faith is under treatment solely by spiritual means through prayer in accordance with the tenets and practices of a recognized church or religious denomination shall for that reason alone be considered to be an abused or neglected child. Further, a decision by parents who have legal authority for the child or, in the absence of parents with legal authority for the child, any person with legal authority for the child, who refuses a particular medical treatment for a child with a life-threatening condition shall not be deemed a refusal to provide necessary care if (i) such decision is made jointly by the parents or other person with legal authority and the child; (ii) the child has reached 14 years of age and is sufficiently mature to have an informed opinion on the subject of his medical treatment; (iii) the parents or other person with legal authority and the child have considered alternative treatment options; and (iv) the parents or other person with legal authority and the child believe in good faith that such decision is in the child's best interest. Nothing in this subdivision shall be construed to limit the provisions of § 16.1-278.4;

3. Whose parents or other person responsible for his care abandons such child;

4. Whose parents or other person responsible for his care commits or allows to be committed any act of sexual exploitation or any sexual act upon a child in violation of the law;

5. Who is without parental care or guardianship caused by the unreasonable absence or the mental or physical incapacity of the child's parent, guardian, legal custodian or other person standing in loco parentis; or

6. Whose parents or other person responsible for his care creates a substantial risk of physical or mental injury by knowingly leaving the child alone in the same dwelling, including an apartment as defined in § 55-79.2, with a person to whom the child is not related by blood or marriage and who the parent or other person responsible for his care knows has been convicted of an offense against a minor for which registration is required as a violent sexual offender pursuant to § 9.1-902.

If a civil proceeding under this title is based solely on the parent having left the child at a hospital or rescue squad, it shall be an affirmative defense that such parent safely delivered the child to a hospital that provides 24-hour emergency services or to an attended rescue squad that employs emergency medical technicians, within 14 days of the child's birth. For purposes of terminating parental rights pursuant to § 16.1-283 and placement for adoption, the court may find such a child is a neglected child upon the ground of abandonment.

"Adoptive home" means any family home selected and approved by a parent, local board or a licensed child-placing agency for the placement of a child with the intent of adoption.

"Adoptive placement" means arranging for the care of a child who is in the custody of a child-placing agency in an approved home for the purpose of adoption.

"Adult abuse" means the willful infliction of physical pain, injury or mental anguish or unreasonable confinement of an adult.

"Adult day care center" means any facility that is either operated for profit or that desires licensure and that provides supplementary care and protection during only a part of the day to four or more aged, infirm or disabled adults who reside elsewhere, except (i) a facility or portion of a facility licensed by the State Board of Health or the Department of Behavioral Health and Developmental Services, and (ii) the home or residence of an individual who cares for only persons related to him by blood or marriage. Included in this definition are any two or more places, establishments or institutions owned, operated or controlled by a single entity and providing such supplementary care and protection to a combined total of four or more aged, infirm or disabled adults.

"Adult exploitation" means the illegal use of an incapacitated adult or his resources for another's profit or advantage.

"Adult foster care" means room and board, supervision, and special services to an adult who has a physical or mental condition. Adult foster care may be provided by a single provider for up to three adults.

"Adult neglect" means that an adult is living under such circumstances that he is not able to provide for himself or is not being provided services necessary to maintain his physical and mental health and that the failure to receive such necessary services impairs or threatens to impair his well-being. However, no adult shall be considered neglected solely on the basis that such adult is receiving religious nonmedical treatment or religious nonmedical nursing care in lieu of medical care, provided that such treatment or care is performed in good faith and in accordance with the religious practices of the adult and there is a written or oral expression of consent by that adult.

"Adult protective services" means services provided by the local department that are necessary to protect an adult from abuse, neglect or exploitation.

"Assisted living care" means a level of service provided by an assisted living facility for adults who may have physical or mental impairments and require at least a moderate level of assistance with activities of daily living.

"Assisted living facility" means any congregate residential setting that provides or coordinates personal and health care services, 24-hour supervision, and assistance (scheduled and unscheduled) for the maintenance or care of four or more adults who are aged, infirm or disabled and who are cared for in a primarily residential setting, except (i) a facility or portion of a facility licensed by the State Board of Health or the Department of Behavioral Health and Developmental Services, but including any portion of such facility not so licensed; (ii) the home or residence of an individual who cares for or maintains only persons related to him by blood or marriage; (iii) a facility or portion of a facility serving infirm or disabled persons between the ages of 18 and 21, or 22 if enrolled in an educational program for the handicapped pursuant to § 22.1-214, when such facility is licensed by the Department as a children's residential facility under Chapter 17 (§ 63.2-1700 et seq.), but including any portion of the facility not so licensed; and (iv) any housing project for persons 62 years of age or older or the disabled that provides no more than basic coordination of care services and is funded by the U.S. Department of Housing and Urban Development, by the U.S. Department of Agriculture, or by the Virginia Housing Development Authority. Included in this definition are any two or more places, establishments or institutions owned or operated by a single entity and providing maintenance or care to a combined total of four or more aged, infirm or disabled adults. Maintenance or care means the protection, general supervision and oversight of the physical and mental well-being of an aged, infirm or disabled individual.

"Auxiliary grants" means cash payments made to certain aged, blind or disabled individuals who receive benefits under Title XVI of the Social Security Act, as amended, or would be eligible to receive these benefits except for excess income.

"Birth family" or "birth sibling" means the child's biological family or biological sibling.

"Birth parent" means the child's biological parent and, for purposes of adoptive placement, means parent(s) by previous adoption.

"Board" means the State Board of Social Services.

"Child" means any natural person under 18 years of age.

"Child day center" means a child day program offered to (i) two or more children under the age of 13 in a facility that is not the residence of the provider or of any of the children in care or (ii) 13 or more children at any location.

"Child day program" means a regularly operating service arrangement for children where, during the absence of a parent or guardian, a person or organization has agreed to assume responsibility for the supervision, protection, and well-being of a child under the age of 13 for less than a 24-hour period.

"Child-placing agency" means any person who places children in foster homes, adoptive homes or independent living arrangements pursuant to § 63.2-1819 or a local board that places children in foster homes or adoptive homes pursuant to §§ 63.2-900, 63.2-903, and 63.2-1221. Officers, employees, or agents of the Commonwealth, or any locality acting within the scope of their authority as such, who serve as or maintain a child-placing agency, shall not be required to be licensed.

"Child-protective services" means the identification, receipt and immediate response to complaints and reports of alleged child abuse or neglect for children under 18 years of age. It also includes assessment, and arranging for and providing necessary protective and rehabilitative services for a child and his family when the child has been found to have been abused or neglected or is at risk of being abused or neglected.

"Child support services" means any civil, criminal or administrative action taken by the Division of Child Support Enforcement to locate parents; establish paternity; and establish, modify, enforce, or collect child support, or child and spousal support.

"Child-welfare agency" means a child day center, child-placing agency, children's residential facility, family day home, family day system, or independent foster home.

"Children's residential facility" means any facility, child-caring institution, or group home that is maintained for the purpose of receiving children separated from their parents or guardians for full-time

care, maintenance, protection and guidance, or for the purpose of providing independent living services to persons between 18 and 21 years of age who are in the process of transitioning out of foster care. Children's residential facility shall not include:

1. A licensed or accredited educational institution whose pupils, in the ordinary course of events, return annually to the homes of their parents or guardians for not less than two months of summer vacation;

2. An establishment required to be licensed as a summer camp by § 35.1-18; and

3. A licensed or accredited hospital legally maintained as such.

"Commissioner" means the Commissioner of the Department, his designee or authorized representative.

"Department" means the State Department of Social Services.

"Department of Health and Human Services" means the Department of Health and Human Services of the United States government or any department or agency thereof that may hereafter be designated as the agency to administer the Social Security Act, as amended.

"Disposable income" means that part of the income due and payable of any individual remaining after the deduction of any amount required by law to be withheld.

"Energy assistance" means benefits to assist low-income households with their home heating and cooling needs, including, but not limited to, purchase of materials or substances used for home heating, repair or replacement of heating equipment, emergency intervention in no-heat situations, purchase or repair of cooling equipment, and payment of electric bills to operate cooling equipment, in accordance with § 63.2-805, or provided under the Virginia Energy Assistance Program established pursuant to the Low-Income Home Energy Assistance Act of 1981 (Title XXVI of Public Law 97-35), as amended.

"Family day home" means a child day program offered in the residence of the provider or the home of any of the children in care for one through 12 children under the age of 13, ~~exclusive of including~~ the provider's own children and any children who reside in the home, when at least one child receives care for compensation. The provider of a licensed ~~or registered~~ family day home shall disclose to the parents or guardians of children in their care the percentage of time per week that persons other than the provider will care for the children. ~~Family day homes serving six through 12 children, exclusive of the provider's own children and any children who reside in the home, shall be licensed. However, no family day home shall care for more than four children under the age of two, including the provider's own children and any children who reside in the home, unless the family day home is licensed or voluntarily registered.~~ However, a "family day home ~~where~~" *does not include a child day program provided in the residence of the provider or the home of any of the children in care when all of the children in care are all grandchildren of the provider shall not be required to be licensed.*

"Family day system" means any person who approves family day homes as members of its system; who refers children to available family day homes in that system; and who, through contractual arrangement, may provide central administrative functions including, but not limited to, training of operators of member homes; technical assistance and consultation to operators of member homes; ~~inspection, supervision, monitoring, and evaluation of member homes;~~ and referral of children to available health and social services.

"Foster care placement" means placement of a child through (i) an agreement between the parents or guardians and the local board where legal custody remains with the parents or guardians or (ii) an entrustment or commitment of the child to the local board or licensed child-placing agency.

"Foster home" means the place of residence of any natural person in which any child, other than a child by birth or adoption of such person, resides as a member of the household.

"General relief" means money payments and other forms of relief made to those persons mentioned in § 63.2-802 in accordance with the regulations of the Board and reimbursable in accordance with § 63.2-401.

"Independent foster home" means a private family home in which any child, other than a child by birth or adoption of such person, resides as a member of the household and has been placed therein independently of a child-placing agency except (i) a home in which are received only children related by birth or adoption of the person who maintains such home and children of personal friends of such person and (ii) a home in which is received a child or children committed under the provisions of subdivision A 4 of § 16.1-278.2, subdivision 6 of § 16.1-278.4, or subdivision A 13 of § 16.1-278.8.

"Independent living" means a planned program of services designed to assist a child age 16 and over and persons who are former foster care children between the ages of 18 and 21 in transitioning to self-sufficiency.

"Independent living arrangement" means placement of a child at least 16 years of age who is in the custody of a local board or licensed child-placing agency and has been placed by the local board or licensed child-placing agency in a living arrangement in which he does not have daily substitute parental supervision.

"Independent living services" means services and activities provided to a child in foster care 14 years



of age or older who was committed or entrusted to a local board of social services, child welfare agency, or private child-placing agency. "Independent living services" may also mean services and activities provided to a person who (i) was in foster care on his 18th birthday and has not yet reached the age of 21 years or (ii) is at least 18 years of age but who has not yet reached 21 years of age and who, immediately prior to his commitment to the Department of Juvenile Justice, was in the custody of a local board of social services. Such services shall include counseling, education, housing, employment, and money management skills development, access to essential documents, and other appropriate services to help children or persons prepare for self-sufficiency.

"Independent physician" means a physician who is chosen by the resident of the assisted living facility and who has no financial interest in the assisted living facility, directly or indirectly, as an owner, officer, or employee or as an independent contractor with the residence.

"Intercountry placement" means the arrangement for the care of a child in an adoptive home or foster care placement into or out of the Commonwealth by a licensed child-placing agency, court, or other entity authorized to make such placements in accordance with the laws of the foreign country under which it operates.

"Interstate placement" means the arrangement for the care of a child in an adoptive home, foster care placement or in the home of the child's parent or with a relative or nonagency guardian, into or out of the Commonwealth, by a child-placing agency or court when the full legal right of the child's parent or nonagency guardian to plan for the child has been voluntarily terminated or limited or severed by the action of any court.

"Kinship care" means the full-time care, nurturing, and protection of children by relatives.

"Local board" means the local board of social services representing one or more counties or cities.

"Local department" means the local department of social services of any county or city in this Commonwealth.

"Local director" means the director or his designated representative of the local department of the city or county.

"Merit system plan" means those regulations adopted by the Board in the development and operation of a system of personnel administration meeting requirements of the federal Office of Personnel Management.

"Parental placement" means locating or effecting the placement of a child or the placing of a child in a family home by the child's parent or legal guardian for the purpose of foster care or adoption.

"Public assistance" means Temporary Assistance for Needy Families (TANF); auxiliary grants to the aged, blind and disabled; medical assistance; energy assistance; food stamps; employment services; child care; and general relief.

"Qualified assessor" means an entity contracting with the Department of Medical Assistance Services to perform nursing facility pre-admission screening or to complete the uniform assessment instrument for a home and community-based waiver program, including an independent physician contracting with the Department of Medical Assistance Services to complete the uniform assessment instrument for residents of assisted living facilities, or any hospital that has contracted with the Department of Medical Assistance Services to perform nursing facility pre-admission screenings.

"Registered family day home" means any family day home that has met the standards for voluntary registration for such homes pursuant to regulations adopted by the Board and that has obtained a certificate of registration from the Commissioner.

"Residential living care" means a level of service provided by an assisted living facility for adults who may have physical or mental impairments and require only minimal assistance with the activities of daily living. The definition of "residential living care" includes the services provided by independent living facilities that voluntarily become licensed.

"Social services" means foster care, adoption, adoption assistance, child-protective services, domestic violence services, or any other services program implemented in accordance with regulations adopted by the Board. Social services also includes adult services pursuant to Article 4 (§ 51.5-144 et seq.) of Chapter 14 of Title 51.5 and adult protective services pursuant to Article 5 (§ 51.5-148) of Chapter 14 of Title 51.5 provided by local departments of social services in accordance with regulations and under the supervision of the Commissioner for Aging and Rehabilitative Services.

"Special order" means an order imposing an administrative sanction issued to any party licensed pursuant to this title by the Commissioner that has a stated duration of not more than 12 months. A special order shall be considered a case decision as defined in § 2.2-4001.

"Temporary Assistance for Needy Families" or "TANF" means the program administered by the Department through which a relative can receive monthly cash assistance for the support of his eligible children.

"Temporary Assistance for Needy Families-Unemployed Parent" or "TANF-UP" means the Temporary Assistance for Needy Families program for families in which both natural or adoptive

551 parents of a child reside in the home and neither parent is exempt from the Virginia Initiative for  
552 Employment Not Welfare (VIEW) participation under § 63.2-609.

553 "Title IV-E Foster Care" means a federal program authorized under §§ 472 and 473 of the Social  
554 Security Act, as amended, and administered by the Department through which foster care is provided on  
555 behalf of qualifying children.

556 **§ 63.2-1506. Family assessments by local departments.**

557 A. A family assessment requires the collection of information necessary to determine:

558 1. The immediate safety needs of the child;

559 2. The protective and rehabilitative services needs of the child and family that will deter abuse or  
560 neglect;

561 3. Risk of future harm to the child; and

562 4. Alternative plans for the child's safety if protective and rehabilitative services are indicated and the  
563 family is unable or unwilling to participate in services.

564 B. When a local department has been designated as a child-protective services differential response  
565 system participant by the Department pursuant to § 63.2-1504 and responds to the report or complaint  
566 by conducting a family assessment, the local department shall:

567 1. Conduct an immediate family assessment and, if the report or complaint was based upon one of  
568 the factors specified in subsection B of § 63.2-1509, the local department may file a petition pursuant  
569 to § 16.1-241.3;

570 2. Immediately contact the subject of the report and the family of the child alleged to have been  
571 abused or neglected and give each a written and an oral explanation of the family assessment procedure.  
572 The family assessment shall be in writing and shall be completed in accordance with Board regulation;

573 3. Complete the family assessment within forty-five days and transmit a report to such effect to the  
574 Department and to the person who is the subject of the family assessment. However, upon written  
575 justification by the local department, the family assessment may be extended, not to exceed a total of  
576 sixty days;

577 4. Consult with the family to arrange for necessary protective and rehabilitative services to be  
578 provided to the child and his family. Families have the option of declining the services offered as a  
579 result of the family assessment. If the family declines the services, the case shall be closed unless the  
580 local department determines that sufficient cause exists to redetermine the case as one that needs to be  
581 investigated. In no instance shall a case be redetermined as an investigation solely because the family  
582 declines services;

583 5. Petition the court for services deemed necessary;

584 6. Make no disposition of founded or unfounded for reports in which a family assessment is  
585 completed. Reports in which a family assessment is completed shall not be entered into the central  
586 registry contained in § 63.2-1515; and

587 7. Commence an immediate investigation, if at any time during the completion of the family  
588 assessment, the local department determines that an investigation is required.

589 C. When a local department has been designated as a child-protective services differential response  
590 agency by the Department, the local department may investigate any report of child abuse or neglect,  
591 but the following valid reports of child abuse or neglect shall be investigated: (i) sexual abuse, (ii) child  
592 fatality, (iii) abuse or neglect resulting in serious injury as defined in § 18.2-371.1, (iv) child has been  
593 taken into the custody of the local department, or (v) cases involving a caretaker at a state-licensed child  
594 day center, religiously exempt child day center, licensed, ~~registered or approved~~ family day home,  
595 private or public school, or hospital or any institution.

596 **§ 63.2-1515. Central registry; disclosure of information.**

597 The central registry shall contain such information as shall be prescribed by Board regulation;  
598 however, when the founded case of abuse or neglect does not name the parents or guardians of the child  
599 as the abuser or neglecter, and the abuse or neglect occurred in a licensed or unlicensed child day  
600 center, a licensed, ~~registered or approved~~ family day home, a private or public school, or a children's  
601 residential facility, the child's name shall not be entered on the registry without consultation with and  
602 permission of the parents or guardians. If a child's name currently appears on the registry without  
603 consultation with and permission of the parents or guardians for a founded case of abuse and neglect  
604 that does not name the parents or guardians of the child as the abuser or neglecter, such parents or  
605 guardians may have the child's name removed by written request to the Department. The information  
606 contained in the central registry shall not be open to inspection by the public. However, appropriate  
607 disclosure may be made in accordance with Board regulations.

608 The Department shall respond to requests for a search of the central registry made by (i) local  
609 departments and (ii) local school boards regarding applicants for employment, pursuant to § 22.1-296.4,  
610 in cases where there is no match within the central registry within 10 business days of receipt of such  
611 requests. In cases where there is a match within the central registry regarding applicants for  
612 employment, the Department shall respond to requests made by local departments and local school

boards within 30 business days of receipt of such requests. The response may be by first-class mail or facsimile transmission.

Any central registry check of a person who has applied to be a volunteer with a (a) Virginia affiliate of Big Brothers/Big Sisters of America, (b) Virginia affiliate of Compeer, (c) Virginia affiliate of Childhelp USA/rs, (d) volunteer fire company or volunteer rescue squad, or (e) with a court-appointed special advocate program pursuant to § 9.1-153 shall be conducted at no charge.

**§ 63.2-1708. Records and reports.**

Every licensed assisted living facility, licensed adult day care center, *and* licensed ~~or registered~~ child welfare agency; ~~or family day home approved by a family day system~~ shall keep such records and make such reports to the Commissioner as he may require. The forms to be used in the making of such reports shall be prescribed and furnished by the Commissioner.

**§ 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 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, if 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

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* ~~or 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* ~~or 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. However, no employee shall be permitted to work in a position that involves direct contact with a person or child receiving services until an original criminal record clearance or original criminal history record has been received, unless such person works under the direct supervision of another employee for whom a background check has been completed in accordance with the requirements of this section. 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 or the Central Criminal Records Exchange or both to the applicant.

G. No volunteer who has an offense as defined in § 63.2-1719 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 (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 as child welfare agency; background check of foster or adoptive parents approved by child-placing agencies; 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

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, 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; ~~or~~ (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 a child welfare agency; be alone with, in control of, or supervising one or more children receiving services from a child welfare agency; or be permitted to work in a position that involves direct contact with a person receiving services without first having completed background checks pursuant to subsection B, unless such person is directly supervised by another person for whom a background check has been completed in accordance with the requirements of this section.

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. 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.

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. 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.

**§ 63.2-1722. Revocation or denial of renewal based on background checks; failure to obtain background check.**

A. The Commissioner may revoke or deny renewal of a license ~~or registration~~ of a child welfare agency, an assisted living facility, or *an* adult day care center, *and* a child-placing agency may revoke the approval of a foster home, ~~and a family day system may revoke the approval of a family day home~~ if the assisted living facility, adult day care center, *or* child welfare agency, ~~foster home or approved family day home~~ has knowledge that a person specified in §§ 63.2-1720 and 63.2-1721 required to have a background check has an 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 the exceptions in subsection B of § 63.2-1720 and subsection E of § 63.2-1721, and the facility, center or agency refuses to separate such person from employment or service.

B. Failure to obtain background checks pursuant to §§ 63.2-1720 and 63.2-1721 shall be grounds for denial or revocation of a license, ~~registration or approval~~. No violation shall occur if the assisted living facility, adult day care center, or child welfare agency has applied for the background check timely and it has not been obtained due to administrative delay. The provisions of this section shall be enforced by the Department.

B. The Board shall adopt regulations to implement the provisions of this section.

**§ 63.2-1809. Regulated child day programs to require proof of child identity and age; report to law-enforcement agencies.**

A. Upon enrollment of a child in a regulated child day program, such child day program shall require information from the person enrolling the child regarding previous child day care and schools attended by the child. The regulated child day program shall also require that the person enrolling the child present the regulated child day program with the proof of the child's identity and age. The proof of identity, if reproduced or retained by the child day program or both, shall be destroyed upon the conclusion of the requisite period of retention. The procedures for the disposal, physical destruction or other disposition of the proof of identity containing social security numbers shall include all reasonable steps to destroy such documents by (i) shredding, (ii) erasing, or (iii) otherwise modifying the social security numbers in those records to make them unreadable or indecipherable by any means.

B. For purposes of this section:

"Proof of identity" means a certified copy of a birth certificate or other reliable proof of the child's identity and age.

"Regulated child day program" is one in which a person or organization has agreed to assume

797 responsibility for the supervision, protection, and well-being of a child under the age of 13 for less than  
798 a 24-hour period that is licensed pursuant to § 63.2-1701, ~~voluntarily registered pursuant to § 63.2-1704,~~  
799 certified as a preschool or nursery school program pursuant to § 63.2-1717, ~~or~~ exempted from licensure  
800 as a child day center operated by a religious institution pursuant to § 63.2-1716; ~~or approved as a family~~  
801 ~~day home by a licensed family day system.~~

802 C. If the parent, guardian, or other person enrolling the child in a regulated child day program for  
803 longer than two consecutive days or other pattern of regular attendance does not provide the information  
804 required by subsection A within seven business days of initial attendance, such child day program shall  
805 immediately notify the local law-enforcement agency in its jurisdiction of such failure to provide the  
806 requested information.

807 D. Upon receiving notification of such failure to provide the information required by subsection A,  
808 the law-enforcement agency shall, if available information warrants, immediately submit an inquiry to  
809 the Missing Children Information Clearinghouse and, with the assistance of the local department, if  
810 available information warrants, conduct the appropriate investigation to determine whether the child is  
811 missing.

812 E. The Board shall adopt regulations to implement the provisions of this act.

813 **§ 63.2-1809.1. Insurance notice requirements for family day homes; civil penalty.**

814 A. Any person who operates a ~~family day home approved by a licensed family day system, a~~  
815 ~~licensed family day home, or a voluntarily registered family day home~~ shall furnish a written notice to  
816 the parent or guardian of each child under the care of the family day home, ~~which~~ *that* states whether  
817 there is liability insurance in force to cover the operation of the family day home; provided, that no  
818 person under this section shall state that liability insurance is in place to cover the operation of the  
819 family day home; unless there is a minimum amount of coverage as established by the Department.

820 B. Each parent or guardian shall acknowledge, in writing, receipt of such notice. In the event there is  
821 no longer insurance coverage, the person operating the family day home shall (i) notify each parent or  
822 guardian within 10 business days after the effective date of the change and (ii) obtain written  
823 acknowledgment of such notice. A copy of an acknowledgment required under this section shall be  
824 maintained on file at the family day home at all times while the child attends the family day home and  
825 for 12 months after the child's last date of attendance.

826 C. Any person who fails to give any notice required under this section shall be subject to a civil  
827 penalty of up to \$500 for each such failure.

828 **2. That § 63.2-1704 of the Code of Virginia is repealed.**