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SENATE BILL NO. 911

Offered January 14, 2015

Prefiled January 8, 2015

A *BILL to amend and reenact §§ 63.2-1702, 63.2-1720, and 63.2-1721 of the Code of Virginia, relating to child welfare agencies; background checks.*

Patron—Wexton

Referred to Committee on Rehabilitation and Social Services

Be it enacted by the General Assembly of Virginia:

1. That §§ 63.2-1702, 63.2-1720, and 63.2-1721 of the Code of Virginia are amended and reenacted as follows:

§ 63.2-1702. Investigation on receipt of application.

Upon receipt of the application, the Commissioner shall cause an investigation to be made of the activities, services, and facilities of the applicant and of his character and reputation or, if the applicant is an association, partnership, limited liability company, or corporation, the character and reputation of its officers and agents, and upon receipt of the initial application, an investigation of the applicant's financial responsibility. The financial records of an applicant shall not be subject to inspection if the applicant submits an operating budget and at least one credit reference. In the case of child welfare agencies and assisted living facilities, the character and reputation investigation upon application shall include background checks pursuant to § 63.2-1721, *which in the case of child welfare agencies shall be repeated annually thereafter*; however, a children's residential facility shall comply with the background check requirements contained in § 63.2-1726. Records that contain confidential proprietary information furnished to the Department pursuant to this section shall be exempt from disclosure pursuant to subdivision 4 of § 2.2-3705.5.

§ 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 *or, in the case of child welfare agencies or family day homes, continue to employ*, 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 *or is currently the subject of a 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 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

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59 welfare agency, or a family day home approved by a family day system shall obtain for any
60 compensated employees within 30 days of employment, *and in the case of child welfare agencies and*
61 *family day homes, annually thereafter*, (i) an original criminal record clearance with respect to
62 convictions for offenses specified in § 63.2-1719 or an original criminal history record from the Central
63 Criminal Records Exchange and (ii) in the case of licensed or registered child welfare agencies or family
64 day homes approved by family day systems, a copy of the information from the central registry.
65 However, no employee shall be permitted to work in a position that involves direct contact with a
66 person or child receiving services until an original criminal record clearance or original criminal history
67 record has been received, unless such person works under the direct supervision of another employee for
68 whom a background check has been completed in accordance with the requirements of this section. If an
69 applicant is denied employment because of information from the central registry or convictions
70 appearing on his criminal history record, the assisted living facility, adult day care center or child
71 welfare agency shall provide a copy of the information obtained from the central registry or the Central
72 Criminal Records Exchange or both to the applicant.

73 G. No volunteer who has an offense as defined in § 63.2-1719 shall be permitted to serve in a
74 licensed or registered child welfare agency or a family day home approved by a family day system. Any
75 person desiring to volunteer at such a child welfare agency shall provide the agency with a sworn
76 statement or affirmation pursuant to subdivision D 1. Such child welfare agency shall obtain for any
77 volunteers, within 30 days of commencement of volunteer service *and annually thereafter*, a copy of (i)
78 the information from the central registry and (ii) an original criminal record clearance with respect to
79 offenses specified in § 63.2-1719 or an original criminal history record from the Central Criminal
80 Records Exchange. Any person making a materially false statement regarding the sworn statement or
81 affirmation provided pursuant to subdivision D 1 shall be guilty of a Class 1 misdemeanor. If a
82 volunteer is denied service because of information from the central registry or convictions appearing on
83 his criminal history record, such child welfare agency shall provide a copy of the information obtained
84 from the central registry or the Central Criminal Records Exchange or both to the volunteer. The
85 provisions of this subsection shall apply only to volunteers who will be alone with any child in the
86 performance of their duties and shall not apply to a parent-volunteer of a child attending a licensed or
87 registered child welfare agency, or a family day home approved by a family day system, whether or not
88 such parent-volunteer will be alone with any child in the performance of his duties. A parent-volunteer
89 is someone supervising, without pay, a group of children that includes the parent-volunteer's own child
90 in a program that operates no more than four hours per day, provided that the parent-volunteer works
91 under the direct supervision of a person who has received a clearance pursuant to this section.

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

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

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

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

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

107 **§ 63.2-1721. Background check upon application for licensure or registration as child welfare**
108 **agency; background check of foster or adoptive parents approved by child-placing agencies and**
109 **family day homes approved by family day systems; penalty.**

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

120 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 *or is currently the subject of a 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, *and in the case of child welfare agencies and family day homes, annually thereafter*. 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 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.