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HOUSE BILL NO. 896

Offered January 13, 2016

Prefiled January 12, 2016

A BILL to amend and reenact §§ 63.2-1720.1, as it shall become effective, 63.2-1724, and 63.2-1725 of the Code of Virginia, relating to background checks; certain private school employees.

Patron—Greason

Referred to Committee on Health, Welfare and Institutions

Be it enacted by the General Assembly of Virginia:

1. That §§ 63.2-1720.1, as it shall become effective, 63.2-1724, and 63.2-1725 of the Code of Virginia are amended and reenacted as follows:

§ 63.2-1720.1. (Effective July 1, 2017) Licensed child day centers and licensed family day homes; employment for compensation or use as volunteers of persons convicted of or found to have committed certain offenses prohibited; national background check required; penalty.

A. No child day center or family day home licensed in accordance with the provisions of this chapter shall hire for compensated employment or permit to serve as a volunteer in a position that is involved in the day-to-day operations of the child day center or family day home or in which the employee or volunteer will be alone with, in control of, or supervising children any person who has an offense as defined in § 63.2-1719. All applicants for employment or to serve as volunteers shall undergo a background check in accordance with subsection B, *unless such person has had a background check in accordance with § 22.1-296.3.*

B. Any applicant required to undergo a background check in accordance with subsection A shall:

1. Provide a sworn statement or affirmation disclosing whether he has ever been convicted of or is the subject of pending charges for any offense within or outside the Commonwealth and whether he has been the subject of a founded complaint of child abuse or neglect within or outside the Commonwealth;

2. Submit to fingerprinting and provide personal descriptive information described in subdivision B 2 of § 19.2-392.02; and

3. Authorize the child day center or family day home to obtain a copy of information from the central registry maintained pursuant to § 63.2-1515 on any investigation of child abuse or neglect undertaken on him.

The applicant's fingerprints and personal descriptive information obtained pursuant to subdivision 2 shall be forwarded through the Central Criminal Records Exchange to the Federal Bureau of Investigation for the purpose of obtaining national criminal history record information regarding such applicant. Upon receipt of an applicant's record or notification that no record exists, the Central Criminal Records Exchange shall forward the information to the Department, and the Department shall report to the child day center or family day home whether the applicant is eligible to have responsibility for the safety and well-being of children. In cases in which the record forwarded to the Department is lacking disposition data, the Department shall conduct research in whatever state and local recordkeeping systems are available in order to obtain complete data before reporting to the child day center or family day home.

C. The child day center or family day home shall inform every applicant for compensated employment or to serve as a volunteer required to undergo a background check pursuant to this section 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 determination is made of the applicant's eligibility to have responsibility for the safety and well-being of children.

D. Any person making a materially false statement regarding the sworn statement or affirmation provided pursuant to subdivision B 1 is guilty of a Class 1 misdemeanor.

E. 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.

F. 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.

G. 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.

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59 H. Fees charged for the processing and administration of background checks pursuant to this section
60 shall not exceed the actual cost to the state of such processing and administration.

61 I. Any person employed for compensation at a licensed child day center or family day home or
62 permitted to serve as a volunteer at a licensed child day center or family day home in a position that is
63 involved in the day-to-day operations of the child day center or family day home or in which he will be
64 alone with, in control of, or supervising children who is (i) convicted of an offense as defined in
65 § 63.2-1719 within or outside of the Commonwealth or (ii) found to be the subject of a founded
66 complaint of child abuse or neglect within or outside of the Commonwealth shall notify the child day
67 center or family day home of such conviction or finding.

68 **§ 63.2-1724. Records check by unlicensed child day center; penalty.**

69 Any child day center that is exempt from licensure pursuant to § 63.2-1716 shall require a
70 prospective employee or volunteer or any other person who is expected to be alone with one or more
71 children enrolled in the child day center to obtain within 30 days of employment or commencement of
72 volunteer service, a search of the central registry maintained pursuant to § 63.2-1515 on any founded
73 complaint of child abuse or neglect and a criminal records check as provided in subdivision A 11 of
74 § 19.2-389, *unless such person has had a background check pursuant to § 22.1-296.3*. However, no
75 employee shall be permitted to work in a position that involves direct contact with a child until an
76 original criminal record clearance or original criminal history record has been received, unless such
77 person works under the direct supervision of another employee for whom a background check has been
78 completed in accordance with the requirements of this section. A child day center that is exempt from
79 licensure pursuant to § 63.2-1716 shall refuse employment or service to any person who has any offense
80 defined in § 63.2-1719. Such center shall also require a prospective employee or volunteer or any other
81 person who is expected to be alone with one or more children in the child day center to provide a
82 sworn statement or affirmation disclosing whether or not the applicant has ever been (i) the subject of a
83 founded complaint of child abuse or neglect, or (ii) convicted of a crime or is the subject of pending
84 criminal charges for any offense within the Commonwealth or any equivalent offense outside the
85 Commonwealth. The foregoing provisions shall not apply to a parent or guardian who may be left alone
86 with his or her own child. For purposes of this section, convictions shall include prior adult convictions
87 and juvenile convictions or adjudications of delinquency based on a crime that would have been a
88 felony if committed by an adult within or outside the Commonwealth. Any person making a materially
89 false statement regarding any such offense shall be guilty of a Class 1 misdemeanor. If an applicant is
90 denied employment or service because of information from the central registry or convictions appearing
91 on his criminal history record, the child day center shall provide a copy of the information obtained
92 from the central registry or Central Criminal Records Exchange or both to the applicant. Further
93 dissemination of the information provided to the facility is prohibited.

94 The provisions of this section referring to volunteers shall apply only to volunteers who will be alone
95 with any child in the performance of their duties and shall not apply to a parent-volunteer of a child
96 attending the child day center whether or not such parent-volunteer will be alone with any child in the
97 performance of his duties. A parent-volunteer is someone supervising, without pay, a group of children
98 which includes the parent-volunteer's own child, in a program which operates no more than four hours
99 per day, where the parent-volunteer works under the direct supervision of a person who has received a
100 clearance pursuant to this section.

101 **§ 63.2-1725. Child day centers or family day homes receiving federal, state, or local child care**
102 **funds; eligibility requirements.**

103 A. Whenever any child day center or family day home that has not met the requirements of
104 §§ 63.2-1720, 63.2-1721, and 63.2-1724 applies to enter into a contract with the Department or a local
105 department to provide child care services to clients of the Department or local department, the
106 Department or local department shall require a criminal records check pursuant to subdivision A 43 of
107 § 19.2-389, as well as a search of the central registry maintained pursuant to § 63.2-1515, on any child
108 abuse or neglect investigation, of the applicant; any employee; prospective employee; volunteers; agents
109 involved in the day-to-day operation; all agents who are alone with, in control of, or supervising one or
110 more of the children; and any other adult living in a family day home, *unless such person has had a*
111 *background check pursuant to § 22.1-296.3*. The applicant shall provide the Department or local
112 department with copies of these records checks. The child day center or family day home shall not be
113 permitted to enter into a contract with the Department or a local department for child care services when
114 an applicant; any employee; a prospective employee; a volunteer, an agent involved in the day-to-day
115 operation; an agent alone with, in control of, or supervising one or more children; or any other adult
116 living in a family day home has any offense as defined in § 63.2-1719. The child day center or family
117 day home shall also require the above individuals to provide a sworn statement or affirmation disclosing
118 whether or not the person has ever been (i) the subject of a founded case of child abuse or neglect or
119 (ii) convicted of a crime or is the subject of any pending criminal charges within the Commonwealth or
120 any equivalent offense outside the Commonwealth. Any person making a materially false statement

121 regarding any such offense shall be guilty of a Class 1 misdemeanor. If a person is denied employment
122 or work because of information from the central registry or convictions appearing on his criminal history
123 record, the child day center or family day program shall provide a copy of such information obtained
124 from the central registry or Central Criminal Records Exchange or both to the person. Further
125 dissemination of the information provided to the facility, beyond dissemination to the Department,
126 agents of the Department, or the local department, is prohibited.

127 B. Every child day center or family day home that enters into a contract with the Department or a
128 local department to provide child care services to clients of the Department or local departments that is
129 funded, in whole or in part, by the Child Care and Development Block Grant, shall comply with all
130 requirements established by federal law and regulations.