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## SENATE BILL NO. 278

Offered January 13, 2016

Prefiled January 7, 2016

A *BILL to amend and reenact §§ 63.2-1720, as it is currently effective, 63.2-1720.1, as it shall become effective, 63.2-1721, as it is currently effective and as it shall become effective, and 63.2-1721.1, as it shall become effective, 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 §§ 63.2-1720, as it is currently effective, 63.2-1720.1, as it shall become effective, 63.2-1721, as it is currently effective and as it shall become effective, and 63.2-1721.1, as it shall become effective, of the Code of Virginia are amended and reenacted as follows:**

**§ 63.2-1720. (Effective until July 1, 2017) 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 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

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SB278

59 central registry or convictions appearing on his criminal history record, the assisted living facility, adult  
60 day care center or child welfare agency shall provide a copy of the information obtained from the  
61 central registry or the Central Criminal Records Exchange or both to the applicant.

62 G. No volunteer who has an offense as defined in § 63.2-1719 shall be permitted to serve in a  
63 licensed or registered child welfare agency or a family day home approved by a family day system. Any  
64 person desiring to volunteer at such a child welfare agency shall provide the agency with a sworn  
65 statement or affirmation pursuant to subdivision D 1. Such child welfare agency shall obtain for any  
66 volunteers, within 30 days of commencement of volunteer service, a copy of (i) the information from  
67 the central registry and (ii) an original criminal record clearance with respect to offenses specified in  
68 § 63.2-1719 or an original criminal history record from the Central Criminal Records Exchange. Any  
69 person making a materially false statement regarding the sworn statement or affirmation provided  
70 pursuant to subdivision D 1 shall be guilty of a Class 1 misdemeanor. If a volunteer is denied service  
71 because of information from the central registry or convictions appearing on his criminal history record,  
72 such child welfare agency shall provide a copy of the information obtained from the central registry or  
73 the Central Criminal Records Exchange or both to the volunteer. The provisions of this subsection shall  
74 apply only to volunteers who will be alone with any child in the performance of their duties and shall  
75 not apply to a parent-volunteer of a child attending a licensed or registered child welfare agency, or a  
76 family day home approved by a family day system, whether or not such parent-volunteer will be alone  
77 with any child in the performance of his duties. A parent-volunteer is someone supervising, without pay,  
78 a group of children that includes the parent-volunteer's own child in a program that operates no more  
79 than four hours per day, provided that the parent-volunteer works under the direct supervision of a  
80 person who has received a clearance pursuant to this section.

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

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

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

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

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

96 **§ 63.2-1720.1. (Effective July 1, 2017) Licensed child day centers and licensed family day**  
97 **homes; employment for compensation or use as volunteers of persons convicted of or found to**  
98 **have committed certain offenses prohibited; national background check required; penalty.**

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

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

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

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

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

115 The applicant's fingerprints and personal descriptive information obtained pursuant to subdivision 2  
116 shall be forwarded through the Central Criminal Records Exchange to the Federal Bureau of  
117 Investigation for the purpose of obtaining national criminal history record information regarding such  
118 applicant. Upon receipt of an applicant's record or notification that no record exists, the Central Criminal  
119 Records Exchange shall forward the information to the Department, and the Department shall report to  
120 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.

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

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

**§ 63.2-1721. (Effective until July 1, 2017) Background check upon application for licensure or registration as child welfare agency; background check of foster or adoptive parents approved by child-placing agencies and family day homes approved by family day systems; penalty.**

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

B. Background checks pursuant to this section require:

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

182 pursuant to § 63.2-1723 or is not subject to an exception in subsections E, F, G, or H (i) the  
183 Commissioner shall not issue a license or registration to a child welfare agency; (ii) the Commissioner  
184 shall not issue a license to an assisted living facility; (iii) a child-placing agency shall not approve an  
185 adoptive or foster home; or (iv) a family day system shall not approve a family day home.

186 D. No person specified in subsection A shall be involved in the day-to-day operations of a child  
187 welfare agency; be alone with, in control of, or supervising one or more children receiving services from  
188 a child welfare agency; or be permitted to work in a position that involves direct contact with a person  
189 receiving services without first having completed background checks pursuant to subsection B, unless  
190 such person is directly supervised by another person for whom a background check has been completed  
191 in accordance with the requirements of this section.

192 E. Notwithstanding any provision to the contrary contained in this section, a child-placing agency  
193 may approve as an adoptive or foster parent an applicant convicted of not more than one misdemeanor  
194 as set out in § 18.2-57 not involving abuse, neglect, moral turpitude, or a minor, provided 10 years have  
195 elapsed following the conviction.

196 F. Notwithstanding any provision to the contrary contained in this section, a child-placing agency  
197 may approve as a foster parent an applicant convicted of statutory burglary for breaking and entering a  
198 dwelling home or other structure with intent to commit larceny, who has had his civil rights restored by  
199 the Governor, provided 25 years have elapsed following the conviction.

200 G. Notwithstanding any provision to the contrary contained in this section, a child-placing agency  
201 may approve as an adoptive or foster parent an applicant convicted of felony possession of drugs, who  
202 has had his civil rights restored by the Governor, provided 10 years have elapsed following the  
203 conviction.

204 H. Notwithstanding any provision to the contrary contained in this section, a child-placing agency  
205 may approve as an adoptive or foster parent an applicant convicted of felony possession of drugs with  
206 intent to distribute who has had his civil rights restored by the Governor, provided 20 years have  
207 elapsed following the conviction.

208 I. If an applicant is denied licensure, registration or approval because of information from the central  
209 registry or convictions appearing on his criminal history record, the Commissioner shall provide a copy  
210 of the information obtained from the central registry or the Central Criminal Records Exchange or both  
211 to the applicant.

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

215 K. The provisions of this section referring to a sworn statement or affirmation and to prohibitions on  
216 the issuance of a license for any offense shall not apply to any children's residential facility licensed  
217 pursuant to § 63.2-1701, which instead shall comply with the background investigation requirements  
218 contained in § 63.2-1726.

219 **§ 63.2-1721. (Effective July 1, 2017) Background check upon application for licensure as a**  
220 **child-placing agency, etc.; penalty.**

221 A. Upon application for licensure as a child-placing agency, independent foster home, or family day  
222 system or registration as a family day home, (i) all applicants; (ii) agents at the time of application who  
223 are or will be involved in the day-to-day operations of the child-placing agency, independent foster  
224 home, family day system, or family day home or who are or will be alone with, in control of, or  
225 supervising one or more of the children; and (iii) any other adult living in the home of an applicant for  
226 registration as a family day home shall undergo a background check pursuant to subsection B. Upon  
227 application for licensure as an assisted living facility, all applicants shall undergo a background check  
228 pursuant to subsection B. In addition, foster or adoptive parents requesting approval by child-placing  
229 agencies and operators of family day homes requesting approval by family day systems, and any other  
230 adult residing in the family day home or existing employee or volunteer of the family day home, shall  
231 undergo background checks pursuant to subsection B prior to their approval.

232 B. Background checks pursuant to subsection A require:

233 1. A sworn statement or affirmation disclosing whether the person has a criminal conviction or is the  
234 subject of any pending criminal charges within or outside the Commonwealth and whether or not the  
235 person has been the subject of a founded complaint of child abuse or neglect *or is currently the subject*  
236 *of a complaint of child abuse or neglect* within or outside the Commonwealth;

237 2. A criminal history records check through the Central Criminal Records Exchange pursuant to  
238 § 19.2-389; and

239 3. In the case of child-placing agencies, independent foster homes, family day systems, and family  
240 day homes, or adoptive or foster parents, a search of the central registry maintained pursuant to  
241 § 63.2-1515 for any founded complaint of child abuse and neglect.

242 C. The person required to have a background check pursuant to subsection A shall submit the  
243 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 is 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 subsection E, F, G, or H, (i) the Commissioner shall not issue a license to a child-placing agency, independent foster home, or family day system or a registration to a family day home; (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 licensed child-placing agency, independent foster home, or family day system or a registered family day home; be alone with, in control of, or supervising one or more children receiving services from a licensed child-placing agency, independent foster home, or family day system or a registered family day home; 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 that 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 that 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 that 10 years have elapsed following the conviction.

H. Notwithstanding any provision to the contrary contained in this section, a child-placing agency may approve as an adoptive or foster parent an applicant convicted of felony possession of drugs with intent to distribute who has had his civil rights restored by the Governor, provided 20 years have elapsed following the conviction.

I. If an applicant is denied licensure, registration or approval because of information from the central registry or convictions appearing on his criminal history record, the Commissioner shall provide a copy of the information obtained from the central registry or the Central Criminal Records Exchange or both to the applicant.

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

**§ 63.2-1721.1. (Effective July 1, 2017) Background check upon application for licensure as child day center or family day home; penalty.**

A. Every (i) applicant for licensure as a child day center or family day home; (ii) agent of an applicant for licensure as a child day center or family day home at the time of application who is or will be involved in the day-to-day operations of the child day center or family day home or who is or will be alone with, in control of, or supervising one or more of the children; and (iii) adult living in the family day home shall undergo a background check in accordance with subsection B prior to issuance of a license as a child day center or family day home.

B. Every person required to undergo a background check pursuant to subsection A shall:

1. Provide a sworn statement or affirmation disclosing whether he has ever been convicted of or is the subject of any pending criminal charges for any offense within or outside the Commonwealth and whether or not he 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. Submit to fingerprinting and provide personal descriptive information described in subdivision B 2 of § 19.2-392.02; and

3. Authorize the Department 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.

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

305 purpose of obtaining national criminal history record information regarding the individual. Upon receipt  
306 of an applicant's record or notification that no record exists, the Central Criminal Records Exchange  
307 shall forward the information to the Department. In cases in which the record forwarded to the  
308 Department is lacking disposition data, the Department shall conduct research in whatever state and local  
309 recordkeeping systems are available in order to obtain complete data.

310 C. If any person specified in subsection A required to have a background check has an offense as  
311 defined in § 63.2-1719, and such person has not been granted a waiver by the Commissioner pursuant to  
312 § 63.2-1723, no license as a child day center or family day home shall be granted.

313 D. Information from a search of the central registry maintained pursuant to § 63.2-1515, authorized  
314 in accordance with subdivision B 3, shall be obtained prior to issuance of a license as a child day center  
315 or family day home.

316 E. No person specified in subsection A shall be involved in the day-to-day operations of the child  
317 day center or family day home, or shall be alone with, in control of, or supervising one or more  
318 children without first having completed any required background check pursuant to subsection B.

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

321 G. If an applicant is denied licensure because of information from the central registry or convictions  
322 appearing on his criminal history record, the Commissioner shall provide a copy of the information  
323 obtained from the central registry or the Central Criminal Records Exchange or both to the applicant.

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

327 I. Fees charged for the processing and administration of background checks pursuant to this section  
328 shall not exceed the actual cost to the state of such processing and administration.