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SENATE BILL NO. 278

AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the House Committee on Health, Welfare and Institutions
on February 25, 2016)

(Patron Prior to Substitute—Senator Wexton)

A BILL to amend and reenact §§ 63.2-1720, as it is currently effective and as it shall become effective, and 63.2-1720.1, as it shall become effective, of the Code of Virginia, relating to child welfare agencies; background checks.

Be it enacted by the General Assembly of Virginia:

1. That §§ 63.2-1720, as it is currently effective and as it shall become effective, and 63.2-1720.1, 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 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 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 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

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

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

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

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

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

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

91 **§ 63.2-1720. (Effective July 1, 2017) Assisted living facilities and adult day care centers;**
92 **employment for compensation of persons or use of volunteers convicted of certain offenses**
93 **prohibited; background check required; penalty.**

94 A. No assisted living facility, adult day care center, child-placing agency, independent foster home,
95 or family day system licensed in accordance with the provisions of this chapter, or registered family day
96 homes or family day homes approved by family day systems, shall hire for compensated employment *or*
97 *continue to employ* persons who have an offense as defined in § 63.2-1719. All applicants for
98 employment shall undergo background checks pursuant to subsection C.

99 B. A licensed assisted living facility or adult day care center may hire an applicant convicted of one
100 misdemeanor barrier crime not involving abuse or neglect, if five years have elapsed following the
101 conviction.

102 C. Background checks pursuant to subsection A require:

103 1. A sworn statement or affirmation disclosing whether the person has a criminal conviction or is the
104 subject of any pending criminal charges within or outside the Commonwealth and, in the case of
105 licensed child-placing agencies, independent foster homes, and family day systems, registered family day
106 homes, and family day homes approved by family day systems, whether or not the person has been the
107 subject of a founded complaint of child abuse or neglect within or outside the Commonwealth;

108 2. A criminal history records check through the Central Criminal Records Exchange pursuant to
109 § 19.2-389; and

110 3. In the case of licensed child-placing agencies, independent foster homes, and family day systems,
111 registered family day homes, and family day homes approved by family day systems, a search of the
112 central registry maintained pursuant to § 63.2-1515 for any founded complaint of child abuse and
113 neglect.

114 D. Any person making a materially false statement regarding the sworn statement or affirmation
115 provided pursuant to subsection C 1 is guilty of a Class 1 misdemeanor.

116 E. A licensed assisted living facility, licensed adult day care center, licensed child-placing agency,
117 licensed independent foster home, licensed family day system, registered family day home, or family
118 day home approved by a family day system shall obtain for any compensated employees within 30 days
119 of employment (i) an original criminal record clearance with respect to convictions for offenses specified
120 in § 63.2-1719 or an original criminal history record from the Central Criminal Records Exchange and
121 (ii) in the case of licensed child-placing agencies, independent foster homes, and family day systems,

registered family day homes, and family day homes approved by family day systems, a copy of the information from the central registry for any compensated employee within 30 days of employment. 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 licensed assisted living facility, adult day care center, child-placing agency, independent foster home, or family day system, registered family day home, or family day home approved by a family day system shall provide a copy of the information obtained from the central registry or the Central Criminal Records Exchange or both to the applicant.

F. No volunteer who has an offense as defined in § 63.2-1719 shall be permitted to serve in a licensed child-placing agency, independent foster home, or family day system, registered family day home, or family day home approved by a family day system. Any person desiring to volunteer at a licensed child-placing agency, independent foster home, or family day system, registered family day home, or family day home approved by a family day system shall provide the agency, system, or home with a sworn statement or affirmation pursuant to subdivision C 1. Such licensed child-placing agency, independent foster home, or family day system, registered family day home, or family day home approved by a family day system 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 C 1 is 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 licensed child-placing agency, independent foster home, or family day system, registered family day home, or family day home approved by a family day system 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 child-placing agency, independent foster home, or family day system, registered family day home, or 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.

G. 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.

H. 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.

I. 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.

J. 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.

§ 63.2-1720.1. (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, *continue to employ*, 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.

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;

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

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

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

198 C. The child day center or family day home shall inform every applicant for compensated
199 employment or to serve as a volunteer required to undergo a background check pursuant to this section
200 that he is entitled to obtain a copy of any background check report and to challenge the accuracy and
201 completeness of any such report and obtain a prompt resolution before a final determination is made of
202 the applicant's eligibility to have responsibility for the safety and well-being of children.

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

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

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

211 G. Notwithstanding the provisions of subsection A, a child day center may hire for compensated
212 employment persons who have been convicted of not more than one misdemeanor offense under
213 § 18.2-57 if 10 years have elapsed following the conviction, unless the person committed such offense
214 while employed in a child day center or the object of the offense was a minor.

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

217 I. Any person employed for compensation at a licensed child day center or family day home or
218 permitted to serve as a volunteer at a licensed child day center or family day home in a position that is
219 involved in the day-to-day operations of the child day center or family day home or in which he will be
220 alone with, in control of, or supervising children who is (i) convicted of an offense as defined in
221 § 63.2-1719 within or outside of the Commonwealth or (ii) found to be the subject of a founded
222 complaint of child abuse or neglect within or outside of the Commonwealth shall notify the child day
223 center or family day home of such conviction or finding.