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SENATE BILL NO. 467

Offered January 13, 2016

Prefiled January 12, 2016

A BILL to amend and reenact §§ 19.2-392.02, 22.1-19, and 63.2-1715 of the Code of Virginia, relating to child day programs; exemptions from licensure.

Patron—Wagner

Referred to Committee on Rehabilitation and Social Services

Be it enacted by the General Assembly of Virginia:

1. That §§ 19.2-392.02, 22.1-19, and 63.2-1715 of the Code of Virginia are amended and reenacted as follows:

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

A. For purposes of this section:

"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; (ii) is a volunteer of a qualified entity and has, seeks to have, or may have unsupervised access to a child to whom the qualified entity provides care; or (iii) 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 40 9 of § 63.2-1715.

B. 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; 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

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59 is the subject of charges of a barrier crime. To conduct its determination regarding the provider's barrier
60 crime information, the Department shall access the national criminal history background check system,
61 which is maintained by the Federal Bureau of Investigation and is based on fingerprints and other
62 methods of identification, and shall access the Central Criminal Records Exchange maintained by the
63 Department. If the Department receives a background report lacking disposition data, the Department
64 shall conduct research in whatever state and local recordkeeping systems are available in order to obtain
65 complete data. The Department shall make reasonable efforts to respond to a qualified entity's inquiry
66 within 15 business days.

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

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

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

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

80 **§ 22.1-19. Accreditation of elementary, middle, and high schools; nursery schools; recognition of**
81 **certain organizations; child day center regulation.**

82 The Board shall provide for the accreditation of public elementary, middle, and high schools in
83 accordance with standards prescribed by it. The Board may provide for the accreditation of private
84 elementary, middle, and high schools in accordance with standards prescribed by it, taking reasonably
85 into account the special circumstances and factors affecting such private schools. The Board in its
86 discretion may recommend provisions for standards for private nursery schools. Any such accreditation
87 shall be at the request of the private school only.

88 For the purposes of facilitating the transfer of academic credits for students who have attended
89 private schools and are enrolling in public schools, and to meet the requirements of § 63.2-1717, the
90 Board of Education shall authorize, in a manner it deems appropriate, the Virginia Council for Private
91 Education to accredit private nursery, preschool, elementary, and secondary schools.

92 The Board shall promulgate accreditation regulations that incorporate, but may exceed, the
93 regulations for child day centers promulgated by the State Board of Social Services, for those child day
94 centers described in subdivision A 7 of § 63.2-1715.

95 **§ 63.2-1715. Exemptions from licensure.**

96 A. The following child day programs shall not be required to be licensed:

97 1. A child day center that has obtained an exemption pursuant to § 63.2-1716.

98 2. A program where, by written policy given to and signed by a parent or guardian, school-aged
99 children are free to enter and leave the premises without permission or supervision, regardless of (i)
100 such program's location or the number of days per week of its operation; (ii) the provision of
101 transportation services, including drop-off and pick-up times; or (iii) the scheduling of breaks for snacks,
102 homework, or other activities. A program that would qualify for this exemption except that it assumes
103 responsibility for the supervision, protection and well-being of several children with disabilities who are
104 mainstreamed shall not be subject to licensure.

105 3. A program of instructional experience in a single focus, such as, but not limited to, computer
106 science, archaeology, sport clinics, or music, if children under the age of six do not attend at all and if
107 no child is allowed to attend for more than 25 days in any three-month period commencing with
108 enrollment. This exemption does not apply if children merely change their enrollment to a different
109 focus area at a site offering a variety of activities and such children's attendance exceeds 25 days in a
110 three-month period.

111 4. Programs of instructional or recreational activities wherein no child under age six attends for more
112 than six hours weekly with no class or activity period to exceed one and one-half hours, and no child
113 six years of age or above attends for more than six hours weekly when school is in session or 12 hours
114 weekly when school is not in session. Competition, performances and exhibitions related to the
115 instructional or recreational activity shall be excluded when determining the hours of program operation.

116 5. A program that operates no more than a total of 20 program days in the course of a calendar year
117 provided that programs serving children under age six operate no more than two consecutive weeks
118 without a break of at least a week.

119 6. Instructional programs offered by public and private schools that *serve preschool-age children and*
120 *receive state funds or that* satisfy compulsory attendance laws or the Individuals with Disabilities

Education Act, as amended, and programs of school-sponsored extracurricular activities that are focused on single interests such as, but not limited to, music, sports, drama, civic service, or foreign language.

~~7. Education and care programs provided by public schools that are not exempt pursuant to subdivision A 6 shall be regulated by the State Board of Education using regulations that incorporate, but may exceed, the regulations for child day centers licensed by the Commissioner.~~

8. 7. Early intervention programs for children eligible under Part C of the Individuals with Disabilities Education Act, as amended, wherein no child attends for more than a total of six hours per week.

9. 8. Practice or competition in organized competitive sports leagues.

~~10. 9. Programs of religious instruction, such as Sunday schools, vacation Bible schools, and Bar Mitzvah or Bat Mitzvah classes, and child-minding services provided to allow parents or guardians who are on site to attend religious worship or instructional services.~~

~~11. 10. Child-minding services that are not available for more than three hours per day for any individual child offered on site in commercial or recreational establishments if the parent or guardian (i) is not an on-duty employee, except for part-time employees working less than two hours per day, (ii) can be contacted and can resume responsibility for the child's supervision within 30 minutes, and (iii) is receiving or providing services or participating in activities offered by the establishment.~~

~~12. 11. A certified preschool or nursery school program operated by a private school that is accredited by a statewide accrediting organization recognized by the State Board of Education or accredited by the National Association for the Education of Young Children's National Academy of Early Childhood Programs; the Association of Christian Schools International; the American Association of Christian Schools; the National Early Childhood Program Accreditation; the National Accreditation Council for Early Childhood Professional Personnel and Programs; the International Academy for Private Education; the American Montessori Society; the International Accreditation and Certification of Childhood Educators, Programs, and Trainers; or the National Accreditation Commission that complies with the provisions of § 63.2-1717.~~

~~13. 12. A program of recreational activities offered by local governments, staffed by local government employees, and attended by school-age children. Such programs shall be subject to safety and supervisory standards established by local governments.~~

~~14. 13. A child day program offered by a local school division, staffed by local school division employees, and attended by children who are enrolled in public school. Such programs shall be subject to safety and supervisory standards established by the local school board.~~

14. A program of instructional or athletic experience operated during the summer months by, and as an extension of, an accredited private elementary, middle, or high school program as set forth in § 22.1-19 and administered by the Virginia Council for Private Education.

B. Family day homes that are members of a licensed family day system shall not be required to obtain a license from the Commissioner.

C. Officers, employees, or agents of the Commonwealth, or of any county, city, or town 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.