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HOUSE BILL NO. 1837

AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the Joint Conference Committee on February 25, 2017)

(Patron Prior to Substitute—Delegate Orrock)

A BILL to amend and reenact §§ 63.2-1715 and 63.2-1717 of the Code of Virginia, relating to licensure exemptions; private preschool programs.

Be it enacted by the General Assembly of Virginia:

1. That §§ 63.2-1715 and 63.2-1717 of the Code of Virginia are amended and reenacted as follows: § 63.2-1715. Exemptions from licensure.

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

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

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

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

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

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

6. Instructional programs offered by private schools 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. Instructional programs offered by public schools that serve preschool-age children 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.

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

10. 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. 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. 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

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60 Educators, Programs, and Trainers; or the National Accreditation Commission that pursuant to § 22.1-19  
61 and complies with the provisions of § 63.2-1717.

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

65 14. A program of instructional or athletic experience operated during the summer months by, and as  
66 an extension of, an accredited private elementary, middle, or high school program as set forth in  
67 § 22.1-19 and administered by the Virginia Council for Private Education.

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

70 C. Officers, employees, or agents of the Commonwealth, or of any county, city, or town acting  
71 within the scope of their authority as such, who serve as or maintain a child-placing agency shall not be  
72 required to be licensed.

73 **§ 63.2-1717. Certification of preschool or nursery school programs operated by accredited**  
74 **private schools; provisional certification; annual statement and documentary evidence required;**  
75 **enforcement; injunctive relief.**

76 A. A preschool or nursery school program operated by a private school accredited by a statewide *an*  
77 accrediting organization recognized by the Board of Education or a private school or preschool that  
78 offers to preschool-aged children a program accredited by the National Association for the Education of  
79 Young Children's National Academy of Early Childhood Programs; the Association of Christian Schools  
80 International; the American Association of Christian Schools; the National Early Childhood Program  
81 Accreditation; the National Accreditation Council for Early Childhood Professional Personnel and  
82 Programs; the International Academy for Private Education; the American Montessori Society; the  
83 International Accreditation and Certification of Childhood Educators, Programs, and Trainers; or the  
84 National Accreditation Commission and is recognized by the Board of Education, pursuant to § 22.1-19  
85 shall be exempt from licensure under this subtitle if it complies with the provisions of this section and  
86 meets the requirements of subsection B; ~~C or D.~~

87 B. A school described in subsection A shall meet the following conditions in order to be exempt  
88 under this subsection:

89 1. The school offers kindergarten or elementary school instructional programs that satisfy compulsory  
90 school attendance laws, and children below the age of compulsory school attendance also participate in  
91 such instructional programs;

92 2. The instructional programs for children of and below the age of eligibility for school attendance  
93 share (i) a specific verifiable common pedagogy; (ii) education materials; (iii) methods of instruction;  
94 and (iv) professional training and individual teacher certification standards, all of which are required by  
95 a state-recognized accrediting organization;

96 3. The instructional programs described in subdivisions 1 and 2 have number of pupils in the  
97 preschool program does not exceed 12 pupils for each instructional adult, or if operated as a  
98 Montessori program with mixed age groups of three-year-old to six-year-old children and, the number of  
99 pupils in the preschool program does not exceed 15 pupils for each instructional adult;

100 4. The instructional program contemplates a three-to-four-year learning cycle under a common  
101 pedagogy; and

102 5. 3. Children below the age of eligibility for kindergarten attendance do not attend the instructional  
103 preschool program for more than five hours per day, provided that no more than four hours of  
104 instructional classes is provided per day.;

105 C. A school described in subsection A shall be exempt from licensure if it maintains an enrollment  
106 ratio at any one time during the current school year of five children age five or above to one  
107 four-year-old child as long as no

108 4. No child in attendance is under age four and the number of pupils in the preschool program does  
109 not exceed 12 pupils for each instructional adult. *three;*

110 D. A private school or preschool described in subsection A shall meet the following conditions in  
111 order to be exempt under this subsection:

112 1. The school offers instructional classes and has been in operation since January 1984.

113 2. 5. The school preschool offers instructional classes and does not hold itself out as a child care  
114 center, child day center, or child day program.;

115 3. 6. Children enrolled in the school are at least three years of age and preschool do not attend more  
116 than (i) three hours per day and (ii) five days per week.; and

117 4. The enrolled children attend only one program offered by the school per day.

118 5. 7. The school maintains a certificate or permit issued pursuant to a local government ordinance  
119 that addresses health, safety, and welfare of the children; such as but not limited to space requirements;  
120 and requires annual inspections.

121 E. C. The school shall file with the Commissioner, prior to the beginning of the school year or

122 calendar year, as the case may be, and thereafter, annually, a statement which includes the following:

- 123 1. Intent to operate a certified preschool program;
- 124 2. Documentary evidence that the school has been accredited as provided in subsection A;
- 125 3. Documentation that the school has disclosed in writing to the parents, guardians, or persons having
- 126 charge of a child enrolled in the school's preschool program *and has posted in a visible location on the*
- 127 *premises* the fact of the program's exemption from licensure;
- 128 4. Documentary evidence that the physical facility in which the preschool program will be conducted
- 129 has been inspected (i) before initial certification by the local building official and (ii) within the
- 130 12-month period prior to initial certification and at least annually thereafter by the local health
- 131 department, and local fire marshal or Office of the State Fire Marshal, whichever is appropriate, and an
- 132 inspection report ~~which~~ *that* documents that the facility is in compliance with applicable laws and
- 133 regulations pertaining to food services, health and sanitation, water supply, building codes, and the
- 134 Statewide Fire Prevention Code or the Uniform Statewide Building Code;
- 135 5. Documentation that the school has disclosed the following in writing to the parents, guardians, or
- 136 persons having charge of a child enrolled in the school's preschool program, and in a written statement
- 137 available to the general public: (i) the school facility is in compliance with applicable laws and
- 138 regulations pertaining to food services, health and sanitation, water supply, building codes, and the
- 139 Statewide Fire Prevention Code or the Uniform Statewide Building Code;; (ii) the preschool program's
- 140 maximum capacity;; (iii) the school's policy or practice for pupil-teacher ratio, staffing patterns, and staff
- 141 health requirements;; and (iv) a description of the school's public liability insurance, if any;
- 142 6. Qualifications of school personnel who work in the preschool program; ~~and~~
- 143 7. *Certification that the school will report to the Commissioner all incidents involving serious injury*
- 144 *or death to children attending the preschool program. Reports of serious injuries, which shall include*
- 145 *any injuries that require an emergency referral to an offsite health care professional or treatment in a*
- 146 *hospital, shall be submitted annually. Reports of deaths shall be submitted no later than one business*
- 147 *day after the death occurred; and*
- 148 8. Documentary evidence that the private school requires all employees of the preschool and other
- 149 school employees who have contact with the children enrolled in the preschool program to obtain a
- 150 criminal record check as provided in ~~subdivision A 11 of § 19.2-389~~ § 63.2-1720.1 *to meet the*
- 151 *requirements of § 22.1-296.3 as a condition of initial or continued employment. The school shall not*
- 152 *hire or continue employment of any such person who has an offense specified in § 63.2-1719.*

153 All accredited private schools seeking certification of preschool programs shall file such information  
154 on forms prescribed by the Commissioner. The Commissioner shall certify all preschool programs of  
155 accredited private schools which comply with the provisions of subsection A. *The Commissioner may*  
156 *conduct an annual inspection of such preschool programs to ensure compliance with the provisions of*  
157 *this section and conduct inspections to investigate complaints alleging noncompliance.*

158 ~~F. D.~~ A preschool program of a private school that has not been accredited as provided in subsection  
159 A; ~~or which has not provided documentation to the Commissioner that it has initiated the accreditation~~  
160 ~~process;~~ shall be subject to licensure.

161 ~~The Commissioner shall issue a provisional certificate to a private school which provides~~  
162 ~~documentation to the Commissioner that it has initiated the accreditation process. The provisional~~  
163 ~~certificate shall permit the school to operate its preschool program during the accreditation process~~  
164 ~~period. The issuance of an initial provisional certificate shall be for a period not to exceed one year. A~~  
165 ~~provisional certificate may be renewed up to an additional year if the accrediting organization provides a~~  
166 ~~statement indicating it has visited the school within the previous six months and the school has made~~  
167 ~~sufficient progress. Such programs shall not be subject to licensure during the provisional certification~~  
168 ~~period.~~

169 ~~G. If a school fails to complete the accreditation process or is denied accreditation, the Commissioner~~  
170 ~~shall revoke the provisional certification and the program shall thereafter be subject to licensure.~~

171 ~~H. E.~~ If the preschool program of a private school ~~which that~~ is accredited as provided in subsection  
172 A fails to file the statement and the required documentary evidence, the Commissioner shall notify the  
173 school of its noncompliance and may thereafter take such action as he determines appropriate, including  
174 notice that the program is required to be licensed.

175 ~~I. F.~~ The revocation or denial of the certification of a preschool program shall be subject to appeal  
176 pursuant to the provisions of the Administrative Process Act (§ 2.2-4000 et seq.). Judicial review of a  
177 final agency decision shall be in accordance with the provisions of the Administrative Process Act.

178 ~~J. G.~~ Any person who has reason to believe that a private school falling within the provisions of this  
179 section is in noncompliance with any applicable requirement of this section may report the same to the  
180 Department, the local department, the local health department, or the local fire marshal, each of which  
181 may inspect the school for noncompliance, give reasonable notice to the school of the nature of its  
182 noncompliance, and thereafter may take appropriate action as provided by law, including a suit to enjoin

183 the operation of the preschool program.

184 ~~K. H.~~ Upon receipt of a complaint concerning a certified preschool program of an accredited private  
185 school, ~~or of a private school to which provisional certification has been issued,~~ if for good cause shown  
186 there is reason to suspect that the school is in noncompliance with any provision of this section or the  
187 health or safety of the children attending the preschool program is in danger, the Commissioner shall  
188 cause an investigation to be made, including on-site visits as he deems necessary of the services,  
189 personnel, and facilities of the school's *preschool* program. The school shall afford the Commissioner  
190 reasonable opportunity to inspect the school's *preschool* program, records, and facility, and to interview  
191 the employees and any child or parent or guardian of a child who is or has been enrolled in the  
192 preschool program. If, upon completion of the investigation, it is determined that the school is in  
193 noncompliance with the provisions of this section, the Commissioner shall give reasonable notice to the  
194 school of the nature of its noncompliance and thereafter may take appropriate action as provided by law,  
195 including a suit to enjoin the operation of the preschool program.

196 ~~L. I.~~ Failure of a private school to comply with the provisions of this section, or a finding that the  
197 health and safety of the children attending the preschool program are in clear and substantial danger  
198 upon the completion of an investigation, shall be grounds for revocation of the certification issued  
199 pursuant to this section.

200 ~~M. J.~~ If a private school operates a child day program outside the scope of its instructional classes  
201 during the school year or operates a child day program during the summer, the child day program shall  
202 be subject to licensure under the regulations adopted pursuant to § 63.2-1734.

203 ~~N. K.~~ Nothing in this section shall prohibit a preschool operated by or conducted under the auspices  
204 of a private school from obtaining a license pursuant to this subtitle.