

17103366D

SENATE BILL NO. 1434

Offered January 13, 2017

A *BILL to amend and reenact § 63.2-1720, as it is currently effective and as it shall become effective, of the Code of Virginia, relating to assisted living facilities and adult day care centers; 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 and as it shall become effective, of the Code of Virginia is 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 *or continue to employ a person* 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

INTRODUCED

SB1434

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

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

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

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

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

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

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

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

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

103 C. Background checks pursuant to subsection A require:

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

109 2. A criminal history records check through the Central Criminal Records Exchange pursuant to
110 § 19.2-389; and

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

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

117 E. A licensed assisted living facility, licensed adult day care center, licensed child-placing agency,
118 licensed independent foster home, licensed family day system, registered family day home, or family
119 day home approved by a family day system shall obtain for any compensated employees within 30 days
120 of employment (i) an original criminal record clearance with respect to convictions for offenses specified

121 in § 63.2-1719 or an original criminal history record from the Central Criminal Records Exchange and
122 (ii) in the case of licensed child-placing agencies, independent foster homes, and family day systems,
123 registered family day homes, and family day homes approved by family day systems, a copy of the
124 information from the central registry for any compensated employee within 30 days of employment.
125 However, no employee shall be permitted to work in a position that involves direct contact with a
126 person or child receiving services until an original criminal record clearance or original criminal history
127 record has been received, unless such person works under the direct supervision of another employee for
128 whom a background check has been completed in accordance with the requirements of this section. If an
129 applicant is denied employment because of information from the central registry or convictions
130 appearing on his criminal history record, the licensed assisted living facility, adult day care center,
131 child-placing agency, independent foster home, or family day system, registered family day home, or
132 family day home approved by a family day system shall provide a copy of the information obtained
133 from the central registry or the Central Criminal Records Exchange or both to the applicant.

134 F. No volunteer who has an offense as defined in § 63.2-1719 shall be permitted to serve in a
135 licensed child-placing agency, independent foster home, or family day system, registered family day
136 home, or family day home approved by a family day system. Any person desiring to volunteer at a
137 licensed child-placing agency, independent foster home, or family day system, registered family day
138 home, or family day home approved by a family day system shall provide the agency, system, or home
139 with a sworn statement or affirmation pursuant to subdivision C 1. Such licensed child-placing agency,
140 independent foster home, or family day system, registered family day home, or family day home
141 approved by a family day system shall obtain for any volunteers, within 30 days of commencement of
142 volunteer service, a copy of (i) the information from the central registry and (ii) an original criminal
143 record clearance with respect to offenses specified in § 63.2-1719 or an original criminal history record
144 from the Central Criminal Records Exchange. Any person making a materially false statement regarding
145 the sworn statement or affirmation provided pursuant to subdivision C 1 is guilty of a Class 1
146 misdemeanor. If a volunteer is denied service because of information from the central registry or
147 convictions appearing on his criminal history record, such licensed child-placing agency, independent
148 foster home, or family day system, registered family day home, or family day home approved by a
149 family day system shall provide a copy of the information obtained from the central registry or the
150 Central Criminal Records Exchange or both to the volunteer. The provisions of this subsection shall
151 apply only to volunteers who will be alone with any child in the performance of their duties and shall
152 not apply to a parent-volunteer of a child attending a licensed child-placing agency, independent foster
153 home, or family day system, registered family day home, or family day home approved by a family day
154 system, whether or not such parent-volunteer will be alone with any child in the performance of his
155 duties. A parent-volunteer is someone supervising, without pay, a group of children that includes the
156 parent-volunteer's own child in a program that operates no more than four hours per day, provided that
157 the parent-volunteer works under the direct supervision of a person who has received a clearance
158 pursuant to this section.

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

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

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

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