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HOUSE BILL NO. 437

AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the House Committee for Courts of Justice  
on February 5, 2018)

(Patron Prior to Substitute—Delegate Herring)

A BILL to amend and reenact § 63.2-1721, as it is currently effective and as it shall become effective, of the Code of Virginia, relating to adoption and foster care; barrier crimes; exception.

Be it enacted by the General Assembly of Virginia:

1. That § 63.2-1721, as it is currently effective and as it shall become effective, of the Code of Virginia is amended and reenacted as follows:

§ 63.2-1721. (Expires July 1, 2018, or earlier if contingency is met) Background check upon application for licensure as a child-placing agency or independent foster home; penalty.

A. Upon application for licensure as a child-placing agency or independent foster home, all (i) applicants and (ii) agents at the time of application who are or will be involved in the day-to-day operations of the child-placing agency or independent foster home or who are or will be alone with, in control of, or supervising one or more of the children shall undergo a background check pursuant to subsection B. Upon application for licensure as an assisted living facility, all applicants shall undergo a background check pursuant to subsection B. In addition, foster or adoptive parents requesting approval by child-placing agencies shall undergo background checks pursuant to subsection B prior to their approval.

B. Background checks pursuant to subsection A 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 within or outside the Commonwealth;

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

3. In the case of child-placing agencies, independent foster homes, 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 person required to have a background check pursuant to subsection A shall submit the background check information required in subsection B to the Commissioner's representative prior to issuance of a license or approval. The applicant, other than an applicant for licensure as an assisted living facility, shall provide an original criminal record clearance with respect to any barrier crime as defined in § 19.2-392.02 or an original criminal history record from the Central Criminal Records Exchange. An applicant for licensure as an assisted living facility shall provide an original criminal record clearance with respect to any offense set forth in clause (i) of the definition of barrier crime in § 19.2-392.02 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, other than an applicant for licensure as an assisted living facility, required to have a background check (i) has been convicted of any barrier crime as defined in § 19.2-392.02 or (ii) is the subject of a founded complaint of child abuse or neglect within or outside the Commonwealth, 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, (a) the Commissioner shall not issue a license to a child-placing agency or independent foster home; or (b) a child-placing agency shall not approve an adoptive or foster home. If any applicant for licensure as an assisted living facility required to have a background check has been convicted of any offense set forth in clause (i) of the definition of barrier crime in § 19.2-392.02, the Commissioner shall not issue a license to an assisted living facility.

D. No person specified in subsection A shall be involved in the day-to-day operations of a licensed child-placing agency or independent foster home; be alone with, in control of, or supervising one or more children receiving services from a licensed child-placing agency or independent foster 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 who has been convicted of not more than one misdemeanor offense as set out in § 18.2-57, or any substantially similar offense under the laws of

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60 another jurisdiction, not involving abuse, neglect, moral turpitude, or a minor, provided that 10 years  
61 have elapsed following the conviction.

62 F. Notwithstanding any provision to the contrary contained in this section, a child-placing agency  
63 may approve as a foster parent an applicant who has been convicted of statutory burglary for breaking  
64 and entering a dwelling home or other structure with intent to commit larceny, or any substantially  
65 similar offense under the laws of another jurisdiction, who has had his civil rights restored by the  
66 Governor or other appropriate authority, provided that 25 years have elapsed following the conviction.

67 G. Notwithstanding any provision to the contrary contained in this section, a child-placing agency  
68 may approve as an adoptive or foster parent an applicant convicted of any offense set forth in clause  
69 (iv) of the definition of barrier crime in § 19.2-392.02 who has had his civil rights restored by the  
70 Governor or other appropriate authority, provided that 10 years have elapsed following the conviction,  
71 *or eight years have elapsed following the conviction and the applicant (i) has complied with all*  
72 *obligations imposed by the criminal court; (ii) has completed a substance abuse treatment program; (iii)*  
73 *has completed a drug test administered by a laboratory or medical professional within 90 days prior to*  
74 *being approved, and such test returned with a negative result; and (iv) complies with any other*  
75 *obligations as determined by the Department.*

76 H. Notwithstanding any provision to the contrary contained in this section, a child-placing agency  
77 may approve as an adoptive or foster parent an applicant convicted of any offense set forth in clause  
78 (iii) of the definition of barrier crime in § 19.2-392.02 who has had his civil rights restored by the  
79 Governor or other appropriate authority, provided that 20 years have elapsed following the conviction.

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

84 J. 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 **§ 63.2-1721. (Effective July 1, 2018, or earlier if contingency is met) Background check upon**  
88 **application for licensure as a child-placing agency, etc.; penalty.**

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

100 B. Background checks pursuant to subsection A require:

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

105 2. A criminal history records check through the Central Criminal Records Exchange pursuant to  
106 § 19.2-389; and

107 3. In the case of child-placing agencies, independent foster homes, family day systems, and family  
108 day homes, or adoptive or foster parents, a search of the central registry maintained pursuant to  
109 § 63.2-1515 for any founded complaint of child abuse and neglect.

110 C. The person required to have a background check pursuant to subsection A shall submit the  
111 background check information required in subsection B to the Commissioner's representative prior to  
112 issuance of a license, registration or approval. The applicant, other than an applicant for licensure as an  
113 assisted living facility, shall provide an original criminal record clearance with respect to any barrier  
114 crime as defined in § 19.2-392.02 or an original criminal history record from the Central Criminal  
115 Records Exchange. An applicant for licensure as an assisted living facility shall provide an original  
116 criminal record clearance with respect to any offense set forth in clause (i) of the definition of barrier  
117 crime in § 19.2-392.02 or an original criminal history record from the Central Criminal Records  
118 Exchange. Any person making a materially false statement regarding the sworn statement or affirmation  
119 provided pursuant to subdivision B 1 is guilty of a Class 1 misdemeanor. If any person specified in  
120 subsection A, other than an applicant for licensure as an assisted living facility, required to have a  
121 background check (i) has been convicted of any barrier crime as defined in § 19.2-392.02 or (ii) is the

122 subject of a founded complaint of child abuse or neglect within or outside the Commonwealth, and such  
123 person has not been granted a waiver by the Commissioner pursuant to § 63.2-1723 or is not subject to  
124 an exception in subsection E, F, G, or H, (a) the Commissioner shall not issue a license to a  
125 child-placing agency, independent foster home, or family day system or a registration to a family day  
126 home; (b) a child-placing agency shall not approve an adoptive or foster home; or (c) a family day  
127 system shall not approve a family day home. If any applicant for licensure as an assisted living facility  
128 required to have a background check has been convicted of any offense set forth in clause (i) of the  
129 definition of barrier crime in § 19.2-392.02, the Commissioner shall not issue a license to an assisted  
130 living facility.

131 D. No person specified in subsection A shall be involved in the day-to-day operations of a licensed  
132 child-placing agency, independent foster home, or family day system or a registered family day home;  
133 be alone with, in control of, or supervising one or more children receiving services from a licensed  
134 child-placing agency, independent foster home, or family day system or a registered family day home;  
135 or be permitted to work in a position that involves direct contact with a person receiving services  
136 without first having completed background checks pursuant to subsection B unless such person is  
137 directly supervised by another person for whom a background check has been completed in accordance  
138 with the requirements of this section.

139 E. Notwithstanding any provision to the contrary contained in this section, a child-placing agency  
140 may approve as an adoptive or foster parent an applicant who has been convicted of not more than one  
141 misdemeanor offense as set out in § 18.2-57, or any substantially similar offense under the laws of  
142 another jurisdiction, not involving abuse, neglect, moral turpitude, or a minor, provided that 10 years  
143 have elapsed following the conviction.

144 F. Notwithstanding any provision to the contrary contained in this section, a child-placing agency  
145 may approve as a foster parent an applicant who has been convicted of statutory burglary for breaking  
146 and entering a dwelling home or other structure with intent to commit larceny, or any substantially  
147 similar offense under the laws of another jurisdiction, who has had his civil rights restored by the  
148 Governor or other appropriate authority, provided that 25 years have elapsed following the conviction.

149 G. Notwithstanding any provision to the contrary contained in this section, a child-placing agency  
150 may approve as an adoptive or foster parent an applicant convicted of any offense set forth in clause  
151 (iv) of the definition of barrier crime in § 19.2-392.02 who has had his civil rights restored by the  
152 Governor or other appropriate authority, provided that 10 years have elapsed following the conviction,  
153 *or eight years have elapsed following the conviction and the applicant (i) has complied with all*  
154 *obligations imposed by the criminal court; (ii) has completed a substance abuse treatment program; (iii)*  
155 *has completed a drug test administered by a laboratory or medical professional within 90 days prior to*  
156 *being approved, and such test returned with a negative result; and (iv) complies with any other*  
157 *obligations as determined by the Department.*

158 H. Notwithstanding any provision to the contrary contained in this section, a child-placing agency  
159 may approve as an adoptive or foster parent an applicant convicted of any offense set forth in clause  
160 (iii) of the definition of barrier crime in § 19.2-392.02 who has had his civil rights restored by the  
161 Governor or other appropriate authority, provided that 20 years have elapsed following the conviction.

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

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