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SENATE BILL NO. 539

AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the House Committee on Health, Welfare and Institutions
on February 20, 2018)

(Patron Prior to Substitute—Senator Hanger)

*A BILL to amend and reenact §§ 19.2-392.02, 63.2-1715, and 63.2-1716 of the Code of Virginia, relating to child day programs; exemptions from licensure.***Be it enacted by the General Assembly of Virginia:****1. That §§ 19.2-392.02, 63.2-1715, and 63.2-1716 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 (i) a felony violation of § 16.1-253.2; any violation of § 18.2-31, 18.2-32, 18.2-32.1, 18.2-32.2, 18.2-33, 18.2-35, 18.2-36, 18.2-36.1, 18.2-36.2, 18.2-41, or 18.2-42; any felony violation of § 18.2-46.2, 18.2-46.3, 18.2-46.3:1, or 18.2-46.3:3; any violation of § 18.2-46.5, 18.2-46.6, or 18.2-46.7; any violation of subsection A or B of § 18.2-47; any violation of § 18.2-48, 18.2-49, or 18.2-50.3; any violation of § 18.2-51, 18.2-51.1, 18.2-51.2, 18.2-51.3, 18.2-51.4, 18.2-51.5, 18.2-51.6, 18.2-52, 18.2-52.1, 18.2-53, 18.2-53.1, 18.2-54.1, 18.2-54.2, 18.2-55, 18.2-55.1, 18.2-56, 18.2-56.1, 18.2-56.2, 18.2-57, 18.2-57.01, 18.2-57.02, 18.2-57.2, 18.2-58, 18.2-58.1, 18.2-59, 18.2-60, or 18.2-60.1; any felony violation of § 18.2-60.3 or 18.2-60.4; any violation of § 18.2-61, 18.2-63, 18.2-64.1, 18.2-64.2, 18.2-67.1, 18.2-67.2, 18.2-67.3, 18.2-67.4, 18.2-67.4:1, 18.2-67.4:2, 18.2-67.5, 18.2-67.5:1, 18.2-67.5:2, 18.2-67.5:3, 18.2-77, 18.2-79, 18.2-80, 18.2-81, 18.2-82, 18.2-83, 18.2-84, 18.2-85, 18.2-86, 18.2-87, 18.2-87.1, or 18.2-88; any felony violation of § 18.2-279, 18.2-280, 18.2-281, 18.2-282, 18.2-282.1, 18.2-286.1, or 18.2-287.2; any violation of § 18.2-289, 18.2-290, 18.2-300, 18.2-308.4, or 18.2-314; any felony violation of § 18.2-346; any violation of § 18.2-355, 18.2-356, 18.2-357, or 18.2-357.1; any violation of subsection B of § 18.2-361; any violation of § 18.2-366, 18.2-369, 18.2-370, 18.2-370.1, 18.2-370.2, 18.2-370.3, 18.2-370.4, 18.2-370.5, 18.2-370.6, 18.2-371.1, 18.2-374.1, 18.2-374.1:1, 18.2-374.3, 18.2-374.4, 18.2-379, 18.2-386.1, or 18.2-386.2; any felony violation of § 18.2-405 or 18.2-406; any violation of § 18.2-408, 18.2-413, 18.2-414, 18.2-423, 18.2-423.01, 18.2-423.1, 18.2-423.2, 18.2-433.2, 18.2-472.1, 18.2-474.1, 18.2-477, 18.2-477.1, 18.2-477.2, 18.2-478, 18.2-479, 18.2-480, 18.2-481, 18.2-484, 18.2-485, 37.2-917, or 53.1-203; or any substantially similar offense under the laws of another jurisdiction; (ii) any violation of § 18.2-89, 18.2-90, 18.2-91, 18.2-92, 18.2-93, or 18.2-94 or any substantially similar offense under the laws of another jurisdiction; (iii) any felony violation of § 18.2-248, 18.2-248.01, 18.2-248.02, 18.2-248.03, 18.2-248.1, 18.2-248.5, 18.2-251.2, 18.2-251.3, 18.2-255, 18.2-255.2, 18.2-258, 18.2-258.02, 18.2-258.1, or 18.2-258.2 or any substantially similar offense under the laws of another jurisdiction; (iv) any felony violation of § 18.2-250 or any substantially similar offense under the laws of another jurisdiction; (v) any offense set forth in § 9.1-902 that results in the person's requirement to register with the Sex Offender and Crimes Against Minors Registry pursuant to § 9.1-901, including any finding that a person is not guilty by reason of insanity in accordance with Chapter 11.1 (§ 19.2-182.2 et seq.) of Title 19.2 of an offense set forth in § 9.1-902 that results in the person's requirement to register with the Sex Offender and Crimes Against Minors Registry pursuant to § 9.1-901; any substantially similar offense under the laws of another jurisdiction; or any offense for which registration in a sex offender and crimes against minors registry is required under the laws of the jurisdiction where the offender was convicted; or (vi) any other felony not included in clause (i), (ii), (iii), (iv), or (v) unless five years have elapsed from the date of the conviction.

"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

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60 States government, a state, a political subdivision of a state, a foreign government, political subdivision
61 of a foreign government, an international governmental or an international quasi-governmental
62 organization that, when completed with information concerning a particular individual, is of a type
63 intended or commonly accepted for the purpose of identification of individuals.

64 "Provider" means a person who (i) is employed by a qualified entity and has, seeks to have, or may
65 have unsupervised access to a child or to an elderly or disabled person to whom the qualified entity
66 provides care; (ii) is a volunteer of a qualified entity and has, seeks to have, or may have unsupervised
67 access to a child to whom the qualified entity provides care; or (iii) owns, operates, or seeks to own or
68 operate a qualified entity.

69 "Qualified entity" means a business or organization that provides care to children or the elderly or
70 disabled, whether governmental, private, for profit, nonprofit, or voluntary, except organizations exempt
71 pursuant to subdivision A 40 7 of § 63.2-1715.

72 B. A qualified entity may request the Department of State Police to conduct a national criminal
73 background check on any provider who is employed by such entity. No qualified entity may request a
74 national criminal background check on a provider until such provider has:

75 1. Been fingerprinted; and

76 2. Completed and signed a statement, furnished by the entity, that includes (i) his name, address, and
77 date of birth as it appears on a valid identification document; (ii) a disclosure of whether or not the
78 provider has ever been convicted of or is the subject of pending charges for a criminal offense within or
79 outside the Commonwealth, and if the provider has been convicted of a crime, a description of the crime
80 and the particulars of the conviction; (iii) a notice to the provider that the entity may request a
81 background check; (iv) a notice to the provider that he is entitled to obtain a copy of any background
82 check report, to challenge the accuracy and completeness of any information contained in any such
83 report, and to obtain a prompt determination as to the validity of such challenge before a final
84 determination is made by the Department; and (v) a notice to the provider that prior to the completion
85 of the background check the qualified entity may choose to deny the provider unsupervised access to
86 children or the elderly or disabled for whom the qualified entity provides care.

87 C. Upon receipt of (i) a qualified entity's written request to conduct a background check on a
88 provider, (ii) the provider's fingerprints, and (iii) a completed, signed statement as described in
89 subsection B, the Department shall make a determination whether the provider has been convicted of or
90 is the subject of charges of a barrier crime. To conduct its determination regarding the provider's barrier
91 crime information, the Department shall access the national criminal history background check system,
92 which is maintained by the Federal Bureau of Investigation and is based on fingerprints and other
93 methods of identification, and shall access the Central Criminal Records Exchange maintained by the
94 Department. If the Department receives a background report lacking disposition data, the Department
95 shall conduct research in whatever state and local recordkeeping systems are available in order to obtain
96 complete data. The Department shall make reasonable efforts to respond to a qualified entity's inquiry
97 within 15 business days.

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

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

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

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

111 **§ 63.2-1715. Exemptions from licensure.**

112 A. The following *programs are not* child day programs *and* shall not be required to be licensed:

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

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

121 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. 2. 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. 3. Instructional programs offered by private schools that *serve school-age children and that satisfy compulsory attendance laws or provide services under 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. 4. Instructional programs offered by public schools that serve preschool-age children ~~or that~~, satisfy compulsory attendance laws, *or provide services under 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. 5. 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. 6. Practice or competition in organized competitive sports leagues.

10. 7. Programs of religious instruction, such as Sunday schools, vacation Bible schools, and Bar Mitzvah or Bat Mitzvah classes, and ~~child-minding services provided nurseries offered by religious institutions and provided for the duration of specified religious services or related activities~~ to allow parents or guardians *or their designees* who are on site to attend *such religious worship or instructional services and activities*.

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 an accrediting organization recognized by the State Board of Education pursuant to § 22.1-19 and complies with the provisions of § 63.2-1717.

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

1. A child day program or 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-age children are free to enter and leave the premises without permission. 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 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.

4. 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) can be contacted and can resume responsibility for the child's supervision within 30 minutes and (ii) is receiving or providing services or participating in activities offered by the establishment.

5. A certified preschool or nursery school program operated by a private school that is accredited by an accrediting organization recognized by the State Board of Education pursuant to § 22.1-19 and complies with the provisions of § 63.2-1717.

6. 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 the local government offering the program.

7. A program offered by a local school division, operated for no more than four hours per day, staffed by local school division employees, and attended by school-age children who are enrolled in public school within such school division. Such programs shall be subject to safety and supervisory standards established by the local school division offering the program.

C. Child day programs that are exempt from licensure pursuant to subsection B, except for child day programs that are exempt from licensure pursuant to subdivision B 1 or 5, shall:

1. File with the Commissioner annually and prior to beginning operation of a child day program a statement indicating the intent to operate a child day program, identifying the specific provision of this section relied upon for exemption from licensure, and certifying that the child day program has disclosed in writing to the parents or guardians of the children in the program the fact that it is exempt from licensure;

2. Report to the Commissioner all incidents involving serious physical injury to or death of children attending the child day program. Reports of serious physical injuries, which shall include any physical injuries that require an emergency referral to an offsite health care professional or treatment in a hospital, shall be submitted annually. Reports of deaths shall be submitted no later than one business day after the death occurred; and

3. Post in a visible location on the premises notice that the child day program is operating as a program exempt from licensure with basic health and safety requirements but has no direct oversight by the Department.

D. Child day programs that are exempt from licensure pursuant to subsection B, except for child day programs that are exempt from licensure pursuant to subdivision B 1, 5, 6, or 7 shall:

1. Have a person trained and certified in first aid and cardiopulmonary resuscitation present at the child day program whenever children are present or at any other location in which children attending the child day program are present;

2. Maintain daily attendance records that document the arrival and departure of all children;

3. Have an emergency preparedness plan in place;

4. Comply with all applicable laws and regulations governing transportation of children; and

5. Comply with all safe sleep guidelines recommended by the American Academy of Pediatrics.

E. The Commissioner shall inspect child day programs that are exempt from licensure pursuant to subsection B to determine compliance with the provisions of this section only upon receipt of a complaint, except as otherwise provided by law.

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

F. 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.

§ 63.2-1716. Child day center operated by religious institution exempt from licensure; annual statement and documentary evidence required; enforcement; injunctive relief.

A. Notwithstanding any other provisions of this chapter, a child day center, including a child day center that is a child welfare agency operated or conducted under the auspices of a religious institution, shall be exempt from the licensure requirements of this subtitle, but shall comply with the provisions of this section unless it chooses to be licensed. If such religious institution chooses not to be licensed, it shall file with the Commissioner, prior to beginning operation of a child day center and thereafter annually, a statement of intent to operate a child day center, certification that the child day center has disclosed in writing to the parents or guardians of the children in the center the fact that it is exempt from licensure and has posted the fact that it is exempt from licensure in a visible location on the premises, the qualifications of the personnel employed therein, and documentary evidence that:

1. Such religious institution has tax exempt status as a nonprofit religious institution in accordance with § 501(c) of the Internal Revenue Code of 1954, as amended, or that the real property owned and exclusively occupied by the religious institution is exempt from local taxation.

2. Within the prior 90 days for the initial exemption and within the prior 180 days for exemptions thereafter, the local health department and local fire marshal or Office of the State Fire Marshal, whichever is appropriate, have inspected the physical facilities of the child day center and have determined that the center is in compliance with applicable laws and regulations with regard to food service activities, health and sanitation, water supply, building codes, and the Statewide Fire Prevention Code or the Uniform Statewide Building Code.

3. The child day center employs supervisory personnel according to the following ratio of staff to children:

a. One staff member to four children from ages zero to ~~twenty-four~~ 16 months.

b. One staff member to five children from ages 16 months to 24 months.

- 245 c. One staff member to ~~ten~~ eight children from ages ~~twenty-four~~ 24 months to ~~six~~ years 36 months.
 246 ~~e. d. One staff member to 10 children from ages 36 months to five years.~~
 247 e. One staff member to 20 children from ages five years to nine years.
 248 f. One staff member to ~~twenty-five~~ 25 children from ages ~~six~~ nine years and older to 12 years.

249 Staff shall be counted in the required staff-to-children ratios only when they are directly supervising
 250 children. In each grouping of children, at least one adult staff member shall be regularly present.
 251 However, during designated daily rest periods and designated sleep periods of evening and overnight
 252 care programs, for children ages ~~24~~ 16 months to six years, only one staff member shall be required to
 253 be present with the children under supervision. In such cases, at least one staff member shall be
 254 physically present in the same space as the children under supervision at all times. Other staff members
 255 counted for purposes of the staff-to-child ratio need not be physically present in the same space as the
 256 resting or sleeping children, but shall be present on the same floor as the resting or sleeping children
 257 and shall have no barrier to their immediate access to the resting or sleeping children. The staff member
 258 who is physically present in the same space as the sleeping children shall be able to summon additional
 259 staff counted in the staff-to-child ratio without leaving the space in which the resting or sleeping
 260 children are located.

261 Staff members shall be at least 16 years of age. Staff members under 18 years of age shall be under
 262 the supervision of an adult staff member. Adult staff members shall supervise no more than two staff
 263 members under 18 years of age at any given time.

264 4. Each person in a supervisory position has been certified by a practicing physician or physician
 265 assistant to be free from any disability which would prevent him from caring for children under his
 266 supervision.

267 5. The center is in compliance with the requirements of:

- 268 a. This section.
 269 b. Section 63.2-1724 relating to background checks.
 270 c. Section 63.2-1509 relating to the reporting of suspected cases of child abuse and neglect.
 271 d. Chapter 3 (§ 46.2-300 et seq.) of Title 46.2 regarding a valid Virginia driver's license or
 272 commercial driver's license; ~~of~~ Article 21 (§ 46.2-1157 et seq.) of Chapter 10 of Title 46.2, regarding
 273 vehicle inspections; ensuring that any vehicle used to transport children is an insured motor vehicle as
 274 defined in § 46.2-705; and Article 13 (§ 46.2-1095 et seq.) of Chapter 10 of Title 46.2, regarding child
 275 restraint devices.

276 6. The following aspects of the child day center's operations are described in a written statement
 277 provided to the parents or guardians of the children in the center and made available to the general
 278 public: physical facilities, enrollment capacity, food services, health requirements for the staff and public
 279 liability insurance.

280 7. *A person trained and certified in first aid and cardiopulmonary resuscitation (CPR) will be*
 281 *present at the child day center whenever children are present or at any other location in which children*
 282 *attending the child day center are present.*

283 8. *The child day center is in compliance with all safe sleep guidelines recommended by the American*
 284 *Academy of Pediatrics.*

285 B. The center shall establish and implement procedures for:

- 286 1. Hand washing by staff and children before eating and after toileting and diapering.
 287 2. Appropriate supervision of all children in care, including daily intake and dismissal procedures to
 288 ensure safety of children.
 289 3. A daily simple health screening and exclusion of sick children by a person trained to perform such
 290 screenings.

291 4. ~~Ensuring that a person trained and certified in first aid is present at the center whenever children~~
 292 ~~are present.~~

293 5. Ensuring that all children in the center are in compliance with the provisions of § 32.1-46
 294 regarding the immunization of children against certain diseases.

295 6. 5. Ensuring that all areas of the premises accessible to children are free of obvious injury hazards,
 296 including providing and maintaining sand or other cushioning material under playground equipment.

297 7. 6. Ensuring that all staff are able to recognize the signs of child abuse and neglect.

298 7. *Ensuring that all incidents involving serious physical injury to or death of children attending the*
 299 *child day center are reported to the Commissioner. Reports of serious physical injuries, which shall*
 300 *include any physical injuries that require an emergency referral to an offsite health care professional or*
 301 *treatment in a hospital, shall be submitted annually. Reports of deaths shall be submitted no later than*
 302 *one business day after the death occurred.*

303 C. The Commissioner may perform on-site inspections of religious institutions to confirm compliance
 304 with the provisions of this section and to investigate complaints that the religious institution is not in
 305 compliance with the provisions of this section. The Commissioner may revoke the exemption for any

306 child day center in serious or persistent violation of the requirements of this section. If a religious
307 institution operates a child day center and does not file the statement and documentary evidence required
308 by this section, the Commissioner shall give reasonable notice to such religious institution of the nature
309 of its noncompliance and may thereafter take such action as he determines appropriate, including a suit
310 to enjoin the operation of the child day center.

311 D. Any person who has reason to believe that a child day center falling within the provisions of this
312 section is not in compliance with the requirements of this section may report the same to the local
313 department, the local health department or the local fire marshal, each of which may inspect the child
314 day center for noncompliance, give reasonable notice to the religious institution, and thereafter may take
315 appropriate action as provided by law, including a suit to enjoin the operation of the child day center.

316 E. Nothing in this section shall prohibit a child day center operated by or conducted under the
317 auspices of a religious institution from obtaining a license pursuant to this chapter.

318 **2. That the provisions of this act shall become effective on July 1, 2019.**

319 **3. That the Commissioner of Social Services shall develop and establish a process to gather and**
320 **track aggregate data regarding child injuries and deaths that occur at child day programs exempt**
321 **from licensure.**

322 **4. That the Commissioner of Social Services shall prepare a plan to implement the provisions of**
323 **this act, which shall include the projected costs of implementation of the provisions of this act and**
324 **the availability of funds appropriated to the Department of Social Services to pay such costs, and**
325 **shall report such plan to the Chairmen of the House Committee on Appropriations and the Senate**
326 **Committee on Finance by December 1, 2018.**

327 **5. That, if the Commissioner of Social Services (the Commissioner) determines that**
328 **implementation of the provisions of this act requires funding in addition to amounts appropriated**
329 **to the Department of Social Services in the appropriation act, the Commissioner shall cease**
330 **implementation of the provisions of this act and shall not enforce the requirements of this act until**
331 **an amount necessary to implement the provisions of this act is appropriated by the General**
332 **Assembly.**

333 **6. That, notwithstanding the provisions of this act, all child day programs that enter into a**
334 **contract with the Department of Social Services or a local department of social services to provide**
335 **child care services funded by the Child Care and Development Block Grant shall comply with all**
336 **applicable requirements imposed by federal law or regulation.**

337 **7. That the Commissioner of Social Services shall assess the need for different standards governing**
338 **child day programs that are exempt from licensure pursuant to § 63.2-1716 of the Code of**
339 **Virginia, as amended by this act, and other child day programs that are exempt from licensure**
340 **and shall report his findings and conclusions to the Chairmen of the House Committee on Health,**
341 **Welfare and Institutions and the Senate Committee on Rehabilitation and Social Services by**
342 **December 1, 2018.**