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SENATE BILL NO. 920

Offered January 19, 2018

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.

Patron—Ebbin

Referred to Committee on Rehabilitation and Social Services

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

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59 may approve as an adoptive or foster parent an applicant who has been convicted of not more than one
60 misdemeanor offense as set out in § 18.2-57, or any substantially similar offense under the laws of
61 another jurisdiction, not involving abuse, neglect, moral turpitude, or a minor, provided that 10 years
62 have elapsed following the conviction.

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

68 G. Notwithstanding any provision to the contrary contained in this section, a child-placing agency
69 may approve as an adoptive or foster parent an applicant convicted of any offense set forth in clause
70 (iv) of the definition of barrier crime in § 19.2-392.02 who has had his civil rights restored by the
71 Governor or other appropriate authority, provided that ~~40~~ *five* years have elapsed following the
72 conviction.

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

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

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

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

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

97 B. Background checks pursuant to subsection A require:

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

102 2. A criminal history records check through the Central Criminal Records Exchange pursuant to
103 § 19.2-389; and

104 3. In the case of child-placing agencies, independent foster homes, family day systems, and family
105 day homes, or adoptive or foster parents, a search of the central registry maintained pursuant to
106 § 63.2-1515 for any founded complaint of child abuse and neglect.

107 C. The person required to have a background check pursuant to subsection A shall submit the
108 background check information required in subsection B to the Commissioner's representative prior to
109 issuance of a license, registration or approval. The applicant, other than an applicant for licensure as an
110 assisted living facility, shall provide an original criminal record clearance with respect to any barrier
111 crime as defined in § 19.2-392.02 or an original criminal history record from the Central Criminal
112 Records Exchange. An applicant for licensure as an assisted living facility shall provide an original
113 criminal record clearance with respect to any offense set forth in clause (i) of the definition of barrier
114 crime in § 19.2-392.02 or an original criminal history record from the Central Criminal Records
115 Exchange. Any person making a materially false statement regarding the sworn statement or affirmation
116 provided pursuant to subdivision B 1 is guilty of a Class 1 misdemeanor. If any person specified in
117 subsection A, other than an applicant for licensure as an assisted living facility, required to have a
118 background check (i) has been convicted of any barrier crime as defined in § 19.2-392.02 or (ii) is the
119 subject of a founded complaint of child abuse or neglect within or outside the Commonwealth, and such
120 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, independent foster home, or family day system or a registration to a family day home; (b) a child-placing agency shall not approve an adoptive or foster home; or (c) a family day system shall not approve a family day 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, independent foster home, or family day system or a registered family day home; be alone with, in control of, or supervising one or more children receiving services from a licensed child-placing agency, independent foster home, or family day system or a registered family day 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 another jurisdiction, not involving abuse, neglect, moral turpitude, or a minor, provided that 10 years have elapsed following the conviction.

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

G. Notwithstanding any provision to the contrary contained in this section, a child-placing agency may approve as an adoptive or foster parent an applicant convicted of any offense set forth in clause (iv) of the definition of barrier crime in § 19.2-392.02 who has had his civil rights restored by the Governor or other appropriate authority, provided that ~~40~~ *five* years have elapsed following the conviction.

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

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

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