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**HOUSE BILL NO. 2040**

Offered January 9, 2019

Prefiled January 7, 2019

*A BILL to amend and reenact § 19.2-392.02, as it is currently effective and as it shall become effective, of the Code of Virginia, relating to national fingerprint background checks; persons providing care for elderly or disabled.*

Patron—McGuire

Referred to Committee on Health, Welfare and Institutions

**Be it enacted by the General Assembly of Virginia:**

**1. That § 19.2-392.02, as it is currently effective and as it shall become effective, of the Code of Virginia is amended and reenacted as follows:**

**§ 19.2-392.02. (Effective until July 1, 2019) 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

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HB2040

59 recreation to children or the elderly or disabled.

60 "Department" means the Department of State Police.

61 "Employed by" means any person who is employed by, volunteers for, seeks to be employed by, or  
62 seeks to volunteer for a qualified entity.

63 "Identification document" means a document made or issued by or under the authority of the United  
64 States government, a state, a political subdivision of a state, a foreign government, political subdivision  
65 of a foreign government, an international governmental or an international quasi-governmental  
66 organization that, when completed with information concerning a particular individual, is of a type  
67 intended or commonly accepted for the purpose of identification of individuals.

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

73 "Qualified entity" means a business or organization that provides care to children or the elderly or  
74 disabled, whether governmental, private, for profit, nonprofit or voluntary, except organizations exempt  
75 pursuant to subdivision A 10 of § 63.2-1715.

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

79 1. Been fingerprinted; and

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

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

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

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

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

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

115 H. (Expires July 1, 2020) Notwithstanding any provisions in this section to the contrary, a spouse of  
116 a birth parent or parent by adoption who is not the birth parent of a child and has filed a petition for  
117 adoption of such child in circuit court may request the Department of State Police to conduct a national  
118 criminal background check on such prospective adoptive parent at his cost for purposes of § 63.2-1242.  
119 Such background checks shall otherwise be conducted in accordance with the provisions of this section.

120 I. Notwithstanding any provisions in this section to the contrary, any person who provides or seeks

to provide unsupervised care or assistance to an elderly or disabled person may request the Department of State Police to conduct a national criminal background check on himself at his cost. Such background checks shall otherwise be conducted in accordance with the provisions of this section.

**§ 19.2-392.02. (Effective July 1, 2019) National criminal background checks by businesses and organizations regarding employees or volunteers providing care to children or the elderly or disabled.**

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"Identification document" means a document made or issued by or under the authority of the United States government, a state, a political subdivision of a state, a foreign government, political subdivision of a foreign government, an international governmental or an international quasi-governmental organization that, when completed with information concerning a particular individual, is of a type intended or commonly accepted for the purpose of identification of individuals.

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