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SENATE BILL NO. 1407

Offered January 9, 2019

Prefiled January 8, 2019

A *BILL to amend and reenact §§ 63.2-1720.1 and 63.2-1721.1, as they are currently effective and as they shall become effective, of the Code of Virginia, relating to child care providers; fingerprint background checks.*

Patrons—Mason; Delegate: Price

Referred to Committee on Rehabilitation and Social Services

Be it enacted by the General Assembly of Virginia:

1. That §§ 63.2-1720.1 and 63.2-1721.1, as they are currently effective and as they shall become effective, of the Code of Virginia are amended and reenacted as follows:

§ 63.2-1720.1. (For expiration date, see Acts 2018, cc. 146 and 278) Child day centers, family day homes, and family day systems; employment for compensation or use as volunteers of persons convicted of or found to have committed certain offenses prohibited; national background check required; penalty.

A. No child day center, family day home, or family day system licensed in accordance with the provisions of this chapter, child day center exempt from licensure pursuant to § 63.2-1716, registered family day home, family day home approved by a family day system, or child day center, family day home, or child day program that enters into a contract with the Department or a local department to provide child care services funded by the Child Care and Development Block Grant shall hire for compensated employment, continue to employ, or permit to serve as a volunteer who will be alone with, in control of, or supervising children any person who (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. All applicants for employment, employees, applicants to serve as volunteers, and volunteers shall undergo a background check in accordance with subsection B prior to employment or beginning to serve as a volunteer and every five years thereafter.

B. Any individual required to undergo a background check in accordance with subsection A shall:

1. Provide a sworn statement or affirmation disclosing whether he has ever been convicted of or is the subject of pending charges for any offense within or outside the Commonwealth and whether he has been the subject of a founded complaint of child abuse or neglect within or outside the Commonwealth;

2. Submit to fingerprinting and provide personal descriptive information described in subdivision B 2 of § 19.2-392.02; and

3. Authorize the child day center, family day home, or family day system described in subsection A to obtain a copy of the results of a search of the central registry maintained pursuant to § 63.2-1515 and any child abuse and neglect registry or equivalent registry maintained by any other state in which the individual has resided in the preceding five years for any founded complaint of child abuse or neglect against him.

The individual's fingerprints and personal descriptive information obtained pursuant to subdivision 2 shall be forwarded by the Department, the Department's designee, or the local law-enforcement agency through the Central Criminal Records Exchange to the Federal Bureau of Investigation for the purpose of obtaining national criminal history record information regarding such individual. Upon receipt of the individual's record or notification that no record exists, the Central Criminal Records Exchange shall forward the information to the Department, and the Department shall report to the child day center, family day home, or family day system described in subsection A as to whether the individual is eligible to have responsibility for the safety and well-being of children. In cases in which the record forwarded to the Department is lacking disposition data, the Department shall conduct research in whatever state and local recordkeeping systems are available in order to obtain complete data before reporting to the child day center, family day home, or family day system.

C. The child day center, family day home, or family day system described in subsection A shall inform every individual required to undergo a background check pursuant to this section that he is entitled to obtain a copy of any background check report and to challenge the accuracy and completeness of any such report and obtain a prompt resolution before a final determination is made of the individual's eligibility to have responsibility for the safety and well-being of children.

D. 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.

E. Further dissemination of the background check information is prohibited other than to the

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59 Commissioner's representative or a federal or state authority or court as may be required to comply with
60 an express requirement of law for such further dissemination.

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

64 G. Notwithstanding the provisions of subsection A, a child day center may hire for compensated
65 employment persons who have been convicted of not more than one misdemeanor offense under
66 § 18.2-57, or any substantially similar offense under the laws of another jurisdiction, if 10 years have
67 elapsed following the conviction, unless the person committed such offense while employed in a child
68 day center or the object of the offense was a minor.

69 H. Fees charged for the processing and administration of background checks pursuant to this section
70 shall not exceed the actual cost to the state *or local law-enforcement agency* of such processing and
71 administration.

72 I. Any individual required to undergo a background check pursuant to subsection A who is (i)
73 convicted of any barrier crime as defined in § 19.2-392.02 or (ii) found to be the subject of a founded
74 complaint of child abuse or neglect within or outside of the Commonwealth shall notify the child day
75 center, family day home, or family day system described in subsection A of such conviction or finding.

76 **§ 63.2-1720.1. (For effective date, see Acts 2018, cc. 146 and 278) Licensed child day centers**
77 **and licensed family day homes; employment for compensation or use as volunteers of persons**
78 **convicted of or found to have committed certain offenses prohibited; national background check**
79 **required; penalty.**

80 A. No child day center or family day home licensed in accordance with the provisions of this chapter
81 shall hire for compensated employment, continue to employ, or permit to serve as a volunteer in a
82 position that is involved in the day-to-day operations of the child day center or family day home or in
83 which the employee or volunteer will be alone with, in control of, or supervising children any person
84 who (i) has been convicted of any barrier crime as defined in § 19.2-392.02 or (ii) is the subject of a
85 founded complaint of child abuse or neglect within or outside the Commonwealth. All applicants for
86 employment or to serve as volunteers shall undergo a background check in accordance with subsection
87 B.

88 B. Any applicant required to undergo a background check in accordance with subsection A shall:

89 1. Provide a sworn statement or affirmation disclosing whether he has ever been convicted of or is
90 the subject of pending charges for any offense within or outside the Commonwealth and whether he has
91 been the subject of a founded complaint of child abuse or neglect within or outside the Commonwealth;

92 2. Submit to fingerprinting and provide personal descriptive information described in subdivision B 2
93 of § 19.2-392.02; and

94 3. Authorize the child day center or family day home to obtain a copy of information from the
95 central registry maintained pursuant to § 63.2-1515 on any investigation of child abuse or neglect
96 undertaken on him.

97 The applicant's fingerprints and personal descriptive information obtained pursuant to subdivision 2
98 shall be forwarded *by the Department, the Department's designee, or the local law-enforcement agency*
99 through the Central Criminal Records Exchange to the Federal Bureau of Investigation for the purpose
100 of obtaining national criminal history record information regarding such applicant. Upon receipt of an
101 applicant's record or notification that no record exists, the Central Criminal Records Exchange shall
102 forward the information to the Department, and the Department shall report to the child day center or
103 family day home whether the applicant is eligible to have responsibility for the safety and well-being of
104 children. In cases in which the record forwarded to the Department is lacking disposition data, the
105 Department shall conduct research in whatever state and local recordkeeping systems are available in
106 order to obtain complete data before reporting to the child day center or family day home.

107 C. The child day center or family day home shall inform every applicant for compensated
108 employment or to serve as a volunteer required to undergo a background check pursuant to this section
109 that he is entitled to obtain a copy of any background check report and to challenge the accuracy and
110 completeness of any such report and obtain a prompt resolution before a final determination is made of
111 the applicant's eligibility to have responsibility for the safety and well-being of children.

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

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

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

120 G. 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, or any substantially similar offense under the laws of another jurisdiction, 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.

H. Fees charged for the processing and administration of background checks pursuant to this section shall not exceed the actual cost to the state *or local law-enforcement agency* of such processing and administration.

I. Any person employed for compensation at a licensed child day center or family day home or permitted to serve as a volunteer at a licensed child day center or family day home in a position that is involved in the day-to-day operations of the child day center or family day home or in which he will be alone with, in control of, or supervising children who is (i) convicted of any barrier crime as defined in § 19.2-392.02 or (ii) found to be the subject of a founded complaint of child abuse or neglect within or outside of the Commonwealth shall notify the child day center or family day home of such conviction or finding.

§ 63.2-1721.1. (For expiration date, see Acts 2018, cc. 146 and 278) Background check upon application for licensure, registration, or approval as child day center, family day home, or family day system; penalty.

A. Every (i) applicant for licensure as a child day center, family day home, or family day system, registration as a family day home, or approval as a family day home by a family day system; (ii) agent of an applicant for licensure as a child day center, family day home, or family day system, registration as a family day home, or approval as a family day home by a family day system at the time of application who is or will be involved in the day-to-day operations of the child day center, family day home, or family day system or who is or will be alone with, in control of, or supervising one or more of the children; and (iii) adult living in such child day center or family day home shall undergo a background check in accordance with subsection B prior to issuance of a license as a child day center, family day home, or family day system, registration as a family day home, or approval as a family day home by a family day system and every five years thereafter.

B. Every person required to undergo a background check pursuant to subsection A shall:

1. Provide a sworn statement or affirmation disclosing whether he has ever been convicted of or is the subject of any pending criminal charges for any offense within or outside the Commonwealth and whether or not he has been the subject of a founded complaint of child abuse or neglect within or outside the Commonwealth;

2. Submit to fingerprinting and provide personal descriptive information described in subdivision B 2 of § 19.2-392.02; and

3. Authorize the child day center, family day home, or family day system specified in subsection A to obtain a copy of the results of a search of the central registry maintained pursuant to § 63.2-1515 and any child abuse and neglect registry or equivalent registry maintained by any other state in which the individual has resided in the preceding five years for any founded complaint of child abuse or neglect against him.

Fingerprints and personal descriptive information obtained pursuant to subdivision 2 shall be forwarded by the Department, the Department's designee, or the local law-enforcement agency through the Central Criminal Records Exchange to the Federal Bureau of Investigation for the purpose of obtaining national criminal history record information regarding the individual. Upon receipt of an individual's record or notification that no record exists, the Central Criminal Records Exchange shall forward the information to the Department. The Department shall report to the child day center, family day home, or family day system described in subsection A as to whether the individual is eligible to have responsibility for the safety and well-being of children. In cases in which the record forwarded to the Department is lacking disposition data, the Department shall conduct research in whatever state and local recordkeeping systems are available in order to obtain complete data.

C. If any person specified in subsection A 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, no license as a child day center, family day home, or family day system or registration as a family day home shall be granted by the Commissioner and no approval as a family day home shall be granted by the family day system.

D. Information from a search of the central registry maintained pursuant to § 63.2-1515 and any child abuse and neglect registry or equivalent registry maintained by any other state in which the applicant, agent, or adult has resided in the preceding five years, authorized in accordance with subdivision B 3, shall be obtained prior to issuance of a license as a child day center, family day home, or family day system, registration as a family day home, or approval as a family day home by a family day system.

182 E. No person specified in subsection A shall be involved in the day-to-day operations of the child
183 day center, family day home, or family day system, or shall be alone with, in control of, or supervising
184 one or more children, without first having completed any required background check pursuant to
185 subsection B.

186 F. Any person making a materially false statement regarding the sworn statement or affirmation
187 provided pursuant to subdivision B 1 is guilty of a Class 1 misdemeanor.

188 G. If an individual is denied licensure, registration, or approval because of information from the
189 central registry or any child abuse and neglect registry or equivalent registry maintained by any other
190 state, or convictions appearing on his criminal history record, the Commissioner shall provide a copy of
191 the information obtained from the central registry, any child abuse and neglect registry or equivalent
192 registry maintained by any other state, or the Central Criminal Records Exchange to the individual.

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

196 I. Fees charged for the processing and administration of background checks pursuant to this section
197 shall not exceed the actual cost to the state or local law-enforcement agency of such processing and
198 administration.

199 **§ 63.2-1721.1. (For effective date, see Acts 2018, cc. 146 and 278) Background check upon**
200 **application for licensure as child day center or family day home; penalty.**

201 A. Every (i) applicant for licensure as a child day center or family day home; (ii) agent of an
202 applicant for licensure as a child day center or family day home at the time of application who is or
203 will be involved in the day-to-day operations of the child day center or family day home or who is or
204 will be alone with, in control of, or supervising one or more of the children; and (iii) adult living in the
205 family day home shall undergo a background check in accordance with subsection B prior to issuance of
206 a license as a child day center or family day home.

207 B. Every person required to undergo a background check pursuant to subsection A shall:

208 1. Provide a sworn statement or affirmation disclosing whether he has ever been convicted of or is
209 the subject of any pending criminal charges for any offense within or outside the Commonwealth and
210 whether or not he has been the subject of a founded complaint of child abuse or neglect within or
211 outside the Commonwealth;

212 2. Submit to fingerprinting and provide personal descriptive information described in subdivision B 2
213 of § 19.2-392.02; and

214 3. Authorize the Department to obtain a copy of information from the central registry maintained
215 pursuant to § 63.2-1515 on any investigation of child abuse or neglect undertaken on him.

216 Fingerprints and personal descriptive information obtained pursuant to subdivision 2 shall be
217 forwarded by the Department, the Department's designee, or the local law-enforcement agency through
218 the Central Criminal Records Exchange to the Federal Bureau of Investigation for the purpose of
219 obtaining national criminal history record information regarding the individual. Upon receipt of an
220 applicant's record or notification that no record exists, the Central Criminal Records Exchange shall
221 forward the information to the Department. In cases in which the record forwarded to the Department is
222 lacking disposition data, the Department shall conduct research in whatever state and local recordkeeping
223 systems are available in order to obtain complete data.

224 C. If any person specified in subsection A required to have a background check (i) has been
225 convicted of any barrier crime as defined in § 19.2-392.02 or (ii) is the subject of a founded complaint
226 of child abuse or neglect within or outside the Commonwealth, and such person has not been granted a
227 waiver by the Commissioner pursuant to § 63.2-1723, no license as a child day center or family day
228 home shall be granted.

229 D. Information from a search of the central registry maintained pursuant to § 63.2-1515, authorized
230 in accordance with subdivision B 3, shall be obtained prior to issuance of a license as a child day center
231 or family day home.

232 E. No person specified in subsection A shall be involved in the day-to-day operations of the child
233 day center or family day home, or shall be alone with, in control of, or supervising one or more
234 children without first having completed any required background check pursuant to subsection B.

235 F. Any person making a materially false statement regarding the sworn statement or affirmation
236 provided pursuant to subdivision B 1 is guilty of a Class 1 misdemeanor.

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

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

243 I. Fees charged for the processing and administration of background checks pursuant to this section

244 shall not exceed the actual cost to the state *or local law-enforcement agency* of such processing and
245 administration.

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