

VIRGINIA ACTS OF ASSEMBLY — CHAPTER

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An Act 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.

[S 1407]

Approved

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 or its designee or, in the case of a child day program operated by a local government, may be forwarded by 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 Commissioner's representative or a federal or state authority or court as may be required to comply with

57 an express requirement of law for such further dissemination.

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

61 G. Notwithstanding the provisions of subsection A, a child day center may hire for compensated  
62 employment persons who have been convicted of not more than one misdemeanor offense under  
63 § 18.2-57, or any substantially similar offense under the laws of another jurisdiction, if 10 years have  
64 elapsed following the conviction, unless the person committed such offense while employed in a child  
65 day center or the object of the offense was a minor.

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

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

73 **§ 63.2-1720.1. (For effective date, see Acts 2018, cc. 146 and 278) Licensed child day centers  
74 and licensed family day homes; employment for compensation or use as volunteers of persons  
75 convicted of or found to have committed certain offenses prohibited; national background check  
76 required; penalty.**

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

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

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

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

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

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

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

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

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

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

118 G. Notwithstanding the provisions of subsection A, a child day center may hire for compensated  
119 employment persons who have been convicted of not more than one misdemeanor offense under  
120 § 18.2-57, or any substantially similar offense under the laws of another jurisdiction, if 10 years have  
121 elapsed following the conviction, unless the person committed such offense while employed in a child  
122 day center or the object of the offense was a minor.

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

126 I. Any person employed for compensation at a licensed child day center or family day home or  
127 permitted to serve as a volunteer at a licensed child day center or family day home in a position that is  
128 involved in the day-to-day operations of the child day center or family day home or in which he will be  
129 alone with, in control of, or supervising children who is (i) convicted of any barrier crime as defined in  
130 § 19.2-392.02 or (ii) found to be the subject of a founded complaint of child abuse or neglect within or  
131 outside of the Commonwealth shall notify the child day center or family day home of such conviction  
132 or finding.

133 **§ 63.2-1721.1. (For expiration date, see Acts 2018, cc. 146 and 278) Background check upon**  
134 **application for licensure, registration, or approval as child day center, family day home, or family**  
135 **day system; penalty.**

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

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

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

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

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

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

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

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

179 or family day system, registration as a family day home, or approval as a family day home by a family  
180 day system.

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

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

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

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

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

198 **§ 63.2-1721.1. (For effective date, see Acts 2018, cc. 146 and 278) Background check upon**  
199 **application for licensure as child day center or family day home; penalty.**

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

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

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

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

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

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

246 **2. That the provisions of the first enactment of this act shall become effective on July 1, 2020.**

247 **3. That the Department of Social Services shall implement a process for receiving criminal history**  
248 **background checks processed by local law-enforcement agencies by July 1, 2020.**