

VIRGINIA ACTS OF ASSEMBLY — CHAPTER

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*An Act to amend and reenact §§ 22.1-289.035 and 22.1-296.3 of the Code of Virginia, relating to certain private schools in the Commonwealth; disclosure of certain employee records for purpose of accreditation.*

[H 1701]

Approved

**Be it enacted by the General Assembly of Virginia:**  
**1. That §§ 22.1-289.035 and 22.1-296.3 of the Code of Virginia are amended and reenacted as follows:**

**§ 22.1-289.035. Licensed 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 § 22.1-289.031, 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 its agents or designees 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;

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 for any founded complaint of child abuse or neglect against him; and

4. 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 criminal history record information check, a sex offender registry check, and a search of the child abuse and neglect registry or equivalent registry from any state in which the individual has resided in the preceding five years.

The applicant'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 applicant. Upon receipt of an applicant's record or notification that no record exists, the Central Criminal Records Exchange shall forward the information to the Department or its designee, and the Department or its designee shall report to the child day center or family day home whether the applicant is eligible to have responsibility for the safety and well-being of children. In cases in which the record forwarded to the Department or its designee is lacking disposition data, the Department or its designee 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 (i) other than to the

57 Superintendent's representative or a federal or state authority or court as may be required to comply with  
58 an express requirement of law for such further dissemination or (ii) except as provided in subsection J.

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

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

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

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

74 J. Notwithstanding the provisions of subsection A, a background check shall not be required for any  
75 individual who has completed a background check under the provisions of this section within the  
76 previous five years, provided that (i) such background check was conducted after July 1, 2017; (ii) the  
77 results of such background check indicated that the individual had not been convicted of any barrier  
78 crime as defined in § 19.2-392.02 and was not the subject of a founded complaint of child abuse or  
79 neglect within or outside the Commonwealth; and (iii) the individual is currently or has been, within the  
80 previous 180 days, employed by or a volunteer at a child day center, family day home, family day  
81 system, or child day program described in subsection A. Prior to hiring or allowing to volunteer any  
82 individual required to undergo a background check pursuant to subsection A without the completion of a  
83 background check under the provisions of subsection B, the child day center, family day home, family  
84 day system, or child day program shall, upon the individual's written consent, obtain written certification  
85 from the Department or its designee that such individual satisfies all requirements set forth in this  
86 subsection and is eligible to serve as an employee or volunteer. If the individual meets all requirements  
87 set forth in this subsection and is eligible to serve as an employee or volunteer at the child day center,  
88 family day home, family day system, or child day program, the written certification shall also state the  
89 next date by which another background check for such person shall be completed in accordance with  
90 subsection B. Such written certifications shall not reveal the nature of any disqualifying barrier crime or  
91 founded complaint of child abuse or neglect or any other information about the individual.

92 *K. Notwithstanding the provisions of subsection E, the Virginia Council for Private Education (the*  
93 *Council) or its authorized designee may review background check information for current employees of*  
94 *child day centers accredited by the Council for the purposes of seeking or maintaining accreditation by*  
95 *the Council as permitted pursuant to § 22.1-19.*

96 **§ 22.1-296.3. Certain private school employees subject to fingerprinting and criminal records**  
97 **checks.**

98 A. As a condition of employment, the governing boards or administrators of private elementary or  
99 secondary schools that are accredited pursuant to § 22.1-19 shall require any applicant who accepts  
100 employment, whether full time or part time or permanent or temporary, to submit to fingerprinting and  
101 to provide personal descriptive information to be forwarded along with the applicant's fingerprints  
102 through the Central Criminal Records Exchange to the Federal Bureau of Investigation for the purpose  
103 of obtaining criminal history record information regarding such applicant.

104 The Central Criminal Records Exchange, upon receipt of an applicant's record or notification that no  
105 record exists, shall report to the governing board or administrator, or to a private organization  
106 coordinating such records on behalf of such governing board or administrator pursuant to a written  
107 agreement with the Department of State Police, that the applicant meets the criteria or does not meet the  
108 criteria for employment based on whether or not the applicant has ever been convicted of any barrier  
109 crime as defined in § 19.2-392.02.

110 B. The Central Criminal Records Exchange shall not disclose information to such governing board,  
111 administrator, or private organization coordinating such records regarding charges or convictions of any  
112 crimes. If any applicant is denied employment because of information appearing on the criminal history  
113 record and the applicant disputes the information upon which the denial was based, the Central Criminal  
114 Records Exchange shall, upon request, furnish the applicant the procedures for obtaining a copy of the  
115 criminal history record from the Federal Bureau of Investigation. The information provided to the  
116 governing board, administrator, or private organization coordinating such records shall not be  
117 disseminated except as provided in this section. A governing board or administrator employing or

118 previously employing a temporary teacher or a private organization coordinating such records on behalf  
119 of such governing board or administrator pursuant to a written agreement with the Department of State  
120 Police may disseminate, at the written request of such temporary teacher, whether such teacher meets the  
121 criteria or does not meet the criteria for employment pursuant to subsection A to the governing board or  
122 administrator of another accredited private elementary or secondary school in which such teacher has  
123 accepted employment. Such governing board, administrator, or private organization transferring criminal  
124 records information pursuant to this section shall be immune from civil liability for any official act,  
125 decision, or omission done or made in the performance of such transfer, when such acts or omissions  
126 are taken in good faith and are not the result of gross negligence or willful misconduct.

127 Fees charged for the processing and administration of background checks pursuant to this section  
128 shall not exceed the actual cost to the state of such processing and administration.

129 *C. The governing board or administrator of a private elementary or secondary school may disclose*  
130 *information in records received pursuant to subsection A to the Virginia Council for Private Education*  
131 *(the Council) or its authorized designee for purposes of seeking or maintaining accreditation by the*  
132 *Council as permitted pursuant to § 22.1-19.*

133 *D.* The governing board or administrator of a private elementary or secondary school that is  
134 accredited pursuant to § 22.1-19 that operates a child day program or family day system regulated by the  
135 Department pursuant to Chapter 14.1 (§ 22.1-289.02 et seq.) shall accept evidence of a background  
136 check in accordance with § 22.1-289.035 for individuals who are required to undergo a background  
137 check in accordance with that section as a condition of employment in lieu of the background check  
138 required by subsection A.

139 *D. E.* The governing boards or administrators of private elementary and secondary schools that are  
140 accredited pursuant to § 22.1-19 shall adopt and implement policies prohibiting any individual who is a  
141 governing board member, administrator, employee, contractor, or agent of a private elementary or  
142 secondary school to assist a governing board member, administrator, employee, contractor, or agent of  
143 such private elementary or secondary school in obtaining a new job if such individual knows or has  
144 probable cause to believe that the individual seeking new employment engaged in sexual misconduct  
145 regarding a minor or student in violation of law.

146 *E. F.* For purposes of this section, "governing board" or "administrator" means the unit or board or  
147 person designated to supervise operations of a system of private schools or a private school accredited  
148 pursuant to § 22.1-19.

149 Nothing in this section or § 19.2-389 shall be construed to require any private or religious school that  
150 is not so accredited to comply with this section.