

## 2007 SESSION

LEGISLATION NOT PREPARED BY DLS  
INTRODUCED

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### HOUSE BILL NO. 1587

Offered January 20, 2006

A *BILL to amend and reenact §§ 19.2-392.02, 63.2-1720, 63.2-1721, 63.2-1724, and 63.2-1725 of the Code of Virginia, relating to national criminal records checks by the Department of State Police to prevent sex offender access to children and others; civil and criminal penalties.*

Patron—Hurt

Referred to Committee for Courts of Justice

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

1. That 19.2-392.02, 63.2-1720, 63.2-1721, 63.2-1724, and 63.2-1725 of the Code of Virginia are amended and reenacted as follows:

§ 19.2-392.02. National criminal background checks by businesses and organizations regarding employees or volunteers providing care to children, the elderly and disabled.

A. For purposes of this section:

"Barrier crime" means any offense set forth in § 63.2-1719 or 63.2-1726.

"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 recreation to children, the elderly or disabled.

"Department" means the Department of State Police.

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

"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.

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

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

B. Notwithstanding Pursuant to §§ 63.2-1719 to 63.2-1721, and 63.2-1724, and 63.2-1725, a qualified entity, except for any program exempt from licensure pursuant to subdivision A 10 of § 63.2-1715, who may but is not required to request a criminal background check, may shall request the Department of State Police to conduct a national criminal background check on any provider who is employed by such entity prior to the commencement of employment or volunteer service. No qualified entity may shall request a national criminal background check on a provider until such provider has:

1. Been fingerprinted at any local or state law-enforcement agency and provided the fingerprints to the qualified entity; and

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

C. Upon receipt of (i) a qualified entity's written request to conduct a background check on a

INTRODUCED

HB1587

59 provider, (ii) the provider's fingerprints, and (iii) a completed, signed statement as described in  
60 subsection B, the Department shall make a determination whether the provider has been convicted of or  
61 is the subject of charges of a barrier crime. To conduct its determination regarding the provider's barrier  
62 crime information, the Department shall access the national criminal history background check system,  
63 which is maintained by the Federal Bureau of Investigation and is based on fingerprints and other  
64 methods of identification, and shall access the Central Criminal Records Exchange maintained by the  
65 Department. If the Department receives a background report lacking disposition data, the Department  
66 shall conduct research in whatever state and local record-keeping systems are available in order to obtain  
67 complete data. The Department shall make reasonable efforts to respond to a qualified entity's inquiry  
68 within 15 business days.

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

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

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

80 G. ~~The failure to request a criminal background check pursuant to subsection B shall not be~~  
81 ~~considered negligence per se in any civil action.~~ *Any qualified entity, except any program exempt from*  
82 *licensure pursuant to subdivision A 10 of § 63.2-1715, that fails to request a criminal background check*  
83 *of a provider pursuant to subsection B shall be fined \$2,500. Upon a second or subsequent violation of*  
84 *this requirement, the qualified entity shall be guilty of a Class 3 misdemeanor and shall forfeit its*  
85 *license to operate in the Commonwealth.*

86 § 63.2-1720. Employment for compensation of persons or use of volunteers convicted of certain  
87 offenses prohibited; background check required; penalty.

88 A. An assisted living facility, adult day care center or child welfare agency licensed or registered in  
89 accordance with the provisions of this chapter, or family day homes approved by family day systems,  
90 shall not hire for compensated employment persons who have an offense as defined in § 63.2-1719.  
91 Such employees shall undergo background checks pursuant to subsection D. In the case of child welfare  
92 agencies, the provisions of this section shall apply to employees who are involved in the day-to-day  
93 operations of such agency or who are alone with, in control of, or supervising one or more children.

94 B. A licensed assisted living facility or adult day care center may hire an applicant convicted of one  
95 misdemeanor barrier crime not involving abuse or neglect or moral turpitude, provided five years have  
96 elapsed following the conviction.

97 C. Notwithstanding the provisions of subsection A, a child day center may hire for compensated  
98 employment persons who have been convicted of not more than one misdemeanor offense under  
99 § 18.2-57 if 10 years have elapsed following the conviction, unless the person committed such offense  
100 while employed in a child day center or the object of the offense was a minor.

101 D. Background checks pursuant to this section ~~require~~ *shall be conducted pursuant to § 19.2-392.02:*

102 ~~1. A sworn statement or affirmation disclosing whether the person has a criminal conviction or is the~~  
103 ~~subject of any pending criminal charges within or outside the Commonwealth and; in the case of child~~  
104 ~~welfare agencies, whether or not the person has been the subject of a founded complaint of child abuse~~  
105 ~~or neglect within or outside the Commonwealth;~~

106 ~~2. A criminal history record check through the Central Criminal Records Exchange pursuant to~~  
107 ~~§ 19.2-389; and~~

108 ~~3. In the case of child welfare agencies, the background check shall include a search of the central~~  
109 ~~registry maintained pursuant to § 63.2-1515 for any founded complaint of child abuse and neglect.~~

110 E. Any person desiring to work as a compensated employee at a licensed assisted living facility,  
111 licensed adult day care center, a licensed or registered child welfare agency, or a family day home  
112 approved by a family day system shall provide the hiring or approving facility, center or agency with a  
113 sworn statement or affirmation pursuant to subdivision ~~D 1.~~ *B 2 of § 19.2-392.02.* Any person making a  
114 materially false statement regarding the sworn statement or affirmation provided pursuant to subdivision  
115 ~~D 1.~~ *B 2 of § 19.2-392.02* shall be guilty of a Class 1 misdemeanor.

116 F. A licensed assisted living facility, licensed adult day care center, a licensed or registered child  
117 welfare agency, or a family day home approved by a family day system shall obtain for any  
118 compensated employees ~~within 30 days prior to the period of employment~~ (i) an original criminal  
119 record clearance with respect to convictions for offenses specified in § 63.2-1719 ~~or an original criminal~~  
120 ~~history record from the Central Criminal Records Exchange~~ and (ii) in the case of licensed or registered

child welfare agencies or family day homes approved by family day systems, a copy of the information from the central registry. If an applicant is denied employment because of information from the central registry or convictions appearing on his criminal history record, the assisted living facility, adult day care center or child welfare agency shall provide a copy of the *such* information obtained from the central registry or the Central Criminal Records Exchange or both to the applicant.

G. No volunteer who has an offense as defined in § 63.2-1719 shall be permitted to serve in a licensed or registered child welfare agency or a family day home approved by a family day system. Any person desiring to volunteer at such a child welfare agency shall provide the agency with a sworn statement or affirmation pursuant to subdivision D 4. B 2 of § 19.2-392.02. Such child welfare agency shall obtain for any volunteers, within 30 days of commencement of volunteer service prior to the commencement of volunteer service, a copy of (i) the information from the central registry and (ii) an original criminal record clearance with respect to offenses specified in § 63.2-1719 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 D 4. B 2 of § 19.2-392.02 shall be guilty of a Class 1 misdemeanor. If a volunteer is denied service because of information from the central registry or convictions appearing on his criminal history record, such child welfare agency shall provide a copy of the *such* information obtained from the central registry or the Central Criminal Records Exchange or both to the volunteer. The provisions of this subsection shall apply only to volunteers who will be alone with any child in the performance of their duties and shall not apply to a parent-volunteer of a child attending a licensed or registered child welfare agency, or a family day home approved by a family day system, whether or not such parent-volunteer will be alone with any child in the performance of his duties. A parent-volunteer is someone supervising, without pay, a group of children that includes the parent-volunteer's own child in a program that operates no more than four hours per day, provided that the parent-volunteer works under the direct supervision of a person who has received a clearance pursuant to this section.

H. No volunteer shall be permitted to serve in a licensed assisted living facility or licensed adult day care center without the permission or under the supervision of a person who has received a clearance pursuant to this section.

I. 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.

J. A licensed assisted living facility shall notify and provide all students a copy of the provisions of this article prior to or upon enrollment in a certified nurse aide program operated by such assisted living facility.

K. The provisions of this section shall not apply to any children's residential facility licensed pursuant to § 63.2-1701, which instead shall comply with the background investigation requirements contained in § 63.2-1726.

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

§ 63.2-1721. Background check upon application for licensure or registration as child welfare agency; background check of foster or adoptive parents approved by child-placing agencies and family day homes approved by family day systems; penalty.

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

B. Background checks pursuant to this section *require shall be conducted pursuant to § 19.2-392.02:*

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 record check through the Central Criminal Records Exchange pursuant to § 19.2-389; and

3. In the case of child welfare agencies or adoptive or foster parents, *the background check shall*

182 include a search of the central registry maintained pursuant to § 63.2-1515 for any founded complaint of  
183 child abuse and neglect.

184 C. The character and reputation investigation pursuant to § 63.2-1702 shall include background  
185 checks pursuant to subsection B of persons specified in subsection A. The applicant shall submit the  
186 background check information required in subsection B to the Commissioner's representative prior to  
187 issuance of a license, registration or approval. The applicant shall provide an original criminal record  
188 clearance with respect to offenses specified in § 63.2-1719 ~~or an original criminal history record from~~  
189 ~~the Central Criminal Records Exchange~~. Any person making a materially false statement regarding the  
190 sworn statement or affirmation provided pursuant to subdivision B ~~4 B 2 of § 19.2-392.02~~ shall be guilty  
191 of a Class 1 misdemeanor. If any person specified in subsection A required to have a background check  
192 has any offense as defined in § 63.2-1719, and such person has not been granted a waiver by the  
193 Commissioner pursuant to § 63.2-1723 or is not subject to an exception in subsections E or F, (i) the  
194 Commissioner shall not issue a license or registration to a child welfare agency; (ii) the Commissioner  
195 shall not issue a license to an assisted living facility; (iii) a child-placing agency shall not approve an  
196 adoptive or foster home; or (iv) a family day system shall not approve a family day home.

197 D. No person specified in subsection A shall be involved in the day-to-day operations of the child  
198 welfare agency or shall be alone with, in control of, or supervising one or more of the children without  
199 first having completed background checks pursuant to subsection B.

200 E. Notwithstanding any provision to the contrary contained in this section, a child-placing agency  
201 may approve as an adoptive or foster parent an applicant convicted of not more than one misdemeanor  
202 as set out in § 18.2-57 not involving abuse, neglect, moral turpitude, or a minor, provided 10 years have  
203 elapsed following the conviction.

204 F. Notwithstanding any provision to the contrary contained in this section, a child-placing agency  
205 may approve as a foster parent an applicant convicted of statutory burglary for breaking and entering a  
206 dwelling home or other structure with intent to commit larceny, who has had his civil rights restored by  
207 the Governor, provided 25 years have elapsed following the conviction.

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

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

215 I. The provisions of this section referring to a sworn statement or affirmation and to prohibitions on  
216 the issuance of a license for any offense shall not apply to any children's residential facility licensed  
217 pursuant to § 63.2-1701, which instead shall comply with the background investigation requirements  
218 contained in § 63.2-1726.

219 § 63.2-1724. Records check by unlicensed child day center; penalty.

220 Any child day center that is exempt from licensure pursuant to § 63.2-1716 shall require a  
221 prospective employee or volunteer or any other person who is expected to be alone with one or more  
222 children enrolled in the child day center to obtain ~~within 30 days of prior to~~ employment or  
223 commencement of volunteer service, a search of the central registry maintained pursuant to § 63.2-1515  
224 on any founded complaint of child abuse or neglect ~~and a criminal records check as provided in~~  
225 ~~subdivision A 11 of § 19.2-389 and a national criminal background check pursuant to § 19.2-392.02~~  
226 and shall refuse employment or service to any person who has any offense defined in § 63.2-1719. Such  
227 center shall also require a prospective employee or volunteer or any other person who is expected to be  
228 alone with one or more children in the child day center to provide a sworn statement or affirmation  
229 disclosing whether or not the applicant has ever been (i) the subject of a founded complaint of child  
230 abuse or neglect, or (ii) convicted of a crime or is the subject of pending criminal charges for any  
231 offense within the Commonwealth or any equivalent offense outside the Commonwealth. The foregoing  
232 provisions shall not apply to a parent or guardian who may be left alone with his or her own child. For  
233 purposes of this section, convictions shall include prior adult convictions and juvenile convictions or  
234 adjudications of delinquency based on a crime that would have been a felony if committed by an adult  
235 within or outside the Commonwealth. Any person making a materially false statement regarding any  
236 such offense shall be guilty of a Class 1 misdemeanor. If an applicant is denied employment or service  
237 because of information from the central registry or convictions appearing on his criminal history record,  
238 the child day center shall provide a copy of ~~the such~~ information ~~obtained from the central registry or~~  
239 ~~Central Criminal Records Exchange or both~~ to the applicant. Further dissemination of the information  
240 provided to the facility is prohibited.

241 The provisions of this section referring to volunteers shall apply only to volunteers who will be alone  
242 with any child in the performance of their duties and shall not apply to a parent-volunteer of a child  
243 attending the child day center whether or not such parent-volunteer will be alone with any child in the

performance of his duties. A parent-volunteer is someone supervising, without pay, a group of children which includes the parent-volunteer's own child, in a program which operates no more than four hours per day, where the parent-volunteer works under the direct supervision of a person who has received a clearance pursuant to this section.

§ 63.2-1725. Records checks of child day centers or family day homes receiving federal, state or local child care funds; penalty.

Whenever any child day center or family day home that has not met the requirements of §§ 63.2-1720, 63.2-1721 and 63.2-1724 applies to enter into a contract with a local department to provide child care services to clients of the local department, the local department shall require a *national* criminal records check pursuant to ~~subdivision A 11 of § 19.2-389~~ § 19.2-392.02, as well as a search of the central registry maintained pursuant to § 63.2-1515, on any child abuse or neglect investigation, of the applicant; any employee; prospective employee; volunteers; agents involved in the day-to-day operation; all agents who are alone with, in control of, or supervising one or more of the children; and any other adult living in a family day home. The applicant shall provide the local department with copies of these records checks. The child day center or family day home shall not be permitted to enter into a contract with a local department for child care services when an applicant; any employee; a prospective employee; a volunteer, an agent involved in the day-to-day operation; an agent alone with, in control of, or supervising one or more children; or any other adult living in a family day home has any offense as defined in § 63.2-1719. The child day center or family day home shall also require the above individuals to provide a sworn statement or affirmation disclosing whether or not the person has ever been (i) the subject of a founded case of child abuse or neglect or (ii) convicted of a crime or is the subject of any pending criminal charges within the Commonwealth or any equivalent offense outside the Commonwealth. Any person making a materially false statement regarding any such offense shall be guilty of a Class 1 misdemeanor. If a person is denied employment or work because of information from the central registry or convictions appearing on his criminal history record, the child day center or family day program shall provide a copy of such information ~~obtained from the central registry or Central Criminal Records Exchange or both~~ to the person. Further dissemination of the information provided to the facility, beyond dissemination to the local department, is prohibited.