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SENATE BILL NO. 1168**AMENDMENT IN THE NATURE OF A SUBSTITUTE**(Proposed by the Senate Committee on Finance
on February 3, 2015)(Patrons Prior to Substitute—Senators Hanger, Barker [SB 1124], Favola [SB 780], Marsden [SB 1029], and
Wexton [SB 1069])*A BILL to amend and reenact §§ 63.2-100 and 63.2-1704 of the Code of Virginia and to amend the
Code of Virginia by adding sections numbered 63.2-1701.1 and 63.2-1701.2, relating to family day
homes and child day centers; licensure; report to Department of Social Services.***Be it enacted by the General Assembly of Virginia:****1. That §§ 63.2-100 and 63.2-1704 of the Code of Virginia are amended and reenacted and that the
Code of Virginia is amended by adding sections numbered 63.2-1701.1 and 63.2-1701.2 as follows:****§ 63.2-100. Definitions.**

As used in this title, unless the context requires a different meaning:

"Abused or neglected child" means any child less than 18 years of age:

1. Whose parents or other person responsible for his care creates or inflicts, threatens to create or
inflict, or allows to be created or inflicted upon such child a physical or mental injury by other than
accidental means, or creates a substantial risk of death, disfigurement, or impairment of bodily or mental
functions, including, but not limited to, a child who is with his parent or other person responsible for his
care either (i) during the manufacture or attempted manufacture of a Schedule I or II controlled
substance, or (ii) during the unlawful sale of such substance by that child's parents or other person
responsible for his care, where such manufacture, or attempted manufacture or unlawful sale would
constitute a felony violation of § 18.2-248;

2. Whose parents or other person responsible for his care neglects or refuses to provide care
necessary for his health. However, no child who in good faith is under treatment solely by spiritual
means through prayer in accordance with the tenets and practices of a recognized church or religious
denomination shall for that reason alone be considered to be an abused or neglected child. Further, a
decision by parents who have legal authority for the child or, in the absence of parents with legal
authority for the child, any person with legal authority for the child, who refuses a particular medical
treatment for a child with a life-threatening condition shall not be deemed a refusal to provide necessary
care if (i) such decision is made jointly by the parents or other person with legal authority and the child;
(ii) the child has reached 14 years of age and is sufficiently mature to have an informed opinion on the
subject of his medical treatment; (iii) the parents or other person with legal authority and the child have
considered alternative treatment options; and (iv) the parents or other person with legal authority and the
child believe in good faith that such decision is in the child's best interest. Nothing in this subdivision
shall be construed to limit the provisions of § 16.1-278.4;

3. Whose parents or other person responsible for his care abandons such child;

4. Whose parents or other person responsible for his care commits or allows to be committed any act
of sexual exploitation or any sexual act upon a child in violation of the law;5. Who is without parental care or guardianship caused by the unreasonable absence or the mental or
physical incapacity of the child's parent, guardian, legal custodian or other person standing in loco
parentis; or6. Whose parents or other person responsible for his care creates a substantial risk of physical or
mental injury by knowingly leaving the child alone in the same dwelling, including an apartment as
defined in § 55-79.2, with a person to whom the child is not related by blood or marriage and who the
parent or other person responsible for his care knows has been convicted of an offense against a minor
for which registration is required as a violent sexual offender pursuant to § 9.1-902.If a civil proceeding under this title is based solely on the parent having left the child at a hospital
or rescue squad, it shall be an affirmative defense that such parent safely delivered the child to a
hospital that provides 24-hour emergency services or to an attended rescue squad that employs
emergency medical technicians, within 14 days of the child's birth. For purposes of terminating parental
rights pursuant to § 16.1-283 and placement for adoption, the court may find such a child is a neglected
child upon the ground of abandonment."Adoptive home" means any family home selected and approved by a parent, local board or a
licensed child-placing agency for the placement of a child with the intent of adoption."Adoptive placement" means arranging for the care of a child who is in the custody of a
child-placing agency in an approved home for the purpose of adoption."Adult abuse" means the willful infliction of physical pain, injury or mental anguish or unreasonable
confinement of an adult.

60 "Adult day care center" means any facility that is either operated for profit or that desires licensure
61 and that provides supplementary care and protection during only a part of the day to four or more aged,
62 infirm or disabled adults who reside elsewhere, except (i) a facility or portion of a facility licensed by
63 the State Board of Health or the Department of Behavioral Health and Developmental Services, and (ii)
64 the home or residence of an individual who cares for only persons related to him by blood or marriage.
65 Included in this definition are any two or more places, establishments or institutions owned, operated or
66 controlled by a single entity and providing such supplementary care and protection to a combined total
67 of four or more aged, infirm or disabled adults.

68 "Adult exploitation" means the illegal use of an incapacitated adult or his resources for another's
69 profit or advantage.

70 "Adult foster care" means room and board, supervision, and special services to an adult who has a
71 physical or mental condition. Adult foster care may be provided by a single provider for up to three
72 adults.

73 "Adult neglect" means that an adult is living under such circumstances that he is not able to provide
74 for himself or is not being provided services necessary to maintain his physical and mental health and
75 that the failure to receive such necessary services impairs or threatens to impair his well-being.
76 However, no adult shall be considered neglected solely on the basis that such adult is receiving religious
77 nonmedical treatment or religious nonmedical nursing care in lieu of medical care, provided that such
78 treatment or care is performed in good faith and in accordance with the religious practices of the adult
79 and there is a written or oral expression of consent by that adult.

80 "Adult protective services" means services provided by the local department that are necessary to
81 protect an adult from abuse, neglect or exploitation.

82 "Assisted living care" means a level of service provided by an assisted living facility for adults who
83 may have physical or mental impairments and require at least a moderate level of assistance with
84 activities of daily living.

85 "Assisted living facility" means any congregate residential setting that provides or coordinates
86 personal and health care services, 24-hour supervision, and assistance (scheduled and unscheduled) for
87 the maintenance or care of four or more adults who are aged, infirm or disabled and who are cared for
88 in a primarily residential setting, except (i) a facility or portion of a facility licensed by the State Board
89 of Health or the Department of Behavioral Health and Developmental Services, but including any
90 portion of such facility not so licensed; (ii) the home or residence of an individual who cares for or
91 maintains only persons related to him by blood or marriage; (iii) a facility or portion of a facility
92 serving infirm or disabled persons between the ages of 18 and 21, or 22 if enrolled in an educational
93 program for the handicapped pursuant to § 22.1-214, when such facility is licensed by the Department as
94 a children's residential facility under Chapter 17 (§ 63.2-1700 et seq.), but including any portion of the
95 facility not so licensed; and (iv) any housing project for persons 62 years of age or older or the disabled
96 that provides no more than basic coordination of care services and is funded by the U.S. Department of
97 Housing and Urban Development, by the U.S. Department of Agriculture, or by the Virginia Housing
98 Development Authority. Included in this definition are any two or more places, establishments or
99 institutions owned or operated by a single entity and providing maintenance or care to a combined total
100 of four or more aged, infirm or disabled adults. Maintenance or care means the protection, general
101 supervision and oversight of the physical and mental well-being of an aged, infirm or disabled
102 individual.

103 "Auxiliary grants" means cash payments made to certain aged, blind or disabled individuals who
104 receive benefits under Title XVI of the Social Security Act, as amended, or would be eligible to receive
105 these benefits except for excess income.

106 "Birth family" or "birth sibling" means the child's biological family or biological sibling.

107 "Birth parent" means the child's biological parent and, for purposes of adoptive placement, means
108 parent(s) by previous adoption.

109 "Board" means the State Board of Social Services.

110 "Child" means any natural person under 18 years of age.

111 "Child day center" means a child day program offered to (i) two or more children under the age of
112 13 in a facility that is not the residence of the provider or of any of the children in care or (ii) 13 or
113 more children at any location.

114 "Child day program" means a regularly operating service arrangement for children where, during the
115 absence of a parent or guardian, a person or organization has agreed to assume responsibility for the
116 supervision, protection, and well-being of a child under the age of 13 for less than a 24-hour period.

117 "Child-placing agency" means any person who places children in foster homes, adoptive homes or
118 independent living arrangements pursuant to § 63.2-1819 or a local board that places children in foster
119 homes or adoptive homes pursuant to §§ 63.2-900, 63.2-903, and 63.2-1221. Officers, employees, or
120 agents of the Commonwealth, or any locality acting within the scope of their authority as such, who
121 serve as or maintain a child-placing agency, shall not be required to be licensed.

"Child-protective services" means the identification, receipt and immediate response to complaints and reports of alleged child abuse or neglect for children under 18 years of age. It also includes assessment, and arranging for and providing necessary protective and rehabilitative services for a child and his family when the child has been found to have been abused or neglected or is at risk of being abused or neglected.

"Child support services" means any civil, criminal or administrative action taken by the Division of Child Support Enforcement to locate parents; establish paternity; and establish, modify, enforce, or collect child support, or child and spousal support.

"Child-welfare agency" means a child day center, child-placing agency, children's residential facility, family day home, family day system, or independent foster home.

"Children's residential facility" means any facility, child-caring institution, or group home that is maintained for the purpose of receiving children separated from their parents or guardians for full-time care, maintenance, protection and guidance, or for the purpose of providing independent living services to persons between 18 and 21 years of age who are in the process of transitioning out of foster care. Children's residential facility shall not include:

1. A licensed or accredited educational institution whose pupils, in the ordinary course of events, return annually to the homes of their parents or guardians for not less than two months of summer vacation;

2. An establishment required to be licensed as a summer camp by § 35.1-18; and

3. A licensed or accredited hospital legally maintained as such.

"Commissioner" means the Commissioner of the Department, his designee or authorized representative.

"Department" means the State Department of Social Services.

"Department of Health and Human Services" means the Department of Health and Human Services of the United States government or any department or agency thereof that may hereafter be designated as the agency to administer the Social Security Act, as amended.

"Disposable income" means that part of the income due and payable of any individual remaining after the deduction of any amount required by law to be withheld.

"Energy assistance" means benefits to assist low-income households with their home heating and cooling needs, including, but not limited to, purchase of materials or substances used for home heating, repair or replacement of heating equipment, emergency intervention in no-heat situations, purchase or repair of cooling equipment, and payment of electric bills to operate cooling equipment, in accordance with § 63.2-805, or provided under the Virginia Energy Assistance Program established pursuant to the Low-Income Home Energy Assistance Act of 1981 (Title XXVI of Public Law 97-35), as amended.

"Family day home" means a child day program offered in the residence of the provider or the home of any of the children in care for one through 12 children under the age of 13, ~~exclusive of including~~ the provider's own children and any children who reside in the home *who are under the age of six and are present in the home while care is being provided*, when at least one child receives care for compensation. The provider of a licensed or registered family day home shall disclose to the parents or guardians of children in their care the percentage of time per week that persons other than the provider will care for the children. Family day homes serving six through 12 children, ~~exclusive of including~~ the provider's own children and any children who reside in the home *who are under the age of six and are present in the home while care is being provided*, shall be licensed. However, no family day home shall care for more than four children under the age of two, including the provider's own children and any children who reside in the home, unless the family day home is licensed or voluntarily registered. However, a family day home where *all of the children in care (i) are all grandchildren of the provider and the provider does not receive funds from the federal Child Care and Development Block Grant or (ii) reside in the home shall not be required to be licensed considered a family day home. A home that chooses to be voluntarily registered as set forth in § 63.2-1704 shall be considered a family day home.*

"Family day system" means any person who approves family day homes as members of its system; who refers children to available family day homes in that system; and who, through contractual arrangement, may provide central administrative functions including, but not limited to, training of operators of member homes; technical assistance and consultation to operators of member homes; inspection, supervision, monitoring, and evaluation of member homes; and referral of children to available health and social services.

"Foster care placement" means placement of a child through (i) an agreement between the parents or guardians and the local board where legal custody remains with the parents or guardians or (ii) an entrustment or commitment of the child to the local board or licensed child-placing agency.

"Foster home" means the place of residence of any natural person in which any child, other than a child by birth or adoption of such person, resides as a member of the household.

"General relief" means money payments and other forms of relief made to those persons mentioned

183 in § 63.2-802 in accordance with the regulations of the Board and reimbursable in accordance with
184 § 63.2-401.

185 "Independent foster home" means a private family home in which any child, other than a child by
186 birth or adoption of such person, resides as a member of the household and has been placed therein
187 independently of a child-placing agency except (i) a home in which are received only children related by
188 birth or adoption of the person who maintains such home and children of personal friends of such
189 person and (ii) a home in which is received a child or children committed under the provisions of
190 subdivision A 4 of § 16.1-278.2, subdivision 6 of § 16.1-278.4, or subdivision A 13 of § 16.1-278.8.

191 "Independent living" means a planned program of services designed to assist a child age 16 and over
192 and persons who are former foster care children between the ages of 18 and 21 in transitioning to
193 self-sufficiency.

194 "Independent living arrangement" means placement of a child at least 16 years of age who is in the
195 custody of a local board or licensed child-placing agency and has been placed by the local board or
196 licensed child-placing agency in a living arrangement in which he does not have daily substitute parental
197 supervision.

198 "Independent living services" means services and activities provided to a child in foster care 14 years
199 of age or older who was committed or entrusted to a local board of social services, child welfare
200 agency, or private child-placing agency. "Independent living services" may also mean services and
201 activities provided to a person who (i) was in foster care on his 18th birthday and has not yet reached
202 the age of 21 years or (ii) is at least 18 years of age but who has not yet reached 21 years of age and
203 who, immediately prior to his commitment to the Department of Juvenile Justice, was in the custody of
204 a local board of social services. Such services shall include counseling, education, housing, employment,
205 and money management skills development, access to essential documents, and other appropriate
206 services to help children or persons prepare for self-sufficiency.

207 "Independent physician" means a physician who is chosen by the resident of the assisted living
208 facility and who has no financial interest in the assisted living facility, directly or indirectly, as an
209 owner, officer, or employee or as an independent contractor with the residence.

210 "Intercountry placement" means the arrangement for the care of a child in an adoptive home or foster
211 care placement into or out of the Commonwealth by a licensed child-placing agency, court, or other
212 entity authorized to make such placements in accordance with the laws of the foreign country under
213 which it operates.

214 "Interstate placement" means the arrangement for the care of a child in an adoptive home, foster care
215 placement or in the home of the child's parent or with a relative or nonagency guardian, into or out of
216 the Commonwealth, by a child-placing agency or court when the full legal right of the child's parent or
217 nonagency guardian to plan for the child has been voluntarily terminated or limited or severed by the
218 action of any court.

219 "Kinship care" means the full-time care, nurturing, and protection of children by relatives.

220 "Local board" means the local board of social services representing one or more counties or cities.

221 "Local department" means the local department of social services of any county or city in this
222 Commonwealth.

223 "Local director" means the director or his designated representative of the local department of the
224 city or county.

225 "Merit system plan" means those regulations adopted by the Board in the development and operation
226 of a system of personnel administration meeting requirements of the federal Office of Personnel
227 Management.

228 "Parental placement" means locating or effecting the placement of a child or the placing of a child in
229 a family home by the child's parent or legal guardian for the purpose of foster care or adoption.

230 "Public assistance" means Temporary Assistance for Needy Families (TANF); auxiliary grants to the
231 aged, blind and disabled; medical assistance; energy assistance; food stamps; employment services; child
232 care; and general relief.

233 "Qualified assessor" means an entity contracting with the Department of Medical Assistance Services
234 to perform nursing facility pre-admission screening or to complete the uniform assessment instrument for
235 a home and community-based waiver program, including an independent physician contracting with the
236 Department of Medical Assistance Services to complete the uniform assessment instrument for residents
237 of assisted living facilities, or any hospital that has contracted with the Department of Medical
238 Assistance Services to perform nursing facility pre-admission screenings.

239 "Registered family day home" means any family day home that has met the standards for voluntary
240 registration for such homes pursuant to regulations adopted by the Board and that has obtained a
241 certificate of registration from the Commissioner.

242 "Residential living care" means a level of service provided by an assisted living facility for adults
243 who may have physical or mental impairments and require only minimal assistance with the activities of
244 daily living. The definition of "residential living care" includes the services provided by independent

living facilities that voluntarily become licensed.

"Social services" means foster care, adoption, adoption assistance, child-protective services, domestic violence services, or any other services program implemented in accordance with regulations adopted by the Board. Social services also includes adult services pursuant to Article 4 (§ 51.5-144 et seq.) of Chapter 14 of Title 51.5 and adult protective services pursuant to Article 5 (§ 51.5-148) of Chapter 14 of Title 51.5 provided by local departments of social services in accordance with regulations and under the supervision of the Commissioner for Aging and Rehabilitative Services.

"Special order" means an order imposing an administrative sanction issued to any party licensed pursuant to this title by the Commissioner that has a stated duration of not more than 12 months. A special order shall be considered a case decision as defined in § 2.2-4001.

"Temporary Assistance for Needy Families" or "TANF" means the program administered by the Department through which a relative can receive monthly cash assistance for the support of his eligible children.

"Temporary Assistance for Needy Families-Unemployed Parent" or "TANF-UP" means the Temporary Assistance for Needy Families program for families in which both natural or adoptive parents of a child reside in the home and neither parent is exempt from the Virginia Initiative for Employment Not Welfare (VIEW) participation under § 63.2-609.

"Title IV-E Foster Care" means a federal program authorized under §§ 472 and 473 of the Social Security Act, as amended, and administered by the Department through which foster care is provided on behalf of qualifying children.

§ 63.2-1701.1. Local government to report business licenses issued to child day centers and family day homes.

The commissioner of revenue or other local business license official shall report to the Department semiannually the name, address, and contact information of any child day center or family day home to which a business license was issued since the previous report.

§ 63.2-1701.2. Unlicensed, unregistered family day homes; notice to the Department; inspections.

Every family day home that is not licensed or voluntarily registered with the Department shall, prior to beginning such operation and at such intervals thereafter as may be required by the Department, submit to the Commissioner a written declaration of intent to operate such family day home, which shall include a statement of the number of children for whom the family day home will provide care and such other information as the Commissioner may require.

§ 63.2-1704. Voluntary registration of family day homes; inspections; investigation upon receipt of complaint; revocation or suspension of registration.

A. Any person who maintains a family day home serving fewer than six children, ~~exclusive of~~ including the provider's own children and any children who reside in the home, ~~are under the age of six,~~ and are present in the home while care is being provided, may apply for voluntary registration. An applicant for voluntary registration shall file with the Commissioner, prior to beginning any such operation and thereafter biennially, an application which shall include, but not be limited to, the following:

1. The name, address, phone number, and social security number of the person maintaining the family day home;

2. The number and ages of the children to receive care;

3. A sworn statement or affirmation in which the applicant attests to the accuracy of the information submitted to the Commissioner; and

4. Documentation that the background check requirements for registered child welfare agencies in Article 3 (§ 63.2-1719 et seq.) of this chapter have been met.

B. The Board shall adopt regulations for voluntarily registered family day homes that include, but are not limited to:

1. The criteria and process for the approval of the certificate of registration;

2. Requirements for a self-administered health and safety guidelines evaluation checklist;

3. A schedule for fees to be paid by the providers to the contract organization or to the Department if it implements the provisions of this section for processing applications for the voluntary registration of family day homes. The charges collected shall be maintained for the purpose of recovering administrative costs incurred in processing applications and certifying such homes as eligible or registered;

4. The criteria and process for the renewal of the certificate of registration; and

5. The requirement that upon receipt of a complaint concerning a registered family day home, the Commissioner shall cause an investigation to be made, including on-site visits as he deems necessary, of the activities, services, and facilities. The person who maintains such home shall afford the Commissioner reasonable opportunity to inspect the operator's facilities and records and to interview any employees and any child or other person within his custody or control. Whenever a registered family

306 day home is determined by the Commissioner to be in noncompliance with the regulations for
307 voluntarily registered family day homes, the Commissioner shall give reasonable notice to the operator
308 of the nature of the noncompliance and may thereafter revoke or suspend the registration.

309 C. Upon receiving the application on forms prescribed by the Commissioner, and after having
310 determined that the home has satisfied the requirements of the regulations for voluntarily registered
311 family day homes, the Commissioner shall issue a certificate of registration to the family day home.

312 D. The Commissioner shall contract in accordance with the requirements of the Virginia Public
313 Procurement Act (§ 2.2-4300 et seq.) with qualified local agencies and community organizations to
314 review applications and certify family day homes as eligible for registration, pursuant to the regulations
315 for voluntarily registered family day homes. If no qualified local agencies or community organizations
316 are available, the Commissioner shall implement the provisions of this section. "Qualified" means
317 demonstrated ability to provide sound financial management and administrative services including
318 application processing, maintenance of records and reports, technical assistance, consultation, training,
319 monitoring, and random inspections.

320 E. The scope of services in contracts shall include:

321 1. The identification of family day homes which may meet the standards for voluntary registration
322 provided in subsection A; and

323 2. A requirement that the contract organization shall provide administrative services, including, but
324 not limited to, processing applications for the voluntary registration of family day homes; certifying such
325 homes as eligible for registration; providing technical assistance, training and consultation with family
326 day homes; ensuring providers' compliance with the regulations for voluntarily registered family day
327 homes, including monitoring and random inspections; and maintaining permanent records regarding all
328 family day homes which it may certify as eligible for registration.

329 F. The contract organization, upon determining that a family day home has satisfied the requirements
330 of the regulations for voluntarily registered family day homes, shall certify the home as eligible for
331 registration on forms prescribed by the Commissioner. The Commissioner, upon determining that
332 certification has been properly issued, may register the family day home.

333 G. The provisions of this section shall not apply to any family day home located in a county, city, or
334 town in which the governing body provides by ordinance for the regulation and licensing of persons
335 who provide child-care services for compensation and for the regulation and licensing of child-care
336 facilities pursuant to the provisions of § 15.2-914.

337 **2. That the provisions of this act amending §§ 63.2-100 and 63.2-1704 of the Code of Virginia shall**
338 **become effective on July 1, 2016.**

339 **3. That the provisions of this act shall not become effective unless an appropriation effectuating**
340 **the purposes of this act is included in a general appropriation act passed in 2015 by the General**
341 **Assembly that becomes law.**