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HOUSE BILL NO. 2259

Offered January 11, 2017

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A BILL to amend and reenact §§ 19.2-392.02, 63.2-1715, and 63.2-1716 of the Code of Virginia, relating to child day programs; exemptions from licensure.

Patron—Filler-Corn

Referred to Committee for Courts of Justice

Be it enacted by the General Assembly of Virginia:

1. That §§ 19.2-392.02, 63.2-1715, and 63.2-1716 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, or the elderly or 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 or 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; (ii) is a volunteer of a qualified entity and has, seeks to have, or may have unsupervised access to a child to whom the qualified entity provides care; or (iii) owns, operates, or seeks to own or operate a qualified entity.

"Qualified entity" means a business or organization that provides care to children or the elderly or disabled, whether governmental, private, for profit, nonprofit or voluntary, except organizations exempt pursuant to subdivision A 40 7 of § 63.2-1715.

B. A qualified entity may request the Department of State Police to conduct a national criminal background check on any provider who is employed by such entity. No qualified entity may request a national criminal background check on a provider until such provider has:

1. Been fingerprinted; 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 or 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 provider, (ii) the provider's fingerprints, and (iii) a completed, signed statement as described in subsection B, the Department shall make a determination whether the provider has been convicted of or

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59 is the subject of charges of a barrier crime. To conduct its determination regarding the provider's barrier
60 crime information, the Department shall access the national criminal history background check system,
61 which is maintained by the Federal Bureau of Investigation and is based on fingerprints and other
62 methods of identification, and shall access the Central Criminal Records Exchange maintained by the
63 Department. If the Department receives a background report lacking disposition data, the Department
64 shall conduct research in whatever state and local recordkeeping systems are available in order to obtain
65 complete data. The Department shall make reasonable efforts to respond to a qualified entity's inquiry
66 within 15 business days.

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

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

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

78 G. The failure to request a criminal background check pursuant to subsection B shall not be
79 considered negligence per se in any civil action.

80 **§ 63.2-1715. Exemptions from licensure.**

81 A. The following *programs are not* child day programs *and* shall not be required to be licensed:

82 1. ~~A child day center that has obtained an exemption pursuant to § 63.2-1716.~~

83 2. ~~A program where, by written policy given to and signed by a parent or guardian, school-aged~~
84 ~~children are free to enter and leave the premises without permission or supervision, regardless of (i)~~
85 ~~such program's location or the number of days per week of its operation; (ii) the provision of~~
86 ~~transportation services, including drop-off and pick-up times; or (iii) the scheduling of breaks for snacks,~~
87 ~~homework, or other activities. A program that would qualify for this exemption except that it assumes~~
88 ~~responsibility for the supervision, protection and well-being of several children with disabilities who are~~
89 ~~mainstreamed shall not be subject to licensure.~~

90 3. ~~A program of instructional experience in a single focus, such as, but not limited to, computer~~
91 ~~science, archaeology, sport clinics, or music, if children under the age of six do not attend at all and if~~
92 ~~no child is allowed to attend for more than 25 days in any three-month period commencing with~~
93 ~~enrollment. This exemption does not apply if children merely change their enrollment to a different~~
94 ~~focus area at a site offering a variety of activities and such children's attendance exceeds 25 days in a~~
95 ~~three-month period.~~

96 4. ~~2. Programs of instructional or recreational activities wherein no child under age six attends for~~
97 ~~more than six hours weekly with no class or activity period to exceed one and one-half hours, and no~~
98 ~~child six years of age or above attends for more than six hours weekly when school is in session or 12~~
99 ~~hours weekly when school is not in session. Competition, performances and exhibitions related to the~~
100 ~~instructional or recreational activity shall be excluded when determining the hours of program operation.~~

101 5. ~~A program that operates no more than a total of 20 program days in the course of a calendar year~~
102 ~~provided that programs serving children under age six operate no more than two consecutive weeks~~
103 ~~without a break of at least a week.~~

104 6. ~~3. Instructional programs offered by private schools that serve school-age children and that satisfy~~
105 ~~compulsory attendance laws or provide services under the Individuals with Disabilities Education Act, as~~
106 ~~amended, and programs of school-sponsored extracurricular activities that are focused on single interests~~
107 ~~such as, but not limited to, music, sports, drama, civic service, or foreign language.~~

108 7. ~~4. Instructional programs offered by public schools that serve preschool-age children or that~~
109 ~~satisfy compulsory attendance laws, or provide services under the Individuals with Disabilities Education~~
110 ~~Act, as amended, and programs of school-sponsored extracurricular activities that are focused on single~~
111 ~~interests such as, but not limited to, music, sports, drama, civic service, or foreign language.~~

112 8. ~~5. Early intervention programs for children eligible under Part C of the Individuals with~~
113 ~~Disabilities Education Act, as amended, wherein no child attends for more than a total of six hours per~~
114 ~~week.~~

115 9. ~~6. Practice or competition in organized competitive sports leagues.~~

116 10. ~~7. Programs of religious instruction, such as Sunday schools, vacation Bible schools, and Bar~~
117 ~~Mitzvah or Bat Mitzvah classes, and child-minding services provided nurseries offered by religious~~
118 ~~institutions to allow parents or guardians or their designees who are on site to attend religious worship~~
119 ~~or instructional services and related activities, provided for the duration of such specified religious~~
120 ~~services or activities.~~

11. Child-minding services that are not available for more than three hours per day for any individual child offered on site in commercial or recreational establishments if the parent or guardian (i) is not an on-duty employee, except for part-time employees working less than two hours per day; (ii) can be contacted and can resume responsibility for the child's supervision within 30 minutes; and (iii) is receiving or providing services or participating in activities offered by the establishment.

12. A certified preschool or nursery school program operated by a private school that is accredited by a statewide accrediting organization recognized by the State Board of Education or accredited by the National Association for the Education of Young Children's National Academy of Early Childhood Programs; the Association of Christian Schools International; the American Association of Christian Schools; the National Early Childhood Program Accreditation; the National Accreditation Council for Early Childhood Professional Personnel and Programs; the International Academy for Private Education; the American Montessori Society; the International Accreditation and Certification of Childhood Educators, Programs, and Trainers; or the National Accreditation Commission that complies with the provisions of § 63.2-1717.

13. A program of recreational activities offered by local governments, staffed by local government employees, and attended by school-age children. Such programs shall be subject to safety and supervisory standards established by local governments.

14. 8. A program of instructional or athletic experience operated during the summer months by, and as an extension of, an accredited private elementary, middle, or high school program as set forth in § 22.1-19 and administered by the Virginia Council for Private Education.

B. *The following child day programs shall not be required to be licensed:*

1. *A child day center that has obtained an exemption pursuant to § 63.2-1716.*

2. *A program where, by written policy given to and signed by a parent or guardian, school-age children are free to enter and leave the premises without permission. A program that would qualify for this exemption except that it assumes responsibility for the supervision, protection, and well-being of several children with disabilities who are mainstreamed shall not be subject to licensure.*

3. *A program that operates no more than a total of 20 program days in the course of a calendar year, provided that programs serving children under age six operate no more than two consecutive weeks without a break of at least a week.*

4. *Child-minding services that are not available for more than three hours per day for any individual child offered on-site in commercial or recreational establishments if the parent or guardian (i) can be contacted and can resume responsibility for the child's supervision within 30 minutes and (ii) is receiving or providing services or participating in activities offered by the establishment.*

5. *A certified preschool or nursery school program operated by a private school that is accredited by a statewide accrediting organization recognized by the State Board of Education or accredited by the National Association for the Education of Young Children's National Academy of Early Childhood Programs; the Association of Christian Schools International; the American Association of Christian Schools; the National Early Childhood Program Accreditation; the National Accreditation Council for Early Childhood Professional Personnel and Programs; the International Academy for Private Education; the American Montessori Society; the International Accreditation and Certification of Childhood Educators, Programs, and Trainers; or the National Accreditation Commission that complies with the provisions of § 63.2-1717.*

6. *A program of recreational activities offered by local governments, staffed by local government employees, and attended by school-age children. Such programs shall be subject to safety and supervisory standards established by the local government offering the program.*

C. *Child day programs that are exempt from licensure pursuant to subdivision B 2, 3, or 4 shall:*

1. *File with the Commissioner, prior to beginning operation of a child day program and annually thereafter, a statement indicating the intent to operate a child day program, identifying the specific provision of this section relied upon for exemption from licensure, and certifying that the child day program has disclosed in writing to the parents or guardians of the children in the program the fact that it is exempt from licensure;*

2. *Report to the Commissioner all incidents involving serious injury or death to children attending the child day program;*

3. *Have a person trained and certified in first aid and cardiopulmonary resuscitation present at the child day program whenever children are present or at any other location in which children attending the child day program are present;*

4. *Comply with background check requirements established by regulations of the Board;*

5. *Maintain daily attendance records that document the arrival and departure of all children;*

6. *Have an emergency preparedness plan in place;*

7. *Comply with all applicable laws and regulations governing transportation of children; and*

8. *Post in a visible location on the premises at which the child day program is being provided notice*

182 *that the program is not licensed or inspected by the Department and only certifies basic health and*
183 *safety requirements.*

184 *D. Family day homes that are members of a licensed family day system shall not be required to*
185 *obtain a license from the Commissioner.*

186 *C. E. Officers, employees, or agents of the Commonwealth, or of any county, city, or town acting*
187 *within the scope of their authority as such, who serve as or maintain a child-placing agency shall not be*
188 *required to be licensed.*

189 **§ 63.2-1716. Child day center operated by religious institution exempt from licensure; annual**
190 **statement and documentary evidence required; enforcement; injunctive relief.**

191 A. Notwithstanding any other provisions of this chapter, a child day center, including a child day
192 center that is a child welfare agency operated or conducted under the auspices of a religious institution
193 shall be exempt from the licensure requirements of this subtitle, but shall comply with the provisions of
194 this section unless it chooses to be licensed. If such religious institution chooses not to be licensed, it
195 shall file with the Commissioner, prior to beginning operation of a child day center and thereafter
196 annually, a statement of intent to operate a child day center, certification that the child day center has
197 disclosed in writing to the parents or guardians of the children in the center the fact that it is exempt
198 from licensure, the qualifications of the personnel employed therein and documentary evidence that:

199 1. Such religious institution has tax exempt status as a nonprofit religious institution in accordance
200 with § 501(c) of the Internal Revenue Code of 1954, as amended, or that the real property owned and
201 exclusively occupied by the religious institution is exempt from local taxation.

202 2. Within the prior 90 days for the initial exemption and within the prior 180 days for exemptions
203 thereafter, the local health department and local fire marshal or Office of the State Fire Marshal,
204 whichever is appropriate, have inspected the physical facilities of the child day center and have
205 determined that the center is in compliance with applicable laws and regulations with regard to food
206 service activities, health and sanitation, water supply, building codes, and the Statewide Fire Prevention
207 Code or the Uniform Statewide Building Code.

208 3. The child day center employs supervisory personnel according to the following ratio of staff to
209 children:

210 a. One staff member to four children from ~~ages zero to twenty-four~~ 24 months.

211 b. One staff member to ~~ten eight~~ children from ages ~~twenty-four months~~ 24 to ~~six~~ years 36 months.

212 c. One staff member to 10 children from ages 36 months to five years.

213 d. One staff member to 18 children from ages five years to nine years.

214 e. One staff member to ~~twenty-five~~ 20 children from ages ~~six nine~~ years and older to 12 years.

215 Staff shall be counted in the required staff-to-children ratios only when they are directly supervising
216 children. In each grouping of children, at least one adult staff member shall be regularly present.
217 However, during designated daily rest periods and designated sleep periods of evening and overnight
218 care programs, for children ages 24 months to six years, only one staff member shall be required to be
219 present with the children under supervision. In such cases, at least one staff member shall be physically
220 present in the same space as the children under supervision at all times. Other staff members counted
221 for purposes of the staff-to-child ratio need not be physically present in the same space as the resting or
222 sleeping children, but shall be present on the same floor as the resting or sleeping children and shall
223 have no barrier to their immediate access to the resting or sleeping children. The staff member who is
224 physically present in the same space as the sleeping children shall be able to summon additional staff
225 counted in the staff-to-child ratio without leaving the space in which the resting or sleeping children are
226 located.

227 Staff members shall be at least 16 years of age. Staff members under 18 years of age shall be under
228 the supervision of an adult staff member. Adult staff members shall supervise no more than two staff
229 members under 18 years of age at any given time.

230 4. Each person in a supervisory position has been certified by a practicing physician or physician
231 assistant to be free from any disability which would prevent him from caring for children under his
232 supervision.

233 5. The center is in compliance with the requirements of:

234 a. This section.

235 b. Section 63.2-1724 relating to background checks.

236 c. Section 63.2-1509 relating to the reporting of suspected cases of child abuse and neglect.

237 d. Chapter 3 (§ 46.2-300 et seq.) of Title 46.2 regarding a valid Virginia driver's license or
238 commercial driver's license; of Article 21 (§ 46.2-1157 et seq.) of Chapter 10 of Title 46.2, regarding
239 vehicle inspections; ensuring that any vehicle used to transport children is an insured motor vehicle as
240 defined in § 46.2-705; and Article 13 (§ 46.2-1095 et seq.) of Chapter 10 of Title 46.2, regarding child
241 restraint devices.

242 6. The following aspects of the child day center's operations are described in a written statement
243 provided to the parents or guardians of the children in the center and made available to the general

public: physical facilities, enrollment capacity, food services, health requirements for the staff and public liability insurance.

7. *A person trained and certified in first aid and cardiopulmonary resuscitation (CPR) will be present at the child day center whenever children are present or at any other location in which children attending the child day center are present.*

8. *The child day center is in compliance with all safe sleep practices for infants established by regulations of the Board.*

B. The center shall establish and implement procedures for:

1. Hand washing by staff and children before eating and after toileting and diapering.

2. Appropriate supervision of all children in care, including daily intake and dismissal procedures to ensure safety of children.

3. A daily simple health screening and exclusion of sick children by a person trained to perform such screenings.

4. Ensuring that a person trained and certified in first aid is present at the center whenever children are present.

5. Ensuring that all children in the center are in compliance with the provisions of § 32.1-46 regarding the immunization of children against certain diseases.

6. Ensuring that all areas of the premises accessible to children are free of obvious injury hazards, including providing and maintaining sand or other cushioning material under playground equipment.

7. Ensuring that all staff are able to recognize the signs of child abuse and neglect.

C. The Commissioner may perform on-site inspections of religious institutions to confirm compliance with the provisions of this section and to investigate complaints that the religious institution is not in compliance with the provisions of this section. The Commissioner may revoke the exemption for any child day center in serious or persistent violation of the requirements of this section. If a religious institution operates a child day center and does not file the statement and documentary evidence required by this section, the Commissioner shall give reasonable notice to such religious institution of the nature of its noncompliance and may thereafter take such action as he determines appropriate, including a suit to enjoin the operation of the child day center.

D. Any person who has reason to believe that a child day center falling within the provisions of this section is not in compliance with the requirements of this section may report the same to the local department, the local health department or the local fire marshal, each of which may inspect the child day center for noncompliance, give reasonable notice to the religious institution, and thereafter may take appropriate action as provided by law, including a suit to enjoin the operation of the child day center.

E. Nothing in this section shall prohibit a child day center operated by or conducted under the auspices of a religious institution from obtaining a license pursuant to this chapter.

2. That the Board of Social Services shall promulgate regulations to implement the provisions of this act.

3. That the Commissioner of Social Services shall develop and establish (i) a process to inspect child day programs exempt from licensure in order to ensure that such child day programs are in compliance with all applicable requirements and (ii) a process to gather and track aggregate data regarding child injuries and deaths that occur at child day programs exempt from licensure.