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SENATE BILL NO. 1239

AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the Senate Committee on Rehabilitation and Social Services
on January 27, 2017)

(Patron Prior to Substitute—Senator Hanger)

A *BILL to amend and reenact §§ 19.2-392.02, 63.2-1715, 63.2-1716, and 63.2-1717 of the Code of Virginia, relating to child day programs; exemptions from licensure.*

Be it enacted by the General Assembly of Virginia:

1. That §§ 19.2-392.02, 63.2-1715, 63.2-1716, and 63.2-1717 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 is the subject of charges of a barrier crime. To conduct its determination regarding the provider's barrier crime information, the Department shall access the national criminal history background check system, which is maintained by the Federal Bureau of Investigation and is based on fingerprints and other

60 methods of identification, and shall access the Central Criminal Records Exchange maintained by the
61 Department. If the Department receives a background report lacking disposition data, the Department
62 shall conduct research in whatever state and local recordkeeping systems are available in order to obtain
63 complete data. The Department shall make reasonable efforts to respond to a qualified entity's inquiry
64 within 15 business days.

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

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

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

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

78 **§ 63.2-1715. Exemptions from licensure.**

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

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

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

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

94 4. 2. Programs of instructional or recreational activities wherein no child under age six attends for
95 more than six hours weekly with no class or activity period to exceed one and one-half hours, and no
96 child six years of age or above attends for more than six hours weekly when school is in session or 12
97 hours weekly when school is not in session. Competition, performances and exhibitions related to the
98 instructional or recreational activity shall be excluded when determining the hours of program operation.

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

102 6. 3. Instructional programs offered by private schools that *serve school-age children and that* satisfy
103 compulsory attendance laws or *provide services under* the Individuals with Disabilities Education Act, as
104 amended, and programs of school-sponsored extracurricular activities that are focused on single interests
105 such as, but not limited to, music, sports, drama, civic service, or foreign language.

106 7. 4. Instructional programs offered by public schools that serve preschool-age children ~~or that~~
107 satisfy compulsory attendance laws, or *provide services under* the Individuals with Disabilities Education
108 Act, as amended, and programs of school-sponsored extracurricular activities that are focused on single
109 interests such as, but not limited to, music, sports, drama, civic service, or foreign language.

110 8. 5. Early intervention programs for children eligible under Part C of the Individuals with
111 Disabilities Education Act, as amended, wherein no child attends for more than a total of six hours per
112 week.

113 9. 6. Practice or competition in organized competitive sports leagues.

114 10. 7. Programs of religious instruction, such as Sunday schools, vacation Bible schools, and Bar
115 Mitzvah or Bat Mitzvah classes, and ~~child-minding services provided~~ *nurseries offered by religious*
116 *institutions* to allow parents or guardians *or their designees* who are on site to attend religious ~~worship~~
117 ~~or instructional services and related activities, provided for the duration of such specified religious~~
118 *services or activities.*

119 11. Child-minding services that are not available for more than three hours per day for any individual
120 child offered on site in commercial or recreational establishments if the parent or guardian (i) is not an
121 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 or a program offered by a local school division, operated for no more than four hours per day, staffed by local school division employees, and attended by school-age children who are enrolled in public school within such school division. Such programs shall be subject to safety and supervisory standards established by the local government or local school division offering the program.*

C. *Child day programs that are exempt from licensure pursuant to subsection B, except for child day programs that are exempt from licensure pursuant to subdivision B 1 or 5, 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. Reports of serious injuries, which shall include any injuries that require treatment from a health care professional, shall be submitted annually. Reports of deaths shall be submitted no later than one business day after the death occurred; and*

3. *Post in a visible location on the premises notice that the child day program is operating as a program exempt from licensure with basic health and safety requirements but has no direct oversight by the Department.*

D. *Child day programs that are exempt from licensure pursuant to subsection B, except for child day programs that are exempt from licensure pursuant to subdivision B 1, 5, or 6, shall:*

1. 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;

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

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

4. Have an emergency preparedness plan in place;

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

6. Comply with all safe sleep guidelines recommended by the American Academy of Pediatrics.

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

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

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

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

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

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

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

a. One staff member to four children from ages zero to ~~twenty-four~~ 16 months.

b. One staff member to five children from ages 16 months to 24 months.

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

~~e.~~ d. One staff member to 10 children from ages 36 months to five years.

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

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

Staff shall be counted in the required staff-to-children ratios only when they are directly supervising children. In each grouping of children, at least one adult staff member shall be regularly present. However, during designated daily rest periods and designated sleep periods of evening and overnight care programs, for children ages ~~24~~ 16 months to six years, only one staff member shall be required to be present with the children under supervision. In such cases, at least one staff member shall be physically present in the same space as the children under supervision at all times. Other staff members counted for purposes of the staff-to-child ratio need not be physically present in the same space as the resting or sleeping children, but shall be present on the same floor as the resting or sleeping children and shall have no barrier to their immediate access to the resting or sleeping children. The staff member who is physically present in the same space as the sleeping children shall be able to summon additional staff counted in the staff-to-child ratio without leaving the space in which the resting or sleeping children are located.

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

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

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

a. This section.

b. Section 63.2-1724 relating to background checks.
 c. Section 63.2-1509 relating to the reporting of suspected cases of child abuse and neglect.
 d. Chapter 3 (§ 46.2-300 et seq.) of Title 46.2 regarding a valid Virginia driver's license or commercial driver's license; of Article 21 (§ 46.2-1157 et seq.) of Chapter 10 of Title 46.2, regarding vehicle inspections; ensuring that any vehicle used to transport children is an insured motor vehicle as defined in § 46.2-705; and Article 13 (§ 46.2-1095 et seq.) of Chapter 10 of Title 46.2, regarding child restraint devices.

6. The following aspects of the child day center's operations are described in a written statement 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 guidelines recommended by the American Academy of Pediatrics.

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

7. Ensuring that all incidents involving serious injury or death to children attending the child day center are reported to the Commissioner. Reports of serious injuries, which shall include any injuries that require treatment from a health care professional, shall be submitted annually. Reports of deaths shall be submitted no later than one business day after the death occurred.

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.

§ 63.2-1717. Certification of preschool or nursery school programs operated by accredited private schools; provisional certification; annual statement and documentary evidence required; enforcement; injunctive relief.

A. A preschool or nursery school program operated by a private school accredited by a statewide accrediting organization recognized by the Board of Education or a private school or preschool that offers to preschool-aged children a program 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 and is recognized by the Board of Education, shall be exempt from licensure under this subtitle if it complies with the provisions of this section and meets the requirements

306 of subsection B, C or D.

307 B. A school described in subsection A shall meet the following conditions in order to be exempt
308 under this subsection:

309 1. The school offers kindergarten or elementary school instructional programs that satisfy compulsory
310 school attendance laws, and children below the age of compulsory school attendance also participate in
311 such instructional programs;

312 2. The instructional programs for children of and below the age of eligibility for school attendance
313 share (i) a specific verifiable common pedagogy, (ii) education materials, (iii) methods of instruction,
314 and (iv) professional training and individual teacher certification standards, all of which are required by
315 a state-recognized accrediting organization;

316 3. The instructional programs described in subdivisions 1 and 2 have mixed age groups of
317 three-year-old to six-year-old children and the number of pupils in the preschool program does not
318 exceed 15 pupils for each instructional adult;

319 4. The instructional program contemplates a three-to-four-year learning cycle under a common
320 pedagogy; and

321 5. Children below the age of eligibility for kindergarten attendance do not attend the instructional
322 program for more than four hours per day.

323 C. A school described in subsection A shall be exempt from licensure if it maintains an enrollment
324 ratio at any one time during the current school year of five children age five or above to one
325 four-year-old child as long as no child in attendance is under age four and the number of pupils in the
326 preschool program does not exceed 12 pupils for each instructional adult.

327 D. A private school or preschool described in subsection A shall meet the following conditions in
328 order to be exempt under this subsection:

329 1. The school offers instructional classes and has been in operation since January 1984.

330 2. The school does not hold itself out as a child care center, child day center, or child day program.

331 3. Children enrolled in the school are at least three years of age and do not attend more than (i)
332 three hours per day and (ii) five days per week.

333 4. The enrolled children attend only one program offered by the school per day.

334 5. The school maintains a certificate or permit issued pursuant to a local government ordinance that
335 addresses health, safety and welfare of the children, such as but not limited to space requirements, and
336 requires annual inspections.

337 E. The school shall file with the Commissioner, prior to the beginning of the school year or calendar
338 year, as the case may be, and thereafter, annually, a statement which includes the following:

339 1. Intent to operate a certified preschool program;

340 2. Documentary evidence that the school has been accredited as provided in subsection A;

341 3. Documentation that the school has disclosed in writing to the parents, guardians, or persons having
342 charge of a child enrolled in the school's preschool program *and has posted in a visible location on the*
343 *premises* the fact of the program's exemption from licensure;

344 4. Documentary evidence that the physical facility in which the preschool program will be conducted
345 has been inspected (i) before initial certification by the local building official and (ii) within the
346 12-month period prior to initial certification and at least annually thereafter by the local health
347 department, and local fire marshal or Office of the State Fire Marshal, whichever is appropriate, and an
348 inspection report which documents that the facility is in compliance with applicable laws and regulations
349 pertaining to food services, health and sanitation, water supply, building codes, and the Statewide Fire
350 Prevention Code or the Uniform Statewide Building Code;

351 5. Documentation that the school has disclosed the following in writing to the parents, guardians, or
352 persons having charge of a child enrolled in the school's preschool program, and in a written statement
353 available to the general public: (i) the school facility is in compliance with applicable laws and
354 regulations pertaining to food services, health and sanitation, water supply, building codes, and the
355 Statewide Fire Prevention Code or the Uniform Statewide Building Code, (ii) the preschool program's
356 maximum capacity, (iii) the school's policy or practice for pupil-teacher ratio, staffing patterns and staff
357 health requirements, and (iv) a description of the school's public liability insurance, if any;

358 6. Qualifications of school personnel who work in the preschool program; ~~and~~

359 7. *Certification that the school will report to the Commissioner all incidents involving serious injury*
360 *or death to children attending the school. Reports of serious injuries, which shall include any injuries*
361 *that require treatment from a health care professional, shall be submitted annually. Reports of deaths*
362 *shall be submitted no later than one business day after the death occurred; and*

363 8. Documentary evidence that the private school requires all employees of the preschool and other
364 school employees who have contact with the children enrolled in the preschool program to obtain a
365 criminal record check as provided in subdivision A 11 of § 19.2-389 as a condition of initial or
366 continued employment. The school shall not hire or continue employment of any such person who has
367 an offense specified in § 63.2-1719.

All accredited private schools seeking certification of preschool programs shall file such information on forms prescribed by the Commissioner. The Commissioner shall certify all preschool programs of accredited private schools which comply with the provisions of subsection A.

F. A preschool program of a private school that has not been accredited as provided in subsection A, or which has not provided documentation to the Commissioner that it has initiated the accreditation process, shall be subject to licensure.

The Commissioner shall issue a provisional certificate to a private school which provides documentation to the Commissioner that it has initiated the accreditation process. The provisional certificate shall permit the school to operate its preschool program during the accreditation process period. The issuance of an initial provisional certificate shall be for a period not to exceed one year. A provisional certificate may be renewed up to an additional year if the accrediting organization provides a statement indicating it has visited the school within the previous six months and the school has made sufficient progress. Such programs shall not be subject to licensure during the provisional certification period.

G. If a school fails to complete the accreditation process or is denied accreditation, the Commissioner shall revoke the provisional certification and the program shall thereafter be subject to licensure.

H. If the preschool program of a private school which is accredited as provided in subsection A fails to file the statement and the required documentary evidence, the Commissioner shall notify the school of its noncompliance and may thereafter take such action as he determines appropriate, including notice that the program is required to be licensed.

I. The revocation or denial of the certification of a preschool program shall be subject to appeal pursuant to the provisions of the Administrative Process Act (§ 2.2-4000 et seq.). Judicial review of a final agency decision shall be in accordance with the provisions of the Administrative Process Act.

J. Any person who has reason to believe that a private school falling within the provisions of this section is in noncompliance with any applicable requirement of this section may report the same to the Department, the local department, the local health department, or the local fire marshal, each of which may inspect the school for noncompliance, give reasonable notice to the school of the nature of its noncompliance, and thereafter may take appropriate action as provided by law, including a suit to enjoin the operation of the preschool program.

K. Upon receipt of a complaint concerning a certified preschool program of an accredited private school, or of a private school to which provisional certification has been issued, if for good cause shown there is reason to suspect that the school is in noncompliance with any provision of this section or the health or safety of the children attending the preschool program is in danger, the Commissioner shall cause an investigation to be made, including on-site visits as he deems necessary of the services, personnel, and facilities of the school's program. The school shall afford the Commissioner reasonable opportunity to inspect the school's program, records, and facility, and to interview the employees and any child or parent or guardian of a child who is or has been enrolled in the preschool program. If, upon completion of the investigation, it is determined that the school is in noncompliance with the provisions of this section, the Commissioner shall give reasonable notice to the school of the nature of its noncompliance and thereafter may take appropriate action as provided by law, including a suit to enjoin the operation of the preschool program.

L. Failure of a private school to comply with the provisions of this section, or a finding that the health and safety of the children attending the preschool program are in clear and substantial danger upon the completion of an investigation, shall be grounds for revocation of the certification issued pursuant to this section.

M. If a private school operates a child day program outside the scope of its instructional classes during the school year or operates a child day program during the summer, the child day program shall be subject to licensure under the regulations adopted pursuant to § 63.2-1734.

N. Nothing in this section shall prohibit a preschool operated by or conducted under the auspices of a private school from obtaining a license pursuant to this subtitle.

2. That the provisions of this act shall become effective on July 1, 2018.

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

4. That the Commissioner of Social Services (the Commissioner) shall develop and establish a process to inspect child day programs exempt from licensure, regardless of whether a complaint has been filed concerning such child day programs, in order to ensure that such child day programs are in compliance with all applicable requirements. Such inspections shall be conducted pursuant to a schedule established by the Commissioner based on available resources and appropriations.

5. That the Commissioner of Social Services shall develop and establish a process to gather and track aggregate data regarding child injuries and deaths that occur at child day programs exempt

429 from licensure.