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HOUSE BILL NO. 437

Offered January 10, 2018

Prefiled January 6, 2018

A BILL to amend and reenact § 63.2-1721, as it is currently effective and as it shall become effective, of the Code of Virginia, relating to adoption and foster care; barrier crimes; exception.

Patron—Herring (By Request)

Referred to Committee for Courts of Justice

Be it enacted by the General Assembly of Virginia:

1. That § 63.2-1721, as it is currently effective and as it shall become effective, of the Code of Virginia is amended and reenacted as follows:

§ 63.2-1721. (Expires July 1, 2018, or earlier if contingency is met) Background check upon application for licensure as a child-placing agency or independent foster home; penalty.

A. Upon application for licensure as a child-placing agency or independent foster home, all (i) applicants and (ii) agents at the time of application who are or will be involved in the day-to-day operations of the child-placing agency or independent foster home or who are or will be alone with, in control of, or supervising one or more of the children shall undergo a background check pursuant to subsection B. Upon application for licensure as an assisted living facility, all applicants shall undergo a background check pursuant to subsection B. In addition, foster or adoptive parents requesting approval by child-placing agencies shall undergo background checks pursuant to subsection B prior to their approval.

B. Background checks pursuant to subsection A require:

1. A sworn statement or affirmation disclosing whether the person has a criminal conviction or is the subject of any pending criminal charges within or outside the Commonwealth and whether or not the person has been the subject of a founded complaint of child abuse or neglect within or outside the Commonwealth;

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

3. In the case of child-placing agencies, independent foster homes, or adoptive or foster parents, a search of the central registry maintained pursuant to § 63.2-1515 for any founded complaint of child abuse and neglect.

C. The person required to have a background check pursuant to subsection A shall submit the background check information required in subsection B to the Commissioner's representative prior to issuance of a license or approval. The applicant, other than an applicant for licensure as an assisted living facility, shall provide an original criminal record clearance with respect to any barrier crime as defined in § 19.2-392.02 or an original criminal history record from the Central Criminal Records Exchange. An applicant for licensure as an assisted living facility shall provide an original criminal record clearance with respect to any offense set forth in clause (i) of the definition of barrier crime in § 19.2-392.02 or an original criminal history record from the Central Criminal Records Exchange. Any person making a materially false statement regarding the sworn statement or affirmation provided pursuant to subdivision B 1 is guilty of a Class 1 misdemeanor. If any person specified in subsection A, other than an applicant for licensure as an assisted living facility, required to have a background check (i) has been convicted of any barrier crime as defined in § 19.2-392.02 or (ii) is the subject of a founded complaint of child abuse or neglect within or outside the Commonwealth, and such person has not been granted a waiver by the Commissioner pursuant to § 63.2-1723 or is not subject to an exception in subsection E, F, G, or H, (a) the Commissioner shall not issue a license to a child-placing agency or independent foster home; or (b) a child-placing agency shall not approve an adoptive or foster home. If any applicant for licensure as an assisted living facility required to have a background check has been convicted of any offense set forth in clause (i) of the definition of barrier crime in § 19.2-392.02, the Commissioner shall not issue a license to an assisted living facility.

D. No person specified in subsection A shall be involved in the day-to-day operations of a licensed child-placing agency or independent foster home; be alone with, in control of, or supervising one or more children receiving services from a licensed child-placing agency or independent foster home; or be permitted to work in a position that involves direct contact with a person receiving services without first having completed background checks pursuant to subsection B unless such person is directly supervised by another person for whom a background check has been completed in accordance with the requirements of this section.

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59 E. Notwithstanding any provision to the contrary contained in this section, a child-placing agency
60 may approve as an adoptive or foster parent an applicant who has been convicted of not more than one
61 misdemeanor offense as set out in § 18.2-57, or any substantially similar offense under the laws of
62 another jurisdiction, not involving abuse, neglect, moral turpitude, or a minor, provided that 10 years
63 have elapsed following the conviction.

64 F. Notwithstanding any provision to the contrary contained in this section, a child-placing agency
65 may approve as a foster parent an applicant who has been convicted of statutory burglary for breaking
66 and entering a dwelling home or other structure with intent to commit larceny, or any substantially
67 similar offense under the laws of another jurisdiction, who has had his civil rights restored by the
68 Governor or other appropriate authority, provided that 25 years have elapsed following the conviction.

69 G. Notwithstanding any provision to the contrary contained in this section, a child-placing agency
70 may approve as an adoptive or foster parent an applicant convicted of any offense set forth in clause
71 (iv) of the definition of barrier crime in § 19.2-392.02 who has had his civil rights restored by the
72 Governor or other appropriate authority, provided that 10 years have elapsed following the conviction,
73 *or eight years have elapsed following the conviction and the applicant (i) has complied with all*
74 *obligations imposed by the criminal court; (ii) has completed a substance abuse treatment program; (iii)*
75 *has participated in periodic drug screenings for the 12 months immediately preceding the approval of*
76 *the applicant as an adoptive or foster parent; and (iv) complies with any other obligations as*
77 *determined by the Department.*

78 H. Notwithstanding any provision to the contrary contained in this section, a child-placing agency
79 may approve as an adoptive or foster parent an applicant convicted of any offense set forth in clause
80 (iii) of the definition of barrier crime in § 19.2-392.02 who has had his civil rights restored by the
81 Governor or other appropriate authority, provided that 20 years have elapsed following the conviction.

82 I. If an applicant is denied licensure or approval because of information from the central registry or
83 convictions appearing on his criminal history record, the Commissioner shall provide a copy of the
84 information obtained from the central registry or the Central Criminal Records Exchange or both to the
85 applicant.

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

89 **§ 63.2-1721. (Effective July 1, 2018, or earlier if contingency is met) Background check upon**
90 **application for licensure as a child-placing agency, etc.; penalty.**

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

102 B. Background checks pursuant to subsection A require:

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

107 2. A criminal history records check through the Central Criminal Records Exchange pursuant to
108 § 19.2-389; and

109 3. In the case of child-placing agencies, independent foster homes, family day systems, and family
110 day homes, or adoptive or foster parents, a search of the central registry maintained pursuant to
111 § 63.2-1515 for any founded complaint of child abuse and neglect.

112 C. The person required to have a background check pursuant to subsection A shall submit the
113 background check information required in subsection B to the Commissioner's representative prior to
114 issuance of a license, registration or approval. The applicant, other than an applicant for licensure as an
115 assisted living facility, shall provide an original criminal record clearance with respect to any barrier
116 crime as defined in § 19.2-392.02 or an original criminal history record from the Central Criminal
117 Records Exchange. An applicant for licensure as an assisted living facility shall provide an original
118 criminal record clearance with respect to any offense set forth in clause (i) of the definition of barrier
119 crime in § 19.2-392.02 or an original criminal history record from the Central Criminal Records
120 Exchange. Any person making a materially false statement regarding the sworn statement or affirmation

provided pursuant to subdivision B 1 is guilty of a Class 1 misdemeanor. If any person specified in subsection A, other than an applicant for licensure as an assisted living facility, required to have a background check (i) has been convicted of any barrier crime as defined in § 19.2-392.02 or (ii) is the subject of a founded complaint of child abuse or neglect within or outside the Commonwealth, and such person has not been granted a waiver by the Commissioner pursuant to § 63.2-1723 or is not subject to an exception in subsection E, F, G, or H, (a) the Commissioner shall not issue a license to a child-placing agency, independent foster home, or family day system or a registration to a family day home; (b) a child-placing agency shall not approve an adoptive or foster home; or (c) a family day system shall not approve a family day home. If any applicant for licensure as an assisted living facility required to have a background check has been convicted of any offense set forth in clause (i) of the definition of barrier crime in § 19.2-392.02, the Commissioner shall not issue a license to an assisted living facility.

D. No person specified in subsection A shall be involved in the day-to-day operations of a licensed child-placing agency, independent foster home, or family day system or a registered family day home; be alone with, in control of, or supervising one or more children receiving services from a licensed child-placing agency, independent foster home, or family day system or a registered family day home; or be permitted to work in a position that involves direct contact with a person receiving services without first having completed background checks pursuant to subsection B unless such person is directly supervised by another person for whom a background check has been completed in accordance with the requirements of this section.

E. Notwithstanding any provision to the contrary contained in this section, a child-placing agency may approve as an adoptive or foster parent an applicant who has been convicted of not more than one misdemeanor offense as set out in § 18.2-57, or any substantially similar offense under the laws of another jurisdiction, not involving abuse, neglect, moral turpitude, or a minor, provided that 10 years have elapsed following the conviction.

F. Notwithstanding any provision to the contrary contained in this section, a child-placing agency may approve as a foster parent an applicant who has been convicted of statutory burglary for breaking and entering a dwelling home or other structure with intent to commit larceny, or any substantially similar offense under the laws of another jurisdiction, who has had his civil rights restored by the Governor or other appropriate authority, provided that 25 years have elapsed following the conviction.

G. Notwithstanding any provision to the contrary contained in this section, a child-placing agency may approve as an adoptive or foster parent an applicant convicted of any offense set forth in clause (iv) of the definition of barrier crime in § 19.2-392.02 who has had his civil rights restored by the Governor or other appropriate authority, provided that 10 years have elapsed following the conviction, *or eight years have elapsed following the conviction and the applicant (i) has complied with all obligations imposed by the criminal court; (ii) has completed a substance abuse treatment program; (iii) has participated in periodic drug screenings for the 12 months immediately preceding the approval of the applicant as an adoptive or foster parent; and (iv) complies with any other obligations as determined by the Department.*

H. Notwithstanding any provision to the contrary contained in this section, a child-placing agency may approve as an adoptive or foster parent an applicant convicted of any offense set forth in clause (iii) of the definition of barrier crime in § 19.2-392.02 who has had his civil rights restored by the Governor or other appropriate authority, provided that 20 years have elapsed following the conviction.

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

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