

## VIRGINIA ACTS OF ASSEMBLY — CHAPTER

*An Act 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.*

[H 437]

Approved

**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.

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

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57 misdemeanor offense as set out in § 18.2-57, or any substantially similar offense under the laws of  
 58 another jurisdiction, not involving abuse, neglect, moral turpitude, or a minor, provided that 10 years  
 59 have elapsed following the conviction.

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

65 G. Notwithstanding any provision to the contrary contained in this section, a child-placing agency  
 66 may approve as an adoptive or foster parent an applicant convicted of any offense set forth in clause  
 67 (iv) of the definition of barrier crime in § 19.2-392.02 who has had his civil rights restored by the  
 68 Governor or other appropriate authority, provided that 10 years have elapsed following the conviction,  
 69 *or eight years have elapsed following the conviction and the applicant (i) has complied with all*  
 70 *obligations imposed by the criminal court; (ii) has completed a substance abuse treatment program; (iii)*  
 71 *has completed a drug test administered by a laboratory or medical professional within 90 days prior to*  
 72 *being approved, and such test returned with a negative result; and (iv) complies with any other*  
 73 *obligations as determined by the Department.*

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

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

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

85 **§ 63.2-1721. (Effective July 1, 2018, or earlier if contingency is met) Background check upon**  
 86 **application for licensure as a child-placing agency, etc.; penalty.**

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

98 B. Background checks pursuant to subsection A require:

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

103 2. A criminal history records check through the Central Criminal Records Exchange pursuant to  
 104 § 19.2-389; and

105 3. In the case of child-placing agencies, independent foster homes, family day systems, and family  
 106 day homes, or adoptive or foster parents, a search of the central registry maintained pursuant to  
 107 § 63.2-1515 for any founded complaint of child abuse and neglect.

108 C. The person required to have a background check pursuant to subsection A shall submit the  
 109 background check information required in subsection B to the Commissioner's representative prior to  
 110 issuance of a license, registration or approval. The applicant, other than an applicant for licensure as an  
 111 assisted living facility, shall provide an original criminal record clearance with respect to any barrier  
 112 crime as defined in § 19.2-392.02 or an original criminal history record from the Central Criminal  
 113 Records Exchange. An applicant for licensure as an assisted living facility shall provide an original  
 114 criminal record clearance with respect to any offense set forth in clause (i) of the definition of barrier  
 115 crime in § 19.2-392.02 or an original criminal history record from the Central Criminal Records  
 116 Exchange. Any person making a materially false statement regarding the sworn statement or affirmation  
 117 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 completed a drug test administered by a laboratory or medical professional within 90 days prior to being approved, and such test returned with a negative result; 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.