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HOUSE BILL NO. 869

Offered January 10, 2018

Prefiled January 9, 2018

A BILL to amend and reenact § 63.2-1720.1, as it is currently effective and as it shall become effective, of the Code of Virginia, relating to private preschool programs; background checks.

Patron—Orrock

Referred to Committee on Health, Welfare and Institutions

Be it enacted by the General Assembly of Virginia:

1. That § 63.2-1720.1, as it is currently effective and as it shall become effective, of the Code of Virginia is amended and reenacted as follows:

§ 63.2-1720.1. (For expiration date, see Editor's notes) Child day centers, family day homes, and family day systems; employment for compensation or use as volunteers of persons convicted of or found to have committed certain offenses prohibited; national background check required; penalty.

A. No child day center, family day home, or family day system licensed in accordance with the provisions of this chapter, child day center exempt from licensure pursuant to § 63.2-1716, registered family day home, family day home approved by a family day system, or child day center, family day home, or child day program that enters into a contract with the Department or a local department to provide child care services funded by the Child Care and Development Block Grant shall hire for compensated employment, continue to employ, or permit to serve as a volunteer who will be alone with, in control of, or supervising children any person who (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. All applicants for employment, employees, applicants to serve as volunteers, and volunteers shall undergo a background check in accordance with subsection B prior to employment or beginning to serve as a volunteer and every five years thereafter.

B. Any individual required to undergo a background check in accordance with subsection A shall:

1. Provide a sworn statement or affirmation disclosing whether he has ever been convicted of or is the subject of pending charges for any offense within or outside the Commonwealth and whether he has been the subject of a founded complaint of child abuse or neglect within or outside the Commonwealth;

2. Submit to fingerprinting and provide personal descriptive information described in subdivision B 2 of § 19.2-392.02; and

3. Authorize the child day center, family day home, or family day system described in subsection A to obtain a copy of the results of a search of the central registry maintained pursuant to § 63.2-1515 and any child abuse and neglect registry or equivalent registry maintained by any other state in which the individual has resided in the preceding five years for any founded complaint of child abuse or neglect against him.

The individual's fingerprints and personal descriptive information obtained pursuant to subdivision 2 shall be forwarded through the Central Criminal Records Exchange to the Federal Bureau of Investigation for the purpose of obtaining national criminal history record information regarding such individual. Upon receipt of the individual's record or notification that no record exists, the Central Criminal Records Exchange shall forward the information to the Department, and the Department shall report to the child day center, family day home, or family day system described in subsection A as to whether the individual is eligible to have responsibility for the safety and well-being of children. In cases in which the record forwarded to the Department is lacking disposition data, the Department shall conduct research in whatever state and local recordkeeping systems are available in order to obtain complete data before reporting to the child day center, family day home, or family day system.

C. The child day center, family day home, or family day system described in subsection A shall inform every individual required to undergo a background check pursuant to this section that he is entitled to obtain a copy of any background check report and to challenge the accuracy and completeness of any such report and obtain a prompt resolution before a final determination is made of the individual's eligibility to have responsibility for the safety and well-being of children.

D. 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.

E. 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.

F. A person who complies in good faith with the provisions of this section shall not be liable for any

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59 civil damages for any act or omission in the performance of duties under this section unless the act or
60 omission was the result of gross negligence or willful misconduct.

61 G. Notwithstanding the provisions of subsection A, a child day center may hire for compensated
62 employment persons who have been convicted of not more than one misdemeanor offense under
63 § 18.2-57, or any substantially similar offense under the laws of another jurisdiction, if 10 years have
64 elapsed following the conviction, unless the person committed such offense while employed in a child
65 day center or the object of the offense was a minor.

66 H. Fees charged for the processing and administration of background checks pursuant to this section
67 shall not exceed the actual cost to the state of such processing and administration.

68 I. Any individual required to undergo a background check pursuant to subsection A who is (i)
69 convicted of any barrier crime as defined in § 19.2-392.02 or (ii) found to be the subject of a founded
70 complaint of child abuse or neglect within or outside of the Commonwealth shall notify the child day
71 center, family day home, or family day system described in subsection A of such conviction or finding.

72 J. *Any employee of a private school that operates a certified preschool or nursery school program*
73 *and is accredited by an accrediting organization recognized by the State Board of Education pursuant*
74 *to § 22.1-19 shall not be required to submit to fingerprinting and provide personal descriptive*
75 *information under subdivision B 2 if such employee has submitted to fingerprinting and provided*
76 *personal descriptive information pursuant to § 22.1-296.3 for the purpose of obtaining criminal history*
77 *record information within the last five years and after July 1, 2017.*

78 **§ 63.2-1720.1. (For effective date, see Editor's notes) Licensed child day centers and licensed**
79 **family day homes; employment for compensation or use as volunteers of persons convicted of or**
80 **found to have committed certain offenses prohibited; national background check required; penalty.**

81 A. No child day center or family day home licensed in accordance with the provisions of this chapter
82 shall hire for compensated employment, continue to employ, or permit to serve as a volunteer in a
83 position that is involved in the day-to-day operations of the child day center or family day home or in
84 which the employee or volunteer will be alone with, in control of, or supervising children any person
85 who (i) has been convicted of any barrier crime as defined in § 19.2-392.02 or (ii) is the subject of a
86 founded complaint of child abuse or neglect within or outside the Commonwealth. All applicants for
87 employment or to serve as volunteers shall undergo a background check in accordance with subsection
88 B.

89 B. Any applicant required to undergo a background check in accordance with subsection A shall:

90 1. Provide a sworn statement or affirmation disclosing whether he has ever been convicted of or is
91 the subject of pending charges for any offense within or outside the Commonwealth and whether he has
92 been the subject of a founded complaint of child abuse or neglect within or outside the Commonwealth;

93 2. Submit to fingerprinting and provide personal descriptive information described in subdivision B 2
94 of § 19.2-392.02; and

95 3. Authorize the child day center or family day home to obtain a copy of information from the
96 central registry maintained pursuant to § 63.2-1515 on any investigation of child abuse or neglect
97 undertaken on him.

98 The applicant's fingerprints and personal descriptive information obtained pursuant to subdivision 2
99 shall be forwarded through the Central Criminal Records Exchange to the Federal Bureau of
100 Investigation for the purpose of obtaining national criminal history record information regarding such
101 applicant. Upon receipt of an applicant's record or notification that no record exists, the Central Criminal
102 Records Exchange shall forward the information to the Department, and the Department shall report to
103 the child day center or family day home whether the applicant is eligible to have responsibility for the
104 safety and well-being of children. In cases in which the record forwarded to the Department is lacking
105 disposition data, the Department shall conduct research in whatever state and local recordkeeping
106 systems are available in order to obtain complete data before reporting to the child day center or family
107 day home.

108 C. The child day center or family day home shall inform every applicant for compensated
109 employment or to serve as a volunteer required to undergo a background check pursuant to this section
110 that he is entitled to obtain a copy of any background check report and to challenge the accuracy and
111 completeness of any such report and obtain a prompt resolution before a final determination is made of
112 the applicant's eligibility to have responsibility for the safety and well-being of children.

113 D. Any person making a materially false statement regarding the sworn statement or affirmation
114 provided pursuant to subdivision B 1 is guilty of a Class 1 misdemeanor.

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

118 F. A person who complies in good faith with the provisions of this section shall not be liable for any
119 civil damages for any act or omission in the performance of duties under this section unless the act or
120 omission was the result of gross negligence or willful misconduct.

121 G. Notwithstanding the provisions of subsection A, a child day center may hire for compensated
122 employment persons who have been convicted of not more than one misdemeanor offense under
123 § 18.2-57, or any substantially similar offense under the laws of another jurisdiction, if 10 years have
124 elapsed following the conviction, unless the person committed such offense while employed in a child
125 day center or the object of the offense was a minor.

126 H. Fees charged for the processing and administration of background checks pursuant to this section
127 shall not exceed the actual cost to the state of such processing and administration.

128 I. Any person employed for compensation at a licensed child day center or family day home or
129 permitted to serve as a volunteer at a licensed child day center or family day home in a position that is
130 involved in the day-to-day operations of the child day center or family day home or in which he will be
131 alone with, in control of, or supervising children who is (i) convicted of any barrier crime as defined in
132 § 19.2-392.02 or (ii) found to be the subject of a founded complaint of child abuse or neglect within or
133 outside of the Commonwealth shall notify the child day center or family day home of such conviction
134 or finding.

135 *J. Any employee of a private school that operates a certified preschool or nursery school program*
136 *and is accredited by an accrediting organization recognized by the State Board of Education pursuant*
137 *to § 22.1-19 shall not be required to submit to fingerprinting and provide personal descriptive*
138 *information under subdivision B 2 if such employee has submitted to fingerprinting and provided*
139 *personal descriptive information pursuant to § 22.1-296.3 for the purpose of obtaining criminal history*
140 *record information within the last five years and after July 1, 2017.*