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SENATE BILL NO. 1407

AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the Senate Committee on Rehabilitation and Social Services
on February 1, 2019)

(Patron Prior to Substitute—Senator Mason)

A *BILL to amend and reenact §§ 63.2-1720.1 and 63.2-1721.1, as they are currently effective and as they shall become effective, of the Code of Virginia, relating to child care providers; fingerprint background checks.*

Be it enacted by the General Assembly of Virginia:

1. That §§ 63.2-1720.1 and 63.2-1721.1, as they are currently effective and as they shall become effective, of the Code of Virginia are amended and reenacted as follows:

§ 63.2-1720.1. (For expiration date, see Acts 2018, cc. 146 and 278) 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 *by the Department or its designee or, in the case of a child day program operated by a local government, may be forwarded by the local law-enforcement agency* 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.

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

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

68 H. Fees charged for the processing and administration of background checks pursuant to this section
69 shall not exceed the actual cost to the state *or the local law-enforcement agency* of such processing and
70 administration.

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

75 **§ 63.2-1720.1. (For effective date, see Acts 2018, cc. 146 and 278) Licensed child day centers
76 and licensed family day homes; employment for compensation or use as volunteers of persons
77 convicted of or found to have committed certain offenses prohibited; national background check
78 required; penalty.**

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

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

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

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

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

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

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

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

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

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

120 G. Notwithstanding the provisions of subsection A, a child day center may hire for compensated
121 employment persons who have been convicted of not more than one misdemeanor offense under

122 § 18.2-57, or any substantially similar offense under the laws of another jurisdiction, if 10 years have
123 elapsed following the conviction, unless the person committed such offense while employed in a child
124 day center or the object of the offense was a minor.

125 H. Fees charged for the processing and administration of background checks pursuant to this section
126 shall not exceed the actual cost to the state *or the local law-enforcement agency* of such processing and
127 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 **§ 63.2-1721.1. (For expiration date, see Acts 2018, cc. 146 and 278) Background check upon**
136 **application for licensure, registration, or approval as child day center, family day home, or family**
137 **day system; penalty.**

138 A. Every (i) applicant for licensure as a child day center, family day home, or family day system,
139 registration as a family day home, or approval as a family day home by a family day system; (ii) agent
140 of an applicant for licensure as a child day center, family day home, or family day system, registration
141 as a family day home, or approval as a family day home by a family day system at the time of
142 application who is or will be involved in the day-to-day operations of the child day center, family day
143 home, or family day system or who is or will be alone with, in control of, or supervising one or more
144 of the children; and (iii) adult living in such child day center or family day home shall undergo a
145 background check in accordance with subsection B prior to issuance of a license as a child day center,
146 family day home, or family day system, registration as a family day home, or approval as a family day
147 home by a family day system and every five years thereafter.

148 B. Every person required to undergo a background check pursuant to subsection A shall:

149 1. Provide a sworn statement or affirmation disclosing whether he has ever been convicted of or is
150 the subject of any pending criminal charges for any offense within or outside the Commonwealth and
151 whether or not he has been the subject of a founded complaint of child abuse or neglect within or
152 outside the Commonwealth;

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

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

160 Fingerprints and personal descriptive information obtained pursuant to subdivision 2 shall be
161 forwarded *by the Department or its designee or, in the case of a child day program operated by a local*
162 *government, may be forwarded by the local law-enforcement agency* through the Central Criminal
163 Records Exchange to the Federal Bureau of Investigation for the purpose of obtaining national criminal
164 history record information regarding the individual. Upon receipt of an individual's record or notification
165 that no record exists, the Central Criminal Records Exchange shall forward the information to the
166 Department. The Department shall report to the child day center, family day home, or family day system
167 described in subsection A as to whether the individual is eligible to have responsibility for the safety
168 and well-being of children. In cases in which the record forwarded to the Department is lacking
169 disposition data, the Department shall conduct research in whatever state and local recordkeeping
170 systems are available in order to obtain complete data.

171 C. If any person specified in subsection A required to have a background check (i) has been
172 convicted of any barrier crime as defined in § 19.2-392.02 or (ii) is the subject of a founded complaint
173 of child abuse or neglect within or outside the Commonwealth, and such person has not been granted a
174 waiver by the Commissioner pursuant to § 63.2-1723, no license as a child day center, family day home,
175 or family day system or registration as a family day home shall be granted by the Commissioner and no
176 approval as a family day home shall be granted by the family day system.

177 D. Information from a search of the central registry maintained pursuant to § 63.2-1515 and any
178 child abuse and neglect registry or equivalent registry maintained by any other state in which the
179 applicant, agent, or adult has resided in the preceding five years, authorized in accordance with
180 subdivision B 3, shall be obtained prior to issuance of a license as a child day center, family day home,
181 or family day system, registration as a family day home, or approval as a family day home by a family
182 day system.

183 E. No person specified in subsection A shall be involved in the day-to-day operations of the child
184 day center, family day home, or family day system, or shall be alone with, in control of, or supervising
185 one or more children, without first having completed any required background check pursuant to
186 subsection B.

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

189 G. If an individual is denied licensure, registration, or approval because of information from the
190 central registry or any child abuse and neglect registry or equivalent registry maintained by any other
191 state, or convictions appearing on his criminal history record, the Commissioner shall provide a copy of
192 the information obtained from the central registry, any child abuse and neglect registry or equivalent
193 registry maintained by any other state, or the Central Criminal Records Exchange to the individual.

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

197 I. Fees charged for the processing and administration of background checks pursuant to this section
198 shall not exceed the actual cost to the state *or the local law-enforcement agency* of such processing and
199 administration.

200 **§ 63.2-1721.1. (For effective date, see Acts 2018, cc. 146 and 278) Background check upon**
201 **application for licensure as child day center or family day home; penalty.**

202 A. Every (i) applicant for licensure as a child day center or family day home; (ii) agent of an
203 applicant for licensure as a child day center or family day home at the time of application who is or
204 will be involved in the day-to-day operations of the child day center or family day home or who is or
205 will be alone with, in control of, or supervising one or more of the children; and (iii) adult living in the
206 family day home shall undergo a background check in accordance with subsection B prior to issuance of
207 a license as a child day center or family day home.

208 B. Every person required to undergo a background check pursuant to subsection A shall:

209 1. Provide a sworn statement or affirmation disclosing whether he has ever been convicted of or is
210 the subject of any pending criminal charges for any offense within or outside the Commonwealth and
211 whether or not he has been the subject of a founded complaint of child abuse or neglect within or
212 outside the Commonwealth;

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

215 3. Authorize the Department to obtain a copy of information from the central registry maintained
216 pursuant to § 63.2-1515 on any investigation of child abuse or neglect undertaken on him.

217 Fingerprints and personal descriptive information obtained pursuant to subdivision 2 shall be
218 forwarded by *the Department or its designee or, in the case of a child day program operated by a local*
219 *government, may be forwarded by the local law-enforcement agency* through the Central Criminal
220 Records Exchange to the Federal Bureau of Investigation for the purpose of obtaining national criminal
221 history record information regarding the individual. Upon receipt of an applicant's record or notification
222 that no record exists, the Central Criminal Records Exchange shall forward the information to the
223 Department. In cases in which the record forwarded to the Department is lacking disposition data, the
224 Department shall conduct research in whatever state and local recordkeeping systems are available in
225 order to obtain complete data.

226 C. If any person specified in subsection A required to have a background check (i) has been
227 convicted of any barrier crime as defined in § 19.2-392.02 or (ii) is the subject of a founded complaint
228 of child abuse or neglect within or outside the Commonwealth, and such person has not been granted a
229 waiver by the Commissioner pursuant to § 63.2-1723, no license as a child day center or family day
230 home shall be granted.

231 D. Information from a search of the central registry maintained pursuant to § 63.2-1515, authorized
232 in accordance with subdivision B 3, shall be obtained prior to issuance of a license as a child day center
233 or family day home.

234 E. No person specified in subsection A shall be involved in the day-to-day operations of the child
235 day center or family day home, or shall be alone with, in control of, or supervising one or more
236 children without first having completed any required background check pursuant to subsection B.

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

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

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

245 I. Fees charged for the processing and administration of background checks pursuant to this section
246 shall not exceed the actual cost to the state *or the local law-enforcement agency* of such processing and
247 administration.
248 **2. That the provisions of the first enactment of this act shall become effective on July 1, 2020.**
249 **3. That the Department of Social Services shall implement a process for receiving criminal history**
250 **background checks processed by local law-enforcement agencies by July 1, 2020.**