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HOUSE BILL NO. 1701

Offered January 11, 2023

Prefiled January 9, 2023

A BILL to amend and reenact §§ 22.1-289.035, 22.1-296.3, and 22.1-296.4 of the Code of Virginia, relating to certain private schools in the Commonwealth; disclosure of certain employee records for purpose of accreditation.

Patron—Cherry

Referred to Committee on Education

Be it enacted by the General Assembly of Virginia:

1. That §§ 22.1-289.035, 22.1-296.3, and 22.1-296.4 of the Code of Virginia are amended and reenacted as follows:

§ 22.1-289.035. Licensed 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 § 22.1-289.031, 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 its agents or designees 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;

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 for any founded complaint of child abuse or neglect against him; and

4. 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 criminal history record information check, a sex offender registry check, and a search of the child abuse and neglect registry or equivalent registry from any state in which the individual has resided in the preceding five years.

The applicant'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 applicant. Upon receipt of an applicant's record or notification that no record exists, the Central Criminal Records Exchange shall forward the information to the Department or its designee, and the Department or its designee shall report to the child day center or family day home whether the applicant is eligible to have responsibility for the safety and well-being of children. In cases in which the record forwarded to the Department or its designee is lacking disposition data, the Department or its designee 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

INTRODUCED

HB1701

59 provided pursuant to subdivision B 1 is guilty of a Class 1 misdemeanor.

60 E. Further dissemination of the background check information is prohibited *except* (i) ~~other than~~ to
61 the Superintendent's representative or a federal or state authority or court as may be required to comply
62 with an express requirement of law for such further dissemination, (ii) *to the Virginia Council for*
63 *Private Education (the Council) or its authorized designee for purposes of seeking or maintaining*
64 *accreditation by the Council as permitted pursuant to § 22.1-19, or* ~~(ii) except~~ (iii) as provided in
65 subsection J.

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

69 G. Notwithstanding the provisions of subsection A, a child day center may hire for compensated
70 employment persons who have been convicted of not more than one misdemeanor offense under
71 § 18.2-57, or any substantially similar offense under the laws of another jurisdiction, if 10 years have
72 elapsed following the conviction, unless the person committed such offense while employed in a child
73 day center or the object of the offense was a minor.

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

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

81 J. Notwithstanding the provisions of subsection A, a background check shall not be required for any
82 individual who has completed a background check under the provisions of this section within the
83 previous five years, provided that (i) such background check was conducted after July 1, 2017; (ii) the
84 results of such background check indicated that the individual had not been convicted of any barrier
85 crime as defined in § 19.2-392.02 and was not the subject of a founded complaint of child abuse or
86 neglect within or outside the Commonwealth; and (iii) the individual is currently or has been, within the
87 previous 180 days, employed by or a volunteer at a child day center, family day home, family day
88 system, or child day program described in subsection A. Prior to hiring or allowing to volunteer any
89 individual required to undergo a background check pursuant to subsection A without the completion of a
90 background check under the provisions of subsection B, the child day center, family day home, family
91 day system, or child day program shall, upon the individual's written consent, obtain written certification
92 from the Department or its designee that such individual satisfies all requirements set forth in this
93 subsection and is eligible to serve as an employee or volunteer. If the individual meets all requirements
94 set forth in this subsection and is eligible to serve as an employee or volunteer at the child day center,
95 family day home, family day system, or child day program, the written certification shall also state the
96 next date by which another background check for such person shall be completed in accordance with
97 subsection B. Such written certifications shall not reveal the nature of any disqualifying barrier crime or
98 founded complaint of child abuse or neglect or any other information about the individual.

99 **§ 22.1-296.3. Certain private school employees subject to fingerprinting and criminal records**
100 **checks.**

101 A. As a condition of employment, the governing boards or administrators of private elementary or
102 secondary schools that are accredited pursuant to § 22.1-19 shall require any applicant who accepts
103 employment, whether full time or part time or permanent or temporary, to submit to fingerprinting and
104 to provide personal descriptive information to be forwarded along with the applicant's fingerprints
105 through the Central Criminal Records Exchange to the Federal Bureau of Investigation for the purpose
106 of obtaining criminal history record information regarding such applicant.

107 The Central Criminal Records Exchange, upon receipt of an applicant's record or notification that no
108 record exists, shall report to the governing board or administrator, or to a private organization
109 coordinating such records on behalf of such governing board or administrator pursuant to a written
110 agreement with the Department of State Police, that the applicant meets the criteria or does not meet the
111 criteria for employment based on whether or not the applicant has ever been convicted of any barrier
112 crime as defined in § 19.2-392.02.

113 B. The Central Criminal Records Exchange shall not disclose information to such governing board,
114 administrator, or private organization coordinating such records regarding charges or convictions of any
115 crimes. If any applicant is denied employment because of information appearing on the criminal history
116 record and the applicant disputes the information upon which the denial was based, the Central Criminal
117 Records Exchange shall, upon request, furnish the applicant the procedures for obtaining a copy of the
118 criminal history record from the Federal Bureau of Investigation. The information provided to the
119 governing board, administrator, or private organization coordinating such records shall not be
120 disseminated except as provided in this section. A governing board or administrator employing or

121 previously employing a temporary teacher or a private organization coordinating such records on behalf
 122 of such governing board or administrator pursuant to a written agreement with the Department of State
 123 Police may disseminate, at the written request of such temporary teacher, whether such teacher meets the
 124 criteria or does not meet the criteria for employment pursuant to subsection A to the governing board or
 125 administrator of another accredited private elementary or secondary school in which such teacher has
 126 accepted employment. Such governing board, administrator, or private organization transferring criminal
 127 records information pursuant to this section shall be immune from civil liability for any official act,
 128 decision, or omission done or made in the performance of such transfer, when such acts or omissions
 129 are taken in good faith and are not the result of gross negligence or willful misconduct.

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

132 *C. The governing board or administrator of a private elementary or secondary school may disclose*
 133 *information in records received pursuant to subsection A to the Virginia Council for Private Education*
 134 *(the Council) or its authorized designee for purposes of seeking or maintaining accreditation by the*
 135 *Council as permitted pursuant to § 22.1-19.*

136 *D.* The governing board or administrator of a private elementary or secondary school that is
 137 accredited pursuant to § 22.1-19 that operates a child day program or family day system regulated by the
 138 Department pursuant to Chapter 14.1 (§ 22.1-289.02 et seq.) shall accept evidence of a background
 139 check in accordance with § 22.1-289.035 for individuals who are required to undergo a background
 140 check in accordance with that section as a condition of employment in lieu of the background check
 141 required by subsection A.

142 ~~D.~~ *E.* The governing boards or administrators of private elementary and secondary schools that are
 143 accredited pursuant to § 22.1-19 shall adopt and implement policies prohibiting any individual who is a
 144 governing board member, administrator, employee, contractor, or agent of a private elementary or
 145 secondary school to assist a governing board member, administrator, employee, contractor, or agent of
 146 such private elementary or secondary school in obtaining a new job if such individual knows or has
 147 probable cause to believe that the individual seeking new employment engaged in sexual misconduct
 148 regarding a minor or student in violation of law.

149 ~~E.~~ *F.* For purposes of this section, "governing board" or "administrator" means the unit or board or
 150 person designated to supervise operations of a system of private schools or a private school accredited
 151 pursuant to § 22.1-19.

152 Nothing in this section or § 19.2-389 shall be construed to require any private or religious school that
 153 is not so accredited to comply with this section.

154 **§ 22.1-296.4. Child abuse and neglect data required.**

155 *A.* Every school board and every governing board or administrator of a private school accredited
 156 pursuant to § 22.1-19 shall require, as a condition of employment, that any applicant who is offered or
 157 accepts employment requiring direct contact with students, whether full-time or part-time, permanent or
 158 temporary, provide written consent and the necessary personal information for the school board,
 159 governing board, or administrator to obtain a search of the registry of founded complaints of child abuse
 160 and neglect maintained by the Department of Social Services pursuant to § 63.2-1515. The school
 161 board, governing board, or administrator shall ensure that all such searches are requested in conformance
 162 with the regulations of the Board of Social Services. In addition, where the applicant has resided in
 163 another state within the last five years, the school board, governing board, or administrator shall require
 164 as a condition of employment that such applicant provide written consent and the necessary personal
 165 information for the school board, governing board, or administrator to obtain information from each
 166 relevant state as to whether the applicant was the subject of a founded complaint of child abuse and
 167 neglect in such state. The school board, governing board or administrator shall take reasonable steps to
 168 determine whether the applicant was the subject of a founded complaint of child abuse and neglect in
 169 the relevant state. The Department of Social Services shall maintain a database of central child abuse
 170 and neglect registries in other states that provide access to out-of-state school boards, for use by local
 171 school boards, governing boards, and administrators. The applicant may be required to pay the cost of
 172 any search conducted pursuant to this subsection at the discretion of the school board, governing board,
 173 or administrator. From such funds as may be available for this purpose, however, the school board or
 174 the governing board or administrator may pay for the search.

175 The Department of Social Services shall respond to such request by the school board, governing
 176 board, or administrator in cases where there is no match within the central registry regarding applicants
 177 for employment within 10 business days of receipt of such request. In cases where there is a match
 178 within the central registry regarding applicants for employment, the Department of Social Services shall
 179 respond to such request by the school board, governing board, or administrator within 30 business days
 180 of receipt of such request. The request and response may be sent electronically or by first-class mail or
 181 facsimile transmission.

182 B. If the response obtained pursuant to subsection A indicates that the applicant is the subject of a
183 founded case of child abuse and neglect, such applicant shall be denied employment or the employment
184 shall be rescinded.

185 C. If an applicant is denied employment because of information appearing on his record in the
186 registry, the school board, governing board, or administrator shall provide a copy of the information
187 obtained from the registry to the applicant. The information provided to the school board, governing
188 board, or administrator by the Department of Social Services shall be confidential and shall not be
189 disseminated by the school board, governing board, or administrator *except that the governing board or*
190 *administrator of a private school may disclose such information to the Virginia Council for Private*
191 *Education (the Council) or its authorized designee for purposes of seeking or maintaining accreditation*
192 *by the Council as permitted pursuant to § 22.1-19.*