

HOUSE BILL NO. 1701

AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the House Committee on Education

on \_\_\_\_\_)

(Patron Prior to Substitute--Delegate Cherry)

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

**Be it enacted by the General Assembly of Virginia:**

**1. That §§ 22.1-289.035 and 22.1-296.3 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:

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

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

32 3. Authorize the child day center, family day home, or family day system described in subsection  
33 A to obtain a copy of the results of a search of the central registry maintained pursuant to § 63.2-1515 for  
34 any founded complaint of child abuse or neglect against him; and

35 4. Authorize the child day center, family day home, or family day system described in subsection  
36 A to obtain a copy of the results of a criminal history record information check, a sex offender registry  
37 check, and a search of the child abuse and neglect registry or equivalent registry from any state in which  
38 the individual has resided in the preceding five years.

39 The applicant's fingerprints and personal descriptive information obtained pursuant to subdivision  
40 2 shall be forwarded by the Department or its designee or, in the case of a child day program operated by  
41 a local government, may be forwarded by the local law-enforcement agency through the Central Criminal  
42 Records Exchange to the Federal Bureau of Investigation for the purpose of obtaining national criminal  
43 history record information regarding such applicant. Upon receipt of an applicant's record or notification  
44 that no record exists, the Central Criminal Records Exchange shall forward the information to the  
45 Department or its designee, and the Department or its designee shall report to the child day center or  
46 family day home whether the applicant is eligible to have responsibility for the safety and well-being of  
47 children. In cases in which the record forwarded to the Department or its designee is lacking disposition  
48 data, the Department or its designee shall conduct research in whatever state and local recordkeeping  
49 systems are available in order to obtain complete data before reporting to the child day center, family day  
50 home, or family day system.

51 C. The child day center, family day home, or family day system described in subsection A shall  
52 inform every individual required to undergo a background check pursuant to this section that he is entitled  
53 to obtain a copy of any background check report and to challenge the accuracy and completeness of any

54 such report and obtain a prompt resolution before a final determination is made of the individual's  
55 eligibility to have responsibility for the safety and well-being of children.

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

58 E. Further dissemination of the background check information is prohibited (i) other than to the  
59 Superintendent's representative or a federal or state authority or court as may be required to comply with  
60 an express requirement of law for such further dissemination or (ii) except as provided in subsection J.

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

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

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

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

76 J. Notwithstanding the provisions of subsection A, a background check shall not be required for  
77 any individual who has completed a background check under the provisions of this section within the  
78 previous five years, provided that (i) such background check was conducted after July 1, 2017; (ii) the  
79 results of such background check indicated that the individual had not been convicted of any barrier crime  
80 as defined in § 19.2-392.02 and was not the subject of a founded complaint of child abuse or neglect within

81 or outside the Commonwealth; and (iii) the individual is currently or has been, within the previous 180  
82 days, employed by or a volunteer at a child day center, family day home, family day system, or child day  
83 program described in subsection A. Prior to hiring or allowing to volunteer any individual required to  
84 undergo a background check pursuant to subsection A without the completion of a background check  
85 under the provisions of subsection B, the child day center, family day home, family day system, or child  
86 day program shall, upon the individual's written consent, obtain written certification from the Department  
87 or its designee that such individual satisfies all requirements set forth in this subsection and is eligible to  
88 serve as an employee or volunteer. If the individual meets all requirements set forth in this subsection and  
89 is eligible to serve as an employee or volunteer at the child day center, family day home, family day  
90 system, or child day program, the written certification shall also state the next date by which another  
91 background check for such person shall be completed in accordance with subsection B. Such written  
92 certifications shall not reveal the nature of any disqualifying barrier crime or founded complaint of child  
93 abuse or neglect or any other information about the individual.

94 K. Notwithstanding the provisions of subsection E, the Virginia Council for Private Education (the  
95 Council) or its authorized designee may review background check information for current employees of  
96 child day centers accredited by the Council for the purposes of seeking or maintaining accreditation by  
97 the Council as permitted pursuant to § 22.1-19.

98 **§ 22.1-296.3. Certain private school employees subject to fingerprinting and criminal records**  
99 **checks.**

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

106 The Central Criminal Records Exchange, upon receipt of an applicant's record or notification that  
107 no record exists, shall report to the governing board or administrator, or to a private organization

108 coordinating such records on behalf of such governing board or administrator pursuant to a written  
109 agreement with the Department of State Police, that the applicant meets the criteria or does not meet the  
110 criteria for employment based on whether or not the applicant has ever been convicted of any barrier crime  
111 as defined in § 19.2-392.02.

112 B. The Central Criminal Records Exchange shall not disclose information to such governing board,  
113 administrator, or private organization coordinating such records regarding charges or convictions of any  
114 crimes. If any applicant is denied employment because of information appearing on the criminal history  
115 record and the applicant disputes the information upon which the denial was based, the Central Criminal  
116 Records Exchange shall, upon request, furnish the applicant the procedures for obtaining a copy of the  
117 criminal history record from the Federal Bureau of Investigation. The information provided to the  
118 governing board, administrator, or private organization coordinating such records shall not be  
119 disseminated except as provided in this section. A governing board or administrator employing or  
120 previously employing a temporary teacher or a private organization coordinating such records on behalf  
121 of such governing board or administrator pursuant to a written agreement with the Department of State  
122 Police may disseminate, at the written request of such temporary teacher, whether such teacher meets the  
123 criteria or does not meet the criteria for employment pursuant to subsection A to the governing board or  
124 administrator of another accredited private elementary or secondary school in which such teacher has  
125 accepted employment. Such governing board, administrator, or private organization transferring criminal  
126 records information pursuant to this section shall be immune from civil liability for any official act,  
127 decision, or omission done or made in the performance of such transfer, when such acts or omissions are  
128 taken in good faith and are not the result of gross negligence or willful misconduct.

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

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

