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SENATE BILL NO. 483

Offered January 12, 2022

Prefiled January 11, 2022

A BILL to amend and reenact §§ 8.01-243, 19.2-389, 22.1-289.030, and 22.1-289.035 of the Code of Virginia, relating to child abuse and neglect; limitations period on sexual abuse of a minor claims; background check and training requirements for youth sports coaches and staff.

Patron—McClellan

Referred to Committee on the Judiciary

Be it enacted by the General Assembly of Virginia:

1. That §§ 8.01-243, 19.2-389, 22.1-289.030, and 22.1-289.035 of the Code of Virginia are amended and reenacted as follows:

§ 8.01-243. Personal action for injury to person or property generally; extension in actions for malpractice against health care provider.

A. Unless otherwise provided in this section or by other statute, every action for personal injuries, whatever the theory of recovery, and every action for damages resulting from fraud, shall be brought within two years after the cause of action accrues.

B. Every action for injury to property, including actions by a parent or guardian of an infant against a tort-feasor for expenses of curing or attempting to cure such infant from the result of a personal injury or loss of services of such infant, shall be brought within five years after the cause of action accrues. An infant's claim for medical expenses pursuant to subsection B of § 8.01-36 accruing on or after July 1, 2013, shall be governed by the applicable statute of limitations that applies to the infant's cause of action.

C. The two-year limitations period specified in subsection A shall be extended in actions for malpractice against a health care provider as follows:

1. In cases arising out of a foreign object having no therapeutic or diagnostic effect being left in a patient's body, for a period of one year from the date the object is discovered or reasonably should have been discovered;

2. In cases in which fraud, concealment, or intentional misrepresentation prevented discovery of the injury within the two-year period, for one year from the date the injury is discovered or, by the exercise of due diligence, reasonably should have been discovered; and

3. In a claim for the negligent failure to diagnose a malignant tumor, cancer, or an intracranial, intraspinal, or spinal schwannoma, for a period of one year from the date the diagnosis of a malignant tumor, cancer, or an intracranial, intraspinal, or spinal schwannoma is communicated to the patient by a health care provider, provided that the health care provider's underlying act or omission was on or after July 1, 2008, in the case of a malignant tumor or cancer or on or after July 1, 2016, in the case of an intracranial, intraspinal, or spinal schwannoma. Claims under this section for the negligent failure to diagnose a malignant tumor or cancer, where the health care provider's underlying act or omission occurred prior to July 1, 2008, shall be governed by the statute of limitations that existed prior to July 1, 2008. Claims under this section for the negligent failure to diagnose an intracranial, intraspinal, or spinal schwannoma, where the health care provider's underlying act or omission occurred prior to July 1, 2016, shall be governed by the statute of limitations that existed prior to July 1, 2016.

However, the provisions of this subsection shall not apply to extend the limitations period beyond 10 years from the date the cause of action accrues, except that the provisions of subdivision A 2 of § 8.01-229 shall apply to toll the statute of limitations in actions brought by or on behalf of a person under a disability.

D. Every action for injury to the person, whatever the theory of recovery, resulting from sexual abuse occurring during the ~~infancy~~ or incapacity of the person as set forth in subdivision 6 of § 8.01-249 shall be brought within 20 years after the cause of action accrues.

D1. Every action for injury to the person, whatever the theory of recovery, resulting from sexual abuse occurring during the infancy of the person as set forth in subdivision 6 of § 8.01-249 shall be brought at any time without limitation after the cause of action accrues. Beginning July 1, 2022, persons who have been time-barred from filing such an action due to the expiration of the limitations period in effect prior to such date shall be permitted to file such an action.

D2. For a cause of action accruing on or after July 1, 2020, every action for injury to the person, whatever the theory of recovery, resulting from sexual abuse, other than those actions specified in subsection subsections D and D1, shall be brought within 10 years after the cause of action accrues.

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SB483

59 E. Every action for injury to property brought by the Commonwealth against a tort-feasor for
60 expenses arising out of the negligent operation of a motor vehicle shall be brought within five years
61 after the cause of action accrues.

62 **§ 19.2-389. Dissemination of criminal history record information.**

63 A. Criminal history record information shall be disseminated, whether directly or through an
64 intermediary, only to:

65 1. Authorized officers or employees of criminal justice agencies, as defined by § 9.1-101, for
66 purposes of the administration of criminal justice and the screening of an employment application or
67 review of employment by a criminal justice agency with respect to its own employees or applicants, and
68 dissemination to the Virginia Parole Board, pursuant to this subdivision, of such information on all
69 state-responsible inmates for the purpose of making parole determinations pursuant to subdivisions 1, 2,
70 4, and 6 of § 53.1-136 shall include collective dissemination by electronic means every 30 days. For
71 purposes of this subdivision, criminal history record information includes information sent to the Central
72 Criminal Records Exchange pursuant to §§ 37.2-819 and 64.2-2014 when disseminated to any full-time
73 or part-time employee of the State Police, a police department or sheriff's office that is a part of or
74 administered by the Commonwealth or any political subdivision thereof, and who is responsible for the
75 prevention and detection of crime and the enforcement of the penal, traffic or highway laws of the
76 Commonwealth for the purposes of the administration of criminal justice;

77 2. Such other individuals and agencies that require criminal history record information to implement
78 a state or federal statute or executive order of the President of the United States or Governor that
79 expressly refers to criminal conduct and contains requirements or exclusions expressly based upon such
80 conduct, except that information concerning the arrest of an individual may not be disseminated to a
81 noncriminal justice agency or individual if an interval of one year has elapsed from the date of the
82 arrest and no disposition of the charge has been recorded and no active prosecution of the charge is
83 pending;

84 3. Individuals and agencies pursuant to a specific agreement with a criminal justice agency to provide
85 services required for the administration of criminal justice pursuant to that agreement which shall
86 specifically authorize access to data, limit the use of data to purposes for which given, and ensure the
87 security and confidentiality of the data;

88 4. Individuals and agencies for the express purpose of research, evaluative, or statistical activities
89 pursuant to an agreement with a criminal justice agency that shall specifically authorize access to data,
90 limit the use of data to research, evaluative, or statistical purposes, and ensure the confidentiality and
91 security of the data;

92 5. Agencies of state or federal government that are authorized by state or federal statute or executive
93 order of the President of the United States or Governor to conduct investigations determining
94 employment suitability or eligibility for security clearances allowing access to classified information;

95 6. Individuals and agencies where authorized by court order or court rule;

96 7. Agencies of any political subdivision of the Commonwealth, public transportation companies
97 owned, operated or controlled by any political subdivision, and any public service corporation that
98 operates a public transit system owned by a local government for the conduct of investigations of
99 applicants for employment, permit, or license whenever, in the interest of public welfare or safety, it is
100 necessary to determine under a duly enacted ordinance if the past criminal conduct of a person with a
101 conviction record would be compatible with the nature of the employment, permit, or license under
102 consideration;

103 7a. Commissions created pursuant to the Transportation District Act of 1964 (§ 33.2-1900 et seq.) of
104 Title 33.2 and their contractors, for the conduct of investigations of individuals who have been offered a
105 position of employment whenever, in the interest of public welfare or safety and as authorized in the
106 Transportation District Act of 1964, it is necessary to determine if the past criminal conduct of a person
107 with a conviction record would be compatible with the nature of the employment under consideration;

108 8. Public or private agencies when authorized or required by federal or state law or interstate
109 compact to investigate (i) applicants for foster or adoptive parenthood or (ii) any individual, and the
110 adult members of that individual's household, with whom the agency is considering placing a child or
111 from whom the agency is considering removing a child due to abuse or neglect, on an emergency,
112 temporary, or permanent basis pursuant to §§ 63.2-901.1 and 63.2-1505, subject to the restriction that
113 the data shall not be further disseminated to any party other than a federal or state authority or court as
114 may be required to comply with an express requirement of law;

115 9. To the extent permitted by federal law or regulation, public service companies as defined in
116 § 56-1, for the conduct of investigations of applicants for employment when such employment involves
117 personal contact with the public or when past criminal conduct of an applicant would be incompatible
118 with the nature of the employment under consideration;

119 10. The appropriate authority for purposes of granting citizenship and for purposes of international
120 travel, including, but not limited to, issuing visas and passports;

11. A person requesting a copy of his own criminal history record information as defined in § 9.1-101 at his cost, except that criminal history record information shall be supplied at no charge to a person who has applied to be a volunteer with (i) a Virginia affiliate of Big Brothers/Big Sisters of America; (ii) a volunteer fire company; (iii) the Volunteer Emergency Families for Children; (iv) any affiliate of Prevent Child Abuse, Virginia; (v) any Virginia affiliate of Compeer; or (vi) any board member or any individual who has been offered membership on the board of a Crime Stoppers, Crime Solvers or Crime Line program as defined in § 15.2-1713.1;

12. Administrators and board presidents of and applicants for licensure or registration as a child welfare agency as defined in § 63.2-100 for dissemination to the Commissioner of Social Services' representative pursuant to § 63.2-1702 for the conduct of investigations with respect to employees of and volunteers at such facilities, caretakers, and foster and adoptive parent applicants of private child-placing agencies, pursuant to §§ 63.2-1719, 63.2-1720, and 63.2-1721, subject to the restriction that the data shall not be further disseminated by the facility or agency to any party other than the data subject, the Commissioner of Social Services' 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; however, nothing in this subdivision shall be construed to prohibit the Commissioner of Social Services' representative from issuing written certifications regarding the results of a background check that was conducted before July 1, 2021, in accordance with subsection J of § 22.1-289.035 or § 22.1-289.039;

13. The school boards of the Commonwealth for the purpose of screening individuals who are offered or who accept public school employment and those current school board employees for whom a report of arrest has been made pursuant to § 19.2-83.1;

14. The Virginia Lottery for the conduct of investigations as set forth in the Virginia Lottery Law (§ 58.1-4000 et seq.) and casino gaming as set forth in Chapter 41 (§ 58.1-4100 et seq.) of Title 58.1, and the Department of Agriculture and Consumer Services for the conduct of investigations as set forth in Article 1.1:1 (§ 18.2-340.15 et seq.) of Chapter 8 of Title 18.2;

15. Licensed nursing homes, hospitals and home care organizations for the conduct of investigations of applicants for compensated employment in licensed nursing homes pursuant to § 32.1-126.01, hospital pharmacies pursuant to § 32.1-126.02, and home care organizations pursuant to § 32.1-162.9:1, subject to the limitations set out in subsection E;

16. Licensed assisted living facilities and licensed adult day care centers for the conduct of investigations of applicants for compensated employment in licensed assisted living facilities and licensed adult day care centers pursuant to § 63.2-1720, subject to the limitations set out in subsection F;

17. The Virginia Alcoholic Beverage Control Authority for the conduct of investigations as set forth in § 4.1-103.1;

18. The State Board of Elections and authorized officers and employees thereof and general registrars appointed pursuant to § 24.2-110 in the course of conducting necessary investigations with respect to voter registration, limited to any record of felony convictions;

19. The Commissioner of Behavioral Health and Developmental Services for those individuals who are committed to the custody of the Commissioner pursuant to §§ 19.2-169.2, 19.2-169.6, 19.2-182.2, 19.2-182.3, 19.2-182.8, and 19.2-182.9 for the purpose of placement, evaluation, and treatment planning;

20. Any alcohol safety action program certified by the Commission on the Virginia Alcohol Safety Action Program for (i) interventions with first offenders under § 18.2-251 or (ii) services to offenders under § 18.2-51.4, 18.2-266, or 18.2-266.1;

21. Residential facilities for juveniles regulated or operated by the Department of Social Services, the Department of Education, or the Department of Behavioral Health and Developmental Services for the purpose of determining applicants' fitness for employment or for providing volunteer or contractual services;

22. The Department of Behavioral Health and Developmental Services and facilities operated by the Department for the purpose of determining an individual's fitness for employment pursuant to departmental instructions;

23. Pursuant to § 22.1-296.3, the governing boards or administrators of private elementary or secondary schools which are accredited pursuant to § 22.1-19 or a private organization coordinating such records information on behalf of such governing boards or administrators pursuant to a written agreement with the Department of State Police;

24. Public institutions of higher education and nonprofit private institutions of higher education for the purpose of screening individuals who are offered or accept employment;

25. Members of a threat assessment team established by a local school board pursuant to § 22.1-79.4, by a public institution of higher education pursuant to § 23.1-805, or by a private nonprofit institution of higher education, for the purpose of assessing or intervening with an individual whose behavior may present a threat to safety; however, no member of a threat assessment team shall redisclose any criminal history record information obtained pursuant to this section or otherwise use any record of an individual

beyond the purpose that such disclosure was made to the threat assessment team;

26. Executive directors of community services boards or the personnel director serving the community services board for the purpose of determining an individual's fitness for employment, approval as a sponsored residential service provider, permission to enter into a shared living arrangement with a person receiving medical assistance services pursuant to a waiver, or permission for any person under contract with the community services board to serve in a direct care position on behalf of the community services board pursuant to §§ 37.2-506 and 37.2-607;

27. Executive directors of behavioral health authorities as defined in § 37.2-600 for the purpose of determining an individual's fitness for employment, approval as a sponsored residential service provider, permission to enter into a shared living arrangement with a person receiving medical assistance services pursuant to a waiver, or permission for any person under contract with the behavioral health authority to serve in a direct care position on behalf of the behavioral health authority pursuant to §§ 37.2-506 and 37.2-607;

28. The Commissioner of Social Services for the purpose of locating persons who owe child support or who are alleged in a pending paternity proceeding to be a putative father, provided that only the name, address, demographics and social security number of the data subject shall be released;

29. Authorized officers or directors of agencies licensed pursuant to Article 2 (§ 37.2-403 et seq.) of Chapter 4 of Title 37.2 by the Department of Behavioral Health and Developmental Services for the purpose of determining if any applicant who accepts employment in any direct care position or requests approval as a sponsored residential service provider, permission to enter into a shared living arrangement with a person receiving medical assistance services pursuant to a waiver, or permission for any person under contract with the provider to serve in a direct care position has been convicted of a crime that affects his fitness to have responsibility for the safety and well-being of individuals with mental illness, intellectual disability, or substance abuse pursuant to §§ 37.2-416, 37.2-506, and 37.2-607;

30. The Commissioner of the Department of Motor Vehicles, for the purpose of evaluating applicants for and holders of a motor carrier certificate or license subject to the provisions of Chapters 20 (§ 46.2-2000 et seq.) and 21 (§ 46.2-2100 et seq.) of Title 46.2;

31. The Chairman of the Senate Committee on the Judiciary or the Chairman of the House Committee for Courts of Justice for the purpose of determining if any person being considered for election to any judgeship has been convicted of a crime;

32. Heads of state agencies in which positions have been identified as sensitive for the purpose of determining an individual's fitness for employment in positions designated as sensitive under Department of Human Resource Management policies developed pursuant to § 2.2-1201.1;

33. The Office of the Attorney General, for all criminal justice activities otherwise permitted under subdivision A 1 and for purposes of performing duties required by the Civil Commitment of Sexually Violent Predators Act (§ 37.2-900 et seq.);

34. Shipyards, to the extent permitted by federal law or regulation, engaged in the design, construction, overhaul, or repair of nuclear vessels for the United States Navy, including their subsidiary companies, for the conduct of investigations of applications for employment or for access to facilities, by contractors, leased laborers, and other visitors;

35. Any employer of individuals whose employment requires that they enter the homes of others, for the purpose of screening individuals who apply for, are offered, or have accepted such employment;

36. Public agencies when and as required by federal or state law to investigate (i) applicants as providers of adult foster care and home-based services or (ii) any individual with whom the agency is considering placing an adult on an emergency, temporary, or permanent basis pursuant to § 63.2-1601.1, subject to the restriction that the data shall not be further disseminated by the agency to any party other than a federal or state authority or court as may be required to comply with an express requirement of law for such further dissemination, subject to limitations set out in subsection G;

37. The Department of Medical Assistance Services, or its designee, for the purpose of screening individuals who, through contracts, subcontracts, or direct employment, volunteer, apply for, are offered, or have accepted a position related to the provision of transportation services to enrollees in the Medicaid Program or the Family Access to Medical Insurance Security (FAMIS) Program, or any other program administered by the Department of Medical Assistance Services;

38. The State Corporation Commission for the purpose of investigating individuals who are current or proposed members, senior officers, directors, and principals of an applicant or person licensed under Chapter 16 (§ 6.2-1600 et seq.), Chapter 19 (§ 6.2-1900 et seq.), or Chapter 26 (§ 6.2-2600 et seq.) of Title 6.2. Notwithstanding any other provision of law, if an application is denied based in whole or in part on information obtained from the Central Criminal Records Exchange pursuant to Chapter 16, 19, or 26 of Title 6.2, the Commissioner of Financial Institutions or his designee may disclose such information to the applicant or its designee;

39. The Department of Professional and Occupational Regulation for the purpose of investigating individuals for initial licensure pursuant to § 54.1-2106.1;

40. The Department for Aging and Rehabilitative Services and the Department for the Blind and Vision Impaired for the purpose of evaluating an individual's fitness for various types of employment and for the purpose of delivering comprehensive vocational rehabilitation services pursuant to Article 11 (§ 51.5-170 et seq.) of Chapter 14 of Title 51.5 that will assist the individual in obtaining employment;

41. Bail bondsmen, in accordance with the provisions of § 19.2-120;

42. The State Treasurer for the purpose of determining whether a person receiving compensation for wrongful incarceration meets the conditions for continued compensation under § 8.01-195.12;

43. The Department of Education or its agents or designees for the purpose of screening individuals seeking to enter into a contract with the Department of Education or its agents or designees for the provision of child care services for which child care subsidy payments may be provided;

44. The Department of Juvenile Justice to investigate any parent, guardian, or other adult members of a juvenile's household when completing a predispositional or postdispositional report required by § 16.1-273 or a Board of Juvenile Justice regulation promulgated pursuant to § 16.1-233;

45. The State Corporation Commission, for the purpose of screening applicants for insurance licensure under Chapter 18 (§ 38.2-1800 et seq.) of Title 38.2;

46. Administrators and board presidents of and applicants for licensure or registration as a child day program or family day system, as such terms are defined in § 22.1-289.02, *or programs set forth in subdivision A 6 of § 22.1-289.030* for dissemination to the Superintendent of Public Instruction's representative pursuant to § 22.1-289.013 for the conduct of investigations with respect to employees of and volunteers at such facilities pursuant to §§ 22.1-289.034 through 22.1-289.037, subject to the restriction that the data shall not be further disseminated by the facility or agency to any party other than the data subject, the Superintendent of Public Instruction'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; however, nothing in this subdivision shall be construed to prohibit the Superintendent of Public Instruction's representative from issuing written certifications regarding the results of prior background checks in accordance with subsection J of § 22.1-289.035 or § 22.1-289.039; and

47. Other entities as otherwise provided by law.

Upon an ex parte motion of a defendant in a felony case and upon the showing that the records requested may be relevant to such case, the court shall enter an order requiring the Central Criminal Records Exchange to furnish the defendant, as soon as practicable, copies of any records of persons designated in the order on whom a report has been made under the provisions of this chapter.

Notwithstanding any other provision of this chapter to the contrary, upon a written request sworn to before an officer authorized to take acknowledgments, the Central Criminal Records Exchange, or the criminal justice agency in cases of offenses not required to be reported to the Exchange, shall furnish a copy of conviction data covering the person named in the request to the person making the request; however, such person on whom the data is being obtained shall consent in writing, under oath, to the making of such request. A person receiving a copy of his own conviction data may utilize or further disseminate that data as he deems appropriate. In the event no conviction data is maintained on the data subject, the person making the request shall be furnished at his cost a certification to that effect.

B. Use of criminal history record information disseminated to noncriminal justice agencies under this section shall be limited to the purposes for which it was given and may not be disseminated further, except as otherwise provided in subdivision A 46.

C. No criminal justice agency or person shall confirm the existence or nonexistence of criminal history record information for employment or licensing inquiries except as provided by law.

D. Criminal justice agencies shall establish procedures to query the Central Criminal Records Exchange prior to dissemination of any criminal history record information on offenses required to be reported to the Central Criminal Records Exchange to ensure that the most up-to-date disposition data is being used. Inquiries of the Exchange shall be made prior to any dissemination except in those cases where time is of the essence and the normal response time of the Exchange would exceed the necessary time period. A criminal justice agency to whom a request has been made for the dissemination of criminal history record information that is required to be reported to the Central Criminal Records Exchange may direct the inquirer to the Central Criminal Records Exchange for such dissemination. Dissemination of information regarding offenses not required to be reported to the Exchange shall be made by the criminal justice agency maintaining the record as required by § 15.2-1722.

E. Criminal history information provided to licensed nursing homes, hospitals and to home care organizations pursuant to subdivision A 15 shall be limited to the convictions on file with the Exchange for any offense specified in §§ 32.1-126.01, 32.1-126.02, and 32.1-162.9:1.

F. Criminal history information provided to licensed assisted living facilities and licensed adult day care centers pursuant to subdivision A 16 shall be limited to the convictions on file with the Exchange for any offense specified in § 63.2-1720.

G. Criminal history information provided to public agencies pursuant to subdivision A 36 shall be

limited to the convictions on file with the Exchange for any offense set forth in clause (i) of the definition of barrier crime in § 19.2-392.02.

H. Upon receipt of a written request from an employer or prospective employer, the Central Criminal Records Exchange, or the criminal justice agency in cases of offenses not required to be reported to the Exchange, shall furnish at the employer's cost a copy of conviction data covering the person named in the request to the employer or prospective employer making the request, provided that the person on whom the data is being obtained has consented in writing to the making of such request and has presented a photo-identification to the employer or prospective employer. In the event no conviction data is maintained on the person named in the request, the requesting employer or prospective employer shall be furnished at his cost a certification to that effect. The criminal history record search shall be conducted on forms provided by the Exchange.

I. Nothing in this section shall preclude the dissemination of a person's criminal history record information pursuant to the rules of court for obtaining discovery or for review by the court.

§ 22.1-289.030. Exemptions from licensure.

A. The following programs are not child day programs and shall not be required to be licensed:

1. A program of instructional experience in a single focus, such as, but not limited to, computer science, archaeology, sport clinics, or music, if children under the age of six do not attend at all and if no child is allowed to attend for more than 25 days in any three-month period commencing with enrollment. This exemption does not apply if children merely change their enrollment to a different focus area at a site offering a variety of activities and such children's attendance exceeds 25 days in a three-month period.

2. Programs of instructional or recreational activities wherein no child under age six attends for more than six hours weekly with no class or activity period to exceed one and one-half hours, and no child six years of age or above attends for more than six hours weekly when school is in session or 12 hours weekly when school is not in session. Competition, performances, and exhibitions related to the instructional or recreational activity shall be excluded when determining the hours of program operation.

3. Instructional programs offered by private schools that serve school-age children and that satisfy compulsory attendance laws or provide services under the Individuals with Disabilities Education Act, as amended, and programs of school-sponsored extracurricular activities that are focused on single interests such as, but not limited to, music, sports, drama, civic service, or foreign language.

4. Instructional programs offered by public schools that serve preschool-age children, satisfy compulsory attendance laws, or provide services under the Individuals with Disabilities Education Act, as amended, and programs of school-sponsored extracurricular activities that are focused on single interests such as, but not limited to, music, sports, drama, civic service, or foreign language.

5. Early intervention programs for children eligible under Part C of the Individuals with Disabilities Education Act, as amended, wherein no child attends for more than a total of six hours per week.

6. Practice or competition in organized competitive sports leagues.

7. Programs of religious instruction, such as Sunday schools, vacation Bible schools, Bar Mitzvah or Bat Mitzvah classes, and nurseries offered by religious institutions and provided for the duration of specified religious services or related activities to allow parents or guardians or their designees who are on site to attend such religious services and activities.

8. A program of instructional or athletic experience operated during the summer months by, and as an extension of, an accredited private elementary, middle, or high school program as set forth in § 22.1-19 and administered by the Virginia Council for Private Education.

B. The following child day programs shall not be required to be licensed:

1. A child day center that has obtained an exemption pursuant to § 2.1-289.031.

2. A program where, by written policy given to and signed by a parent or guardian, school-age children are free to enter and leave the premises without permission. A program that would qualify for this exemption except that it assumes responsibility for the supervision, protection, and well-being of several children with disabilities who are mainstreamed shall not be subject to licensure.

3. A program that operates no more than a total of 20 program days in the course of a calendar year, provided that programs serving children under age six operate no more than two consecutive weeks without a break of at least a week.

4. Child-minding services that are not available for more than three hours per day for any individual child offered on site in commercial or recreational establishments if the parent or guardian (i) can be contacted and can resume responsibility for the child's supervision within 30 minutes and (ii) is receiving or providing services or participating in activities offered by the establishment.

5. A certified preschool or nursery school program operated by an accredited private school as set forth in § 22.1-19 and administered by the Virginia Council for Private Education that complies with the provisions of § 2.1-289.032.

6. A program of recreational activities offered by local governments, staffed by local government employees, and attended by school-age children. Such programs shall be subject to safety and

supervisory standards established by the local government offering the program.

7. A program offered by a local school division, operated for no more than four hours per day, staffed by local school division employees, and attended by children who are at least three years of age and are enrolled in public school or a preschool program within such school division. Such programs shall be subject to safety and supervisory standards established by the local school division offering the program.

8. Child-minding services offered by a business on the premises of the business to no more than four children under the age of 13 at any given time and for no more than eight hours per day, provided that the parent or guardian of every child receiving care is an employee of the business who is on the premises of the business and can resume responsibility for the child's supervision within 30 minutes upon request.

C. Child day programs that are exempt from licensure pursuant to subsection B, except for child day programs that are exempt from licensure pursuant to subdivision B 1 or 5, shall:

1. File with the Superintendent annually and prior to beginning operation of a child day program a statement indicating the intent to operate a child day program, identifying the specific provision of this section relied upon for exemption from licensure, and certifying that the child day program has disclosed in writing to the parents or guardians of the children in the program the fact that it is exempt from licensure;

2. Report to the Superintendent all incidents involving serious physical injury to or death of children attending the child day program. Reports of serious physical injuries, which shall include any physical injuries that require an emergency referral to an offsite health care professional or treatment in a hospital, shall be submitted annually. Reports of deaths shall be submitted no later than one business day after the death occurred; and

3. Post in a visible location on the premises notice that the child day program is operating as a program exempt from licensure with basic health and safety requirements but has no direct oversight by the Department.

D. Child day programs that are exempt from licensure pursuant to subsection B, except for child day programs that are exempt from licensure pursuant to subdivision B 1, 5, 6, or 7 shall:

1. Have a person trained and certified in first aid and cardiopulmonary resuscitation present at the child day program whenever children are present or at any other location in which children attending the child day program are present;

2. Maintain daily attendance records that document the arrival and departure of all children;

3. Have an emergency preparedness plan in place;

4. Comply with all applicable laws and regulations governing transportation of children; and

5. Comply with all safe sleep guidelines recommended by the American Academy of Pediatrics.

E. *All competitive sports leagues, as described in subdivision A 6, in which persons under the age of 18 participate shall:*

1. *Require all coaches, staff members, employees, and other volunteers who will be alone with, in control of, or supervising children to complete a background check in accordance with § 22.1-289.035;*

2. *Provide to all coaches, staff members, employees, and other volunteers who will be alone with, in control of, or supervising children and the parent of any child participating in the sports league written notice of the duty of all coaches, directors, and persons 18 years of age or older employed by or volunteering with the sports league to report suspected child abuse or neglect in accordance with § 63.2-1509. Such notice shall include information regarding how to report suspected child abuse or neglect, an explanation of the penalties that may be imposed for failure to file a required report, contact information for the local department of social services, and the telephone number for the Department of Social Services' toll-free child abuse and neglect hotline. The sports league shall require all persons receiving such notice to sign and return the notice to the sports league; and*

3. *Require all paid coaches, staff members, and employees who will be alone with, in control of, or supervising children to complete no less than four hours of training annually regarding child abuse prevention and response and require all volunteers who will be alone with, in control of, or supervising children to complete no less than two hours of training annually regarding child abuse prevention and response.*

The provisions of this subsection shall not apply to any competitive sports league operated by a public or private school or a local government.

F. The Superintendent shall inspect child day programs that are exempt from licensure pursuant to subsection B and competitive sports leagues, as described in subdivision A 6, to determine compliance with the provisions of this section only upon receipt of a complaint, except as otherwise provided by law.

~~F.~~ G. Family day homes that are members of a licensed family day system shall not be required to obtain a license from the Superintendent.

428 § 22.1-289.035. Licensed child day centers, family day homes, and family day systems;
429 employment for compensation or use as volunteers of persons convicted of or found to have
430 committed certain offenses prohibited; national background check required; penalty.

431 A. No child day center, family day home, or family day system licensed in accordance with the
432 provisions of this chapter, child day center exempt from licensure pursuant to § 22.1-289.031, registered
433 family day home, family day home approved by a family day system, ~~or~~ child day center, family day
434 home, or child day program that enters into a contract with the Department or its agents or designees to
435 provide child care services funded by the Child Care and Development Block Grant, *or sports league set*
436 *forth in subdivision A 6 of § 22.1-289.030* shall hire for compensated employment, continue to employ,
437 or permit to serve as a volunteer who will be alone with, in control of, or supervising children any
438 person who (i) has been convicted of any barrier crime as defined in § 19.2-392.02 or (ii) is the subject
439 of a founded complaint of child abuse or neglect within or outside the Commonwealth. All applicants
440 for employment, employees, applicants to serve as volunteers, and volunteers shall undergo a
441 background check in accordance with subsection B prior to employment or beginning to serve as a
442 volunteer and every five years thereafter.

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

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

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

449 3. Authorize the child day center, family day home, ~~or~~ family day system, *or sports league* described
450 in subsection A to obtain a copy of the results of a search of the central registry maintained pursuant to
451 § 63.2-1515 for any founded complaint of child abuse or neglect against him; and

452 4. Authorize the child day center, family day home, ~~or~~ family day system, *or sports league* described
453 in subsection A to obtain a copy of the results of a criminal history record information check, a sex
454 offender registry check, and a search of the child abuse and neglect registry or equivalent registry from
455 any state in which the individual has resided in the preceding five years.

456 The applicant's fingerprints and personal descriptive information obtained pursuant to subdivision 2
457 shall be forwarded by the Department or its designee or, in the case of a child day program operated by
458 a local government, may be forwarded by the local law-enforcement agency through the Central
459 Criminal Records Exchange to the Federal Bureau of Investigation for the purpose of obtaining national
460 criminal history record information regarding such applicant. Upon receipt of an applicant's record or
461 notification that no record exists, the Central Criminal Records Exchange shall forward the information
462 to the Department or its designee, and the Department or its designee shall report to the child day center
463 ~~or~~, family day home, *or sports league* whether the applicant is eligible to have responsibility for the
464 safety and well-being of children. In cases in which the record forwarded to the Department or its
465 designee is lacking disposition data, the Department or its designee shall conduct research in whatever
466 state and local recordkeeping systems are available in order to obtain complete data before reporting to
467 the child day center, family day home, ~~or~~ family day system, *or sports league*.

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

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

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

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

481 G. Notwithstanding the provisions of subsection A, a child day center may hire for compensated
482 employment persons who have been convicted of not more than one misdemeanor offense under
483 § 18.2-57, or any substantially similar offense under the laws of another jurisdiction, if 10 years have
484 elapsed following the conviction, unless the person committed such offense while employed in a child
485 day center or the object of the offense was a minor.

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

489 I. Any individual required to undergo a background check pursuant to subsection A who is (i)

convicted of any barrier crime as defined in § 19.2-392.02 or (ii) found to be the subject of a founded complaint of child abuse or neglect within or outside of the Commonwealth shall notify the child day center, family day home, ~~or~~ family day system, *or sports league* described in subsection A of such conviction or finding.

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

2. That the Board of Education shall (i) promulgate regulations to implement the provisions of this act and (ii) develop and provide to sports leagues resources regarding child abuse prevention and response training opportunities.