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HOUSE BILL NO. 1785

Offered January 13, 2025

Prefiled January 6, 2025

A BILL to amend and reenact §§ 15.2-741, 15.2-914, 22.1-289.04, 22.1-289.030, 22.1-289.031, 22.1-289.035, 22.1-289.039, and 22.1-289.049 of the Code of Virginia, relating to certain child day centers operated by religious institutions; exemption from licensure by Superintendent of Public Instruction.

Patron—Orrock

Referred to Committee on Education

Be it enacted by the General Assembly of Virginia:

1. That §§ 15.2-741, 15.2-914, 22.1-289.04, 22.1-289.030, 22.1-289.031, 22.1-289.035, 22.1-289.039, and 22.1-289.049 of the Code of Virginia are amended and reenacted as follows:

§ 15.2-741. Regulation of child-care services and facilities in certain counties.

A. The board may by ordinance provide for the regulation and licensing of (i) persons who provide child-care services for remuneration and (ii) child-care facilities. "Child-care services" includes regular care, protection, or guidance during a part of a day to one or more children, not related by blood or marriage to the provider of services, while they are not attended by their parent, guardian, or person with legal custody. "Child-care facilities" includes any commercial or residential structure which is used to provide child-care services for remuneration. However, such ordinance shall not require the regulation or licensing of any facility operated by a religious institution as exempted from licensure by subdivision A 9 of § 22.1-289.030 or § 22.1-289.031.

B. Such ordinance may be more restrictive or more extensive in scope than statutes or state regulations that may affect child-care services or child-care facilities, provided that such ordinance shall not impose additional requirements or restrictions on the construction or materials to be used in the erection, alteration, repair, or use of a residential dwelling.

§ 15.2-914. Regulation of child-care services and facilities in cities and certain counties.

Any (i) county that has adopted the urban county executive form of government or (ii) city may by ordinance provide for the regulation and licensing of persons who provide child-care services for compensation and for the regulation and licensing of child-care facilities. "Child-care services" means provision of regular care, protection and guidance to one or more children not related by blood or marriage while such children are separated from their parent, guardian or legal custodian in a dwelling not the residence of the child during a part of the day for at least four days of a calendar week. "Child-care facilities" includes any commercial or residential structure that is used to provide child-care services.

Such local ordinance shall not require the regulation or licensing of any child-care facility that is licensed by the Commonwealth and such ordinance shall not require the regulation or licensing of any facility operated by a religious institution as exempted from licensure by subdivision A 9 of § 22.1-289.030 or § 22.1-289.031.

Except as otherwise provided in this section, such local ordinances shall not be more extensive in scope than comparable state regulations applicable to family day homes. Such local ordinances may regulate the possession and storage of firearms, ammunition, or components or combination thereof at child-care facilities and may be more extensive in scope than comparable state statutes or regulations applicable to family day homes. Local regulations shall not affect the manner of construction or materials to be used in the erection, alteration, repair or use of a residential dwelling.

Such local ordinances may require that persons who provide child-care services shall provide certification from the Central Criminal Records Exchange and a national criminal background check, in accordance with §§ 19.2-389 and 19.2-392.02, that such persons have not been convicted of any offense involving the sexual molestation of children or the physical or sexual abuse or rape of a child or any barrier crime defined in § 19.2-392.02, and such ordinances may require that persons who provide child-care services shall provide certification from the central registry of the Department of Social Services that such persons have not been the subject of a founded complaint of abuse or neglect. If an applicant is denied licensure because of any adverse information appearing on a record obtained from the Central Criminal Records Exchange, the national criminal background check, or the Department of Social Services, the applicant shall be provided a copy of the information upon which that denial was based.

§ 22.1-289.04. Early childhood care and education advisory committee.

The Board shall establish an early childhood care and education advisory committee to advise the Board on programs, systems, and regulations established pursuant to this chapter. The advisory committee shall include the following members, who shall represent geographically diverse areas: (i) two representatives of

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59 publicly funded licensed providers, including at least one for-profit provider; (ii) one representative of an
60 early childhood care and education entity that is not a publicly funded provider; (iii) two representatives of
61 early childhood care and education entities that are license-exempt pursuant to Article 4 (§ 22.1-289.030 et
62 seq.), including one representative of an early childhood care and education entity that is exempt from
63 licensure pursuant to *subdivision A 9 of § 22.1-289.030 or § 22.1-289.031*; (iv) three representatives of Head
64 Start providers, one of which shall be operated by a local school division, and two of which shall not be
65 operated by a local school division; (v) two representatives from local school divisions or local school boards
66 operating early childhood programs other than Head Start providers; (vi) two representatives of nonprofit
67 advocacy organizations in the Commonwealth that focus on early childhood care and education; (vii) one
68 representative of a family day home that is a publicly funded provider; (viii) two professionals or faculty
69 members from an institution of higher education in the Commonwealth who have child development or early
70 childhood education expertise; (ix) one representative from the Virginia chapter of the American Academy of
71 Pediatrics; (x) one representative from an advocacy or service organization that focuses on serving children
72 with disabilities; (xi) one representative from a business in the Commonwealth; (xii) one parent of a child
73 currently enrolled in a preschool program offered by a publicly funded provider; (xiii) one representative of
74 the Virginia Council on Private Education; (xiv) one representative from a statewide nonprofit association in
75 the Commonwealth whose membership includes both before-school and afterschool nonprofit child care
76 providers and nonprofit preschool providers; (xv) one representative from a nonprofit entity that provides
77 child care resource and referral services related to the operation of early childhood care and education
78 programs; and (xvi) such other members as the Board may deem appropriate. The Commissioner of Social
79 Services or his designee, the Secretary of Education or his designee, the Secretary of Health and Human
80 Resources or his designee, the Superintendent of Public Instruction or his designee, the Commissioner of the
81 Department of Health or his designee, the Commissioner of the Department of Behavioral Health and
82 Development Services or his designee, and the Director of the Head Start Collaboration Office shall serve ex
83 officio without voting privileges. The Board shall establish bylaws for such advisory committee that include
84 term length and limits for members.

85 **§ 22.1-289.030. Exemptions from licensure.**

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

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

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

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

101 4. Instructional programs offered by public schools that serve preschool-age children, satisfy compulsory
102 attendance laws, or provide services under the Individuals with Disabilities Education Act (20 U.S.C. § 1400
103 et seq.), as amended, and programs of school-sponsored extracurricular activities that are focused on single
104 interests such as, but not limited to, music, sports, drama, civic service, or foreign language.

105 5. Early intervention programs for children eligible under Part C of the Individuals with Disabilities
106 Education Act (20 U.S.C. § 1431 et seq.), as amended, wherein no child attends for more than a total of six
107 hours per week.

108 6. Practice or competition in organized competitive sports leagues.

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

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

116 9. A *child day center* that (i) *exclusively serves children over the age of two*, (ii) *is operated or conducted*
117 *under the auspices of a religious institution*, and (iii) (a) *has tax exempt status as a nonprofit religious*
118 *institution in accordance with § 501(c) of the Internal Revenue Code of 1954, as amended*, or (b) *owns and*
119 *exclusively occupies real property that is exempt from local taxation*.

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

- 121 1. A child day center that has obtained an exemption pursuant to § 22.1-289.031.
- 122 2. A program where, by written policy given to and signed by a parent or guardian, school-age children
- 123 are free to enter and leave the premises without permission. A program that would qualify for this exemption
- 124 except that it assumes responsibility for the supervision, protection, and well-being of several children with
- 125 disabilities who are mainstreamed shall not be subject to licensure.
- 126 3. A program that operates no more than a total of 20 program days in the course of a calendar year,
- 127 provided that programs serving children under age six operate no more than two consecutive weeks without a
- 128 break of at least a week.
- 129 4. Child-minding services that are not available for more than three hours per day for any individual child
- 130 offered on site in commercial or recreational establishments if the parent or guardian (i) can be contacted and
- 131 can resume responsibility for the child's supervision within 30 minutes and (ii) is receiving or providing
- 132 services or participating in activities offered by the establishment.
- 133 5. A certified preschool or nursery school program operated by an accredited private school as set forth in
- 134 § 22.1-19 and administered by the Virginia Council for Private Education that complies with the provisions
- 135 of § 22.1-289.032.
- 136 6. A program of recreational activities offered by local governments, staffed by local government
- 137 employees, and attended by school-age children. Such programs shall be subject to safety and supervisory
- 138 standards established by the local government offering the program.
- 139 7. A program offered by a local school division, operated for no more than four hours per day on full
- 140 instructional days or for more than four hours per day on shortened instructional days or noninstructional
- 141 days, staffed by local school division employees, and attended by children who are at least three years of age
- 142 and are enrolled in public school or a preschool program within such school division. Such programs shall be
- 143 subject to safety and supervisory standards established by the local school division offering the program.
- 144 8. Child-minding services offered by a business on the premises of the business to no more than four
- 145 children under the age of 13 at any given time and for no more than eight hours per day, provided that the
- 146 parent or guardian of every child receiving care is an employee of the business who is on the premises of the
- 147 business and can resume responsibility for the child's supervision within 30 minutes upon request.
- 148 9. A program offered by a private school accredited by and in good standing with the Virginia Council for
- 149 Private Education, operated for no more than four hours per day, staffed by the accredited private school's
- 150 employees, and attended by school-age children who are enrolled in the accredited private school. Such
- 151 programs shall be subject to safety and supervisory standards established by the Virginia Council for Private
- 152 Education.
- 153 10. A child day program that (i) serves only dependent children of military personnel and (ii) (a) is located
- 154 on a military base or federal property or (b) is certified as a family child care provider by a branch of the
- 155 Armed Forces of the United States. Any branch of the Armed Forces of the United States or its agent,
- 156 including an installation commander of a military base on which a child day program is located, may assume
- 157 responsibility for approving or determining which children may be served by the program that is so exempted
- 158 from licensure.
- 159 C. Child day programs that are exempt from licensure pursuant to subsection B, except for child day
- 160 programs that are exempt from licensure pursuant to subdivision B 1 or 5, shall:
- 161 1. File with the Superintendent annually and prior to beginning operation of a child day program a
- 162 statement indicating the intent to operate a child day program, identifying the specific provision of this
- 163 section relied upon for exemption from licensure, and certifying that the child day program has disclosed in
- 164 writing to the parents or guardians of the children in the program the fact that it is exempt from licensure;
- 165 2. Report to the Superintendent all incidents involving serious physical injury to or death of children
- 166 attending the child day program. Reports of serious physical injuries, which shall include any physical
- 167 injuries that require an emergency referral to an offsite health care professional or treatment in a hospital,
- 168 shall be submitted annually. Reports of deaths shall be submitted no later than one business day after the
- 169 death occurred; and
- 170 3. Post in a visible location on the premises notice that the child day program is operating as a program
- 171 exempt from licensure with basic health and safety requirements but has no direct oversight by the
- 172 Department.
- 173 D. Child day programs that are exempt from licensure pursuant to subsection B, except for child day
- 174 programs that are exempt from licensure pursuant to subdivision B 1, 5, 6, or 7 shall:
- 175 1. Have a person trained and certified in first aid and cardiopulmonary resuscitation present at the child
- 176 day program whenever children are present or at any other location in which children attending the child day
- 177 program are present;
- 178 2. Maintain daily attendance records that document the arrival and departure of all children;
- 179 3. Have an emergency preparedness plan in place;
- 180 4. Comply with all applicable laws and regulations governing transportation of children; and
- 181 5. Comply with all safe sleep guidelines recommended by the American Academy of Pediatrics.
- 182 E. The Superintendent shall inspect child day programs that are exempt from licensure pursuant to

183 subsection B to determine compliance with the provisions of this section only upon receipt of a complaint,
184 except as otherwise provided by law.

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

187 **§ 22.1-289.031. Child day center operated by religious institution exempt from licensure; annual**
188 **statement and documentary evidence required; enforcement; injunctive relief.**

189 A. Notwithstanding any other provisions of this chapter, ~~a child day center, including~~ a child day center
190 operated or conducted under the auspices of a religious institution, *with the exception of a child day center*
191 *described in subdivision A 9 of § 22.1-289.030*, shall be exempt from the licensure requirements of this
192 chapter, but shall comply with the provisions of this section unless it chooses to be licensed. If such religious
193 institution chooses not to be licensed, it shall file with the Superintendent, prior to beginning operation of a
194 child day center and thereafter annually, a statement of intent to operate a child day center, certification that
195 the child day center has disclosed in writing to the parents or guardians of the children in the center the fact
196 that it is exempt from licensure and has posted the fact that it is exempt from licensure in a visible location on
197 the premises, the qualifications of the personnel employed therein, and documentary evidence that:

198 1. Such religious institution has tax exempt status as a nonprofit religious institution in accordance with §
199 501(c) of the Internal Revenue Code of 1954, as amended, or that the real property owned and exclusively
200 occupied by the religious institution is exempt from local taxation.

201 2. Within the prior 90 days for the initial exemption and within the prior 180 days for exemptions
202 thereafter, the local health department and local fire marshal or Office of the State Fire Marshal, whichever is
203 appropriate, have inspected the physical facilities of the child day center and have determined that the center
204 is in compliance with applicable laws and regulations with regard to food service activities, health and
205 sanitation, water supply, building codes, and the Statewide Fire Prevention Code or the Uniform Statewide
206 Building Code.

207 3. The child day center employs supervisory personnel according to the following ratio of staff to
208 children:

- 209 a. One staff member to four children from ages zero to 16 months.
- 210 b. One staff member to five children from ages 16 months to 24 months.
- 211 c. One staff member to eight children from ages 24 months to 36 months.
- 212 d. One staff member to 10 children from ages 36 months to five years.
- 213 e. One staff member to 20 children from ages five years to nine years.
- 214 f. One staff member to 25 children from ages nine years to 12 years.

215 Staff shall be counted in the required staff-to-children ratios only when they are directly supervising
216 children. When a group of children receiving care includes children from different age brackets, the age of
217 the youngest child in the group shall be used to determine the staff-to-children ratio that applies to that group.
218 For each group of children receiving care, at least one adult staff member shall be regularly present.
219 However, during designated daily rest periods and designated sleep periods of evening and overnight care
220 programs, for children ages 16 months to six years, only one staff member shall be required to be present
221 with the children under supervision. In such cases, at least one staff member shall be physically present in the
222 same space as the children under supervision at all times. Other staff members counted for purposes of the
223 staff-to-child ratio need not be physically present in the same space as the resting or sleeping children, but
224 shall be present on the same floor as the resting or sleeping children and shall have no barrier to their
225 immediate access to the resting or sleeping children. The staff member who is physically present in the same
226 space as the sleeping children shall be able to summon additional staff counted in the staff-to-child ratio
227 without leaving the space in which the resting or sleeping children are located.

228 Staff members shall be at least 16 years of age. Staff members under 18 years of age shall be under the
229 supervision of an adult staff member. Adult staff members shall supervise no more than two staff members
230 under 18 years of age at any given time.

231 4. Each person in a supervisory position has been certified by a practicing physician or physician assistant
232 to be free from any disability which would prevent him from caring for children under his supervision.

233 5. The center is in compliance with the requirements of:

- 234 a. This section.
- 235 b. Section 22.1-289.039 relating to background checks.
- 236 c. Section 63.2-1509 relating to the reporting of suspected cases of child abuse and neglect.
- 237 d. Chapter 3 (§ 46.2-300 et seq.) of Title 46.2 regarding a valid Virginia driver's license or commercial
238 driver's license; Article 21 (§ 46.2-1157 et seq.) of Chapter 10 of Title 46.2, regarding vehicle inspections;
239 ensuring that any vehicle used to transport children is an insured motor vehicle as defined in § 46.2-705; and
240 Article 13 (§ 46.2-1095 et seq.) of Chapter 10 of Title 46.2, regarding child restraint devices.

241 6. The following aspects of the child day center's operations are described in a written statement provided
242 to the parents or guardians of the children in the center and made available to the general public: physical
243 facilities, enrollment capacity, food services, health requirements for the staff, and public liability insurance.

244 7. The individual seeking to operate the child day center is not currently ineligible to operate another child

245 day program due to a suspension or revocation of his license or license exemption for reasons involving child
 246 safety or any criminal conviction, including fraud, related to such child day program.

247 8. A person trained and certified in first aid and cardiopulmonary resuscitation (CPR) will be present at
 248 the child day center whenever children are present or at any other location in which children attending the
 249 child day center are present.

250 9. The child day center is in compliance with all safe sleep guidelines recommended by the American
 251 Academy of Pediatrics.

252 B. The center shall establish and implement procedures for:

253 1. Hand washing by staff and children before eating and after toileting and diapering.

254 2. Appropriate supervision of all children in care, including daily intake and dismissal procedures to
 255 ensure safety of children.

256 3. A daily simple health screening and exclusion of sick children by a person trained to perform such
 257 screenings.

258 4. Ensuring that all children in the center are in compliance with the provisions of § 32.1-46 regarding the
 259 immunization of children against certain diseases.

260 5. Ensuring that all areas of the premises accessible to children are free of obvious injury hazards,
 261 including providing and maintaining sand or other cushioning material under playground equipment.

262 6. Ensuring that all staff are able to recognize the signs of child abuse and neglect.

263 7. Ensuring that all incidents involving serious physical injury to or death of children attending the child
 264 day center are reported to the Superintendent. Reports of serious physical injuries, which shall include any
 265 physical injuries that require an emergency referral to an offsite health care professional or treatment in a
 266 hospital, shall be submitted annually. Reports of deaths shall be submitted no later than one business day after
 267 the death occurred.

268 C. The Superintendent may perform on-site inspections of religious institutions to confirm compliance
 269 with the provisions of this section and to investigate complaints that the religious institution is not in
 270 compliance with the provisions of this section. The Superintendent may revoke the exemption for any child
 271 day center in serious or persistent violation of the requirements of this section. If a religious institution
 272 operates a child day center and does not file the statement and documentary evidence required by this section,
 273 the Superintendent shall give reasonable notice to such religious institution of the nature of its noncompliance
 274 and may thereafter take such action as he determines appropriate, including a suit to enjoin the operation of
 275 the child day center.

276 D. Any person who has reason to believe that a child day center falling within the provisions of this
 277 section is not in compliance with the requirements of this section may report the same to the Department, the
 278 local health department, or the local fire marshal, each of which may inspect the child day center for
 279 noncompliance, give reasonable notice to the religious institution, and thereafter may take appropriate action
 280 as provided by law, including a suit to enjoin the operation of the child day center.

281 E. Nothing in this section shall prohibit a child day center operated by or conducted under the auspices of
 282 a religious institution from obtaining a license pursuant to this chapter.

283 **§ 22.1-289.035. Licensed child day centers, family day homes, and family day systems; employment**
 284 **for compensation or use as volunteers of persons convicted of or found to have committed certain**
 285 **offenses prohibited; national background check required; penalty.**

286 A. No child day center, family day home, or family day system licensed in accordance with the provisions
 287 of this chapter, child day center exempt from licensure pursuant to *subdivision A 9 of § 22.1-289.030 or §*
 288 *22.1-289.031*, registered family day home, family day home approved by a family day system, or child day
 289 center, family day home, or child day program that enters into a contract with the Department or its agents or
 290 designees to provide child care services funded by the Child Care and Development Block Grant shall hire
 291 for compensated employment, continue to employ, or permit to serve as a volunteer who will be alone with,
 292 in control of, or supervising children any person who (i) has been convicted of any barrier crime as defined in
 293 § 19.2-392.02 or (ii) is the subject of a founded complaint of child abuse or neglect within or outside the
 294 Commonwealth. All applicants for employment, employees, applicants to serve as volunteers, and volunteers
 295 shall undergo a background check in accordance with subsection B prior to employment or beginning to
 296 serve as a volunteer and every five years thereafter.

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

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

301 2. Submit to fingerprinting and provide personal descriptive information described in subdivision B 2 of §
 302 19.2-392.02;

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

306 4. Authorize the child day center, family day home, or family day system described in subsection A to

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

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

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

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

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

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

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

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

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

346 J. Notwithstanding the provisions of subsection A, a background check shall not be required for any
347 individual who has completed a background check under the provisions of this section within the previous
348 five years, provided that (i) such background check was conducted after July 1, 2017; (ii) the results of such
349 background check indicated that the individual had not been convicted of any barrier crime as defined in §
350 19.2-392.02 and was not the subject of a founded complaint of child abuse or neglect within or outside the
351 Commonwealth; and (iii) the individual is currently or has been, within the previous 180 days, employed by
352 or a volunteer at a child day center, family day home, family day system, or child day program described in
353 subsection A. Prior to hiring or allowing to volunteer any individual required to undergo a background check
354 pursuant to subsection A without the completion of a background check under the provisions of subsection B,
355 the child day center, family day home, family day system, or child day program shall, upon the individual's
356 written consent, obtain written certification from the Department or its designee that such individual satisfies
357 all requirements set forth in this subsection and is eligible to serve as an employee or volunteer. If the
358 individual meets all requirements set forth in this subsection and is eligible to serve as an employee or
359 volunteer at the child day center, family day home, family day system, or child day program, the written
360 certification shall also state the next date by which another background check for such person shall be
361 completed in accordance with subsection B. Such written certifications shall not reveal the nature of any
362 disqualifying barrier crime or founded complaint of child abuse or neglect or any other information about the
363 individual.

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

368 **§ 22.1-289.039. Records check by unlicensed child day center; penalty.**

369 Any child day center that is exempt from licensure pursuant to *subdivision A 9 of § 22.1-289.030 or §*
 370 *22.1-289.031* shall require all applicants for employment, employees, applicants to serve as volunteers, and
 371 volunteers and any other person who is expected to be alone with one or more children enrolled in the child
 372 day center to obtain a background check in accordance with § 22.1-289.035. A child day center that is exempt
 373 from licensure pursuant to *subdivision A 9 of § 22.1-289.030 or § 22.1-289.031* shall refuse employment or
 374 service to any person who (i) has been convicted of any barrier crime as defined in § 19.2-392.02 or (ii) is the
 375 subject of a founded complaint of child abuse or neglect within or outside the Commonwealth. The foregoing
 376 provisions shall not apply to a parent or guardian who may be left alone with his own child. For purposes of
 377 this section, convictions shall include prior adult convictions and juvenile convictions or adjudications of
 378 delinquency based on a crime that would have been a felony if committed by an adult within or outside the
 379 Commonwealth. Further dissemination of the information provided to the facility is prohibited, except as
 380 otherwise provided in subsection J of § 22.1-289.035.

381 **§ 22.1-289.049. Regulated child day programs to require proof of child identity and age; report to**
 382 **law-enforcement agencies.**

383 A. Upon enrollment of a child in a regulated child day program, such child day program shall require
 384 information from the person enrolling the child regarding previous child day care and schools attended by the
 385 child. The regulated child day program shall also require that the person enrolling the child present the
 386 regulated child day program with the proof of the child's identity and age. The proof of identity, if reproduced
 387 or retained by the child day program or both, shall be destroyed upon the conclusion of the requisite period of
 388 retention. The procedures for the disposal, physical destruction, or other disposition of the proof of identity
 389 containing social security numbers shall include all reasonable steps to destroy such documents by (i)
 390 shredding, (ii) erasing, or (iii) otherwise modifying the social security numbers in those records to make them
 391 unreadable or indecipherable by any means.

392 B. For purposes of this section:

393 "Proof of identity" means a certified copy of a birth certificate or other reliable proof of the child's identity
 394 and age.

395 "Regulated child day program" is one in which a person or organization has agreed to assume
 396 responsibility for the supervision, protection, and well-being of a child under the age of 13 for less than a
 397 24-hour period that is licensed pursuant to § 22.1-289.011, voluntarily registered pursuant to § 22.1-289.015,
 398 certified as a preschool or nursery school program pursuant to § 22.1-289.032, exempted from licensure as a
 399 child day center operated by a religious institution pursuant to *subdivision A 9 of § 22.1-289.030 or §*
 400 *22.1-289.031*, or approved as a family day home by a licensed family day system.

401 C. If the parent, guardian, or other person enrolling the child in a regulated child day program for longer
 402 than two consecutive days or other pattern of regular attendance does not provide the information required by
 403 subsection A within seven business days of initial attendance, such child day program shall immediately
 404 notify the local law-enforcement agency in its jurisdiction of such failure to provide the requested
 405 information.

406 D. Upon receiving notification of such failure to provide the information required by subsection A, the
 407 law-enforcement agency shall, if available information warrants, immediately submit an inquiry to the
 408 Missing Children Information Clearinghouse and, with the assistance of the local department of social
 409 services, if available information warrants, conduct the appropriate investigation to determine whether the
 410 child is missing.

411 E. The Board shall adopt regulations to implement the provisions of this section.

412 B. The plan established pursuant to subsection A and the results of each test conducted pursuant to such
 413 plan shall be submitted to and reviewed by the Commissioner and the Department of Health's Office of
 414 Drinking Water.

415 C. If the results of any test conducted in accordance with the plan established pursuant to subsection A
 416 indicate a level of lead in the potable water that is at or above 15 parts per billion, the program shall
 417 remediate the level of lead in the potable water to below 15 parts per billion and confirm such remediation by
 418 retesting the water. The results of the retests shall be submitted to and reviewed by the Commissioner and the
 419 Department of Health's Office of Drinking Water.

420 D. Notwithstanding the provisions of subsection A or C, a child day program that is licensed pursuant to
 421 this chapter and any program described in subdivision A 4, B 1, or B 5 of § 22.1-289.030 may, in lieu of
 422 developing and implementing a plan to test potable water or of remediation, use for human consumption, as
 423 defined by § 32.1-167, bottled water, water coolers, or other similar water source that meets the U.S. Food
 424 and Drug Administration standards for bottled water. Any program that chooses this option shall notify the
 425 Commissioner and the Department of Health's Office of Drinking Water and the parent of each child in the
 426 program of such choice.