~~Indicates Matter Stricken~~

Indicates New Matter

COMMITTEE REPORT

March 27, 2019

**S. 595**

Introduced by Senators Shealy and Hutto

S. Printed 3/27/19--S.

Read the first time March 5, 2019.

**THE COMMITTEE ON**

**FAMILY AND VETERANS' SERVICES**

To whom was referred a Bill (S. 595) to amend Section 63‑13‑40 of the 1976 Code, relating to background checks for employment, to provide that a childcare facility may not employ a caregiver or other, etc., respectfully

**REPORT:**

That they have duly and carefully considered the same and recommend that the same do pass:

KATRINA F. SHEALY for Committee.

**A** **BILL**

TO AMEND SECTION 63‑13‑40 OF THE 1976 CODE, RELATING TO BACKGROUND CHECKS FOR EMPLOYMENT, TO PROVIDE THAT A CHILDCARE FACILITY MAY NOT EMPLOY A CAREGIVER OR OTHER STAFF IF THAT PERSON IS REGISTERED OR REQUIRED TO REGISTER ON THE NATIONAL SEX OFFENDER REGISTRY, STATE SEX OFFENDER REGISTRY, OR CENTRAL REGISTRY OF CHILD ABUSE AND NEGLECT OR FOR OTHER CONVICTIONS, TO REQUIRE EMPLOYEES TO UNDERGO BACKGROUND CHECKS, INCLUDING A SEARCH ON THE NATIONAL SEX OFFENDER REGISTRY, STATE SEX OFFENDER REGISTRY, AND STATE CHILD ABUSE AND NEGLECT REGISTRY AND A DATABASE CHECK IN EACH STATE WHERE THE PERSON HAS LIVED FOR THE PREVIOUS FIVE YEARS, TO GIVE THE SOUTH CAROLINA LAW ENFORCEMENT DIVISION AND THE FEDERAL BUREAU OF INVESTIGATION THE AUTHORITY TO RETAIN, STORE, AND SHARE RECORDS, AND TO PROVIDE A FEE FOR BACKGROUND CHECKS; TO AMEND SECTION 63‑13‑50 OF THE 1976 CODE, RELATING TO FINGERPRINT EXEMPTIONS, TO PROVIDE THAT FINGERPRINT REVIEWS CONDUCTED WITHIN THE PREVIOUS SIX MONTHS ARE EXEMPT; AND TO AMEND SECTION 63‑13‑420 OF THE 1976 CODE, RELATING TO LICENSURE REQUIREMENTS, SECTION 63‑13‑430 OF THE 1976 CODE, RELATING TO LICENSE RENEWAL, SECTION 63‑13‑620 OF THE 1976 CODE, RELATING TO A STATEMENT OF APPROVAL REQUIREMENTS, SECTION 63‑13‑630(D), (E), (F), AND (G) OF THE 1976 CODE, RELATING TO APPROVAL RENEWAL, SECTION 63‑13‑810(C) OF THE 1976 CODE, RELATING TO THE REGISTRATION REQUIRED FOR FAMILY CHILDCARE HOMES, SECTION 63‑13‑820 OF THE 1976 CODE, RELATING TO REGISTRATION REQUIREMENTS, SECTION 63‑13‑830(C) AND (D) OF THE 1976 CODE, RELATING TO PERSONS APPLYING FOR REGISTRATION RENEWALS, AND SECTION 63‑13‑1010 OF THE 1976 CODE, RELATING TO THE REGISTRATION REQUIRED FOR CHURCHES AND RELIGIOUS CENTERS, TO MAKE CONFORMING CHANGES.

Be it enacted by the General Assembly of the State of South Carolina:

SECTION 1. Section 63‑13‑40 of the 1976 Code is amended to read:

“Section 63‑13‑40. (A)(1) ~~No childcare center, group childcare home, family childcare home, or church or religious childcare center may employ a person or engage the services of a caregiver who is required to register under the sex offender registry act pursuant to Section 23‑3‑430 or who has been convicted of:~~ A licensed, approved, or registered childcare facility, or any childcare provider eligible to deliver services for which Child Care and Development Fund financial assistance is provided, may not employ a childcare caregiver or other staff member if that person is required to register or is registered with the National Crime Information Center National Sex Offender Registry, the state sex offender registry pursuant to Section 23‑3‑430, or the Central Registry of Child Abuse and Neglect or has been convicted of:

~~(1)~~(a) a crime listed in Chapter 3 of Title 16, Offenses Against the Person;

~~(2)~~(b) a crime listed in Chapter 15 of Title 16, Offenses Against Morality and Decency;

~~(3)~~(c) the crime of contributing to the delinquency of a minor, contained in Section 16‑17‑490;

~~(4)~~(d) unlawful conduct toward a child, as provided for in Section 63‑5‑70;

(e) cruelty to children, as provided for in Section 63‑5‑80;

(f) child endangerment, as provided for in Section 56‑5‑2947;

(g)(i) the felonies classified in Section 16‑1‑10(A), except that this prohibition does not apply to Section 56‑5‑2930, the Class F felony of driving under the influence ~~pursuant to Section 56‑5‑2940(4)~~ if the conviction occurred at least ten years prior to the application for employment and the following conditions are met:

~~(a)~~(A) the person has not been convicted in this State or any other state of an alcohol or drug violation during the previous ten‑year period;

~~(b)~~(B) the person has not been convicted of and has no charges pending in this State or any other state for a violation of driving while his license is canceled, suspended, or revoked during the previous ten‑year period; and

~~(c)~~(C) the person has completed successfully an alcohol or drug assessment and treatment program provided by the South Carolina Department of Alcohol and Other Drug Abuse Services or an equivalent program designated by that agency.

(ii) A person who has been convicted of a first‑offense violation of Section 56‑5‑2930 must not drive a motor vehicle or provide transportation while in the official course of his duties as an employee of a childcare center, group childcare home, family childcare home, or church or religious childcare center.

(iii) If the person subsequently is convicted of, receives a sentence upon a plea of guilty or of nolo contendere, or forfeits bail posted for a violation of Section 56‑5‑2930 or for a violation of another law or ordinance of this State or any other state or of a municipality of this State or any other state that prohibits a person from operating a motor vehicle while under the influence of intoxicating liquor, drugs, or narcotics, the person’s employment must be terminated;

~~(5)~~(h) the offenses enumerated in Section 16‑1‑10(D) if the crime was a felony or if the victim was a minor;

(i) a violent misdemeanor committed as an adult against a child;

(j) a violent crime listed in Section 16‑1‑60 if the crime was a felony or if the victim was a minor; or

~~(6)~~(k) a criminal offense similar in nature to the crimes listed in this subsection committed in other jurisdictions or under federal law.

(2) This section does not prohibit employment or provision of caregiver services when a conviction or plea of guilty or nolo contendere for one of the crimes enumerated in this subsection has been pardoned. However, notwithstanding the entry of a pardon, an operator or the department may consider all information available, including the person’s pardoned convictions or pleas and the circumstances surrounding them, to determine whether the applicant is unfit or otherwise unsuited for employment or to provide caregiver services.

(B) A person who has been convicted of a crime enumerated in subsection (A) who applies for employment with, is employed by, or is a caregiver at a childcare center, group childcare home, family childcare home, or church or religious childcare center is guilty of a misdemeanor and, upon conviction, must be fined not more than five thousand dollars or imprisoned not more than one year, or both.

(C) Application forms for employment at childcare centers, group childcare homes, family childcare homes, or church or religious childcare centers must include, at the top of the form in large bold type, a statement indicating that a person who has been convicted of a crime enumerated in subsection (A) who applies for employment with, is employed by, or seeks to provide caregiver services or is a caregiver at a facility is guilty of a misdemeanor and, upon conviction, must be fined not more than five thousand dollars or imprisoned not more than one year, or both.

(D)(1) To be employed by or to provide caregiver services at a childcare facility licensed, registered, or approved under this subarticle, a person first shall undergo a state fingerprint‑based background check to be conducted by the State Law Enforcement Division (SLED) to determine any state criminal history, a fingerprint‑based background check to be conducted by the Federal Bureau of Investigation to determine any other criminal history, ~~and~~ a Central Registry check to be conducted by the department to determine any abuse or neglect perpetrated by the person upon a child, and a search of the National Crime Information Center National Sex Offender Registry and the state sex offender registry pursuant to Section 23‑3‑430.

(2) The person shall be subject to a state criminal register or repository check, a state sex offender check, and a state child abuse and neglect registry and database check in each state where the person has lived in the previous five years.

~~(2)~~(3) However, a person may be provisionally employed or may provisionally provide caregiver services after the favorable completion of the State Law Enforcement Division name and date of birth‑based background check ~~until such time as the~~ and the SLED ~~and~~ or Federal Bureau of Investigation fingerprint‑based background checks, until such time as the remaining fingerprint‑based background check and the Central Registry check are completed if the person executes a sworn statement on a form provided by the department that he or she has not been convicted of any crime enumerated in this section and that he or she is not on the Central Registry for having perpetrated abuse or neglect upon a child. A person provisionally employed must be directly supervised by, and in the presence of a nonprovisionally employed person at all times when providing direct care to children.

~~(3)~~(4) Provisional status will be repealed if the requests for the Central Registry check and SLED and FBI fingerprint‑based background checks are not sent by facsimile, mail, or another manner approved by the department by the end of the next business day after the person was employed.

~~(4)~~(5) If the director of a childcare facility violates the terms of provisional employment, for a first offense, the facility may not employ a person provisionally for twelve months. For a second or subsequent offense, the facility may not employ a person provisionally for twenty‑four months. The penalty shall apply to any facility that may employ the director of the facility during the period of suspension. A childcare facility owner with five or more facilities that sustains violations in twenty‑five percent or more of facilities owned in the State during a period of two years may not employ a person provisionally in any facility for twenty‑four months. The department shall have authority to determine that a violation has occurred and shall notify the owner and the director in writing of the violation and the penalty. The owner or director under penalty may appeal this determination through the process provided in this subarticle for appeal of the revocation or denial of a childcare license. Authority to employ persons in provisional status must remain suspended while the appeal is pending. Upon disposition of the appeal in favor of the appellant, authority to use provisional status must be restored.

~~(5)~~(6) The results of the fingerprint‑based background checks are valid and reviews are to be repeated every five years. The fingerprint checks must be repeated if a person is not employed by or does not provide caregiver services in a childcare center, group childcare home, family childcare home, church or religious childcare center, or childcare provider eligible to deliver services for which Child Care and Development Fund financial assistance is provided for six months or longer ~~not required to be repeated as long as the person remains employed by or continues providing caregiver services in a childcare center, group childcare home, family childcare home, or church or religious childcare center; however, if a person is not employed or does not provide caregiver services for one year or longer, the fingerprint reviews must be repeated.~~

~~(6)~~(7) For provisional employment under this section, the department must complete the Central Registry check within two business days of receipt of the request. For other employment under this section, the department must complete the Central Registry check within five business days of receipt of the request. If the department notifies the provider that research into other records is required, these deadlines may be extended for up to ten additional business days.

(8) The South Carolina Law Enforcement Division and the Federal Bureau of Investigation are authorized to retain and store fingerprints for further use in the identification of persons, including, but not limited to, use in identifying unsolved latent prints.

(9) The South Carolina Law Enforcement Division and the Federal Bureau of Investigation are authorized to provide the department with current and future information regarding the fingerprints stored, including arrests, convictions, dispositions, warrants, and other information available to the South Carolina Law Enforcement Division and the Federal Bureau of Investigation, such as civil and criminal information.

(10) The prospective employee or childcare facility shall be responsible for any fees associated with any and all required background checks. Fees shall not exceed the actual cost of processing and administration.

(E) ~~Unless otherwise required by law, this section does not apply to volunteers in a childcare center, group childcare home, family childcare home, or church or religious childcare center. For purposes of this section, ‘volunteer’ means a person who:~~

~~(1)~~ ~~provides services without compensation relating to the operation of a childcare center, group childcare home, family childcare home, or church or religious childcare center; and~~

~~(2)~~ ~~is in the presence of an operator, employee, or caregiver when providing direct care to children.~~

~~‘Volunteer’ includes, but is not limited to, parents, grandparents, students, and student teachers.~~

~~(F)~~ Unless otherwise required by law, this section applies to:

(1) an employee who provides care to the child or children with or without the direct personal supervision of a person licensed, registered, ~~or~~ approved, or eligible to deliver services for which Child Care and Development Fund financial assistance is provided under this chapter; and

(2) any other employee at a facility licensed, registered, ~~or~~ approved, or eligible to deliver services for which Child Care and Development Fund financial assistance is provided under this chapter who has direct access to a child outside the immediate presence of a person who has undergone the fingerprint review required under this chapter.”

SECTION 2. Section 63‑13‑50 of the 1976 Code is amended to read:

“Section 63‑13‑50. The fingerprint reviews required by this chapter are not required of a certified education personnel who has undergone a fingerprint review pursuant to Section 59‑26‑40 or of a person licensed as a foster parent who has undergone a state and federal fingerprint review pursuant to Section 63‑7‑2340, and the results of these reviews have been submitted to the department and the person has remained employed since the review in certified education or licensed as a foster parent or the reviews have been conducted within the preceding ~~year~~ six months.”

SECTION 3. Section 63‑13‑420 of the 1976 Code is amended to read:

“Section 63‑13‑420. (A) Application for license must be made on forms supplied by the department and in the manner it prescribes.

(B) Before issuing a license the department shall conduct an investigation of the applicant and the proposed plan of care for children and for operating a private childcare center or group childcare home. If the results of the investigation verify that the provisions of this chapter and the applicable regulations promulgated by the department are satisfied, a license must be issued. The applicant shall cooperate with the investigation and related inspections by providing access to the physical plant, records, excluding financial records, and staff. Failure to comply with the regulations promulgated by the department within the time period specified in this chapter, if adequate notification of deficiencies has been made, is a ground for denial of application. The investigation and inspections may involve consideration of any facts, conditions, or circumstances relevant to the operation of the childcare center or group childcare home, including references and other information about the character and quality of the personnel.

(C) Each license must be conditioned by stating clearly the name and address of the licensee, the address of the childcare center or group childcare home, and the number of children who may be served.

(D) Failure of the department, except as provided in Section 63‑13‑200, to approve or deny an application within ninety days results in the granting of a provisional license.

(E)(1) No license may be issued to an operator who has been convicted of any of the offenses included in Section 63‑13‑40(A)(1)~~:~~

~~(1)~~ ~~a crime listed in Chapter 3 of Title 16, Offenses Against the Person;~~

~~(2)~~ ~~a crime listed in Chapter 15 of Title 16, Offenses Against Morality and Decency;~~

~~(3)~~ ~~the crime of contributing to the delinquency of a minor, contained in Section 16‑17‑490;~~

~~(4)~~ ~~the felonies classified in Section 16‑1‑10(A);~~

~~(5)~~ ~~the offenses enumerated in Section 16‑1‑10(D); or~~

~~(6)~~ ~~a criminal offense similar in nature to the crimes listed in this subsection committed in other jurisdictions or under federal law~~.

(2) This section does not prohibit licensing when a conviction or plea of guilty or nolo contendere for one of the crimes enumerated in this subsection has been pardoned. However, notwithstanding the entry of a pardon, the department may consider all information available, including the person’s pardoned convictions or pleas and the circumstances surrounding them, to determine whether the person is unfit or otherwise unsuited to be an operator.

(F) Application forms for licenses issued under this section must include, at the top of the form in large bold type, a statement indicating that a person who has been convicted of a crime enumerated in ~~subsection (E)~~ Section 63‑13‑40(A)(1) who applies for a license as an operator is guilty of a misdemeanor and, upon conviction, must be fined not more than five thousand dollars or imprisoned not more than one year, or both.

(G) A person eighteen years of age or older living in a group family childcare home, and any person eighteen years of age or older who moves into a group family childcare home after an initial application for licensing is approved, shall undergo a state fingerprint review to be conducted by the State Law Enforcement Division to determine any state criminal history, a fingerprint review to be conducted by the Federal Bureau of Investigation to determine any other criminal history, a Central Registry check to be conducted by the department to determine any abuse or neglect perpetrated by the person upon a child, and a search of the National Crime Information Center National Sex Offender Registry and the state sex offender registry pursuant to Section 23‑3‑430. The person shall be subject to a state criminal register or repository check, a state sex offender check, and a state child abuse and neglect registry and database check in each state where the person has lived in the previous five years. The fingerprint reviews required by this subsection are required to be repeated every five years.

(H) A person fifteen through seventeen years of age living in a group family childcare home, and any person fifteen through seventeen years of age who moves into a group family childcare home after an initial application for licensing is approved, shall undergo a state fingerprint review to be conducted by the State Law Enforcement Division to determine any state criminal history and a fingerprint review to be conducted by the Federal Bureau of Investigation to determine any other criminal history. The fingerprint reviews required by this subsection are required to be repeated every five years.

(I) A person applying for a license as an operator under this section shall undergo a state fingerprint review to be conducted by the State Law Enforcement Division to determine any state criminal history, ~~and~~ a fingerprint review to be conducted by the Federal Bureau of Investigation to determine any other criminal history, a Central Registry check to be conducted by the department to determine any abuse or neglect perpetrated by the person upon a child, and a search of the National Crime Information Center National Sex Offender Registry and the state sex offender registry pursuant to Section 23‑3‑430. The person shall be subject to a state criminal register or repository check, a state sex offender check, and a state child abuse and neglect registry and database check in each state where the person has lived in the previous five years. If a person is not employed or does not provide caregiver services for six months or longer, then the fingerprint reviews must be repeated. The fingerprint reviews required by this subsection are ~~not~~ required ~~upon each renewal~~ to be repeated every five years.

~~(H)~~(J) A person applying for a license as an operator under this section or seeking employment or seeking to provide caregiver services at a facility licensed under this section shall undergo a state fingerprint review to be conducted by the State Law Enforcement Division to determine any state criminal history, ~~and~~ a fingerprint review to be conducted by the Federal Bureau of Investigation to determine any other criminal history, a Central Registry check to be conducted by the department to determine any abuse or neglect perpetrated by the person upon a child, and a search of the National Crime Information Center National Sex Offender Registry and the state sex offender registry pursuant to Section 23‑3‑430. The person shall be subject to a state criminal register or repository check, a state sex offender check, and a state child abuse and neglect registry and database check in each state where the person has lived in the previous five years. If a person is not employed or does not provide caregiver services for six months or longer, then the fingerprint reviews must be repeated. The fingerprint reviews required by this subsection are ~~not~~ required ~~upon each renewal unless the renewal coincides with employment of a new operator, employee, or caregiver~~ to be repeated every five years.

(K) The South Carolina Law Enforcement Division and the Federal Bureau of Investigation are authorized to retain and store fingerprints for further use in the identification of persons, including, but not limited to, use in identifying unsolved latent prints. The South Carolina Law Enforcement Division and the Federal Bureau of Investigation are authorized to provide the department with current and future information regarding the fingerprints stored, including arrests, convictions, dispositions, warrants, and other information available to the South Carolina Law Enforcement Division and the Federal Bureau of Investigation, such as civil and criminal information. The prospective employee or childcare facility shall be responsible for any fees associated with any and all required background checks. Fees shall not exceed the actual cost of processing and administration.”

SECTION 4. Section 63‑13‑430 of the 1976 Code is amended to read:

“Section 63‑13‑430. (A) Regular licenses may be renewed upon application and approval. Notification of a childcare center or group childcare home regarding renewal is the responsibility of the department.

(B) Application for renewal must be made on forms supplied by the department in the manner it prescribes.

(C) Before renewing a license the department shall conduct an investigation of the childcare center or group childcare home. If the results of the investigation verify that the provisions of this chapter and the applicable regulations promulgated by the department are satisfied, the license must be renewed. The licensee shall cooperate with the investigation and related inspections by providing access to the physical plant, records, and staff. Failure to comply with the regulations promulgated by the department within the time period specified in this chapter, if adequate notification of deficiencies has been made, is a ground for revocation of the license. The investigation and inspections may involve consideration of any facts, conditions, or circumstances relevant to the operation of the childcare center or group childcare home.

(D)(1) No license may be renewed for any operator who has been convicted of any of the offenses included in Section 63‑13‑40(A)(1)~~:~~

~~(1)~~ ~~a crime listed in Chapter 3 of Title 16, Offenses Against the Person;~~

~~(2)~~ ~~a crime listed in Chapter 15 of Title 16, Offenses Against Morality and Decency;~~

~~(3)~~ ~~the crime of contributing to the delinquency of a minor, contained in Section 16‑17‑490;~~

~~(4)~~ ~~the felonies classified in Section 16‑1‑10(A);~~

~~(5)~~ ~~the offenses enumerated in Section 16‑1‑10(D); or~~

~~(6)~~ ~~a criminal offense similar in nature to the crimes listed in this subsection committed in other jurisdictions or under federal law~~.

(2) This section does not prohibit renewal when a conviction or plea of guilty or nolo contendere for one of the crimes enumerated in this subsection has been pardoned. However, notwithstanding the entry of a pardon, the department may consider all information available, including the person’s pardoned convictions or pleas and the circumstances surrounding them, to determine whether the person is unfit or otherwise unsuited to be an operator.

(E) Application forms for license renewals issued under this section must include, at the top of the form in large bold type, a statement indicating that a person who has been convicted of a crime enumerated in ~~subsection (D)~~ Section 63‑13‑40(A)(1) who applies for a license renewal as operator is guilty of a misdemeanor and, upon conviction, must be fined not more than five thousand dollars or imprisoned not more than one year, or both.

(F) A licensee seeking license renewal under this section, its employees, and its caregivers, who have not done so previously, on the first renewal after June 30, 1995, shall undergo a state fingerprint review to be conducted by the State Law Enforcement Division to determine any state criminal history, ~~and~~ a fingerprint review to be conducted by the Federal Bureau of Investigation to determine any other criminal history, a Central Registry check to be conducted by the department to determine any abuse or neglect perpetrated by the person upon a child, and a search of the National Crime Information Center National Sex Offender Registry and the state sex offender registry pursuant to Section 23‑3‑430. The person shall be subject to a state criminal register or repository check, a state sex offender check, and a state child abuse and neglect registry and database check in each state where the person has lived in the previous five years.

(G) No facility may employ or engage the services of an employee or caregiver who has been convicted of one of the crimes ~~listed in this section~~ included in Section 63‑13‑40(A)(1).

(H) The South Carolina Law Enforcement Division and the Federal Bureau of Investigation are authorized to retain and store fingerprints for further use in the identification of persons, including, but not limited to, use in identifying unsolved latent prints. The South Carolina Law Enforcement Division and the Federal Bureau of Investigation are authorized to provide the department with current and future information regarding the fingerprints stored, including arrests, convictions, dispositions, warrants, and other information available to the South Carolina Law Enforcement Division and the Federal Bureau of Investigation, such as civil and criminal information. The prospective employee or childcare facility shall be responsible for any fees associated with any and all required background checks. Fees shall not exceed the actual cost of processing and administration.”

SECTION 5. Section 63‑13‑620 of the 1976 Code is amended to read:

“Section 63‑13‑620. (A) Application for a statement of standard conformity or approval must be made on forms supplied by the department and in the manner it prescribes.

(B) Before issuing approval the department shall conduct an investigation of the applicant and the proposed plan of care for children and for operating a public childcare center or group childcare home. If the results of the investigation verify that the provisions of the chapter and the applicable regulations promulgated by the department are satisfied, approval must be issued. The applicant shall cooperate with the investigation and inspections by providing access to the physical plant, records, and staff. The investigation and related inspections may involve consideration of any facts, conditions, or circumstances relevant to the operation of the childcare center or group childcare home, including references and other information about the character and quality of the personnel. If the childcare center or group childcare home fails to comply with the regulations promulgated by the department within the time period specified in this chapter, if adequate notification regarding deficiencies has been given, the appropriate public officials of the state and local government must be notified.

(C) A person applying for approval under this section shall undergo a state fingerprint review to be conducted by the State Law Enforcement Division to determine any state criminal history, ~~and~~ a fingerprint review to be conducted by the Federal Bureau of Investigation to determine any other criminal history, a Central Registry check to be conducted by the department to determine any abuse or neglect perpetrated by the person upon a child, and a search of the National Crime Information Center National Sex Offender Registry and the state sex offender registry pursuant to Section 23‑3‑430. The person shall be subject to a state criminal register or repository check, a state sex offender check, and a state child abuse and neglect registry and database check in each state where the person has lived in the previous five years. The fingerprint reviews required by this subsection are ~~not~~ required ~~upon each renewal~~ to be repeated every five years.

(D)(1) No approval may be granted under this section if the person applying for approval or the operator, an employee, or a caregiver of the facility has been convicted of any of the offenses included in Section 63‑13‑40(A)(1)~~:~~

~~(1)~~ ~~a crime listed in Chapter 3 of Title 16, Offenses Against the Person;~~

~~(2)~~ ~~a crime listed in Chapter 15 of Title 16, Offenses Against Morality and Decency;~~

~~(3)~~ ~~the crime of contributing to the delinquency of a minor, contained in Section 16‑17‑490;~~

~~(4)~~ ~~the felonies classified in Section 16‑1‑10(A);~~

~~(5)~~ ~~the offenses enumerated in Section 16‑1‑10(D); or~~

~~(6)~~ ~~a criminal offense similar in nature to the crimes in this subsection committed in other jurisdictions or under federal law~~.

(2) This section does not prohibit approval when a conviction or plea of guilty or nolo contendere for one of the crimes enumerated in this subsection has been pardoned. However, notwithstanding the entry of a pardon, the department may consider all information available, including the person’s pardoned convictions or pleas and the circumstances surrounding them, to determine whether the person is unfit or otherwise unsuited as an applicant or to be an operator, caregiver, or employee.

(E) Application forms for a statement of standard conformity or approval issued under this section must include, at the top of the form in large bold type, a statement indicating that a person who has been convicted of a crime enumerated in ~~subsection (D)~~ Section 63‑13‑40(A)(1) who applies for approval is guilty of a misdemeanor and, upon conviction, must be fined not more than five thousand dollars or imprisoned not more than one year, or both.

(F) Application forms for a statement of standard conformity or approval issued under this chapter by the department and application forms for employment at individual public childcare centers or group childcare homes must include, at the top of the form in large bold type, a statement indicating that a person who has been convicted of one of the ~~crimes listed in this section~~ offenses included in Section 63‑13‑40(A)(1) who applies for a license as operator, applies for employment with, is employed by, seeks to provide caregiver services with, or is a caregiver at a facility is guilty of a misdemeanor and, upon conviction, must be fined not more than five thousand dollars or imprisoned not more than one year, or both.

(G) The South Carolina Law Enforcement Division and the Federal Bureau of Investigation are authorized to retain and store fingerprints for further use in the identification of persons, including, but not limited to, use in identifying unsolved latent prints. The South Carolina Law Enforcement Division and the Federal Bureau of Investigation are authorized to provide the department with current and future information regarding the fingerprints stored, including arrests, convictions, dispositions, warrants, and other information available to the South Carolina Law Enforcement Division and the Federal Bureau of Investigation, such as civil and criminal information. The prospective employee or childcare facility shall be responsible for any fees associated with any and all required background checks. Fees shall not exceed the actual cost of processing and administration.”

SECTION 6. A. Section 63‑13‑630(D), (E), (F), and (G) of the 1976 Code is amended to read:

“(D)(1) A person applying for approval renewal under this section, a person who will operate the facility, and its employees and caregivers, who have not done so previously, on the first approval renewal after June 30, 1995, shall undergo a state fingerprint review to be conducted by the State Law Enforcement Division to determine any state criminal history, ~~and~~ a fingerprint review to be conducted by the Federal Bureau of Investigation to determine any other criminal history, a Central Registry check to be conducted by the department to determine any abuse or neglect perpetrated by the person upon a child, and a search of the National Crime Information Center National Sex Offender Registry and the state sex offender registry pursuant to Section 23‑3‑430. The person shall be subject to a state criminal register or repository check, a state sex offender check, and a state child abuse and neglect registry and database check in each state where the person has lived in the previous five years.

(2) No approval may be renewed under this section if the person applying for renewal, the operator of the facility, or an employee or a caregiver has been convicted of any of the offenses included in Section 63‑13‑40(A)(1)~~:~~

~~(1)~~ ~~a crime listed in Chapter 3 of Title 16, Offenses Against the Person;~~

~~(2)~~ ~~a crime listed in Chapter 15 of Title 16, Offenses Against Morality and Decency;~~

~~(3)~~ ~~the crime of contributing to the delinquency of a minor, contained in Section 16‑17‑490;~~

~~(4)~~ ~~the felonies classified in Section 16‑1‑10(A);~~

~~(5)~~ ~~the offenses enumerated in Section 16‑1‑10(D); or~~

~~(6)~~ ~~a criminal offense similar in nature to the crimes listed in this subsection committed in other jurisdictions or under federal law~~.

(3) This section does not prohibit renewal when a conviction or plea of guilty or nolo contendere for one of the crimes enumerated in this subsection has been pardoned. However, notwithstanding the entry of a pardon, the department may consider all information available, including the person’s pardoned convictions or pleas and the circumstances surrounding them, to determine whether the person is unfit or otherwise unsuited as an applicant or to be an operator, caregiver, or employee.

(E) Application forms for renewal of a statement of standard conformity or approval issued under this section must include, at the top of the form in large bold type, a statement indicating that a person who has been convicted of a crime enumerated in ~~subsection (D)~~ Section 63‑13‑40(A)(1) who applies for approval renewal is guilty of a misdemeanor and, upon conviction, must be fined not more than five thousand dollars or imprisoned not more than one year, or both.

(F) No facility may employ or engage the services of an employee or a caregiver who has been convicted of one of the crimes listed in ~~this section~~ Section 63‑13‑40(A)(1).

(G) Application forms for renewal of a statement of standard conformity or approval issued under this article by the department for individual public childcare centers or group childcare homes must include, at the top of the form in large bold type, a statement indicating that a person who has been convicted of one of the crimes listed in ~~this section~~ Section 63‑13‑40(A)(1) who applies for a license as operator, applies for employment with, is employed by, seeks to provide caregiver services with, or is a caregiver at a facility is guilty of a misdemeanor and, upon conviction, must be fined not more than five thousand dollars or imprisoned not more than one year, or both.”

SECTION 6.B. Section 63‑13‑630 of the 1976 Code is amended by adding an appropriately lettered new subsection to read:

“( ) The South Carolina Law Enforcement Division and the Federal Bureau of Investigation are authorized to retain and store fingerprints for further use in the identification of persons, including, but not limited to, use in identifying unsolved latent prints. The South Carolina Law Enforcement Division and the Federal Bureau of Investigation are authorized to provide the department with current and future information regarding the fingerprints stored, including arrests, convictions, dispositions, warrants, and other information available to the South Carolina Law Enforcement Division and the Federal Bureau of Investigation, such as civil and criminal information. The prospective employee or childcare facility shall be responsible for any fees associated with any and all required background checks. Fees shall not exceed the actual cost of processing and administration.”

SECTION 7. Section 63‑13‑810(C) of the 1976 Code is amended to read:

“(C)(1) A family childcare home which elects to participate in a federal program which requires licensing as a prerequisite to participation may elect to be licensed under the procedures in Section 63‑13‑820. A family childcare home electing licensing shall demonstrate compliance with the suggested standards developed by the department under Section 63‑13‑180 and shall comply with provisions of Sections 63‑13‑420 and 63‑13‑430 relating to criminal history conviction records checks, a Central Registry check to be conducted by the department to determine any abuse or neglect perpetrated by the person upon a child, and a search of the National Crime Information Center National Sex Offender Registry and the state sex offender registry pursuant to Section 23‑3‑430 upon original licensing and upon renewal. The person shall be subject to a state criminal register or repository check, a state sex offender check, and a state child abuse and neglect registry and database check in each state where the person has lived in the previous five years.

(2) Operators and caregivers of licensed family childcare homes are held to the standards in Sections 63‑13‑420 and 63‑13‑430 regarding criminal convictions and Central Registry and sex offender checks.”

SECTION 8. Section 63‑13‑820 of the 1976 Code is amended to read:

“Section 63‑13‑820. (A) Registration must be completed on forms supplied by the department and in the manner it prescribes.

(B) Before becoming a registered operator the applicant shall:

(1) sign a statement that he has read the suggested standards developed by the department under Section 63‑13‑180;

(2) furnish the department with a signed statement by each consumer parent verifying that the operator has provided each consumer parent with a copy of the suggested standards for family childcare homes and the procedures for filing complaints;

(3) upon request, provide the department with any facts, conditions, or circumstances relevant to the operation of the family childcare home, including references and other information regarding the character of the family childcare home operator.

(C) A person applying to become a registered operator of a family childcare home under this section, a person ~~fifteen~~ eighteen years of age or older living in the family childcare home, and any person ~~fifteen~~ eighteen years of age or older who moves into the family childcare home after the initial application for registration is approved shall undergo a state fingerprint review to be conducted by the State Law Enforcement Division to determine any state criminal history, ~~and~~ a fingerprint review to be conducted by the Federal Bureau of Investigation to determine any other criminal history, a Central Registry check to be conducted by the department to determine any abuse or neglect perpetrated by the person upon a child, and a search of the National Crime Information Center National Sex Offender Registry and the state sex offender registry pursuant to Section 23‑3‑430. The fingerprint reviews required by this subsection are ~~not~~ required ~~upon each renewal~~ to be repeated every five years.

(D) A person applying to become the registered operator of a family childcare home under this section, a person fifteen through seventeen years of age living in a family childcare home, and any person fifteen through seventeen years of age who moves into a family childcare home after an initial application for registration is approved shall undergo a state fingerprint review to be conducted by the State Law Enforcement Division to determine any state criminal history and a fingerprint review to be conducted by the Federal Bureau of Investigation to determine any other criminal history. The fingerprint reviews required by this subsection are required to be repeated every five years.

~~(D)~~(E)(1) No applicant may be registered as an operator if the person, an employee, a caregiver, or a person fifteen years of age or older living in the family childcare home has been convicted of an offense included in Section 63‑13‑40(A)(1)~~:~~

~~(1)~~ ~~a crime listed in Chapter 3 of Title 16, Offenses Against the Person;~~

~~(2)~~ ~~a crime listed in Chapter 15 of Title 16, Offenses Against Morality and Decency;~~

~~(3)~~ ~~the crime of contributing to the delinquency of a minor, contained in Section 16‑17‑490;~~

~~(4)~~ ~~the felonies classified in Section 16‑1‑10(A);~~

~~(5)~~ ~~the offenses enumerated in Section 16‑1‑10(D); or~~

~~(6)~~ ~~a criminal offense similar in nature to the crimes listed in this subsection committed in other jurisdictions or under federal law~~.

(2) This section does not operate to prohibit registration or renewal when a conviction or plea of guilty or nolo contendere for one of the crimes enumerated in this subsection has been pardoned. However, notwithstanding the entry of a pardon, the department may consider all information available, including the person’s pardoned convictions or pleas and the circumstances surrounding them, to determine whether the person is unfit or otherwise unsuited to be an operator, caregiver, employee, or to be living in the family daycare home.

~~(E)~~(F) Application forms for registration issued under this section must include, at the top of the form in large bold type, a statement indicating that a person who has been convicted of a crime ~~enumerated in subsection (D)~~ included in Section 63‑13‑40(A)(1) who applies for registration as operator or a person who applies for registration as an operator who has a person fifteen years of age or older living in the family childcare home who has been convicted of a crime ~~enumerated in subsection (D)~~ included in Section 63‑13‑40(A)(1) is guilty of a misdemeanor and, upon conviction, must be fined not more than five thousand dollars or imprisoned not more than one year, or both.

~~(F)~~(G) Application forms for registration issued under this chapter by the department and application forms for employment at a family childcare home must include, at the top of the form in large bold type, a statement indicating that a person who has been convicted of one of the crimes listed in ~~this section~~ Section 63‑13‑40(A)(1) who applies for a license as operator, applies for employment with, is employed by, seeks to provide caregiver services with, or is a caregiver at a facility is guilty of a misdemeanor and, upon conviction, must be fined not more than five thousand dollars or imprisoned not more than one year, or both.

(H) The South Carolina Law Enforcement Division and the Federal Bureau of Investigation are authorized to retain and store fingerprints for further use in the identification of persons, including, but not limited to, use in identifying unsolved latent prints. The South Carolina Law Enforcement Division and the Federal Bureau of Investigation are authorized to provide the department with current and future information regarding the fingerprints stored, including arrests, convictions, dispositions, warrants, and other information available to the South Carolina Law Enforcement Division and the Federal Bureau of Investigation, such as civil and criminal information. The prospective employee or childcare facility shall be responsible for any fees associated with any and all required background checks. Fees shall not exceed the actual cost of processing and administration.”

SECTION 9. Section 63‑13‑830(C) and (D) of the 1976 Code is amended to read:

“(C)(1) A person applying for renewal of registration as an operator of a family childcare home registered under this article and a person employed or providing caregiver services at a family childcare home registered under this article, who has not done so previously, on the first renewal after June 30, 1996, shall undergo a state fingerprint review to be conducted by the State Law Enforcement Division to determine any state criminal history, ~~and~~ a fingerprint review to be conducted by the Federal Bureau of Investigation to determine any other criminal history, a Central Registry check to be conducted by the department to determine any abuse or neglect perpetrated by the person upon a child, and a search of the National Crime Information Center National Sex Offender Registry and the state sex offender registry pursuant to Section 23‑3‑430. The person shall be subject to a state criminal register or repository check, a state sex offender check, and a state child abuse and neglect registry and database check in each state where the person has lived in the previous five years.

(2) Application forms for registration renewal issued under this section must include, at the top of the form in large bold type, a statement indicating that a person who has been convicted of a crime enumerated in Section ~~63‑13‑820(D)~~ 63‑13‑40(A)(1) who applies for registration as an operator or a person who applies for registration as an operator who has a person fifteen years of age or older living in the home who has been convicted of a crime enumerated in Section ~~63‑13‑820(D)~~ 63‑13‑40(A)(1) is guilty of a misdemeanor and, upon conviction, must be fined not more than five thousand dollars or imprisoned not more than one year, or both.

(D) Application forms for registration renewal issued under this chapter by the department for a family childcare home must include, at the top of the form in large bold type, a statement indicating that a person who has been convicted of one of the crimes listed in ~~this section~~ Section 63‑13‑40(A)(1) who applies for a license as operator, applies for employment with, is employed by, seeks to provide caregiver services with, or is a caregiver at a facility is guilty of a misdemeanor and, upon conviction, must be fined not more than five thousand dollars or imprisoned not more than one year, or both.”

SECTION 10. Section 63‑13‑1010 of the 1976 Code is amended to read:

“Section 63‑13‑1010. (A) No church congregation or established religious denomination or religious college or university which does not receive state or federal financial assistance for childcare services may operate a childcare center or group childcare home unless it complies with the requirements for registration and inspection and the regulations for health and fire safety as set forth in this chapter and Section 63‑13‑110 and requirements applicable to private and public childcare centers and group childcare homes for floor space, child‑staff ratios, and staff training. Application for registration must be made on forms supplied by the department and in the manner it prescribes. Registration expires two years from the date of issuance of the statement of registration. Registration may be renewed according to the procedures developed by the department.

(B) Before issuing a registration, the department shall conduct an investigation of the applicant. This investigation is limited to:

(1) the results of the criminal history review required by subsection (G);

(2) the requirements for registration and inspection and the regulations for health and fire safety provided for in this chapter and Section 63‑13‑110; and

(3) requirements applicable to private and public childcare centers and group childcare homes for floor space, child‑staff ratios, and staff training.

(C)(1) No license or registration may be issued to a church congregation, established religious denomination, or religious college or university if a person who provides service as an operator, caregiver, or employee at the childcare facility has been convicted of any of the offenses included in Section 63‑13‑40(A)(1)~~:~~

~~(1)~~ ~~a crime listed in Chapter 3 of Title 16, Offenses Against the Person;~~

~~(2)~~ ~~a crime listed in Chapter 15 of Title 16, Offenses Against Morality and Decency;~~

~~(3)~~ ~~the crime of contributing to the delinquency of a minor, contained in Section 16‑17‑490;~~

~~(4)~~ ~~the felonies classified in Section 16‑1‑10(A);~~

~~(5)~~ ~~the offenses enumerated in Section 16‑1‑10(D); or~~

~~(6)~~ ~~a criminal offense similar in nature to the crimes listed in this subsection committed in other jurisdictions or under federal law~~.

(2) This section does not prohibit licensing, registration, or the renewal of a license or registration when a conviction or plea of guilty or nolo contendere for one of the crimes enumerated in this subsection has been pardoned. However, notwithstanding the entry of a pardon, the department may consider all information available, including the person’s pardoned convictions or pleas and the circumstances surrounding them, to determine whether the person is unfit or otherwise unsuited to be an operator, caregiver, or employee.

(D) Application forms for licensure or registration issued under this chapter must include, at the top of the form in large bold type, a statement indicating that a person who has been convicted of a crime enumerated in ~~this section~~ Section 63‑13‑40(A)(1) who applies for a license or registration as operator is guilty of a misdemeanor and, upon conviction, must be fined not more than five thousand dollars or imprisoned not more than one year, or both.

(E) A person applying for a license or registration as an operator of a church or religious childcare center shall undergo a state fingerprint review to be conducted by the State Law Enforcement Division to determine any state criminal history, ~~and~~ a fingerprint review to be conducted by the Federal Bureau of Investigation to determine any other criminal history, a Central Registry check to be conducted by the department to determine any abuse or neglect perpetrated by the person upon a child, and a search of the National Crime Information Center National Sex Offender Registry and the state sex offender registry pursuant to Section 23‑3‑430. The person shall be subject to a state criminal register or repository check, a state sex offender check, and a state child abuse and neglect registry and database check in each state where the person has lived in the previous five years. If a person is not employed or does not provide caregiver services for six months or longer, then the fingerprint reviews must be repeated. The fingerprint reviews required by this subsection are ~~not~~ required ~~upon each renewal~~ to be repeated every five years.

(F) Application forms for licensure or registration issued under this chapter by the department and application forms for employment at a facility operated by a church congregation, established religious denomination, or religious college or university must include, at the top of the form in large bold type, a statement indicating that a person who has been convicted of one of the crimes listed in ~~this section~~ Section 63‑13‑40(A)(1) who applies for a license as operator, applies for employment with, is employed by, seeks to provide caregiver services with, or is a caregiver at a facility is guilty of a misdemeanor and, upon conviction, must be fined not more than five thousand dollars or imprisoned not more than one year, or both.

(G) A person applying for a license or registration as an operator of a church or religious childcare center or seeking employment or seeking to provide caregiver services at a church or religious childcare center shall undergo a state fingerprint review to be conducted by the State Law Enforcement Division to determine any state criminal history, ~~and~~ a fingerprint review to be conducted by the Federal Bureau of Investigation to determine any other criminal history, a Central Registry check to be conducted by the department to determine any abuse or neglect perpetrated by the person upon a child, and a search of the National Crime Information Center National Sex Offender Registry and the state sex offender registry pursuant to Section 23‑3‑430. The person shall be subject to a state criminal register or repository check, a state sex offender check, and a state child abuse and neglect registry and database check in each state where the person has lived in the previous five years. The fingerprint reviews required by this subsection are ~~not~~ required ~~upon each renewal unless the renewal coincides with employment of a new operator, employee, or caregiver~~ to be repeated every five years.

(H) A person applying for renewal of a license or registration as an operator of a church or religious childcare center licensed or registered under this chapter and a person employed or registered under this chapter, who has not done so previously, on the first renewal after June 30, 1996, shall undergo a state fingerprint review to be conducted by the State Law Enforcement Division to determine any state criminal history, ~~and~~ a fingerprint review to be conducted by the Federal Bureau of Investigation to determine any other criminal history, a Central Registry check to be conducted by the department to determine any abuse or neglect perpetrated by the person upon a child, and a search of the National Crime Information Center National Sex Offender Registry and the state sex offender registry pursuant to Section 23‑3‑430. The person shall be subject to a state criminal register or repository check, a state sex offender check, and a state child abuse and neglect registry and database check in each state where the person has lived in the previous five years.

(I) The South Carolina Law Enforcement Division and the Federal Bureau of Investigation are authorized to retain and store fingerprints for further use in the identification of persons, including, but not limited to, use in identifying unsolved latent prints. The South Carolina Law Enforcement Division and the Federal Bureau of Investigation are authorized to provide the department with current and future information regarding the fingerprints stored, including arrests, convictions, dispositions, warrants, and other information available to the South Carolina Law Enforcement Division and the Federal Bureau of Investigation, such as civil and criminal information. The prospective employee or childcare facility shall be responsible for any fees associated with any and all required background checks. Fees shall not exceed the actual cost of processing and administration.”

SECTION 11. This act takes effect upon approval by the Governor.

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