

# Child Care Safety in Virginia

## Support SB 707

January 2018



**In Brief:** SB 707 introduced by Senator Surovell makes sure that licensed home child care providers can continue operating pursuant to state law and in compliance with local ordinances. The bill is needed because a growing number of homeowner associations are prohibiting child care programs from operating.

**What the bill says:** Child care services provided by a lot owner who is a licensed child care provider operating within his/her personal residence pursuant to state law and in compliance with local ordinances shall not be barred from operating by a home ownership association (HOA). Reasonable restrictions are allowed.

The homeowners association may establish:

- reasonable restrictions as to the time, place, and manner of the operation of a home business, and
- reasonable restrictions as to the size, place, duration, and manner of the placement or display of signs on the owner's lot.

Any home-based business shall comply with all applicable local ordinances.

**Why the Bill is Needed:** The state has licensing laws for home-based (and center-based) child care. Many localities also have their own rules and ordinances. Homeowner associations in many communities are outlawing what is allowed under state and local law. The impact of homeowner association overreach is that families have a harder time finding licensed child care. Licensed care is important because it means that providers have had a background check, are subject to annual training requirements, and some oversight to ensure that they comply with health and safety requirements to promote child well-being.

### Background:

Every week in Virginia, nearly 400,000 children younger than age 6 spend some time in child care while their parents are working.<sup>1</sup> Parents depend on child care in order to obtain

and retain a job. At the same time, children need a safe place to be that promotes their healthy development.

### Virginia's Economy Relies on Working Parents

Recent data for Virginia shows for children under age 6:

- 247,496 are in two parent families where both work.
- 103,386 live in a single parent family led by a working mother.
- 36,155 live in a single parent family led by a working father.

Source: U.S. Census Bureau, 2016 American Community Survey 1 Year Estimates

### Parents Want Their Children Safe in Child Care

Parents are united in their desire that children are safe in child care. Parents look for caregivers who will be warm and loving with their children and keep them safe.

### The Condition of Child Care in Virginia

Licensed care provides minimum safeguards for children. For example, licensing requires minimum health and safety protections for children as well as provider training for emergencies. However, a series of newspaper articles have exposed a loophole in the state's licensing policies.

In August of 2014, the Washington Post reported that 60 deaths occurred in child care programs in Virginia over the past few years, 43 of those deaths were in unlicensed care.<sup>2</sup> Since that time, fires in unlicensed child care homes caused the deaths of 2 babies in Lynchburg and one in Midlothian.<sup>3</sup> The Richmond Times Dispatch reported that 54 VA children have died in unlicensed care over the past few years.<sup>4</sup> The Washington Post reported that 9 children in Virginia died in unlicensed care in 2014 – making it the deadliest on record.<sup>5</sup>

***Virginia's high licensing threshold leads to children in unlicensed care where providers may be well intentioned but not knowledgeable about basic safety or trained for emergencies.***

One reason that children are at risk in Virginia is that the licensing threshold (the number of children in care before a license is required) is higher than the threshold in most other states. In Virginia, a license is not required until 5 unrelated children are in the home (effective July 2016). Prior to that time, the licensing threshold in VA was 6 children.

The number of children a child care provider is allowed to care for in a home is important. For example, over the past 20 years, research has shown that interactions between the child care provider and the children is the most important component of quality child care to promote healthy development. With regard to safety, the number of children in a home is important for supervisory purposes and to ensure safe evacuation in the event of a fire or emergency.

One of the purposes of licensing is to guard against accidents – to promote safety protections for children and promote safe practices among providers.

Many of the children in Virginia who died in child care were infants. Licensed care requires infants to be placed on their backs to sleep as recommended by the American Academy of Pediatrics (AAP) after years of research on best practices to reduce the likelihood of suffocation. Tragically, unlicensed providers have meant no harm to children, they just didn't know better.

### **Military Children**

There are more than 45,000 children under age 6 whose parents are active duty military; 6,055 children under age 6 whose parents are in the Guard or Reserve. Some military parents are lucky enough to find on-base care. But, in order to use military fee assistance off-base or off the installation, they need to find a licensed provider. In too many communities, because of Virginia's high licensing threshold, parents have great difficulty finding child care.

### **State Licensing Thresholds**

Throughout the United States, there is a wide spectrum on the number of children counted for state licensing policy. Eleven states plus the Department of Defense license child care as soon as a provider regularly cares for one unrelated child. Another 13 states license child care when 3 or more unrelated children are cared for in the home. Virginia's threshold is higher than any of our neighboring states.

### **Federal Rules for States Are Changing**

In November 2014, the President signed into law bipartisan legislation passed by Congress to protect children in child

care. The new law (PL 113-186) promotes child safety and improves accountability by states for the expenditure of federal funds. It requires the following for non-relative providers who receive a subsidy to care for low income children:

- Minimum health and safety protections for children including safe sleep practices, emergency plans, and other safety protections for children;
- Fingerprint background checks for licensed, regulated, registered, or unlicensed providers who receive a subsidy;
- At least one annual inspection for health, safety, and fire for licensed providers and unlicensed providers who receive a subsidy;
- Training related to the social, emotional, physical, and cognitive development of children for providers;
- A public description for states that choose to use subsidies to pay for unlicensed care about how such care will not endanger the health, safety, or development of children;
- In addition to current reporting requirements, states will need to report the number of child fatalities in child care paid for with a subsidy differentiated by the type of child care provider including whether the provider is licensed or license-exempt (unlicensed).



In Virginia, FY2015 data shows that an average of 24,800 low income children received a subsidy each month to help pay for the cost of child care. Most of these children were in licensed care settings, but not all of them.

### **Promoting Safety for Children**

Some might say that reducing the licensing threshold will lead to some providers deciding not to offer child care. Providers who want to do the best for children will continue their programs. Others may need some training. Others may opt out. Children should be safe in child care. Whether it's taxpayer dollars or parent dollars, expectations for safety should be no less.

Some may say that reducing the licensing threshold is not a fix. Providers will operate underground, below the radar. The reality is that these providers are already below the radar. Some may say that this will increase the cost of child

care, that more inspectors will have to be hired, that more providers will need training.

The current licensing fee in Virginia for family child care homes is \$14 per year. Lowering the threshold for licensing will mean more providers will pay the licensing fee. If the funds that are raised through an expanded number of providers is not sufficient, it may be time to review whether the licensing fee is set at an appropriate level.

#### **For 2018, Child Care Aware of Virginia recommends,**

- Repealing the sunset that allows Virginia's current fingerprint-based background checks to expire in July of 2018;
- Reducing the licensing threshold for child care homes;
- Training for providers to promote the safety and healthy development of children;
- Reviewing the state licensing fee to determine whether it is set at an appropriate level to promote accountability in state oversight; and
- Reviewing license-exempt categories and strengthening the law to promote the health and safety of children.

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<sup>1</sup> U.S. Census Bureau. Table B23008. Age of Own Children Under 18 Years in Families and Subfamilies by Living Arrangements by Employment Status of Parents Universe, 2016 ACS 1 Year Estimates. [https://factfinder.census.gov/faces/tableservices/jsf/pages/productview.xhtml?pid=ACS\\_16\\_1YR\\_B23008&prodType=table](https://factfinder.census.gov/faces/tableservices/jsf/pages/productview.xhtml?pid=ACS_16_1YR_B23008&prodType=table)

<sup>2</sup> In Virginia, Thousands of Day Care Providers Receive No Oversight, August 31, 2014; <http://wapo.st/1qVCqmf>

After a Child's Death, Parents Grapple with Second Guesses; September 1, 2014; <http://wapo.st/1qVCqmf>

<sup>3</sup> Child Dies from Injuries in Day Care Fire; September 21, 2014; <http://bit.ly/1tTEJHR>; Midlothian Day Care Program Struck by Fire Operated Without State License, October 23, 2014. <http://bit.ly/1rwKpDp>

<sup>4</sup> Children in Unlicensed Day Cares are 5 Times More Likely to Die; December 20, 2014; <http://bit.ly/16FJhcR>

<sup>5</sup> Nine VA children died in unregulated day care in 2014, the deadliest year in a decade; December 30, 2014; <http://wapo.st/1xfk6D4>

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