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## SENATE BILL NO. 496

Offered January 24, 2000

A *BILL to amend and reenact §§ 32.1-126.01, 37.1-20.3, 37.1-197.2, 63.1-55.02, 63.1-55.4, and 63.1-173.2 of the Code of Virginia and to amend the Code of Virginia by adding a section numbered 63.1-55.4:1, relating to adult protective services.*

Patrons—Edwards, Couric, Lucas and Ticer

Referred to Committee on Rehabilitation and Social Services

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

**1. That §§ 32.1-126.01, 37.1-20.3, 37.1-197.2, 63.1-55.02, 63.1-55.4, and 63.1-173.2 of the Code of Virginia are amended and reenacted, and that the Code of Virginia is amended by adding a section numbered 63.1-55.4:1 as follows:**

§ 32.1-126.01. Employment for compensation of persons convicted of certain offenses prohibited; criminal records check required; suspension or revocation of license.

A. A licensed nursing home shall not hire for compensated employment, persons who have been (i) convicted of murder, abduction for immoral purposes as set out in § 18.2-48, assaults and bodily woundings as set out in Article 4 (§ 18.2-51 et seq.) of Chapter 4 of Title 18.2, robbery as set out in § 18.2-58, sexual assault as set out in Article 7 (§ 18.2-61 et seq.) of Chapter 4 of Title 18.2, arson as set out in Article 1 (§ 18.2-77 et seq.) of Chapter 5 of Title 18.2, pandering as set out in § 18.2-355, crimes against nature involving children as set out in § 18.2-361, taking indecent liberties with children as set out in § 18.2-370 or § 18.2-370.1, abuse and neglect of children as set out in § 18.2-371.1, failure to secure medical attention for an injured child as set out in § 18.2-314, obscenity offenses as set out in § 18.2-374.1 or § 18.2-379, or abuse or neglect of an incapacitated adult as set out in § 18.2-369, or (ii) *the subject of a complaint of adult abuse, neglect or exploitation that results in the person's placement on the adult protective services registry maintained pursuant to § 63.1-55.4:1.* However, a licensed nursing home may hire an applicant who has been convicted of one misdemeanor specified in this section not involving abuse or neglect or moral turpitude, provided five years have elapsed following the conviction.

Any person desiring to work at a licensed nursing home shall provide the hiring facility with a sworn statement or affirmation disclosing any criminal convictions or any pending criminal charges, whether within or without the Commonwealth, *or any adult abuse, neglect or exploitation that resulted in the person's placement on the adult protective services registry maintained pursuant to § 63.1-55.4:1.* Any person making a materially false statement when providing such sworn statement or affirmation regarding any such offense shall be guilty upon conviction of a Class 1 misdemeanor. Further dissemination of the information provided pursuant to this section is prohibited other than to a federal or state authority or court as may be required to comply with an express requirement of law for such further dissemination.

A nursing home shall, within thirty days of employment, obtain for any compensated ~~employees~~ *employee* an original criminal record clearance with respect to convictions for offenses specified in this section or an original criminal history record from the Central Criminal Records Exchange. *The nursing home shall also obtain, from the Adult Protective Services Unit of the Department of Social Services, a copy of any record of adult abuse, neglect or exploitation that resulted in the person's placement on the adult protective services registry maintained pursuant to § 63.1-55.4:1.* The provisions of this section shall be enforced by the Commissioner. If an applicant is denied employment because of convictions appearing on his criminal history record, the nursing home shall provide a copy of the information obtained from the Central Criminal Records Exchange *and the Adult Protective Services Unit* to the applicant.

The provisions of this section shall not apply to volunteers who work with the permission or under the supervision of a person who has received a clearance pursuant to this section.

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

C. A licensed nursing home shall notify and provide to all students a copy of the provisions of this section prior to or upon enrollment in a certified nurse aide program operated by such nursing home.

§ 37.1-20.3. Background check required.

A. As a condition of employment, the Department shall require any individual who (i) accepts a position of employment at a state facility as defined in § 37.1-1 and was not employed by that state

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60 facility prior to July 1, 1996, or (ii) accepts a position with the Department that receives, monitors or  
61 disburses funds of the Commonwealth and was not employed by the Department prior to July 1, 1996,  
62 to submit to fingerprinting and to provide personal descriptive information to be forwarded along with  
63 the applicant's fingerprints through the Central Criminal Records Exchange to the Federal Bureau of  
64 Investigation for the purpose of obtaining criminal history record information regarding such applicant.

65 For purposes of clause (i) above, the Department shall not hire for compensated employment persons  
66 who have been (i) convicted of murder or manslaughter as set out in Article 1 (§ 18.2-30 et seq.) of  
67 Chapter 4 of Title 18.2; malicious wounding by mob as set out in § 18.2-41; abduction as set out in  
68 § 18.2-47 A; abduction for immoral purposes as set out in § 18.2-48; assault and bodily wounding as set  
69 out in Article 4 (§ 18.2-51 et seq.) of Chapter 4 of Title 18.2; robbery as set out in § 18.2-58; carjacking  
70 as set out § 18.2-58.1; extortion by threat as set out in § 18.2-59; threat as set out in § 18.2-60; any  
71 felony stalking violation as set out in § 18.2-60.3; sexual assault as set out in Article 7 (§ 18.2-61 et  
72 seq.) of Chapter 4 of Title 18.2; arson as set out in Article 1 (§ 18.2-77 et seq.) of Chapter 5 of Title  
73 18.2; burglary as set out in Article 2 (§ 18.2-89 et seq.) of Chapter 5 of Title 18.2; any felony violation  
74 relating to possession or distribution of drugs as set out in Article 1 (§ 18.2-247 et seq.) of Chapter 7 of  
75 Title 18.2; drive-by shooting as set out in § 18.2-286.1; use of a machine gun in a crime of violence as  
76 set out in § 18.2-289 or aggressive use of a machine gun as set out in § 18.2-290; use of a sawed-off  
77 shotgun in a crime of violence as set out in § 18.2-300 A; pandering as set out in § 18.2-355; crimes  
78 against nature involving children as set out in § 18.2-361, taking indecent liberties with children as set  
79 out in § 18.2-370 or § 18.2-370.1, abuse and neglect of children as set out in § 18.2-371.1, including  
80 failing to secure medical attention for an injured child as set out in § 18.2-314, obscenity offenses as set  
81 out in § 18.2-374.1, possession of child pornography as set out in § 18.2-374.1:1, or electronic  
82 facilitation of pornography as set out in § 18.2-374.3; incest as set out in § 18.2-366; abuse and neglect  
83 of incapacitated adults as set out in § 18.2-369; employing or permitting a minor to assist in an act  
84 constituting an offense under Article 5 (§ 18.2-372 et seq.) of Chapter 8 of Title 18.2 as set out in  
85 § 18.2-379; delivery of drugs to prisoners as set out in § 18.2-474.1; escape from jail as set out in  
86 § 18.2-477; felonies by prisoners as set out in § 53.1-203; or an equivalent offense in another state; or  
87 (ii) convicted of any felony violation relating to possession of drugs as set out in Article 1 (§ 18.2-247  
88 et seq.) of Chapter 7 of Title 18.2 in the five years prior to the application date for employment or  
89 convicted of any felony violation relating to possession of drugs as set out in Article 1 (§ 18.2-247 et  
90 seq.) of Chapter 7 of Title 18.2 and continue on probation or parole or have failed to pay required court  
91 costs.

92 The Central Criminal Records Exchange, upon receipt of an individual's record or notification that no  
93 record exists, shall submit a report to the state facility or to the Department. If an individual is denied  
94 employment because of information appearing on his criminal history record and the applicant disputes  
95 the information upon which the denial was based, the Central Criminal Records Exchange shall, upon  
96 written request, furnish to the applicant the procedures for obtaining a copy of the criminal history  
97 record from the Federal Bureau of Investigation. The information provided to the state facility or  
98 Department shall not be disseminated except as provided in this section.

99 B. Those individuals listed in clause (i) of subsection A also shall provide the state facility or  
100 Department a copy of information from the central registry maintained pursuant to § 63.1-248.8 on any  
101 investigation of child abuse or neglect *and from the adult protective services central registry maintained*  
102 *pursuant to § 63.1-55.4:1 on any investigation of adult abuse, neglect or exploitation* undertaken on him.

103 C. The Board may promulgate regulations to comply with the provisions of this section. Copies of  
104 any information received by the state facility or Department pursuant to this section shall be available to  
105 the Department and to the applicable state facility but shall not be disseminated further, except as  
106 permitted by state or federal law. The cost of obtaining the criminal history record, *the adult protective*  
107 *services registry* and the central registry information shall be borne by the applicant, unless the  
108 Department, at its option, decides to pay such cost.

109 § 37.1-197.2. Background checks required.

110 A. Every operating community services board, administrative policy board, local government  
111 department with a policy-advisory board, behavioral health authority, and agency licensed pursuant to  
112 Chapter 8 (§ 37.1-179 et seq.) of this title that provides services under contract with a community  
113 services board, behavioral health authority or local government department shall, on and after July 1,  
114 1997, require any applicant who accepts employment in any direct consumer care position with the  
115 operating community services board, administrative policy board, local government department with a  
116 policy-advisory board, behavioral health authority or agency licensed pursuant to Chapter 8 (§ 37.1-179  
117 et seq.) of this title that provides services under contract with a community services board, behavioral  
118 health authority or local government department to submit to fingerprinting and provide personal  
119 descriptive information to be forwarded through the Central Criminal Records Exchange to the Federal  
120 Bureau of Investigation (FBI) for the purpose of obtaining national criminal history record information  
121 regarding such applicant. An operating community services board, administrative policy board, local

government department with a policy-advisory board, behavioral health authority, and agency licensed pursuant to Chapter 8 (§ 37.1-179 et seq.) of this title that provides services under contract with a community services board, behavioral health authority or local government department shall not hire for compensated employment persons who have been (i) convicted of murder or manslaughter as set out in Article 1 (§ 18.2-30 et seq.) of Chapter 4 of Title 18.2; malicious wounding by mob as set out in § 18.2-41; abduction as set out in § 18.2-47 A; abduction for immoral purposes as set out in § 18.2-48; assault and bodily wounding as set out in Article 4 (§ 18.2-51 et seq.) of Chapter 4 of Title 18.2; robbery as set out in § 18.2-58; carjacking as set out § 18.2-58.1; extortion by threat as set out in § 18.2-59; threat as set out in § 18.2-60; any felony stalking violation as set out in § 18.2-60.3; sexual assault as set out in Article 7 (§ 18.2-61 et seq.) of Chapter 4 of Title 18.2; arson as set out in Article 1 (§ 18.2-77 et seq.) of Chapter 5 of Title 18.2; burglary as set out in Article 2 (§ 18.2-89 et seq.) of Chapter 5 of Title 18.2; any felony violation relating to distribution of drugs as set out in Article 1 (§ 18.2-247 et seq.) of Chapter 7 of Title 18.2; drive-by shooting as set out in § 18.2-286.1; use of a machine gun in a crime of violence as set out in § 18.2-289 or aggressive use of a machine gun as set out in § 18.2-290; use of a sawed-off shotgun in a crime of violence as set out in § 18.2-300 A; pandering as set out in § 18.2-355; crimes against nature involving children as set out in § 18.2-361, taking indecent liberties with children as set out in § 18.2-370 or § 18.2-370.1, abuse and neglect of children as set out in § 18.2-371.1, including failing to secure medical attention for an injured child as set out in § 18.2-314, obscenity offenses as set out in § 18.2-374.1, possession of child pornography as set out in § 18.2-374.1:1, or electronic facilitation of pornography as set out in § 18.2-374.3; incest as set out in § 18.2-366; abuse and neglect of incapacitated adults as set out in § 18.2-369; employing or permitting a minor to assist in an act constituting an offense under Article 5 (§ 18.2-372 et seq.) of Chapter 8 of Title 18.2 as set out in § 18.2-379; delivery of drugs to prisoners as set out in § 18.2-474.1; escape from jail as set out in § 18.2-477; felonies by prisoners as set out in § 53.1-203; or an equivalent offense in another state; or (ii) convicted of any felony violation relating to possession of drugs as set out in Article 1 (§ 18.2-247 et seq.) of Chapter 7 of Title 18.2 in the five years prior to the application date for employment or convicted of any felony violation relating to possession of drugs as set out in Article 1 (§ 18.2-247 et seq.) of Chapter 7 of Title 18.2 and continue on probation or parole or have failed to pay required court costs.

The Central Criminal Records Exchange, upon receipt of an individual's record or notification that no record exists, shall submit a report to the requesting (a) authorized officer or director of agencies licensed pursuant to Chapter 8 (§ 37.1-179 et seq.) of this title that provide services under contract with a community services board, behavioral health authority or local government department or (b) executive director or personnel director serving the operating community services board, administrative policy board, local government department with a policy-advisory board or the behavioral health authority. If any applicant is denied employment because of information appearing on the criminal history record and the applicant disputes the information upon which the denial was based, the Central Criminal Records Exchange shall, upon written request, furnish to the applicant the procedures for obtaining a copy of the criminal history record from the Federal Bureau of Investigation. The information provided to (a) the authorized officer or director of agencies licensed pursuant to Chapter 8 (§ 37.1-179 et seq.) of this title that provide services under contract with a community services board, behavioral health authority or local government department or (b) the executive director or personnel director serving any operating community services board, administrative policy board, local government department with a policy-advisory board or behavioral health authority shall not be disseminated except as provided in this section.

B. Operating community services boards, administrative policy boards, local government departments with policy-advisory boards, behavioral health authorities and agencies licensed pursuant to Chapter 8 (§ 37.1-179 et seq.) of this title that provide services under contract with a community services board, behavioral health authority or local government department shall also require, as a condition of employment for all such applicants, written consent and personal information necessary to obtain a search of (i) the registry of founded complaints of child abuse and neglect maintained by the Department of Social Services pursuant to § 63.1-248.8 and (ii) the adult protective services registry maintained pursuant to § 63.1-55.4:1 of any investigation of adult abuse, neglect or exploitation undertaken on him.

C. The cost of obtaining the criminal history record and search of the child abuse and neglect registry ~~record~~ and the adult protective services registry records shall be borne by the applicant, unless the operating community services board, administrative policy board, local government department with a policy-advisory board, behavioral health authority, or agency licensed pursuant to Chapter 8 (§ 37.1-179 et seq.) of this title that provides services under contract with a community services board, behavioral health authority or local government department, at its option, decides to pay such cost.

D. As used in this section, the term "direct consumer care position" means any position with a job

183 description that includes responsibility for (i) treatment, case management, health, safety, development or  
184 well-being of a consumer or (ii) immediately supervising a person in a position with such responsibility.

185 § 63.1-55.02. Establishment of Adult Protective Services Unit; duties.

186 There is hereby created the Adult Protective Services Unit within the Adult Protective Services  
187 Program in the Department of Social Services, which shall have the following powers and duties:

188 1. To support, strengthen, and evaluate adult protective services programs at local departments of  
189 social services.

190 2. To assist in developing and implementing programs aimed at responding to and preventing abuse  
191 of aged and incapacitated adults.

192 3. To prepare, disseminate, and present educational programs and materials on adult abuse, neglect  
193 and exploitation.

194 4. To develop and provide educational programs and materials to persons who are required by law to  
195 make reports of adult abuse, neglect, and exploitation under this chapter.

196 5. To establish standards of training and provide educational opportunities to qualify workers in the  
197 field of adult protective services to determine whether reports of abuse, neglect, or exploitation of aged  
198 and incapacitated adults are substantiated.

199 6. To develop policies and procedures to guide the work of persons in the field of adult protective  
200 services.

201 7. To prepare and disseminate statistical information on adult protective services in Virginia.

202 8. To provide training and technical assistance to the adult protective services twenty-four-hour  
203 hotline.

204 9. To provide coordination among the adult protective services program and other state social  
205 services, medical and legal agencies.

206 *10. To maintain an adult protective services registry within the Commonwealth of any employee of a*  
207 *facility or program licensed or funded by the Departments of Health, Social Services, or Mental Health,*  
208 *Mental Retardation and Substance Abuse Services who abuses, neglects or exploits a person sixty years*  
209 *of age and older, when the abuse, neglect or exploitation results in a local department of social*  
210 *services' determination that such person had or has need of protective services.*

211 § 63.1-55.4. Same; duty of director upon receiving report; confidentiality.

212 Any director of a department of social services or public welfare who receives a report that a person  
213 is in need of protective services shall make a prompt and thorough investigation to determine whether  
214 the person is in need of protective services and what services are needed. The investigation shall include  
215 a visit to the person and consultation with others having knowledge of the facts of the particular case. If  
216 the department is denied access to interview the person or denied entrance to the residence of the person  
217 believed to be an adult in need of protective services, the department may petition the circuit court for  
218 an order allowing access or entry or both. Upon a showing of good cause, the court may enter such  
219 order upon a petition supported by an affidavit or by sworn testimony in person which establishes that  
220 such department has received a report that the individual is in need of protective services and access to  
221 interview the person has been denied the department by a third party. After completing the investigation,  
222 the director shall make a written report of the case indicating whether he believes protective services are  
223 needed. If a report that a person is in need of protective services is unfounded, the director shall notify  
224 the individual making the report of this determination. If the director determines that the adult needs  
225 protective services according to the criteria set forth in subsection A of § 63.1-55.6, the director may  
226 petition the circuit court for an emergency order for protective services pursuant to § 63.1-55.6. *When*  
227 *any employee of a facility or program licensed or funded by the Departments of Health, Social Services,*  
228 *or Mental Health, Mental Retardation and Substance Abuse Services who abuses, neglects or exploits a*  
229 *person sixty years of age and older, and the abuse, neglect or exploitation results in a determination*  
230 *that such person had or has need of protective services, the director shall send a report to the adult*  
231 *protective services registry in accordance with regulations promulgated by the Board.*

232 All reports, documentary evidence, and other information received or maintained by the director  
233 pursuant to this section shall be confidential and not subject to the Virginia Freedom of Information Act  
234 (§ 2.1-340 et seq.), except that such information may be disclosed to persons having a legitimate interest  
235 therein where disclosure of the information is reasonably necessary for the conduct of investigations by  
236 state or local government agencies or the provision of services to the individual who is the subject of  
237 the report, in accordance with regulations promulgated by the Board. Such regulations shall require that  
238 the Board receive appropriate assurances from the agencies to which the information is disclosed that it  
239 will be held confidential except to the extent that disclosure is required by law.

240 § 63.1-55.4:1. *Same; adult protective services registry; disclosure of information.*

241 *The adult protective services registry shall contain a listing of any employee of a facility or program*  
242 *licensed or funded by the Departments of Health, Social Services, or Mental Health, Mental Retardation*  
243 *and Substance Abuse Services who abuses, neglects or exploits a person sixty years of age and older,*  
244 *when the abuse, neglect or exploitation results in a local department of social services' determination*

that such person had or has need of protective services, and such other information as shall be prescribed by State Board regulation. The information contained in the registry shall not be open to inspection by the public. However, appropriate disclosure may be made in accordance with State Board regulations.

§ 63.1-173.2. Employment for compensation of persons convicted of certain offenses prohibited; criminal records check required; suspension or revocation of license.

A. A licensed adult care residence shall not hire for compensated employment; persons who have been (i) convicted of murder, abduction for immoral purposes as set out in § 18.2-48, assaults and bodily woundings as set out in Article 4 (§ 18.2-51 et seq.) of Chapter 4 of Title 18.2, robbery as set out in § 18.2-58, sexual assault as set out in Article 7 (§ 18.2-61 et seq.) of Chapter 4 of Title 18.2, arson as set out in Article 1 (§ 18.2-77 et seq.) of Chapter 5 of Title 18.2, pandering as set out in § 18.2-355, crimes against nature involving children as set out in § 18.2-361, taking indecent liberties with children as set out in § 18.2-370 or § 18.2-370.1, abuse and neglect of children as set out in § 18.2-371.1, failure to secure medical attention for an injured child as set out in § 18.2-314, obscenity offenses as set out in § 18.2-374.1 or § 18.2-379, or abuse or neglect of an incapacitated adult as set out in § 18.2-369, or (ii) the subject of a complaint of adult abuse, neglect or exploitation that resulted in the person's placement on the adult protective services registry maintained pursuant to § 63.1-55.4:1. However, an adult care residence may hire an applicant convicted of one misdemeanor specified in this section not involving abuse or neglect or moral turpitude, provided five years have elapsed following the conviction.

Any person desiring to work at a licensed adult care residence shall provide the hiring residence with a sworn statement or affirmation disclosing any criminal convictions or any pending criminal charges, whether within or without the Commonwealth, or any adult abuse, neglect or exploitation that resulted in the person's placement on the adult protective services registry maintained pursuant to § 63.1-55.4:1. Any person making a materially false statement when providing such sworn statement or affirmation regarding any such offense shall be guilty upon conviction of a Class 1 misdemeanor. Further dissemination of the information provided pursuant to this section is prohibited other than to a federal or state authority or court as may be required to comply with an express requirement of law for such further dissemination.

Such hiring residences shall, within thirty days of employment, obtain for any compensated employees an original criminal record clearance with respect to convictions for offenses specified in this section or an original criminal history record from the Central Criminal Records Exchange. The hiring residences shall also obtain, from the Adult Protective Services Unit of the Department, a copy of any adult abuse, neglect or exploitation that results in the person's placement on the adult protective services registry maintained pursuant to § 63.1-55.4:1. The provisions of this section shall be enforced by the Department of Social Services. If an applicant is denied employment because of convictions appearing on his criminal history record, the hiring residence shall provide a copy of the information obtained from the Central Criminal Records Exchange and the Adult Protective Services Unit to the applicant.

The provisions of this section shall not apply to volunteers who work with the permission or under the supervision of a person who has received a clearance pursuant to this section.

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

C. A licensed adult care residence shall notify and provide all students a copy of the provisions of this section prior to or upon enrollment in a certified nurse aide program operated by such adult care residence.

**2. That the State Board of Social Services shall promulgate regulations to implement the provisions of this Act within 280 days or less of the date of enactment.**