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HOUSE BILL NO. 658

AMENDMENT IN THE NATURE OF A SUBSTITUTE
 (Proposed by the Senate Committee on Education and Health
 on February 21, 2002)

(Patron Prior to Substitute—Delegate Devolites)

A BILL to amend and reenact §§ 37.1-183.3 and 37.1-197.2 of the Code of Virginia, relating to criminal background checks; substance abuse treatment professionals.

Be it enacted by the General Assembly of Virginia:

1. That §§ 37.1-183.3 and 37.1-197.2 of the Code of Virginia are amended and reenacted as follows:

§ 37.1-183.3. Background checks required.

A. Every provider licensed pursuant to this chapter shall, on and after July 1, 1999, require any applicant who accepts employment in any direct consumer care position to submit to fingerprinting and provide personal descriptive information to be forwarded through the Central Criminal Records Exchange to the Federal Bureau of Investigation (FBI) for the purpose of obtaining national criminal history record information regarding the applicant. Except as otherwise provided in subsection B, no provider licensed pursuant to this chapter shall 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 in § 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 authorized officer or director of a provider licensed pursuant to this chapter. 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 the authorized officer or director of a provider licensed pursuant to this chapter shall not be disseminated except as provided in this section.

B. Notwithstanding the provisions of subsection A, a provider may hire for compensated employment at adult substance abuse treatment facilities persons who were convicted of a felony violation relating to (i) distribution of drugs pursuant to Article 1 (§ 18.2-247 et seq.) of Chapter 7 of Title 18.2, except an offense pursuant to subsections H or I of § 18.2-248; or (ii) burglary pursuant to Article 2 (§ 18.2-89 et seq.) of Chapter 5 of Title 18.2, where the building was not occupied at the time of the incident resulting in the conviction a misdemeanor violation relating to (i) unlawful hazing as set out in § 18.2-56; or (ii) reckless handling of a firearm as set out in § 18.2-56.1; or any misdemeanor or felony violation related to (a) reckless endangerment of others by throwing objects as set out in § 18.2-51.3;

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60 (b) threat as set out in § 18.2-60; (c) breaking and entering a dwelling house with intent to commit
61 other misdemeanor as set out in § 18.2-92; or (d) possession of burglarious tools as set out in
62 § 18.2-94; or any felony violation relating to the distribution of drugs as set out in Article 1 (§ 18.2-247
63 et seq.) of Chapter 7 of Title 18.2, except an offense pursuant to subsections H. 1. and H. 2. of
64 § 18.2-248; or an equivalent offense in another state, if the hiring provider determines, based upon a
65 screening assessment, that such criminal behavior was substantially related to the applicant's use of
66 substances, and that the person has been successfully rehabilitated and is not a risk to consumers based
67 on his criminal history background and substance use, abuse or addiction histories.

68 C. The hiring provider and a screening contractor designated by the Department shall screen
69 applicants who meet the criteria set forth in subsection B to assess whether such persons have been
70 successfully rehabilitated and are not a risk to consumers based on their criminal history backgrounds
71 and substance use, abuse or addiction histories. To be eligible for such screening, the applicant shall
72 have completed all prison or jail terms, shall not be under probation or parole supervision, ~~or any~~
73 ~~suspended sentence~~, shall have no pending charges in any locality, shall have paid all fines, restitution,
74 and court costs for any prior convictions, and shall have been free of ~~any suspended sentence~~, parole or
75 probation for at least seven years for drug convictions and five years for all other convictions. In
76 addition to any such supplementary information as the provider or screening contractor may require or
77 the applicant wishes to present, the applicant shall provide to the screening contractor a statement from
78 his most recent probation or parole officer, if any, outlining his period of supervision, together with a
79 copy of any pre-sentencing or post-sentencing report in connection with the felony conviction. The cost
80 of such screening shall be paid by the applicant, unless the licensed provider decides, at its option, to
81 pay such cost.

82 D. Providers licensed pursuant to this chapter shall also require, as a condition of employment for all
83 such applicants, written consent and personal information necessary to obtain a search of the registry of
84 founded complaints of child abuse and neglect maintained by the Department of Social Services
85 pursuant to § 63.1-248.8.

86 E. The cost of obtaining the criminal history record and search of the child abuse and neglect
87 registry record shall be borne by the applicant, unless the provider licensed pursuant to this chapter, at
88 its option, decides to pay such cost.

89 F. As used in this section, the term "direct consumer care position" means any position with a job
90 description that includes responsibility for (i) treatment, case management, health, safety, development or
91 well-being of a consumer or (ii) immediately supervising a person in a position with such responsibility.

92 G. As used in this section, "hire for compensated employment" does not include (i) a promotion from
93 one adult substance abuse treatment position to another such position within the same licensee licensed
94 pursuant to this chapter, or (ii) new employment in an adult substance abuse treatment position in
95 another office or program of the same licensee licensed pursuant to this chapter ~~for which~~ if the person
96 ~~has previously worked in an adult substance abuse treatment position employed in a licensed program~~
97 ~~prior to July 1, 1999, has had no convictions in the five years prior to the application date for~~
98 ~~employment.~~ As used in this section, "hire for compensated employment" includes, but is not limited to,
99 (a) a promotion or transfer from an adult substance abuse treatment position to any mental health or
100 mental retardation direct consumer care position within the same licensee licensed pursuant to this
101 chapter, or (b) new employment in any mental health or mental retardation direct consumer care position
102 in another office or program of the same licensee licensed pursuant to this chapter for which the person
103 has previously worked in an adult substance abuse treatment position.

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

107 § 37.1-197.2. Background checks required.

108 A. Every operating community services board, administrative policy board, local government
109 department with a policy-advisory board, behavioral health authority, and agency licensed pursuant to
110 Chapter 8 (§ 37.1-179 et seq.) of this title that provides services under contract with a community
111 services board, behavioral health authority or local government department shall require any applicant
112 who accepts employment in any direct consumer care position with the operating community services
113 board, administrative policy board, local government department with a policy-advisory board,
114 behavioral health authority or agency licensed pursuant to Chapter 8 (§ 37.1-179 et seq.) of this title that
115 provides services under contract with a community services board, behavioral health authority or local
116 government department to submit to fingerprinting and provide personal descriptive information to be
117 forwarded through the Central Criminal Records Exchange to the Federal Bureau of Investigation (FBI)
118 for the purpose of obtaining national criminal history record information regarding such applicant.
119 Except as otherwise provided in subsection B, no operating community services board, administrative
120 policy board, local government department with a policy-advisory board, behavioral health authority, and
121 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 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. Notwithstanding the provisions of subsection A, 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 Title 37.1 that provides services under contract with a community services board, behavioral health authority or local government department may hire for compensated employment at adult substance abuse treatment facilities persons who were convicted of a felony violation relating to (i) distribution of drugs pursuant to Article 1 (§ 18.2-247 et seq.) of Chapter 7 of Title 18.2, except an offense pursuant to subsections H or I of § 18.2-248; or (ii) burglary pursuant to Article 2 (§ 18.2-89 et seq.) of Chapter 5 of Title 18.2, where the building was not occupied at the time of the incident resulting in the conviction a misdemeanor violation relating to (i) unlawful hazing as set out in § 18.2-56; or (ii) reckless handling of a firearm as set out in § 18.2-56.1; or any misdemeanor or felony violation related to (a) reckless endangerment of others by throwing objects as set out in § 18.2-51.3; (b) threat as set out in § 18.2-60; (c) breaking and entering a dwelling house with intent to commit other misdemeanor as set out in § 18.2-92; or (d) possession of burglarious tools as set out in § 18.2-94; or any felony violation relating to the distribution of drugs as set out in Article 1 (§ 18.2-247 et seq.) of Chapter 7 of Title 18.2, except an offense pursuant to subsections H. 1. or H. 2. of § 18.2-248; or an equivalent offense in another state, if the prospective employer determines, based upon a screening assessment, that such criminal behavior was substantially related to the applicant's use of substances, and that the person has been

183 successfully rehabilitated and is not a risk to consumers based on his criminal history background and
184 substance use, abuse or addiction histories.

185 C. The operating community services board, administrative policy board, local government
186 department with a policy advisory board, behavioral health authority, or agency licensed pursuant to
187 Chapter 8 (§ 37.1-179 et seq.) of Title 37.1 that provides services under contract with a community
188 services board, behavioral health authority or local government department and a screening contractor
189 designated by the Department shall screen applicants who meet the criteria set forth in subsection B to
190 assess whether such persons have been successfully rehabilitated and are not a risk to consumers based
191 on their criminal history backgrounds and substance use, abuse or addiction histories. To be eligible for
192 such screening, the applicant shall have completed all prison or jail terms, shall not be under probation
193 or parole supervision, ~~or any suspended sentence~~, shall have no pending charges in any locality, shall
194 have paid all fines, restitution, and court costs for any prior convictions, and shall have been free of ~~any~~
195 ~~suspended sentence~~, parole or probation for at least ~~seven years for drug convictions and~~ five years for
196 all ~~other~~ convictions. In addition to any such supplementary information as the prospective employer or
197 screening contractor may require or the applicant wishes to present, the applicant shall provide to the
198 screening contractor a statement from his most recent probation or parole officer, if any, outlining his
199 period of supervision, together with a copy of any pre-sentencing or post-sentencing report in connection
200 with the felony conviction. The cost of such screening shall be paid by the applicant, unless the board,
201 authority, local department or licensed agency decides, at its option, to pay such cost.

202 D. Operating community services boards, administrative policy boards, local government departments
203 with policy-advisory boards, behavioral health authorities and agencies licensed pursuant to Chapter 8
204 (§ 37.1-179 et seq.) of this title that provide services under contract with a community services board,
205 behavioral health authority or local government department shall also require, as a condition of
206 employment for all such applicants, written consent and personal information necessary to obtain a
207 search of the registry of founded complaints of child abuse and neglect maintained by the Department of
208 Social Services pursuant to § 63.1-248.8.

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

215 F. As used in this section, the term "direct consumer care position" means any position with a job
216 description that includes responsibility for (i) treatment, case management, health, safety, development or
217 well-being of a consumer or (ii) immediately supervising a person in a position with such responsibility.

218 G. As used in this section, "hire for compensated employment" does not include (i) a promotion from
219 one substance abuse treatment position to another such position within the same licensee licensed
220 pursuant to this chapter, or (ii) new employment in a substance abuse treatment position in another
221 office or program ~~of the same licensee licensed pursuant to this chapter for which~~ if the person has
222 ~~previously worked in a substance abuse treatment position employed in a licensed program prior to July~~
223 ~~1, 1999, has had no convictions in the five years prior to the application date for employment.~~ As used
224 in this section, "hire for compensated employment" does include, but is not limited to, (a) a promotion
225 or transfer from an adult substance abuse treatment position to any mental health or mental retardation
226 direct consumer care position within the same community services board, local government department,
227 behavioral health authority, or licensed contract agency or (b) new employment in any mental health or
228 mental retardation direct consumer care position in another office or program of the same community
229 services board, local government department, behavioral health authority or licensed contract agency for
230 which the person has previously worked in an adult substance abuse treatment position.

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