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SENATE BILL NO. 454

Offered January 9, 2002

Prefiled January 9, 2002

A BILL to amend and reenact §§ 32.1-126.01, 37.1-20.3, 37.1-183.3, 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—Puller; Delegates: Lingamfelter, McQuigg and Parrish

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, 37.1-183.3, 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 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 subsection A of § 18.2-47, 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, car jacking as set out in § 18.2-58.1, extortion by 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, 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, 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 subsection A of § 18.2-300, pandering as set out in § 18.2-355, crimes against nature involving children as set out in § 18.2-361, incest as set out in § 18.2-366, 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, possession of child pornography as set out in § 18.2-374.1:1, electronic facilitation of pornography as set out in § 18.2-374.3, or abuse or neglect of an incapacitated adult 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) *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 results 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 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 *or his placement on the adult protective services registry*, the nursing home shall provide a copy of the information obtained from the Central Criminal Records Exchange *and*

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SB454

59 *the Adult Protective Services Unit* to the applicant.

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

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

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

67 § 37.1-20.3. Background check required.

68 A. As a condition of employment, the Department shall require any individual who (i) accepts a
69 position of employment at a state facility as defined in § 37.1-1 and was not employed by that state
70 facility prior to July 1, 1996, or (ii) accepts a position with the Department that receives, monitors or
71 disburses funds of the Commonwealth and was not employed by the Department prior to July 1, 1996,
72 to submit to fingerprinting and to provide personal descriptive information to be forwarded along with
73 the applicant's fingerprints through the Central Criminal Records Exchange to the Federal Bureau of
74 Investigation for the purpose of obtaining criminal history record information regarding such applicant.

75 For purposes of clause (i) above, the Department shall not hire for compensated employment persons
76 who have been (ia) convicted of murder or manslaughter as set out in Article 1 (§ 18.2-30 et seq.) of
77 Chapter 4 of Title 18.2; malicious wounding by mob as set out in § 18.2-41; abduction as set out in
78 § 18.2-47 A; abduction for immoral purposes as set out in § 18.2-48; assault and bodily wounding as set
79 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
80 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
81 felony stalking violation as set out in § 18.2-60.3; sexual assault as set out in Article 7 (§ 18.2-61 et
82 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
83 18.2; burglary as set out in Article 2 (§ 18.2-89 et seq.) of Chapter 5 of Title 18.2; any felony violation
84 relating to possession or distribution of drugs as set out in Article 1 (§ 18.2-247 et seq.) of Chapter 7 of
85 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
86 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
87 shotgun in a crime of violence as set out in § 18.2-300 A; pandering as set out in § 18.2-355; crimes
88 against nature involving children as set out in § 18.2-361, taking indecent liberties with children as set
89 out in § 18.2-370 or § 18.2-370.1, abuse and neglect of children as set out in § 18.2-371.1, including
90 failing to secure medical attention for an injured child as set out in § 18.2-314, obscenity offenses as set
91 out in § 18.2-374.1, possession of child pornography as set out in § 18.2-374.1:1, or electronic
92 facilitation of pornography as set out in § 18.2-374.3; incest as set out in § 18.2-366; abuse and neglect
93 of incapacitated adults as set out in § 18.2-369; employing or permitting a minor to assist in an act
94 constituting an offense under Article 5 (§ 18.2-372 et seq.) of Chapter 8 of Title 18.2 as set out in
95 § 18.2-379; delivery of drugs to prisoners as set out in § 18.2-474.1; escape from jail as set out in
96 § 18.2-477; felonies by prisoners as set out in § 53.1-203; or an equivalent offense in another state; or
97 (iib) convicted of any felony violation relating to possession of drugs as set out in Article 1 (§ 18.2-247
98 et seq.) of Chapter 7 of Title 18.2 in the five years prior to the application date for employment or
99 convicted of any felony violation relating to possession of drugs as set out in Article 1 (§ 18.2-247 et
100 seq.) of Chapter 7 of Title 18.2 and continue on probation or parole or have failed to pay required court
101 costs.

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

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

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

119 § 37.1-183.3. Background checks required.

120 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 § 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, an agency 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, if the hiring agency 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 successfully rehabilitated and is not a risk to consumers based on his criminal history background and substance use, abuse or addiction histories.

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

cost.

D. Providers licensed pursuant to this chapter 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.*

E. The cost of obtaining the criminal history record and search of the *adult protective services and* child abuse and neglect registry ~~record~~ *records* shall be borne by the applicant, unless the provider licensed pursuant to this chapter, at its option, decides to pay such cost.

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

G. As used in this section, "hire for compensated employment" does not include (i) a promotion from one adult substance abuse treatment position to another such position within the same licensee licensed pursuant to this chapter, or (ii) new employment in an adult substance abuse treatment position in another office or program of the same licensee licensed pursuant to this chapter for which the person has previously worked in an adult substance abuse treatment position. As used in this section, "hire for compensated employment" includes, but is not limited to, (a) a promotion or transfer from an adult substance abuse treatment position to any mental health or mental retardation direct consumer care position within the same licensee licensed pursuant to this chapter, or (b) new employment in any mental health or mental retardation direct consumer care position in another office or program of the same licensee licensed pursuant to this chapter for which the person has previously worked in an adult substance abuse treatment position.

H. 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.

§ 37.1-197.2. Background checks required.

A. Every 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 require any applicant who accepts employment in any direct consumer care position with 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 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 such applicant. Except as otherwise provided in subsection B, no 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 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, 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 successfully rehabilitated and is not a risk to consumers based on his criminal history background and substance use, abuse or addiction histories.

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

D. 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 the registry of founded complaints of child abuse and neglect maintained by the Department of Social Services pursuant to § 63.1-248.8 and 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.

E. The cost of obtaining the criminal history record and search of the adult protective services

305 *registry and the child abuse and neglect registry record records* shall be borne by the applicant, unless
306 the operating community services board, administrative policy board, local government department with
307 a policy-advisory board, behavioral health authority, or agency licensed pursuant to Chapter 8
308 (§ 37.1-179 et seq.) of this title that provides services under contract with a community services board,
309 behavioral health authority or local government department, at its option, decides to pay such cost.

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

313 G. As used in this section, "hire for compensated employment" does not include (i) a promotion from
314 one substance abuse treatment position to another such position within the same licensee licensed
315 pursuant to this chapter, or (ii) new employment in a substance abuse treatment position in another
316 office or program of the same licensee licensed pursuant to this chapter for which the person has
317 previously worked in a substance abuse treatment position. As used in this section, "hire for
318 compensated employment" does include, but is not limited to, (a) a promotion or transfer from an adult
319 substance abuse treatment position to any mental health or mental retardation direct consumer care
320 position within the same community services board, local government department, behavioral health
321 authority, or licensed contract agency or (b) new employment in any mental health or mental retardation
322 direct consumer care position in another office or program of the same community services board, local
323 government department, behavioral health authority or licensed contract agency for which the person has
324 previously worked in an adult substance abuse treatment position.

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

328 § 63.1-55.02. Establishment of Adult Protective Services Unit; duties.

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

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

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

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

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

339 5. To establish minimum standards of training and provide educational opportunities to qualify
340 workers in the field of adult protective services to determine whether reports of abuse, neglect, or
341 exploitation of aged and incapacitated adults are substantiated. The Department shall establish, and the
342 State Board shall approve, by September 15, 2001, a uniform training program for adult protective
343 services workers in the Commonwealth. All adult protective services workers shall complete such
344 training within one year from the date of implementation of the training program or within the first year
345 of their employment.

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

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

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

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

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

358 § 63.1-55.4. Same; duty of director upon receiving report; confidentiality.

359 Any ~~director of a department of social services or public welfare~~ *local director* who receives a report
360 that a person is in need of protective services shall make a prompt and thorough investigation to
361 determine whether the person is in need of *adult* protective services and what services are needed. The
362 investigation shall include a visit to the person and consultation with others having knowledge of the
363 facts of the particular case. If the *local* department is denied access to interview the person or denied
364 entrance to the residence of the person believed to be an adult in need of protective services, the *local*
365 department may petition the circuit court for an order allowing access or entry or both. Upon a showing
366 of good cause, the court may enter such order upon a petition supported by an affidavit or by sworn

testimony in person which establishes that such *local* department has received a report that the individual is in need of protective services and access to interview the person has been denied the *local* department by a third party. After completing the investigation, the *local* director shall make a written report of the case indicating whether he believes *adult* protective services are needed. If a report that a person is in need of *adult* protective services is unfounded, the *local* director shall notify the individual making the report of this determination. If the *local* director determines that the adult needs protective services according to the criteria set forth in subsection A of § 63.1-55.6, the *local* director may petition the circuit court for an emergency order for protective services pursuant to § 63.1-55.6. *When any employee of a facility or program licensed or funded by the Departments of Health, Social Services, or Mental Health, Mental Retardation or Substance Abuse Services abuses, neglects or exploits a person who is incapacitated or sixty years of age and older, and the abuse, neglect or exploitation results in a determination that such person had or has need of protective services, the local director shall send a report to the adult protective services registry in accordance with regulations adopted by the Board.* If the case involves a regulated facility, and if the person alleged to be in need of services leaves the facility or if his safety is otherwise assured, the *local* director shall forthwith refer the case to the appropriate regulatory authority or agency for administrative or criminal investigation. The *local* director shall, not later than forty-five days after referral, contact the investigating agency to determine the status of the investigation.

All reports, documentary evidence, and other information received or maintained by the *local* director pursuant to this section shall be confidential and not subject to the Virginia Freedom of Information Act (§ 2.2-3700 et seq.), except that such information may be disclosed to persons having a legitimate interest therein where disclosure of the information is reasonably necessary for the conduct of investigations by state or local government agencies or the provision of services to the individual who is the subject of the report, in accordance with regulations promulgated by the Board. Such regulations shall require that the Board receive appropriate assurances from the agencies to which the information is disclosed that it will be held confidential except to the extent that disclosure is required by law.

§ 63.1-55.4:1. *Adult protective services registry; disclosure of information.*

The adult protective services registry shall contain a listing of any employee of a facility or program licensed or funded by the Departments of Health, Social Services, or Mental Health, Mental Retardation and Substance Abuse Services who abuses, neglects or exploits a person who is incapacitated or who is sixty years of age or older when the abuse, neglect or exploitation results in a local department's determination that such person had or has need of protective services, and such other information as shall be prescribed by 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 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 assisted living facility 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 assisted living facility 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 assisted living facility 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~~ *facilities* shall, within thirty days of employment, obtain for any compensated

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

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

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

441 C. A licensed assisted living facility shall notify and provide all students a copy of the provisions of
442 this section prior to or upon enrollment in a certified nurse aide program operated by such assisted
443 living facility.

444 **2. That the State Board of Social Services shall promulgate regulations to implement the**
445 **provisions of this act to be effective within 280 days of its enactment.**