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HOUSE BILL NO. 2402

Offered January 8, 2003

Prefiled January 8, 2003

A BILL to amend and reenact §§ 32.1-126.01 and 32.1-162.9:1 of the Code of Virginia, relating to nursing home, home care organization and hospice program criminal records checks.

Patron—Van Yahres

Referred to Committee on Health, Welfare and Institutions

Be it enacted by the General Assembly of Virginia:

1. That §§ 32.1-126.01 and 32.1-162.9:1 of the Code of Virginia are amended and reenacted 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 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 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~~ *carjacking* as set out in § 18.2-58.1, ~~extortion by threat~~ *threats of death or bodily injury* 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~~ and neglect of ~~an~~ incapacitated ~~adult~~ *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. 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. 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 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 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.

§ 32.1-162.9:1. Employment for compensation of persons convicted of certain offenses prohibited;

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59 criminal records check required; suspension or revocation of license.

60 A. A licensed home care organization as defined in § 32.1-162.7 or any home care organization
61 exempt from licensure under subdivision 3 a, b, or c of § 32.1-162.8 or any licensed hospice as defined
62 in § 32.1-162.1 shall not hire for compensated employment, persons who have been convicted of murder
63 *or manslaughter as set out in Article 1 (§ 18.2-30 et seq.) of Chapter 4 of Title 18.2, malicious*
64 *wounding by a mob as set out in § 18.2-41, abduction as set out in subsection A of § 18.2-47, abduction*
65 *for immoral purposes as set out in § 18.2-48, assaults and bodily woundings as set out in Article 4*
66 *(§ 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*
67 *§ 18.2-58.1, threats of death or bodily injury as set out in § 18.2-60, felony stalking as set out in*
68 *§ 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*
69 *set out in Article 1 (§ 18.2-77 et seq.) of Chapter 5 of Title 18.2, drive by shooting as set out in*
70 *§ 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*
71 *machine gun as set out in § 18.2-290, use of a sawed-off shotgun in a crime of violence as set out in*
72 *subsection A of § 18.2-300, pandering as set out in § 18.2-355, crimes against nature involving children*
73 *as set out in § 18.2-361, incest as set out in § 18.2-366, taking indecent liberties with children as set out*
74 *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*
75 *medical attention for an injured child as set out in § 18.2-314, obscenity offenses as set out in*
76 *§ 18.2-374.1 ~~or § 18.2-379, or possession of child pornography as set out in § 18.2-374.1:1, electronic~~*
77 *facilitation of pornography as set out in § 18.2-374.3, abuse ~~or~~ and neglect of ~~an~~ incapacitated ~~adult~~*
78 *adults as set out in § 18.2-369, employing or permitting a minor to assist in an act constituting an*
79 *offense under Article 5 (§ 18.2-372 et seq.) of Chapter 8 of Title 18.2 as set out in § 18.2-379, delivery*
80 *of drugs to prisoners as set out in § 18.2-474.1, escape from jail as set out in § 18.2-477, felonies by*
81 *prisoners as set out in § 53.1-203, or an equivalent offense in another state.*

82 However, a home care organization or hospice may hire an applicant convicted of one misdemeanor
83 specified in this section not involving abuse or neglect or moral turpitude, provided five years have
84 elapsed since the conviction.

85 Any person desiring to work at a licensed home care organization as defined in § 32.1-162.7 or any
86 home care organization exempt from licensure under subdivision 3 a, b, or c of § 32.1-162.8 or any
87 licensed hospice as defined in § 32.1-162.1 shall provide the hiring facility with a sworn statement or
88 affirmation disclosing any criminal convictions or any pending criminal charges, whether within or
89 without the Commonwealth. Any person making a materially false statement when providing such sworn
90 statement or affirmation regarding any such offense shall be guilty upon conviction of a Class 1
91 misdemeanor. Further dissemination of the information provided pursuant to this section is prohibited
92 other than to a federal or state authority or court as may be required to comply with an express
93 requirement of law for such further dissemination.

94 Such home care organization or hospice shall, within thirty days of employment, obtain for any
95 compensated employees an original criminal record clearance with respect to convictions for offenses
96 specified in this section or an original criminal history record from the Central Criminal Records
97 Exchange. The provisions of this section shall be enforced by the Commissioner. If an applicant is
98 denied employment because of convictions appearing on his criminal history record, the home care
99 organization or hospice shall provide a copy of the information obtained from the Central Criminal
100 Records Exchange to the applicant.

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

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

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