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SENATE BILL NO. 93

Offered January 14, 2004

Prefiled January 6, 2004

A BILL to amend and reenact §§ 37.1-183.3 and 37.1-197.2 of the Code of Virginia, relating to employee background checks at adult substance abuse treatment facilities.

 Patron—Devolites

 Referred to Committee on Education and Health

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 subsections B and D, 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, a provider may hire for compensated employment at adult substance abuse treatment facilities persons who were convicted of 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

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SB93

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 and H 2 of § 18.2-248; or an equivalent offense in another state, if the hiring provider 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 provider 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, 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 parole or probation for at least five years for all convictions. In addition to any such supplementary information as the provider 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 provider decides, at its option, to pay such cost.

D. *Notwithstanding the provisions of subsection A, a provider licensed pursuant to this chapter may hire for compensated employment at adult substance abuse treatment facilities a person who is a licensed substance abuse treatment practitioner, certified substance abuse counselor, certified substance abuse counseling assistant, licensed clinical social worker, licensed professional counselor, licensed clinical psychologist, licensed registered nurse, or licensed physician, regardless of any conviction, if the provider determines that such criminal behavior was substantially related to the applicant's use of substances and 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 history. To be eligible for such employment, the applicant shall have completed all prison or jail terms, shall not be under probation or parole supervision, 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 parole or probation for at least five years for all convictions. For the purposes of this subsection, certified substance abuse counselors and certified substance abuse counseling assistants shall include individuals for whom the applicable health regulatory board pursuant to Title 54.1 has approved an application for certification.*

E. Notwithstanding the provisions of subsection A, a provider may hire for compensated employment persons who have been convicted of not more than one misdemeanor offense under § 18.2-57 or § 18.2-57.2, if 10 years have elapsed following the conviction, unless the person committed such offense in the scope of his employment in a direct consumer care position.

EF. 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 the registry of founded complaints of child abuse and neglect maintained by the Department of Social Services pursuant to § 63.2-1515.

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

GH. 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.

HI. 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 licensed pursuant to this chapter if the person employed in a licensed program prior to July 1, 1999, has had no convictions in the five years prior to the application date for employment. 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.

J. *When a provider licensed pursuant to this chapter determines that an applicant who is a licensed substance abuse treatment practitioner, certified substance abuse counselor, certified substance abuse counseling assistant, licensed clinical social worker, licensed professional counselor, licensed clinical*

psychologist, licensed registered nurse, or licensed physician has been convicted of any offense listed in subsection A, the provider shall report such conviction to the appropriate licensing health regulatory board.

IK. 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 subsections B or D, 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

182 community services board, administrative policy board, local government department with a
183 policy-advisory board or behavioral health authority shall not be disseminated except as provided in this
184 section.

185 B. Notwithstanding the provisions of subsection A, the operating community services board,
186 administrative policy board, local government department with a policy advisory board, behavioral health
187 authority, or agency licensed pursuant to Chapter 8 (§ 37.1-179 et seq.) of Title 37.1 that provides
188 services under contract with a community services board, behavioral health authority or local
189 government department may hire for compensated employment at adult substance abuse treatment
190 facilities persons who were convicted of a misdemeanor violation relating to (i) unlawful hazing as set
191 out in § 18.2-56; or (ii) reckless handling of a firearm as set out in § 18.2-56.1; or any misdemeanor or
192 felony violation related to (a) reckless endangerment of others by throwing objects as set out in
193 § 18.2-51.3; (b) threat as set out in § 18.2-60; (c) breaking and entering a dwelling house with intent to
194 commit other misdemeanor as set out in § 18.2-92; or (d) possession of burglarious tools as set out in
195 § 18.2-94; or any felony violation relating to the distribution of drugs as set out in Article 1 (§ 18.2-247
196 et seq.) of Chapter 7 of Title 18.2, except an offense pursuant to subsections H 1 or H 2 of § 18.2-248;
197 or an equivalent offense in another state, if the prospective employer determines, based upon a screening
198 assessment, that such criminal behavior was substantially related to the applicant's use of substances, and
199 that the person has been successfully rehabilitated and is not a risk to consumers based on his criminal
200 history background and substance use, abuse or addiction histories.

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

217 D. *Notwithstanding the provisions of subsection A, the operating community services board,*
218 *administrative policy board, local government department with a policy advisory board, behavioral*
219 *health authority, or agency licensed pursuant to Chapter 8 (§ 37.1-179 et seq.) of this title that provides*
220 *services under contract with a community services board, behavioral health authority or local*
221 *government department may hire for compensated employment at adult substance abuse treatment*
222 *facilities a person who is a licensed substance abuse treatment practitioner, certified substance abuse*
223 *counselor, certified substance abuse counseling assistant, licensed clinical social worker, licensed*
224 *professional counselor, licensed clinical psychologist, licensed registered nurse, or licensed physician,*
225 *regardless of any conviction, if the prospective employer determines that such criminal behavior was*
226 *substantially related to the applicant's use of substances and the person has been successfully*
227 *rehabilitated and is not a risk to consumers based on his criminal history background and substance*
228 *use, abuse or addiction history. To be eligible for such employment, the applicant shall have completed*
229 *all prison or jail terms, shall not be under probation or parole supervision, shall have no pending*
230 *charges in any locality, shall have paid all fines, restitution and court costs for any prior convictions,*
231 *and shall have been free of parole or probation for at least five years for all convictions. For the*
232 *purposes of this subsection, certified substance abuse counselors and certified substance abuse*
233 *counseling assistants shall include individuals for whom the applicable health regulatory board pursuant*
234 *to Title 54.1 has approved an application for certification.*

235 E. Notwithstanding the provisions of subsection A, an operating community services board,
236 administrative policy board, local government department with a policy-advisory board, behavioral health
237 authority, or agency licensed pursuant to Chapter 8 (§ 37.1-179 et seq.) of this title that provides
238 services under contract with a community services board, behavioral health authority or local
239 government department may hire for compensated employment persons who have been convicted of not
240 more than one misdemeanor offense under § 18.2-57 or § 18.2-57.2, if 10 years have elapsed following
241 the conviction, unless the person committed such offense in the scope of his employment in a direct
242 consumer care position.

243 EF. Operating community services boards, administrative policy boards, local government

244 departments with policy-advisory boards, behavioral health authorities and agencies licensed pursuant to
245 Chapter 8 (§ 37.1-179 et seq.) of this title that provide services under contract with a community
246 services board, behavioral health authority or local government department shall also require, as a
247 condition of employment for all such applicants, written consent and personal information necessary to
248 obtain a search of the registry of founded complaints of child abuse and neglect maintained by the
249 Department of Social Services pursuant to § 63.2-1515.

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

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

259 *HI.* As used in this section, "hire for compensated employment" does not include (i) a promotion
260 from one substance abuse treatment position to another such position within the same licensee licensed
261 pursuant to this chapter, or (ii) new employment in a substance abuse treatment position in another
262 office or program licensed pursuant to this chapter if the person employed in a licensed program prior to
263 July 1, 1999, has had no convictions in the five years prior to the application date for employment. As
264 used in this section, "hire for compensated employment" does include, but is not limited to, (a) a
265 promotion or transfer from an adult substance abuse treatment position to any mental health or mental
266 retardation direct consumer care position within the same community services board, local government
267 department, behavioral health authority, or licensed contract agency or (b) new employment in any
268 mental health or mental retardation direct consumer care position in another office or program of the
269 same community services board, local government department, behavioral health authority or licensed
270 contract agency for which the person has previously worked in an adult substance abuse treatment
271 position.

272 *J.* When a prospective employer determines that an applicant who is a licensed substance abuse
273 treatment practitioner, certified substance abuse counselor, certified substance abuse counseling
274 assistant, licensed clinical social worker, licensed professional counselor, licensed clinical psychologist,
275 licensed registered nurse, or licensed physician has been convicted of any of the offenses listed in
276 subsection A, the prospective employer shall report such conviction to the appropriate licensing health
277 regulatory board.

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

281 **2. That the provisions of subsections D and J of section 37.1-183.3 and the provisions of**
282 **subsections D and J of section 37.1-197.2 of this act shall expire on July 1, 2007.**