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SENATE BILL NO. 93

AMENDMENT IN THE NATURE OF A SUBSTITUTE
 (Proposed by the Senate Committee on Education and Health
 on January 22, 2004)

(Patron Prior to Substitute—Senator Devolites)

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.

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 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 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

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60 subsections H 1 and H 2 of § 18.2-248; or an equivalent offense in another state, if the hiring provider
61 determines, based upon a screening assessment, that such criminal behavior was substantially related to
62 the applicant's use of substances, and that the person has been successfully rehabilitated and is not a risk
63 to consumers based on his criminal history background and substance use, abuse or addiction histories.

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

77 D. *Notwithstanding the provisions of subsections A and B, a provider may hire any applicant, as*
78 *defined by this subsection, to provide adult substance abuse treatment at adult substance abuse*
79 *treatment facilities for compensated employment, regardless of any conviction, if the provider determines*
80 *that such criminal behavior was substantially related to the applicant's use of substances and the person*
81 *has been successfully rehabilitated and is not a risk to consumers based on his criminal history*
82 *background and substance use, abuse or addiction history.*

83 *As used in this subsection "applicant" means any person who is a: (i) licensed substance abuse*
84 *treatment practitioner; (ii) certified substance abuse counselor; (iii) certified substance abuse counseling*
85 *assistant; (iv) licensed clinical social worker; (v) licensed professional counselor; (vi) licensed clinical*
86 *psychologist; (vii) licensed registered nurse; or (viii) licensed physician.*

87 *Further, to be eligible for such employment, the applicant shall have completed all prison or jail*
88 *terms, shall not be under probation or parole supervision, shall have no pending charges in any*
89 *locality, and shall have paid all fines, restitution and court costs for any prior convictions.*

90 *As used in this subsection, "certified substance abuse counselor" includes any applicant who has*
91 *been approved to obtain the supervision required for certification, and "certified substance abuse*
92 *counseling assistant" includes any applicant who is actively pursuing the hours of experience required*
93 *for certification as a substance abuse counseling assistant.*

94 E. Notwithstanding the provisions of subsection A, a provider may hire for compensated employment
95 persons who have been convicted of not more than one misdemeanor offense under § 18.2-57 or
96 § 18.2-57.2, if 10 years have elapsed following the conviction, unless the person committed such offense
97 in the scope of his employment in a direct consumer care position.

98 EF. Providers licensed pursuant to this chapter shall also require, as a condition of employment for
99 all such applicants, written consent and personal information necessary to obtain a search of the registry
100 of founded complaints of child abuse and neglect maintained by the Department of Social Services
101 pursuant to § 63.2-1515.

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

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

108 HI. As used in this section, "hire for compensated employment" does not include (i) a promotion
109 from one adult substance abuse treatment position to another such position within the same licensee
110 licensed pursuant to this chapter, or (ii) new employment in an adult substance abuse treatment position
111 in another office or program licensed pursuant to this chapter if the person employed in a licensed
112 program prior to July 1, 1999, has had no convictions in the five years prior to the application date for
113 employment. As used in this section, "hire for compensated employment" includes, but is not limited to,
114 (a) a promotion or transfer from an adult substance abuse treatment position to any mental health or
115 mental retardation direct consumer care position within the same licensee licensed pursuant to this
116 chapter, or (b) new employment in any mental health or mental retardation direct consumer care position
117 in another office or program of the same licensee licensed pursuant to this chapter for which the person
118 has previously worked in an adult substance abuse treatment position.

119 J. Any provider licensed pursuant to this chapter who discovers that an applicant regulated by a
120 regulatory board within the Department of Health Professions has been convicted of any offense listed
121 in subsection A 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 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.

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

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

216 D. *Notwithstanding the provisions of subsections A and B, a community services board, as defined by*
217 *this subsection, may hire any applicant, as defined by this subsection, to provide adult substance abuse*
218 *treatment at adult substance abuse treatment facilities for compensated employment, regardless of any*
219 *conviction, if the community services board determines that such criminal behavior was substantially*
220 *related to the applicant's use of substances and the person has been successfully rehabilitated and is not*
221 *a risk to consumers based on his criminal history background and substance use, abuse or addiction*
222 *history.*

223 *As used in this subsection "community services board" includes any operating community services*
224 *board, administrative policy board, local government department with a policy advisory board,*
225 *behavioral health authority, or agency licensed pursuant to Chapter 8 (§ 37.1-179 et seq.) of this title*
226 *that provides services under contract with a community services board, behavioral health authority or*
227 *local government department.*

228 *As used in this subsection, "applicant" means any person who is a (i) licensed substance abuse*
229 *treatment practitioner; (ii) certified substance abuse counselor; (iii) certified substance abuse counseling*
230 *assistant; (iv) licensed clinical social worker; (v) licensed professional counselor; (vi) licensed clinical*
231 *psychologist; (vii) licensed registered nurse; or (viii) licensed physician.*

232 *Further, to be eligible for such employment, the applicant shall have completed all prison or jail*
233 *terms, shall not be under probation or parole supervision, shall have no pending charges in any*
234 *locality, and shall have paid all fines, restitution and court costs for any prior convictions.*

235 *As used in this subsection, "certified substance abuse counselor" includes any applicant who has*
236 *been approved to obtain the supervision required for certification, and "certified substance abuse*
237 *counseling assistant" includes any applicant who is actively pursuing the hours of experience required*
238 *for certification as a substance abuse counseling assistant.*

239 E. Notwithstanding the provisions of subsection A, an operating community services board,
240 administrative policy board, local government department with a policy advisory board, behavioral health
241 authority, or agency licensed pursuant to Chapter 8 (§ 37.1-179 et seq.) of this title that provides
242 services under contract with a community services board, behavioral health authority or local
243 government department may hire for compensated employment persons who have been convicted of not
244 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. 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 § 63.2-1515.

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 operating community services board, administrative policy board, local government department with a policy-advisory board, behavioral health authority, or agency licensed pursuant to Chapter 8 (§ 37.1-179 et seq.) of this title that provides services under contract with a community services board, behavioral health authority or local government department, at its option, decides to pay such cost.

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 substance abuse treatment position to another such position within the same licensee licensed pursuant to this chapter, or (ii) new employment in a 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" does include, 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 community services board, local government department, behavioral health authority, or licensed contract agency or (b) new employment in any mental health or mental retardation direct consumer care position in another office or program of the same community services board, local government department, behavioral health authority or licensed contract agency for which the person has previously worked in an adult substance abuse treatment position.

J. Any community services board, as defined by subsection D, who discovers that an applicant regulated by a regulatory board within the Department of Health Professions has been convicted of any offense listed in subsection A 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.

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