

VIRGINIA ACTS OF ASSEMBLY — CHAPTER

An Act to amend and reenact §§ 32.1-126.01, 32.1-162.9:1, and 63.2-1720 of the Code of Virginia, relating to workers in nursing homes, assisted living facilities, adult day care, and home and health hospice care.

[S 620]

Approved

Be it enacted by the General Assembly of Virginia:

1. That §§ 32.1-126.01, 32.1-162.9:1, and 63.2-1720 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, carjacking as set out in § 18.2-58.1, threats of death or bodily injury as set out in § 18.2-60, felony stalking 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, 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, 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. 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 if 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 30 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; criminal records check required; suspension or revocation of license.

A. A licensed home care organization as defined in § 32.1-162.7 or any home care organization

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

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

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

90 Such home care organization or hospice shall, within 30 days of employment, obtain for any
 91 compensated employees an original criminal record clearance with respect to convictions for offenses
 92 specified in this section or an original criminal history record from the Central Criminal Records
 93 Exchange. The provisions of this section shall be enforced by the Commissioner. If an applicant is
 94 denied employment because of convictions appearing on his criminal history record, the home care
 95 organization or hospice shall provide a copy of the information obtained from the Central Criminal
 96 Records Exchange to the applicant.

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

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

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

105 § 63.2-1720. Employment for compensation of persons or use of volunteers convicted of certain
 106 offenses prohibited; background check required; penalty.

107 A. An assisted living facility, adult day care center or child welfare agency licensed or registered in
 108 accordance with the provisions of this chapter, or family day homes approved by family day systems,
 109 shall not hire for compensated employment persons who have an offense as defined in § 63.2-1719.
 110 Such employees shall undergo background checks pursuant to subsection D. In the case of child welfare
 111 agencies, the provisions of this section shall apply to employees who are involved in the day-to-day
 112 operations of such agency or who are alone with, in control of, or supervising one or more children.

113 B. A licensed assisted living facility or adult day care center may hire an applicant convicted of one
 114 misdemeanor barrier crime not involving abuse or neglect ~~or moral turpitude~~, ~~provided if~~ five years have
 115 elapsed following the conviction.

116 C. Notwithstanding the provisions of subsection A, a child day center may hire for compensated
 117 employment persons who have been convicted of not more than one misdemeanor offense under

§ 18.2-57 if 10 years have elapsed following the conviction, unless the person committed such offense while employed in a child day center or the object of the offense was a minor.

D. Background checks pursuant to this section require:

1. A sworn statement or affirmation disclosing whether the person has a criminal conviction or is the subject of any pending criminal charges within or outside the Commonwealth and, in the case of child welfare agencies, whether or not the person has been the subject of a founded complaint of child abuse or neglect within or outside the Commonwealth;

2. A criminal history record check through the Central Criminal Records Exchange pursuant to § 19.2-389; and

3. In the case of child welfare agencies, a search of the central registry maintained pursuant to § 63.2-1515 for any founded complaint of child abuse and neglect.

E. Any person desiring to work as a compensated employee at a licensed assisted living facility, licensed adult day care center, a licensed or registered child welfare agency, or a family day home approved by a family day system shall provide the hiring or approving facility, center or agency with a sworn statement or affirmation pursuant to subdivision D 1. Any person making a materially false statement regarding the sworn statement or affirmation provided pursuant to subdivision D 1 shall be guilty of a Class 1 misdemeanor.

F. A licensed assisted living facility, licensed adult day care center, a licensed or registered child welfare agency, or a family day home approved by a family day system shall obtain for any compensated employees within 30 days of employment (i) an original criminal record clearance with respect to convictions for offenses specified in § 63.2-1719 or an original criminal history record from the Central Criminal Records Exchange and (ii) in the case of licensed or registered child welfare agencies or family day homes approved by family day systems, a copy of the information from the central registry. If an applicant is denied employment because of information from the central registry or convictions appearing on his criminal history record, the assisted living facility, adult day care center or child welfare agency shall provide a copy of the information obtained from the central registry or the Central Criminal Records Exchange or both to the applicant.

G. No volunteer who has an offense as defined in § 63.2-1719 shall be permitted to serve in a licensed or registered child welfare agency or a family day home approved by a family day system. Any person desiring to volunteer at such a child welfare agency shall provide the agency with a sworn statement or affirmation pursuant to subdivision D 1. Such child welfare agency shall obtain for any volunteers, within 30 days of commencement of volunteer service, a copy of (i) the information from the central registry and (ii) an original criminal record clearance with respect to offenses specified in § 63.2-1719 or an original criminal history record from the Central Criminal Records Exchange. Any person making a materially false statement regarding the sworn statement or affirmation provided pursuant to subdivision D 1 shall be guilty of a Class 1 misdemeanor. If a volunteer is denied service because of information from the central registry or convictions appearing on his criminal history record, such child welfare agency shall provide a copy of the information obtained from the central registry or the Central Criminal Records Exchange or both to the volunteer. The provisions of this subsection shall apply only to volunteers who will be alone with any child in the performance of their duties and shall not apply to a parent-volunteer of a child attending a licensed or registered child welfare agency, or a family day home approved by a family day system, whether or not such parent-volunteer will be alone with any child in the performance of his duties. A parent-volunteer is someone supervising, without pay, a group of children that includes the parent-volunteer's own child in a program that operates no more than four hours per day, provided that the parent-volunteer works under the direct supervision of a person who has received a clearance pursuant to this section.

H. No volunteer shall be permitted to serve in a licensed assisted living facility or licensed adult day care center without the permission or under the supervision of a person who has received a clearance pursuant to this section.

I. Further dissemination of the background check information is prohibited other than to the Commissioner's representative or a federal or state authority or court as may be required to comply with an express requirement of law for such further dissemination.

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

K. The provisions of this section shall not apply to any children's residential facility licensed pursuant to § 63.2-1701, which instead shall comply with the background investigation requirements contained in § 63.2-1726.

L. 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.