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SENATE BILL NO. 381

Offered January 9, 2008

Prefiled January 8, 2008

A BILL to amend and reenact §§ 37.2-416 and 37.2-506 of the Code of Virginia, relating to background checks for direct care employees.

Patrons—Martin and Puller; Delegates: Brink, Hamilton, Morgan and O'Bannon

Referred to Committee on Education and Health

Be it enacted by the General Assembly of Virginia:

1. That §§ 37.2-416 and 37.2-506 of the Code of Virginia are amended and reenacted as follows:

§ 37.2-416. Background checks required.

A. As used in this section, the term "direct consumer care position" means any position 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 this responsibility.

As used in this section, "hire for compensated employment" does not include (i) a promotion from one adult substance abuse *or adult mental health* treatment position to another such position within the same licensee licensed pursuant to this article or (ii) new employment in an adult substance abuse *or adult mental health* treatment position in another office or program licensed pursuant to this article if the person employed prior to July 1, 1999, in a licensed program had no convictions in the five years prior to the application date for employment. As used in this section, "hire for compensated employment" includes (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 article 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 article for which the person has previously worked in an adult substance abuse treatment position.

B. Every provider licensed pursuant to this article shall 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 C or E, no provider licensed pursuant to this article shall hire for compensated employment persons who have been convicted of any offense listed in subsection B of § 37.2-314.

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 article. 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 FBI. The information provided to the authorized officer or director of a provider licensed pursuant to this article shall not be disseminated except as provided in this section.

C. Notwithstanding the provisions of subsection B, a provider may hire for compensated employment at adult substance abuse *or adult mental health* treatment facilities a person who was 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; (iii) *assault and battery, as set out in subsection A of § 18.2-57; or (iv) assault and battery against a family or household member, as set out in subsection A of § 18.2-57.2*; 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 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 the criminal behavior was substantially related to the applicant's substance abuse *or mental illness* and that the person has been successfully rehabilitated and is not a risk to consumers based on his criminal history background and his substance abuse *or mental illness* history.

D. The hiring provider and a screening contractor designated by the Department shall screen applicants who meet the criteria set forth in subsection C to assess whether the applicants have been

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SB381

59 rehabilitated successfully and are not a risk to consumers based on their criminal history backgrounds
60 and substance abuse *or mental illness* histories. To be eligible for such screening, the applicant shall
61 have completed all prison or jail terms, shall not be under probation or parole supervision, shall have no
62 pending charges in any locality, shall have paid all fines, restitution, and court costs for any prior
63 convictions, and shall have been free of parole or probation for at least five years for all convictions. In
64 addition to any supplementary information the provider or screening contractor may require or the
65 applicant may wish to present, the applicant shall provide to the screening contractor a statement from
66 his most recent probation or parole officer, if any, outlining his period of supervision and a copy of any
67 pre-sentencing or post-sentencing report in connection with the felony conviction. The cost of this
68 screening shall be paid by the applicant, unless the licensed provider decides to pay the cost.

69 E. Notwithstanding the provisions of subsection B, a provider may hire for compensated employment
70 persons who have been convicted of not more than one misdemeanor offense under § 18.2-57 or
71 18.2-57.2, if 10 years have elapsed following the conviction, unless the person committed the offense
72 while employed in a direct consumer care position.

73 F. Providers licensed pursuant to this article also shall require, as a condition of employment for all
74 applicants, written consent and personal information necessary to obtain a search of the registry of
75 founded complaints of child abuse and neglect that is maintained by the Department of Social Services
76 pursuant to § 63.2-1515.

77 G. The cost of obtaining the criminal history record and search of the child abuse and neglect
78 registry record shall be borne by the applicant, unless the provider licensed pursuant to this article
79 decides to pay the cost.

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

83 § 37.2-506. Background checks required.

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

87 As used in this section, "hire for compensated employment" does not include (i) a promotion from
88 one adult substance abuse *or adult mental health* treatment position to another such position within the
89 same community services board or (ii) new employment in an adult substance abuse *or adult mental*
90 *health* treatment position in another office or program of the same community services board if the
91 person employed prior to July 1, 1999, had no convictions in the five years prior to the application date
92 for employment. As used in this section, "hire for compensated employment" includes (a) a promotion
93 or transfer from an adult substance abuse treatment position to any mental health or mental retardation
94 direct consumer care position within the same community services board or (b) new employment in any
95 mental health or mental retardation direct consumer care position in another office or program of the
96 same community services board for which the person has previously worked in an adult substance abuse
97 treatment position.

98 B. Every community services board shall require any applicant who accepts employment in any
99 direct consumer care position with the community services board to submit to fingerprinting and provide
100 personal descriptive information to be forwarded through the Central Criminal Records Exchange to the
101 Federal Bureau of Investigation (FBI) for the purpose of obtaining national criminal history record
102 information regarding the applicant. Except as otherwise provided in subsections C or E, no community
103 services board shall hire for compensated employment persons who have been convicted of any offense
104 listed in subsection B of § 37.2-314.

105 The Central Criminal Records Exchange, upon receipt of an individual's record or notification that no
106 record exists, shall submit a report to the requesting executive director or personnel director of the
107 community services board. If any applicant is denied employment because of information appearing on
108 the criminal history record and the applicant disputes the information upon which the denial was based,
109 the Central Criminal Records Exchange shall, upon written request, furnish to the applicant the
110 procedures for obtaining a copy of the criminal history record from the FBI. The information provided
111 to the executive director or personnel director of any community services board shall not be
112 disseminated except as provided in this section.

113 C. Notwithstanding the provisions of subsection B, the community services board may hire for
114 compensated employment at adult substance abuse *or adult mental health* treatment programs a person
115 who was convicted of a misdemeanor violation relating to (i) unlawful hazing, as set out in § 18.2-56;
116 or (ii) reckless handling of a firearm, as set out in § 18.2-56.1; or (iii) assault and battery, as set out in
117 subsection A of § 18.2-57; or (iv) assault and battery against a family or household member, as set out
118 in subsection A of § 18.2-57.2; or any misdemeanor or felony violation related to (a) reckless
119 endangerment of others by throwing objects, as set out in § 18.2-51.3; (b) threat, as set out in § 18.2-60;
120 (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 subsections H 1 or H 2 of § 18.2-248; or an equivalent offense in another state, if the hiring community services board determines, based upon a screening assessment, that the criminal behavior was substantially related to the applicant's substance abuse *or mental illness* and that the person has been successfully rehabilitated and is not a risk to consumers based on his criminal history background and his substance abuse *or mental illness* history.

D. The community services board and a screening contractor designated by the Department shall screen applicants who meet the criteria set forth in subsection C to assess whether the applicants have been rehabilitated successfully and are not a risk to consumers based on their criminal history backgrounds and substance abuse *or mental illness* 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 supplementary information the community services board or screening contractor may require or the applicant may wish 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 and a copy of any pre-sentencing or post-sentencing report in connection with the felony conviction. The cost of this screening shall be paid by the applicant, unless the board decides to pay the cost.

E. Notwithstanding the provisions of subsection B, a community services board 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 the offense while employed in a direct consumer care position.

F. Community services boards also shall require, as a condition of employment for all applicants, written consent and personal information necessary to obtain a search of the registry of founded complaints of child abuse and neglect that is maintained by the Department of Social Services pursuant to § 63.2-1515.

G. 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 community services board decides to pay the cost.

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.