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SENATE BILL NO. 1228

Offered January 14, 2009

Prefiled January 13, 2009

A BILL to amend and reenact § 37.2-506 of the Code of Virginia, relating to eligibility for employment with community services board; removing provision allowing employment of person convicted of assault and battery of a family member.

Patron—Barker

Referred to Committee on Education and Health

Be it enacted by the General Assembly of Virginia:**1. That § 37.2-506 of the Code of Virginia is amended and reenacted as follows:**

§ 37.2-506. 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 community services board or (ii) new employment in an adult substance abuse or adult mental health treatment position in another office or program of the same community services board if the person employed prior to July 1, 1999, 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 community services board 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 for which the person has previously worked in an adult substance abuse treatment position.

B. Every community services board shall require any applicant who accepts employment in any direct consumer care position with the community services board 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 community services board 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 executive director or personnel director of the community services board. 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 executive director or personnel director of any community services board shall not be disseminated except as provided in this section.

C. Notwithstanding the provisions of subsection B, the community services board may hire for compensated employment at adult substance abuse or adult mental health treatment programs a person who was convicted of a misdemeanor violation relating to (i) unlawful hazing, as set out in § 18.2-56; (ii) reckless handling of a firearm, as set out in § 18.2-56.1; *or* (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 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

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

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

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

79 G. The cost of obtaining the criminal history record and search of the child abuse and neglect
80 registry record shall be borne by the applicant, unless the community services board decides to pay the
81 cost.

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