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HOUSE BILL NO. 708

Offered January 13, 2010

Prefiled January 12, 2010

A BILL to amend and reenact § 32.1-162.9:1 of the Code of Virginia, relating to home health care organization employees; substance abuse screening and testing.

Patrons—Peace and Surovell

Referred to Committee on Health, Welfare and Institutions

Be it enacted by the General Assembly of Virginia:**1. That § 32.1-162.9:1 of the Code of Virginia is amended and reenacted as follows:**

§ 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 exempt from licensure under subdivision 3 a, b, or c of § 32.1-162.8 or any licensed hospice as defined in § 32.1-162.1 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 a 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 home care organization or hospice may hire an applicant convicted of one misdemeanor specified in this section not involving abuse or neglect, if five years have elapsed since the conviction.

A licensed home care organization as defined in § 32.1-162.7 or any home care organization exempt from licensure under subdivision 3 a, 3 b, or 3 c of § 32.1-162.8 shall not hire for compensated employment persons who have been convicted of any felony violation relating to the possession or distribution of drugs, as set out in Article 1 (§ 18.2-247 et seq.) of Chapter 7 of Title 18.2, or an equivalent offense in another state. However, a licensed home care organization or home care organization exempt from licensure under subdivision 3 a, 3 b, or 3 c of § 32.1-162.8 may hire a person who has been convicted of any felony violation relating to the possession or distribution of drugs or an equivalent offense in another state if the hiring home health care organization determines, based upon a screening assessment, that the person has been successfully rehabilitated and is not a risk to consumers based on his criminal history background check and his substance abuse history, including any history of treatment.

Any person desiring to work at a licensed home care organization as defined in § 32.1-162.7 or any home care organization exempt from licensure under subdivision 3 a, b, or c of § 32.1-162.8 or any licensed hospice as defined in § 32.1-162.1 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.

Such home care organization or hospice shall, within 30 days of employment, obtain for any

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59 compensated employees an original criminal record clearance with respect to convictions for offenses
60 specified in this section or an original criminal history record from the Central Criminal Records
61 Exchange. The provisions of this section shall be enforced by the Commissioner. If an applicant is
62 denied employment because of convictions appearing on his criminal history record, the home care
63 organization or hospice shall provide a copy of the information obtained from the Central Criminal
64 Records Exchange to the applicant.

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

67 B. *Upon receipt of a complaint alleging that a person employed by a licensed home health care*
68 *organization or home health care organization that is exempt from licensure under subdivision 3 a, 3 b,*
69 *or 3 c of § 32.1-162.8 has violated any provision of Article 1 (§ 18.2-247 et seq.) of Chapter 7 of Title*
70 *18.2, related to the possession or distribution of drugs, while engaged in activities related to their*
71 *employment by the home health care organization, the home health care organization shall conduct an*
72 *investigation of the complaint, which may include a requirement that the person who is the subject of*
73 *the complaint undergo substance abuse screening. Such screening shall utilize a standardized screening*
74 *instrument. If a screening indicates that probable cause exists to believe that a person is engaged in the*
75 *illegal use of drugs, the organization may require a formal assessment, which may include drug testing,*
76 *to be performed by a substance abuse treatment professional licensed by the Department of Health*
77 *Professions. All positive results of a drug test administered pursuant to this section shall be reported to*
78 *the health regulatory board responsible for licensing, certifying, or registering the person to practice, if*
79 *any, and to the local law-enforcement agency.*

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