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## SENATE BILL NO. 260

## AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the House Committee on Health, Welfare and Institutions  
on February 18, 2010)

(Patron Prior to Substitute—Senator Lucas)

*A BILL to amend and reenact §§ 37.2-416 and 37.2-506 of the Code of Virginia, relating to employees of adult substance abuse and adult mental health treatment facilities; background checks.*

**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; (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 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 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

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60 addition to any supplementary information the provider or screening contractor may require or the  
61 applicant may wish to present, the applicant shall provide to the screening contractor a statement from  
62 his most recent probation or parole officer, if any, outlining his period of supervision and a copy of any  
63 pre-sentencing or post-sentencing report in connection with the felony conviction. The cost of this  
64 screening shall be paid by the applicant, unless the licensed provider decides to pay the cost.

65 E. Notwithstanding the provisions of ~~subsection~~ *subsections B and C*, a provider may hire for  
66 compensated employment persons who have been convicted of not more than one misdemeanor offense  
67 under § 18.2-57 or 18.2-57.2, if 10 years have elapsed following the conviction, unless the person  
68 committed the offense while employed in a direct consumer care position.

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

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

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

79 § 37.2-506. Background checks required.

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

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

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

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

109 C. Notwithstanding the provisions of subsection B, the community services board may hire for  
110 compensated employment at adult substance abuse or adult mental health treatment programs a person  
111 who was convicted of a misdemeanor violation relating to (i) unlawful hazing, as set out in § 18.2-56;  
112 (ii) reckless handling of a firearm, as set out in § 18.2-56.1; *or* (iii) assault and battery, as set out in  
113 subsection A of § 18.2-57; ~~or (iv) assault and battery against a family or household member, as set out~~  
114 ~~in subsection A of § 18.2-57.2;~~ or any misdemeanor or felony violation related to (a) reckless  
115 endangerment of others by throwing objects, as set out in § 18.2-51.3; (b) threat, as set out in § 18.2-60;  
116 (c) breaking and entering a dwelling house with intent to commit other misdemeanor, as set out in  
117 § 18.2-92; or (d) possession of burglarious tools, as set out in § 18.2-94; or any felony violation relating  
118 to the distribution of drugs, as set out in Article 1 (§ 18.2-247 et seq.) of Chapter 7 of Title 18.2, except  
119 an offense pursuant to subsections H 1 or H 2 of § 18.2-248; or an equivalent offense in another state, if  
120 the hiring community services board determines, based upon a screening assessment, that the criminal  
121 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~~ *subsections B and C*, 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.