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HOUSE BILL NO. 1729

Offered January 12, 2011

Prefiled January 10, 2011

A BILL to amend and reenact § 37.2-416 of the Code of Virginia, relating to prohibition of employment of certain persons by providers licensed by the Department of Behavioral Health and Developmental Services.

Patrons—Carrico; Senator: Reynolds

Referred to Committee on Health, Welfare and Institutions

Be it enacted by the General Assembly of Virginia:**1. That § 37.2-416 of the Code of Virginia is 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, D, or F, 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~~ H1 and H ~~2~~ H2 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. Notwithstanding the provisions of subsection B, a provider may hire for compensated employment at adult substance abuse treatment facilities a person who has been convicted of not more than one offense of assault and battery of a law-enforcement officer under § 18.2-57, or an equivalent offense in

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59 *another state when the person has been granted a pardon for the offense in that state, if (i) more than*
60 *10 years have elapsed since the conviction and (ii) the hiring provider determines, based upon a*
61 *screening assessment, that the criminal behavior was substantially related to the applicant's substance*
62 *abuse and that the person has been successfully rehabilitated and is not a risk to consumers based on*
63 *his criminal history background and his substance abuse history.*

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

76 EF. Notwithstanding the provisions of subsection B, a provider may hire for compensated
77 employment persons who have been convicted of not more than one misdemeanor offense under
78 § 18.2-57 or 18.2-57.2, if 10 years have elapsed following the conviction, unless the person committed
79 the offense while employed in a direct consumer care position.

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

84 GH. The cost of obtaining the criminal history record and search of the child abuse and neglect
85 registry record shall be borne by the applicant, unless the provider licensed pursuant to this article
86 decides to pay the cost.

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