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SENATE BILL NO. 602

Offered January 11, 2006

A BILL to amend and reenact § 37.2-416 of the Code of Virginia, relating to background checks for employees of providers licensed by the Department of Mental Health, Mental Retardation and Substance Abuse Services.

Patrons—Reynolds; Delegate: Carrico

Referred to Committee on Education and Health

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 treatment position to another such position within the same licensee licensed pursuant to this article or (ii) new employment in an adult substance abuse 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 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; 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 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 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 police officer under § 18.2-57, or an equivalent offense in another state, if (i) more than five years have elapsed since the conviction and (ii) the hiring provider determines, based upon a screening assessment, that the criminal behavior was substantially related to

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59 *the applicant's substance abuse and that the person has been successfully rehabilitated and is not a risk*
60 *to consumers based on his criminal history background and his substance abuse history.*

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

73 EF. Notwithstanding the provisions of subsection B, a provider may hire for compensated
74 employment persons who have been convicted of not more than one misdemeanor offense under
75 § 18.2-57 or 18.2-57.2, if 10 years have elapsed following the conviction, unless the person committed
76 the offense while employed in a direct consumer care position.

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

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

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