2017 SESSION

ENROLLED

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VIRGINIA ACTS OF ASSEMBLY - CHAPTER

2 An Act to amend and reenact §§ 37.2-416 and 37.2-506 of the Code of Virginia, relating to background 3 checks; exceptions; sponsored living and shared residential service providers.

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Approved

6 Be it enacted by the General Assembly of Virginia:

7 1. That §§ 37.2-416 and 37.2-506 of the Code of Virginia are amended and reenacted as follows: 8 § 37.2-416. Background checks required. 9

A. As used in this section:

10 "Direct care position" means any position that includes responsibility for (i) treatment, case management, health, safety, development, or well-being of an individual receiving services or (ii) 11 immediately supervising a person in a position with this responsibility. "Hire for compensated employment" does not include (i) a promotion from one adult substance abuse 12

13 14 or adult mental health treatment position to another such position within the same licensee licensed 15 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 16 17 prior to July 1, 1999, in a licensed program had no convictions in the five years prior to the application date for employment. "Hire for compensated employment" includes (a) a promotion or transfer from an 18 19 adult substance abuse treatment position to any mental health or developmental services direct care 20 position within the same licensee licensed pursuant to this article or (b) new employment in any mental 21 health or developmental services direct care position in another office or program of the same licensee 22 licensed pursuant to this article for which the person has previously worked in an adult substance abuse 23 treatment position.

24 "Shared living" means an arrangement in which the Commonwealth's program of medical assistance 25 pays a portion of a person's rent, utilities, and food expenses in return for the person residing with and 26 providing companionship, support, and other limited, basic assistance to a person with intellectual or 27 developmental disabilities receiving medical assistance services in accordance with a waiver for whom 28 he has no legal responsibility.

29 B. Every provider licensed pursuant to this article shall require (i) any applicant who accepts 30 employment in any direct care position, (ii) any applicant for approval as a sponsored residential service 31 provider, (iii) any adult living in the home of an applicant for approval as a sponsored residential service provider, (iv) any person employed by a sponsored residential service provider to provide 32 services in the home, and (v) any person who enters into a shared living arrangement with a person 33 34 receiving medical assistance services pursuant to a waiver to submit to fingerprinting and provide 35 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 36 37 information regarding the applicant. Except as otherwise provided in subsection C, D, or F, no provider 38 licensed pursuant to this article shall (a) hire for compensated employment persons who have been 39 convicted of any offense listed in subsection B of § 37.2-314; (b) approve an applicant as a sponsored 40 residential service provider if the applicant, any adult residing in the home of the applicant, or any 41 person employed by the applicant has been convicted of an offense listed in subsection B of § 37.2-314; 42 or (c) permit to enter into a shared living arrangement with a person receiving medical assistance 43 services pursuant to a waiver any person who has been convicted of an offense listed in subsection B of 44 § 37.2-314.

45 The Central Criminal Records Exchange, upon receipt of an applicant's record or notification that no record exists, shall submit a report to the requesting authorized officer or director of a provider licensed 46 pursuant to this article. If any applicant is denied employment because of information appearing on the 47 criminal history record and the applicant disputes the information upon which the denial was based, the 48 49 Central Criminal Records Exchange shall, upon written request, furnish to the applicant the procedures 50 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 51 except as provided in this section. 52

53 C. Notwithstanding the provisions of subsection B, a provider may hire for compensated employment 54 at adult substance abuse or adult mental health treatment facilities a person who was convicted of a 55 misdemeanor violation relating to (i) unlawful hazing, as set out in § 18.2-56; (ii) reckless handling of a 56 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

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57 any misdemeanor or felony violation related to (a) reckless endangerment of others by throwing objects, 58 as set out in § 18.2-51.3; (b) threat, as set out in § 18.2-60; (c) breaking and entering a dwelling house 59 with intent to commit other misdemeanor, as set out in § 18.2-92; or (d) possession of burglarious tools, 60 as set out in § 18.2-94; or any felony violation relating to the distribution of drugs, as set out in Article 61 1 (§ 18.2-247 et seq.) of Chapter 7 of Title 18.2, except an offense pursuant to subsections H1 and H2 62 of § 18.2-248; or an equivalent offense in another state, if the hiring provider determines, based upon a 63 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 64 65 individuals receiving services based on his criminal history background and his substance abuse or 66 mental illness history.

67 D. Notwithstanding the provisions of subsection B, a provider may hire for compensated employment 68 at adult substance abuse treatment facilities a person who has been convicted of not more than one 69 offense of assault and battery of a law-enforcement officer under § 18.2-57, or an equivalent offense in 70 another state, if (i) the person has been granted a simple pardon if the offense was a felony committed in Virginia, or the equivalent if the offense was committed in another state; (ii) more than 10 years have 71 72 elapsed since the conviction; and (iii) the hiring provider determines, based upon a screening assessment, 73 that the criminal behavior was substantially related to the applicant's substance abuse and that the person 74 has been successfully rehabilitated and is not a risk to individuals receiving services based on his 75 criminal history background and his substance abuse history.

76 E. The hiring provider and a screening contractor designated by the Department shall screen 77 applicants who meet the criteria set forth in subsections C and D to assess whether the applicants have 78 been rehabilitated successfully and are not a risk to individuals receiving services based on their criminal 79 history backgrounds and substance abuse or mental illness histories. To be eligible for such screening, 80 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 81 costs for any prior convictions, and shall have been free of parole or probation for at least five years for 82 all convictions. In addition to any supplementary information the provider or screening contractor may 83 84 require or the applicant may wish to present, the applicant shall provide to the screening contractor a 85 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 86 cost of this screening shall be paid by the applicant, unless the licensed provider decides to pay the cost. 87

88 F. Notwithstanding the provisions of subsection B, a provider may (i) hire for compensated 89 employment, (ii) approve as a sponsored residential service provider, or (iii) permit to enter into a 90 shared living arrangement persons who have been convicted of not more than one misdemeanor offense 91 under § 18.2-57 or 18.2-57.2, if 10 years have elapsed following the conviction, unless the person 92 committed the offense while employed in a direct care position. A provider may also approve a person as a sponsored residential service provider if (a) any adult living in the home of an applicant or (b) any 93 person employed by the applicant to provide services in the home in which sponsored residential 94 95 services are provided has been convicted of not more than one misdemeanor offense under § 18.2-57 or 96 18.2-57.2, if 10 years have elapsed following the conviction, unless the person committed the offense 97 while employed in a direct care position.

98 G. Providers licensed pursuant to this article also shall require, as a condition of employment, 99 approval as a sponsored residential service provider, or permission to enter into a shared living 100 arrangement with a person receiving medical assistance services pursuant to a waiver, written consent 101 and personal information necessary to obtain a search of the registry of founded complaints of child 102 abuse and neglect that is maintained by the Department of Social Services pursuant to § 63.2-1515.

H. The cost of obtaining the criminal history record and search of the child abuse and neglect 103 104 registry record shall be borne by the applicant, unless the provider licensed pursuant to this article 105 decides to pay the cost.

106 I. A person who complies in good faith with the provisions of this section shall not be liable for any 107 civil damages for any act or omission in the performance of duties under this section unless the act or 108 omission was the result of gross negligence or willful misconduct. 109

§ 37.2-506. Background checks required.

A. As used in this section:

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111 "Direct care position" means any position that includes responsibility for (i) treatment, case 112 management, health, safety, development, or well-being of an individual receiving services or (ii) 113 immediately supervising a person in a position with this responsibility.

114 "Hire for compensated employment" does not include (i) a promotion from one adult substance abuse 115 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 116 another office or program of the same community services board if the person employed prior to July 1, 117

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118 1999, had no convictions in the five years prior to the application date for employment. "Hire for compensated employment" includes (a) a promotion or transfer from an adult substance abuse treatment position to any mental health or developmental services direct care position within the same community services board or (b) new employment in any mental health or developmental services direct 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.

124 "Shared living" means an arrangement in which the Commonwealth's program of medical assistance 125 pays a portion of a person's rent, utilities, and food expenses in return for the person residing with and 126 providing companionship, support, and other limited, basic assistance to a person with intellectual or 127 developmental disabilities receiving medical assistance services in accordance with a waiver for whom 128 he has no legal responsibility.

129 B. Every community services board shall require (i) any applicant who accepts employment in any 130 direct care position with the community services board, (ii) any applicant for approval as a sponsored 131 residential service provider, (iii) any adult living in the home of an applicant for approval as a 132 sponsored residential service provider, (iv) any person employed by a sponsored residential service 133 provider to provide services in the home, and (v) any person who enters into a shared living 134 arrangement with a person receiving medical assistance services pursuant to a waiver to submit to 135 fingerprinting and provide personal descriptive information to be forwarded through the Central Criminal 136 Records Exchange to the Federal Bureau of Investigation (FBI) for the purpose of obtaining national 137 criminal history record information regarding the applicant. Except as otherwise provided in subsection 138 C, D, or F, no community services board shall hire for compensated employment, approve as a 139 sponsored residential service provider, or permit to enter into a shared living arrangement with a person 140 receiving medical assistance services pursuant to a waiver persons who have been convicted of any offense listed in subsection B of § 37.2-314. 141

142 The Central Criminal Records Exchange, upon receipt of an applicant's record or notification that no 143 record exists, shall submit a report to the requesting executive director or personnel director of the 144 community services board. If any applicant is denied employment because of information appearing on 145 his criminal history record and the applicant disputes the information upon which the denial was based, 146 the Central Criminal Records Exchange shall, upon written request, furnish to the applicant the 147 procedures for obtaining a copy of the criminal history record from the FBI. The information provided 148 to the executive director or personnel director of any community services board shall not be disseminated except as provided in this section. 149

150 C. Notwithstanding the provisions of subsection B, the community services board may hire for 151 compensated employment at adult substance abuse or adult mental health treatment programs a person 152 who was convicted of a misdemeanor violation relating to (i) unlawful hazing, as set out in § 18.2-56; 153 (ii) reckless handling of a firearm, as set out in § 18.2-56.1; (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 154 155 in subsection A of § 18.2-57.2; or any misdemeanor or felony violation related to (a) reckless 156 endangerment of others by throwing objects, as set out in § 18.2-51.3; (b) threat, as set out in § 18.2-60; 157 (c) breaking and entering a dwelling house with intent to commit other misdemeanor, as set out in 158 § 18.2-92; or (d) possession of burglarious tools, as set out in § 18.2-94; or any felony violation relating 159 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 subsection H1 or H2 of § 18.2-248; or an equivalent offense in another state, if 160 161 the hiring community services board determines, based upon a screening assessment, that the criminal 162 behavior was substantially related to the applicant's substance abuse or mental illness and that the person 163 has been successfully rehabilitated and is not a risk to individuals receiving services based on his 164 criminal history background and his substance abuse or mental illness history.

165 D. Notwithstanding the provisions of subsection B, the community services board may hire for 166 compensated employment at adult substance abuse treatment programs a person who has been convicted 167 of not more than one offense of assault and battery of a law-enforcement officer under § 18.2-57, or an 168 equivalent offense in another state, if (i) the person has been granted a simple pardon if the offense was 169 a felony committed in Virginia, or the equivalent if the offense was committed in another state; (ii) 170 more than 10 years have elapsed since the conviction; and (iii) the hiring community services board 171 determines, based upon a screening assessment, that the criminal behavior was substantially related to 172 the applicant's substance abuse and that the person has been successfully rehabilitated and is not a risk 173 to individuals receiving services based on his criminal history background and his substance abuse 174 history.

E. The community services board and a screening contractor designated by the Department shall
screen applicants who meet the criteria set forth in subsections C and D to assess whether the applicants
have been rehabilitated successfully and are not a risk to individuals receiving services based on their
criminal history backgrounds and substance abuse or mental illness histories. To be eligible for such

179 screening, the applicant shall have completed all prison or jail terms, shall not be under probation or 180 parole supervision, shall have no pending charges in any locality, shall have paid all fines, restitution, 181 and court costs for any prior convictions, and shall have been free of parole or probation for at least 182 five years for all convictions. In addition to any supplementary information the community services 183 board or screening contractor may require or the applicant may wish to present, the applicant shall 184 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 185 186 connection with the felony conviction. The cost of this screening shall be paid by the applicant, unless 187 the board decides to pay the cost.

188 F. Notwithstanding the provisions of subsection B, a community services board may (i) hire for 189 compensated employment, (ii) approve as a sponsored residential service provider, or (iii) permit to 190 enter into a shared living arrangement 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, 191 192 unless the person committed the offense while employed in a direct care position. A community services 193 board may also approve a person as a sponsored residential service provider if (a) any adult living in 194 the home of an applicant or (b) any person employed by the applicant to provide services in the home in which sponsored residential services are provided has 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, 195 196 197 unless the person committed the offense while employed in a direct care position.

198 G. Community services boards also shall require, as a condition of employment, approval as a 199 sponsored residential service provider, or permission to enter into a shared living arrangement with a 200 person receiving medical assistance services pursuant to a waiver, written consent and personal 201 information necessary to obtain a search of the registry of founded complaints of child abuse and 202 neglect that is maintained by the Department of Social Services pursuant to § 63.2-1515.

H. 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.

I. 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.