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**SENATE BILL NO. 555**

Offered January 10, 2018

Prefiled January 9, 2018

*A BILL to amend and reenact § 37.2-416 of the Code of Virginia, relating to barrier crimes; adult substance abuse and mental health treatment providers.*

Patrons—Mason and McClellan

Referred to Committee on Rehabilitation and Social Services

**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:

"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) 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 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. "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 licensee licensed pursuant to this article or (b) new employment in any mental health or developmental services direct 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.

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

B. Every provider licensed pursuant to this article shall require (i) any applicant who accepts employment in any direct care position, (ii) any applicant for approval as a sponsored residential service 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 services in the home, and (v) any person who enters into a shared living arrangement with a person receiving medical assistance services pursuant to a waiver 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 subsection C or E, no provider licensed pursuant to this article shall:

1. Hire for compensated employment any person who has been convicted of (i) any offense set forth in clause (i), (ii), or (iii) of the definition of barrier crime in § 19.2-392.02 or (ii) any offense set forth in clause (iv) of the definition of barrier crime in § 19.2-392.02 (a) in the five years prior to the application date for employment or (b) such person continues on probation or parole or has failed to pay required court costs for such offense set forth in clause (iv) of the definition of barrier crime in § 19.2-392.02;

2. Approve an applicant as a sponsored residential service provider if the applicant, any adult residing in the home of the applicant, or any person employed by the applicant has been convicted of (i) any offense set forth in clause (i), (ii), or (iii) of the definition of barrier crime in § 19.2-392.02 or (ii) any offense set forth in clause (iv) of the definition of barrier crime in § 19.2-392.02 (a) in the five years prior to the application date to be a sponsored residential service provider or (b) such applicant continues on probation or parole or has failed to pay required court costs for such offense set forth in clause (iv) of the definition of barrier crime in § 19.2-392.02; or

3. Permit to enter into a shared living arrangement with a person receiving medical assistance services pursuant to a waiver any person who has been convicted of (i) any offense set forth in clause (i), (ii), or (iii) of the definition of barrier crime in § 19.2-392.02 or (ii) any offense set forth in clause

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59 (iv) of the definition of barrier crime in § 19.2-392.02 (a) in the five years prior to entering into a  
60 shared living arrangement or (b) such person continues on probation or parole or has failed to pay  
61 required court costs for such offense set forth in clause (iv) of the definition of barrier crime in  
62 § 19.2-392.02.

63 The Central Criminal Records Exchange, upon receipt of an applicant's record or notification that no  
64 record exists, shall submit a report to the requesting authorized officer or director of a provider licensed  
65 pursuant to this article. If any applicant is denied employment because of information appearing on the  
66 criminal history record and the applicant disputes the information upon which the denial was based, the  
67 Central Criminal Records Exchange shall, upon written request, furnish to the applicant the procedures  
68 for obtaining a copy of the criminal history record from the FBI. The information provided to the  
69 authorized officer or director of a provider licensed pursuant to this article shall not be disseminated  
70 except as provided in this section.

71 C. Notwithstanding the provisions of subsection B, a provider may hire for compensated employment  
72 at adult substance abuse or adult mental health treatment facilities a person who was convicted of any  
73 violation of § 18.2-51.3; a misdemeanor violation of § 18.2-56 or 18.2-56.1 or subsection A of  
74 § 18.2-57; any violation of § 18.2-60, 18.2-89, 18.2-92, or 18.2-94; any offense set forth in clause (iii)  
75 of the definition of barrier crime in § 19.2-392.02, except an offense pursuant to subsections H1 and H2  
76 of § 18.2-248; or any substantially similar offense under the laws of another jurisdiction, if the hiring  
77 provider determines, based upon a screening assessment, that the criminal behavior was substantially  
78 related to the applicant's substance abuse or mental illness and that the person has been successfully  
79 rehabilitated and is not a risk to individuals receiving services based on his criminal history background  
80 and his substance abuse or mental illness history.

81 D. Notwithstanding the provisions of subsection B, a provider may hire for compensated employment  
82 at adult substance abuse treatment facilities a person who has been convicted of not more than one  
83 offense under subsection C of § 18.2-57, or any substantially similar offense under the laws of another  
84 jurisdiction, if (i) the person has been granted a simple pardon if the offense was a felony committed in  
85 Virginia, or the equivalent if the person was convicted under the laws of another jurisdiction; (ii) more  
86 than 10 years have elapsed since the conviction; and (iii) the hiring provider determines, based upon a  
87 screening assessment, that the criminal behavior was substantially related to the applicant's substance  
88 abuse and that the person has been successfully rehabilitated and is not a risk to individuals receiving  
89 services based on his criminal history background and his substance abuse history.

90 E. The hiring provider and a screening contractor designated by the Department shall screen  
91 applicants who meet the criteria set forth in subsections C and D to assess whether the applicants have  
92 been rehabilitated successfully and are not a risk to individuals receiving services based on their criminal  
93 history backgrounds and substance abuse or mental illness histories. To be eligible for such screening,  
94 the applicant shall have completed all prison or jail terms, shall not be under probation or parole  
95 supervision, shall have no pending charges in any locality, shall have paid all fines, restitution, and court  
96 costs for any prior convictions, and shall have been free of parole or probation for at least five years for  
97 all convictions. In addition to any supplementary information the provider or screening contractor may  
98 require or the applicant may wish to present, the applicant shall provide to the screening contractor a  
99 statement from his most recent probation or parole officer, if any, outlining his period of supervision  
100 and a copy of any pre-sentencing or post-sentencing report in connection with the felony conviction. The  
101 cost of this screening shall be paid by the applicant, unless the licensed provider decides to pay the cost.

102 F. Notwithstanding the provisions of subsection B, a provider may (i) hire for compensated  
103 employment, (ii) approve as a sponsored residential service provider, or (iii) permit to enter into a  
104 shared living arrangement persons who have been convicted of not more than one misdemeanor offense  
105 under § 18.2-57 or 18.2-57.2, or any substantially similar offense under the laws of another jurisdiction,  
106 if 10 years have elapsed following the conviction, unless the person committed the offense while  
107 employed in a direct care position. A provider may also approve a person as a sponsored residential  
108 service provider if (a) any adult living in the home of an applicant or (b) any person employed by the  
109 applicant to provide services in the home in which sponsored residential services are provided has been  
110 convicted of not more than one misdemeanor offense under § 18.2-57 or 18.2-57.2, or any substantially  
111 similar offense under the laws of another jurisdiction, if 10 years have elapsed following the conviction,  
112 unless the person committed the offense while employed in a direct care position.

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

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

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