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SENATE BILL NO. 555

AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the Senate Committee on Rehabilitation and Social Services
on January 19, 2018)

(Patron Prior to Substitute—Senator Mason)

A *BILL to amend and reenact §§ 37.2-416 and 37.2-506 of the Code of Virginia, relating to barrier crimes; adult substance abuse and mental health treatment providers.*

Be it enacted by the General Assembly of Virginia:

1. That §§ 37.2-416 and 37.2-506 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 (iv) of the definition of barrier crime in § 19.2-392.02 (a) in the five years prior to entering into a shared living arrangement 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

60 § 19.2-392.02.

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

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

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

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

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

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

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

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

§ 37.2-506. 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 community services board or (ii) new employment in an adult substance abuse or adult mental health treatment position in another office or program of the same community services board if the person employed prior to July 1, 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.

"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 community services board shall require (i) any applicant who accepts employment in any direct care position with the community services board, (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, D, or F, no community services board shall hire for compensated employment, approve as a sponsored residential service provider, or permit to enter into a shared living arrangement with a person receiving medical assistance services pursuant to a waiver persons who have been convicted of (a) any offense set forth in clause (i), (ii), or (iii) of the definition of barrier crime in § 19.2-392.02 or (b) any offense set forth in clause (iv) of the definition of barrier crime in § 19.2-392.02 (1) in the five years prior to the application date for employment, the application date to be a sponsored residential service provider, or entering into a shared living arrangement or (2) 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.

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 executive director or personnel director of the community services board. If any applicant is denied employment because of information appearing on his 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 executive director or personnel director of any community services board shall not be disseminated except as provided in this section.

C. Notwithstanding the provisions of subsection B, the community services board may hire for compensated employment at adult substance abuse or adult mental health treatment programs a person who was convicted of any violation of § 18.2-51.3; a misdemeanor violation of § 18.2-56 or 18.2-56.1, subsection A of § 18.2-57, or § 18.2-57.2; any violation of § 18.2-60, 18.2-89, 18.2-92, or 18.2-94; any offense set forth in clause (iii) of the definition of barrier crime in § 19.2-392.02, except an offense pursuant to subsection H1 or H2 of § 18.2-248; or any substantially similar offense under the laws of another jurisdiction, if the hiring community services board 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 individuals receiving services based on his criminal history background and his substance abuse or mental illness history.

D. Notwithstanding the provisions of subsection B, the community services board may hire for compensated employment at adult substance abuse treatment programs a person who has been convicted of not more than one offense under subsection C of § 18.2-57, or any substantially similar offense under the laws of another jurisdiction, if (i) the person has been granted a simple pardon if the offense was a

183 felony committed in Virginia, or the equivalent if the person was convicted under the laws of another
184 jurisdiction; (ii) more than 10 years have elapsed since the conviction; and (iii) the hiring community
185 services board determines, based upon a screening assessment, that the criminal behavior was
186 substantially related to the applicant's substance abuse and that the person has been successfully
187 rehabilitated and is not a risk to individuals receiving services based on his criminal history background
188 and his substance abuse history.

189 E. The community services board and a screening contractor designated by the Department shall
190 screen applicants who meet the criteria set forth in subsections C and D to assess whether the applicants
191 have been rehabilitated successfully and are not a risk to individuals receiving services based on their
192 criminal history backgrounds and substance abuse or mental illness histories. To be eligible for such
193 screening, the applicant shall have completed all prison or jail terms, shall not be under probation or
194 parole supervision, shall have no pending charges in any locality, shall have paid all fines, restitution,
195 and court costs for any prior convictions, and shall have been free of parole or probation for at least
196 five years for all convictions. In addition to any supplementary information the community services
197 board or screening contractor may require or the applicant may wish to present, the applicant shall
198 provide to the screening contractor a statement from his most recent probation or parole officer, if any,
199 outlining his period of supervision and a copy of any pre-sentencing or post-sentencing report in
200 connection with the felony conviction. The cost of this screening shall be paid by the applicant, unless
201 the board decides to pay the cost.

202 F. Notwithstanding the provisions of subsection B, a community services board may (i) hire for
203 compensated employment, (ii) approve as a sponsored residential service provider, or (iii) permit to enter
204 into a shared living arrangement persons who have been convicted of not more than one misdemeanor
205 offense under § 18.2-57 or 18.2-57.2, or any substantially similar offense under the laws of another
206 jurisdiction, if 10 years have elapsed following the conviction, unless the person committed the offense
207 while employed in a direct care position. A community services board may also approve a person as a
208 sponsored residential service provider if (a) any adult living in the home of an applicant or (b) any
209 person employed by the applicant to provide services in the home in which sponsored residential
210 services are provided has been convicted of not more than one misdemeanor offense under § 18.2-57 or
211 18.2-57.2, or any substantially similar offense under the laws of another jurisdiction, if 10 years have
212 elapsed following the conviction, unless the person committed the offense while employed in a direct
213 care position.

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

219 H. The cost of obtaining the criminal history record and search of the child abuse and neglect
220 registry record shall be borne by the applicant, unless the community services board decides to pay the
221 cost.

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