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HOUSE BILL NO. 277

AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the Senate Committee on Rehabilitation and Social Services
on February 25, 2022)

(Patron Prior to Substitute—Delegate Coyner)

A BILL to amend and reenact §§ 15.2-2291, 37.2-431.1, and 55.1-1201 of the Code of Virginia, relating to recovery residences.

Be it enacted by the General Assembly of Virginia:

1. That §§ 15.2-2291, 37.2-431.1, and 55.1-1201 of the Code of Virginia are amended and reenacted as follows:

§ 15.2-2291. Assisted living facilities and group homes of eight or fewer; single-family residence.

A. Zoning ordinances for all purposes shall consider a residential facility in which no more than eight individuals with mental illness, intellectual disability, or developmental disabilities reside, with one or more resident or nonresident staff persons, as residential occupancy by a single family. For the purposes of this subsection, mental illness and developmental disability shall not include current illegal use of or addiction to a controlled substance as defined in § 54.1-3401. No conditions more restrictive than those imposed on residences occupied by persons related by blood, marriage, or adoption shall be imposed on such facility. For purposes of this subsection, "residential facility" means any group home or other residential facility for which the Department of Behavioral Health and Developmental Services is the licensing authority pursuant to this Code.

B. Zoning ordinances for all purposes shall consider a residential facility in which no more than eight aged, infirm or disabled persons reside, with one or more resident counselors or other staff persons, as residential occupancy by a single family. No conditions more restrictive than those imposed on residences occupied by persons related by blood, marriage, or adoption shall be imposed on such facility. For purposes of this subsection, "residential facility" means any assisted living facility or residential facility in which aged, infirm or disabled persons reside with one or more resident counselors or other staff persons and for which the Department of Social Services is the licensing authority pursuant to this Code.

C. Zoning ordinances for all purposes shall consider a recovery residence, as defined in § 37.2-431.1, in which no more than eight individuals with substance abuse disorder reside, either with or without one or more resident or nonresident staff persons, and in which a certifying entity verifies 50 square feet per bed per sleeping room as residential occupancy by a single family. However, any locality may choose to allow by right such residences with greater than eight individuals. No conditions more restrictive than those imposed on residences occupied by persons related by blood, marriage, or adoption shall be imposed on such recovery residence.

§ 37.2-431.1. Recovery residences.

A. As used in this section:

"Certified recovery residence" means a recovery residence that has been certified by the Department.

"Credentialing entity" means a nonprofit organization that develops and administers professional certification programs according to nationally recognized recovery housing standards of the National Alliance for Recovery Residences or standards endorsed by Oxford House, Inc.

"Level of support" means the level of support and structure that a recovery residence provides to residents, as specified in the standards of the National Alliance for Recovery Residences.

"Recovery residence" means a housing facility that is certified by the Department in accordance with regulations adopted by the Board and provides alcohol-free and illicit-drug-free housing to individuals with substance abuse disorders and individuals with co-occurring mental illnesses and substance abuse disorders that does not include clinical treatment services.

B. Every recovery residence shall disclose to each prospective resident its credentialing entity. If the credentialing entity is the National Alliance for Recovery Residences, the recovery residence shall disclose the level of support provided by the recovery residence. If the credentialing entity is Oxford House, Inc., the recovery residence shall disclose that the recovery residence is self-governed and unstaffed.

C. No person shall operate a recovery residence or advertise, represent, or otherwise imply to the public that a recovery residence or other housing facility is a certified recovery residence by the Department unless such recovery residence or other housing facility has been certified by the Department in accordance with regulations adopted by the Board. Such regulations may require accreditation by or membership in a credentialing agency as a condition of certification.

D. The Department shall maintain a list of certified recovery residences on its website and shall provide (i) for each recovery residence included on such list, the credentialing entity; (ii) for recovery

60 *residences for which the National Alliance of Recovery Residences is the credentialing entity, the level*
 61 *of support provided by the recovery residence; and (iii) for recovery residences for which Oxford House,*
 62 *Inc., is the credentialing entity, a disclosure that the recovery residence is self-governed and unstaffed.*

63 D. E. The Department may institute civil proceedings in the name of the Commonwealth to enjoin
 64 any person from violating the provisions of this section and to recover a civil penalty of at least \$200
 65 but no more than \$1,000 for each violation. Such proceedings shall be brought in the general district or
 66 circuit court for the county or city in which the violation occurred or where the defendant resides. Civil
 67 penalties assessed under this section shall be paid into the Behavioral Health and Developmental
 68 Services Trust Fund established in § 37.2-318.

69 **§ 55.1-1201. Applicability of chapter; local authority.**

70 A. This chapter shall apply to all jurisdictions in the Commonwealth and may not be waived or
 71 otherwise modified, in whole or in part, by the governing body of any locality or its boards or
 72 commissions or other instrumentalities or by the courts of the Commonwealth. Occupancy in a public
 73 housing unit or other housing unit that is a dwelling unit is subject to this chapter; however, if the
 74 provisions of this chapter are inconsistent with the regulations of the U.S. Department of Housing and
 75 Urban Development, such regulations shall control.

76 B. The provisions of this chapter shall apply to occupancy in all single-family and multifamily
 77 dwelling units and multifamily dwelling units located in the Commonwealth.

78 C. The following tenancies and occupancies are not residential tenancies under this chapter:

79 1. Residence at a public or private institution, if incidental to detention or the provision of medical,
 80 geriatric, educational, counseling, religious, or similar services;

81 2. Occupancy by a member of a fraternal or social organization in the portion of a structure operated
 82 for the benefit of the organization;

83 3. Occupancy by an owner of a condominium unit or a holder of a proprietary lease in a cooperative;

84 4. Occupancy in a campground as defined in § 35.1-1;

85 5. Occupancy by a tenant who pays no rent pursuant to a rental agreement;

86 6. Occupancy by an employee of a landlord whose right to occupancy in a multifamily dwelling unit
 87 is conditioned upon employment in and about the premises or a former employee whose occupancy
 88 continues less than 60 days; or

89 7. Occupancy under a contract of sale of a dwelling unit or the property of which it is a part, if the
 90 occupant is the purchaser or a person who succeeds to his interest; or

91 8. *Occupancy in a recovery residence as defined in § 37.2-431.1.*

92 D. The following provisions apply to occupancy in a hotel, motel, extended stay facility, etc.:

93 1. A guest who is an occupant of a hotel, motel, extended stay facility, vacation residential facility,
 94 including those governed by the Virginia Real Estate Time-Share Act (§ 55.1-2200 et seq.),
 95 boardinghouse, or similar transient lodging shall not be construed to be a tenant living in a dwelling unit
 96 if such person does not reside in such lodging as his primary residence. Such guest shall be exempt
 97 from this chapter, and the innkeeper or property owner, or his agent, shall have the right to use self-help
 98 eviction under Virginia law, without the necessity of the filing of an unlawful detainer action in a court
 99 of competent jurisdiction and the execution of a writ of eviction issued pursuant to such action, which
 100 would otherwise be required under this chapter.

101 2. A hotel, motel, extended stay facility, vacation residential facility, including those governed by the
 102 Virginia Real Estate Time-Share Act (§ 55.1-2200 et seq.), boardinghouse, or similar transient lodging
 103 shall be exempt from the provisions of this chapter if overnight sleeping accommodations are furnished
 104 to a person for consideration if such person does not reside in such lodging as his primary residence.

105 3. If a person resides in a hotel, motel, extended stay facility, vacation residential facility, including
 106 those governed by the Virginia Real Estate Time-Share Act (§ 55.1-2200 et seq.), boardinghouse, or
 107 similar transient lodging as his primary residence for 90 consecutive days or less, such lodging shall not
 108 be subject to the provisions of this chapter. However, the owner of such lodging establishment shall give
 109 a five-day written notice of nonpayment to a person residing in such lodging and, upon the expiration of
 110 the five-day period specified in the notice, may exercise self-help eviction if payment in full has not
 111 been received.

112 4. If a person resides in a hotel, motel, extended stay facility, vacation residential facility, including
 113 those governed by the Virginia Real Estate Time-Share Act (§ 55.1-2200 et seq.), boardinghouse, or
 114 similar transient lodging as his primary residence for more than 90 consecutive days or is subject to a
 115 written lease for more than 90 days, such lodging shall be subject to the provisions of this chapter.

116 5. Nothing herein shall be construed to preclude the owner of a lodging establishment that uses
 117 self-help eviction pursuant to this section from pursuing any civil or criminal remedies under the laws of
 118 the Commonwealth.

119 E. Nothing in this chapter shall prohibit a locality from establishing a commission, reconciliatory in
 120 nature only, or designating an existing agency, which upon mutual agreement of the parties may mediate
 121 conflicts that may arise out of the application of this chapter, nor shall anything in this chapter be

- 122 deemed to prohibit an ordinance designed to effect compliance with local property maintenance codes.
- 123 This chapter shall supersede all other local ordinances or regulations concerning landlord and tenant
- 124 relations and the leasing of residential property.