

024846928

HOUSE BILL NO. 1225

Offered January 16, 2002

A BILL to amend and reenact § 19.2-389 of the Code of Virginia and to amend the Code of Virginia by adding in Chapter 1 of Title 9.1 an article numbered 11, consisting of sections numbered 9.1-185 through 9.1-188, relating to regulation of bail recovery agents; penalties.

Patrons—Scott, Albo, Callahan, Hull, Parrish, Plum and Van Landingham; Senators: Byrne and Ticer

Referred to Committee on Militia, Police and Public Safety

Be it enacted by the General Assembly of Virginia:

1. That § 19.2-389 of the Code of Virginia is amended and reenacted and that the Code of Virginia is amended by adding in Chapter 1 of Title 9.1 an article numbered 11, consisting of sections numbered 9.1-185 through 9.1-188, as follows:

*Article 11.**Bail Recovery Agents.**§ 9.1-185. Definition.*

As used in this article, a "bail recovery agent," also called a "bounty hunter," means any person who apprehends, seeks to apprehend, or is employed for the purpose of apprehending the principal on a bail bond or any fugitive from justice who has been released on bail. This term does not include any law-enforcement officer, member of the armed forces on active duty, attorney, accountant, or other professional licensed under applicable state law.

§ 9.1-186. Licensure requirements of bail recovery agents.

A. No person shall be employed or act as a bail recovery agent in the Commonwealth without having first obtained a temporary or permanent license from the Department on or before July 1, 2003.

B. No person shall be issued or reissued a bail recovery agent license unless such person has completed training, or has renewed training, as prescribed by the Board. The Board shall promulgate regulations and minimal standards for training and continuing education of such agents and terms and duration of licensure. A temporary license may be issued pending receipt of the criminal history background of the applicant.

C. No person who has been convicted of a felony and whose rights are unrestored shall be licensed as a bail recovery agent. No person who would be disqualified from obtaining a permit to carry a concealed weapon pursuant to subsection E of § 18.2-308 shall be licensed as a bail recovery agent. Any person applying for licensure as a bail recovery agent shall consent in writing, on a form to be provided by the Department, to have the Department at the time of licensure to obtain his fingerprints and annually thereafter obtain his criminal history record information, which includes a National Criminal Records search.

D. Every person licensed by the Department as a bail recovery agent shall, at the time of receiving the license and before the license shall be operative, file with the Department (i) a cash bond or evidence that the agent is covered by a surety bond, executed by a surety company authorized to do business in this Commonwealth, in a reasonable amount to be fixed by the Department, conditioned upon the faithful and honest conduct of his employment; or (ii) evidence of a policy of liability insurance in an amount and with coverage as fixed by the Department. The bond or liability insurance shall be maintained for so long as the agent is licensed by the Department.

E. If any person aggrieved by the misconduct of any bail recovery agent licensed hereunder recovers judgment against the agent, such person may, after the return unsatisfied, either in whole or in part, of any execution issued upon such judgment, maintain an action in his own name upon the bond of the agent.

F. Any person who claims to be a bail recovery agent but who has no license and who performs any act in furtherance of such claim shall be guilty of a Class 2 misdemeanor. Any person who engages the services of a person claiming to be a bail recovery agent who knows or should know that the person has no bail recovery agent license shall be guilty of a Class 2 misdemeanor.

§ 9.1-187. Limits on conduct of bail recovery agents.

A. A bail recovery agent who enters any jurisdiction in pursuit of and for the purpose of apprehending the principal on a bail bond or capturing a fugitive or engaging in surveillance of such principal or fugitive shall, prior to taking any action in that jurisdiction, notify the police chief of the jurisdiction or, if there is no police chief, the sheriff of the jurisdiction in which the surveillance, apprehension or capture is to take place; however, an agent shall not be required to give such notification in a case where notification would reasonably jeopardize the pursuit, apprehension or

59 surveillance.

60 B. No bail recovery agent shall wear, carry or display (i) any badge or shield, or (ii) any uniform,
61 card, or other item with any printing, insignia or emblem that purports to indicate that such agent is an
62 employee, officer, or agent of any state or federal government or any political subdivision of any state
63 or federal government.

64 C. Any person who violates any provision of this section shall be guilty of a Class 1 misdemeanor.

65 § 9.1-188. Compulsory training standards for bail recovery agents.

66 A. The Board shall have the power to issue regulations pursuant to the Administrative Process Act
67 (§ 2.2-4000 et seq.), establishing compulsory minimum and continuing training standards for bail
68 recovery agents. The regulations may include provisions delegating to the Board's staff the right to
69 inspect the facilities and programs of persons conducting training to ensure compliance with the law
70 and its regulations. The regulations may include provisions for partial exemption from such training for
71 persons having previous training that meets or exceeds the minimum training standards and has been
72 approved by the Department.

73 B. The Board shall have the power to enter into an agreement with other states for reciprocity or
74 recognition of bail recovery agents, duly licensed by such states, provided the requirements and
75 qualifications of that state's law are substantially similar to or exceed the provisions of this article. A
76 state meeting the requirements and qualifications of this section grants the same privilege to residents of
77 the Commonwealth who have obtained a license from the Department.

78 C. The Board shall have the power to promulgate regulations pursuant to the Administrative Process
79 Act (§ 2.2-4000 et seq.) to secure the public safety and welfare against incompetent, unqualified,
80 unscrupulous, or unfit persons employed or acting as bail recovery agents as follows:

81 1. To establish the qualifications of applicants for licensure under this article;

82 2. To examine, or cause to be examined, the qualifications of each applicant for licensure, including
83 when necessary the preparation, administration and grading of examinations;

84 3. To certify qualified applicants for bail recovery agent training schools and instructors;

85 4. To levy and collect non-refundable fees for registration, certification, or licensure and renewal
86 that are sufficient to cover all expenses for administration and operation of a program of registration,
87 certification, and licensure under this article;

88 5. To promulgate regulations necessary to ensure continued competency, and to prevent deceptive or
89 misleading practices by bail recovery agents and to effectively administer the regulatory system
90 promulgated by the Board;

91 6. To receive complaints concerning the conduct of any person whose activities are regulated by the
92 Board, to conduct investigations, and to take appropriate disciplinary action if warranted; and

93 7. To revoke, suspend or fail to renew a registration, certification, or license for just cause as
94 enumerated in regulations of the Board.

95 § 19.2-389. Dissemination of criminal history record information.

96 A. Criminal history record information shall be disseminated, whether directly or through an
97 intermediary, only to:

98 1. Authorized officers or employees of criminal justice agencies, as defined by § 9.1-101, for
99 purposes of the administration of criminal justice and the screening of an employment application or
100 review of employment by a criminal justice agency with respect to its own employees or applicants, and
101 dissemination to the Virginia Parole Board, pursuant to this subdivision, of such information on all
102 state-responsible inmates for the purpose of making parole determinations pursuant to subdivisions 1, 2,
103 3, and 5 of § 53.1-136 shall include collective dissemination by electronic means every thirty days;

104 2. Such other individuals and agencies which require criminal history record information to
105 implement a state or federal statute or executive order of the President of the United States or Governor
106 that expressly refers to criminal conduct and contains requirements and/or exclusions expressly based
107 upon such conduct, except that information concerning the arrest of an individual may not be
108 disseminated to a noncriminal justice agency or individual if an interval of one year has elapsed from
109 the date of the arrest and no disposition of the charge has been recorded and no active prosecution of
110 the charge is pending;

111 3. Individuals and agencies pursuant to a specific agreement with a criminal justice agency to provide
112 services required for the administration of criminal justice pursuant to that agreement which shall
113 specifically authorize access to data, limit the use of data to purposes for which given, and ensure the
114 security and confidentiality of the data;

115 4. Individuals and agencies for the express purpose of research, evaluative, or statistical activities
116 pursuant to an agreement with a criminal justice agency which shall specifically authorize access to data,
117 limit the use of data to research, evaluative, or statistical purposes, and ensure the confidentiality and
118 security of the data;

119 5. Agencies of state or federal government which are authorized by state or federal statute or
120 executive order of the President of the United States or Governor to conduct investigations determining

121 employment suitability or eligibility for security clearances allowing access to classified information;

122 6. Individuals and agencies where authorized by court order or court rule;

123 7. Agencies of any political subdivision of the Commonwealth for the conduct of investigations of
124 applicants for public employment, permit, or license whenever, in the interest of public welfare or
125 safety, it is necessary to determine under a duly enacted ordinance if the past criminal conduct of a
126 person with a conviction record would be compatible with the nature of the employment, permit, or
127 license under consideration;

128 8. Public or private agencies when and as required by federal or state law or interstate compact to
129 investigate applicants for foster or adoptive parenthood subject to the restriction that the data shall not
130 be further disseminated by the agency to any party other than a federal or state authority or court as
131 may be required to comply with an express requirement of law for such further dissemination;

132 9. To the extent permitted by federal law or regulation, public service companies as defined in
133 § 56-1, for the conduct of investigations of applicants for employment when such employment involves
134 personal contact with the public or when past criminal conduct of an applicant would be incompatible
135 with the nature of the employment under consideration;

136 10. The appropriate authority for purposes of granting citizenship and for purposes of international
137 travel, including but not limited to, issuing visas and passports;

138 11. A person requesting a copy of his own criminal history record information as defined in
139 § 9.1-101 at his cost, except that criminal history record information shall be supplied at no charge to a
140 person who has applied to be a volunteer (i) with a Virginia affiliate of Big Brothers/Big Sisters of
141 America, (ii) with a volunteer fire company or volunteer rescue squad, (iii) with the Volunteer
142 Emergency Families for Children, or (iv) with any affiliate of Prevent Child Abuse, Virginia;

143 12. Administrators and board presidents of and applicants for licensure or registration as a child
144 welfare agency as defined in § 63.1-195 for dissemination to the Commissioner of Social Services'
145 representative pursuant to § 63.1-198 for the conduct of investigations with respect to employees of and
146 volunteers at such facilities, caretakers, and other adults living in family day-care homes or homes
147 approved by family day-care systems, and foster and adoptive parent applicants of private child-placing
148 agencies, pursuant to § 63.1-198.1, subject to the restriction that the data shall not be further
149 disseminated by the facility or agency to any party other than the data subject, the Commissioner of
150 Social Services' representative or a federal or state authority or court as may be required to comply with
151 an express requirement of law for such further dissemination;

152 13. The school boards of the Commonwealth for the purpose of screening individuals who are
153 offered or who accept public school employment and those current school board employees for whom a
154 report of arrest has been made pursuant to § 19.2-83.1;

155 14. The State Lottery Department for the conduct of investigations as set forth in the State Lottery
156 Law (§ 58.1-4000 et seq.);

157 15. Licensed nursing homes, hospitals and home care organizations for the conduct of investigations
158 of applicants for compensated employment in licensed nursing homes pursuant to § 32.1-126.01, hospital
159 pharmacies pursuant to § 32.1-126.02, and home care organizations pursuant to § 32.1-162.9:1, subject to
160 the limitations set out in subsection E;

161 16. Licensed homes for adults, licensed district homes for adults, and licensed adult day-care centers
162 for the conduct of investigations of applicants for compensated employment in licensed homes for adults
163 pursuant to § 63.1-173.2, in licensed district homes for adults pursuant to § 63.1-189.1, and in licensed
164 adult day-care centers pursuant to § 63.1-194.13, subject to the limitations set out in subsection F;

165 17. The Alcoholic Beverage Control Board for the conduct of investigations as set forth in
166 § 4.1-103.1;

167 18. The State Board of Elections and authorized officers and employees thereof in the course of
168 conducting necessary investigations with respect to registered voters, limited to any record of felony
169 convictions;

170 19. The Commissioner of the Department of Mental Health, Mental Retardation and Substance Abuse
171 Services for those individuals who are committed to the custody of the Commissioner pursuant to
172 §§ 19.2-169.2, 19.2-169.6, 19.2-176, 19.2-177.1, 19.2-182.2, 19.2-182.3, 19.2-182.8 and 19.2-182.9 for
173 the purpose of placement, evaluation, and treatment planning;

174 20. Any alcohol safety action program certified by the Commission on the Virginia Alcohol Safety
175 Action Program for (i) assessments of habitual offenders under § 46.2-360, (ii) interventions with first
176 offenders under § 18.2-251, or (iii) services to offenders under §§ 18.2-51.4, 18.2-266 or § 18.2-266.1;

177 21. Residential facilities for juveniles regulated or operated by the Department of Social Services, the
178 Department of Education, or the Department of Mental Health, Mental Retardation and Substance Abuse
179 Services for the purpose of determining applicants' fitness for employment or for providing volunteer or
180 contractual services;

181 22. The Department of Mental Health, Mental Retardation and Substance Abuse Services and

182 facilities operated by the Department for the purpose of determining an individual's fitness for
183 employment pursuant to departmental instructions;

184 23. Pursuant to § 22.1-296.3, the governing boards or administrators of private or parochial
185 elementary or secondary schools which are accredited by a statewide accrediting organization
186 recognized, prior to January 1, 1996, by the State Board of Education or a private organization
187 coordinating such records information on behalf of such governing boards or administrators pursuant to
188 a written agreement with the Department of State Police;

189 24. Public and nonprofit private colleges and universities for the purpose of screening individuals
190 who are offered or accept employment;

191 25. Executive directors of community services boards or the personnel director serving the
192 community services board for the purpose of determining an individual's fitness for employment
193 pursuant to § 37.1-197.2;

194 26. Executive directors of behavioral health authorities as defined in § 37.1-243 for the purpose of
195 determining an individual's fitness for employment pursuant to § 37.1-197.2;

196 27. The Commissioner of the Department of Social Services for the purpose of locating persons who
197 owe child support or who are alleged in a pending paternity proceeding to be a putative father, provided
198 that only the name, address, demographics and social security number of the data subject shall be
199 released;

200 28. Authorized officers or directors of agencies licensed pursuant to Chapter 8 (§ 37.1-179 et seq.) of
201 Title 37.1 by the Department of Mental Health, Mental Retardation and Substance Abuse Services for
202 the purpose of determining if any applicant who accepts employment in any direct consumer care
203 position has been convicted of a crime that affects their fitness to have responsibility for the safety and
204 well-being of persons with mental illness, mental retardation and substance abuse pursuant to
205 §§ 37.1-183.3 and 37.1-197.2;

206 29. The Commissioner of the Department of Motor Vehicles, for the purpose of evaluating applicants
207 for a motor carrier certificate or license subject to the provisions of Chapters 20 (§ 46.2-2000 et seq.)
208 and 21 (§ 46.2-2100 et seq.) of Title 46.2;

209 30. The chairmen of the Committees for Courts of Justice of the Senate or the House of Delegates
210 for the purpose of determining if any person being considered for election to any judgeship has been
211 convicted of a crime; and

212 31. *Any bail recovery agent licensed by the Department of Criminal Justice Services pursuant to*
213 *Article 11 (§ 9.1-185 et seq.) of Chapter 1 of Title 9.1, for the purpose of determining whether there are*
214 *any outstanding warrants other than any for which the bail recovery agent bases his pursuit of a*
215 *principal on a bail bond or a fugitive from justice; provided that, only the identifying information and*
216 *record of outstanding warrants of the data subject shall be released; and*

217 32. Other entities as otherwise provided by law.

218 Upon an ex parte motion of a defendant in a felony case and upon the showing that the records
219 requested may be relevant to such case, the court shall enter an order requiring the Central Criminal
220 Records Exchange to furnish the defendant, as soon as practicable, copies of any records of persons
221 designated in the order on whom a report has been made under the provisions of this chapter.

222 Notwithstanding any other provision of this chapter to the contrary, upon a written request sworn to
223 before an officer authorized to take acknowledgments, the Central Criminal Records Exchange, or the
224 criminal justice agency in cases of offenses not required to be reported to the Exchange, shall furnish a
225 copy of conviction data covering the person named in the request to the person making the request;
226 however, such person on whom the data is being obtained shall consent in writing, under oath, to the
227 making of such request. A person receiving a copy of his own conviction data may utilize or further
228 disseminate that data as he deems appropriate. In the event no conviction data is maintained on the data
229 subject, the person making the request shall be furnished at his cost a certification to that effect.

230 B. Use of criminal history record information disseminated to noncriminal justice agencies under this
231 section shall be limited to the purposes for which it was given and may not be disseminated further.

232 C. No criminal justice agency or person shall confirm the existence or nonexistence of criminal
233 history record information for employment or licensing inquiries except as provided by law.

234 D. Criminal justice agencies shall establish procedures to query the Central Criminal Records
235 Exchange prior to dissemination of any criminal history record information on offenses required to be
236 reported to the Central Criminal Records Exchange to ensure that the most up-to-date disposition data is
237 being used. Inquiries of the Exchange shall be made prior to any dissemination except in those cases
238 where time is of the essence and the normal response time of the Exchange would exceed the necessary
239 time period. A criminal justice agency to whom a request has been made for the dissemination of
240 criminal history record information that is required to be reported to the Central Criminal Records
241 Exchange may direct the inquirer to the Central Criminal Records Exchange for such dissemination.
242 Dissemination of information regarding offenses not required to be reported to the Exchange shall be
243 made by the criminal justice agency maintaining the record as required by § 15.2-1722.

244 E. Criminal history information provided to licensed nursing homes, hospitals and to home care
245 organizations pursuant to subdivision A 15 shall be limited to the convictions on file with the Exchange
246 for any offense specified in §§ 32.1-126.01, 32.1-126.02 and 32.1-162.9:1.

247 F. Criminal history information provided to licensed assisted living facilities, licensed district homes
248 for adults, and licensed adult day-care centers pursuant to subdivision A 16 shall be limited to the
249 convictions on file with the Exchange for any offense specified in §§ 63.1-173.2, 63.1-189.1 or
250 § 63.1-194.13.

INTRODUCED

HB1225