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SENATE BILL NO. 1012

Senate Amendments in [] — February 4, 2003

A BILL to amend and reenact § 19.2-389 of the Code of Virginia, and to amend the Code of Virginia by adding a section numbered 2.2-1201.1, relating to the Department of Human Resource Management; criminal background checks for sensitive positions.

Patrons Prior to Engrossment—Senators Howell and Stolle; Delegates: Melvin, Miles and Petersen

Referred to Committee for Courts of Justice

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 a section numbered 2.2-1201.1 as follows:

§ 2.2-1201.1. Criminal background checks for certain positions.

The Department shall develop a statewide personnel policy for designating positions within each state agency as sensitive. Such policy shall provide for a state agency to require any [final] candidate for a position that has been designated as sensitive to submit to fingerprinting and to provide personal descriptive information to be forwarded along with the applicant's fingerprints through the Central Criminal Records Exchange to the Federal Bureau of Investigation for the purpose of obtaining criminal history information regarding such applicant.

[For purposes of this section, "sensitive positions" shall mean those positions generally described as directly responsible for the health, safety and welfare of the general populace or protection of critical infrastructures.]

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

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

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

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

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

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

5. Agencies of state or federal government that are authorized by state or federal statute or executive order of the President of the United States or Governor to conduct investigations determining employment suitability or eligibility for security clearances allowing access to classified information;

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

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

8. Public or private agencies when and as required by federal or state law or interstate compact to investigate (i) applicants for foster or adoptive parenthood or (ii) any individual with whom the agency is considering placing a child on an emergency, temporary or permanent basis pursuant to § 63.2-901.1,

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59 subject to the restriction that the data shall not be further disseminated by the agency to any party other
60 than a federal or state authority or court as may be required to comply with an express requirement of
61 law for such further dissemination;

62 9. To the extent permitted by federal law or regulation, public service companies as defined in
63 § 56-1, for the conduct of investigations of applicants for employment when such employment involves
64 personal contact with the public or when past criminal conduct of an applicant would be incompatible
65 with the nature of the employment under consideration;

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

68 11. A person requesting a copy of his own criminal history record information as defined in
69 § 9.1-101 at his cost, except that criminal history record information shall be supplied at no charge to a
70 person who has applied to be a volunteer with (i) a Virginia affiliate of Big Brothers/Big Sisters of
71 America, (ii) a volunteer fire company or volunteer rescue squad, (iii) the Volunteer Emergency
72 Families for Children, (iv) any affiliate of Prevent Child Abuse, Virginia, or (v) any Virginia affiliate of
73 Compeer;

74 12. Administrators and board presidents of and applicants for licensure or registration as a child
75 welfare agency as defined in § 63.2-100 for dissemination to the Commissioner of Social Services'
76 representative pursuant to § 63.2-1702 for the conduct of investigations with respect to employees of and
77 volunteers at such facilities, caretakers, and other adults living in family day-care homes or homes
78 approved by family day-care systems, and foster and adoptive parent applicants of private child-placing
79 agencies, pursuant to §§ 63.2-1719 to 63.2-1721, subject to the restriction that the data shall not be
80 further disseminated by the facility or agency to any party other than the data subject, the Commissioner
81 of Social Services' representative or a federal or state authority or court as may be required to comply
82 with an express requirement of law for such further dissemination;

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

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

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

92 16. Licensed homes for adults, licensed district homes for adults, and licensed adult day-care centers
93 for the conduct of investigations of applicants for compensated employment in licensed homes for adults
94 pursuant to § 63.2-1720, in licensed district homes for adults pursuant to § 63.1-189.1, and in licensed
95 adult day-care centers pursuant to § 63.2-1720, subject to the limitations set out in subsection F;

96 17. The Alcoholic Beverage Control Board for the conduct of investigations as set forth in
97 § 4.1-103.1;

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

101 19. The Commissioner of the Department of Mental Health, Mental Retardation and Substance Abuse
102 Services for those individuals who are committed to the custody of the Commissioner pursuant to
103 §§ 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
104 the purpose of placement, evaluation, and treatment planning;

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

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

112 22. The Department of Mental Health, Mental Retardation and Substance Abuse Services and
113 facilities operated by the Department for the purpose of determining an individual's fitness for
114 employment pursuant to departmental instructions;

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

120 24. Public and nonprofit private colleges and universities for the purpose of screening individuals

who are offered or accept employment;

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

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

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

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

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

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

31. *[The Director of the Department of Human Resource Management Heads of state agencies in which positions have been identified as sensitive] for the purpose of determining an individual's fitness for employment in positions designated as sensitive under Department [of Human Resource Management] policies developed pursuant to § 2.2-1201.1. Dissemination of criminal history record information to the [Department agencies] shall be limited to those positions generally described as directly responsible for the health, safety and welfare of the general populace or protection of critical infrastructures; and*

32. Other entities as otherwise provided by law.

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

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

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

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

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

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

F. Criminal history information provided to licensed assisted living facilities, licensed district homes for adults, and licensed adult day-care centers pursuant to subdivision 16 of subsection A shall be

182 limited to the convictions on file with the Exchange for any offense specified in § 63.1-189.1 or
183 § 63.2-1720.