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## SENATE BILL NO. 28

Offered January 13, 2010

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A BILL to amend and reenact §§ 15.2-1503.1 and 19.2-389 of the Code of Virginia and to amend the Code of Virginia by adding a section numbered 15.2-4517.1, relating to public transit services; criminal background checks.

Patrons—Puller; Delegate: Torian

Referred to Committee on Local Government

**Be it enacted by the General Assembly of Virginia:**

**1. That §§ 15.2-1503.1 and 19.2-389 of the Code of Virginia are amended and reenacted and that the Code of Virginia is amended by adding a section numbered 15.2-4517.1 as follows:**

§ 15.2-1503.1. Background checks required for certain employees and licensees.

Any locality having a local ordinance adopted in accordance with § 19.2-389 shall require any (i) applicant who is offered or accepts employment with the locality or, (ii) prospective licensee for any categories of license designated by ordinance, or (iii) applicant for employment with a contractor or public service corporation who provides public transit services to the locality to submit to fingerprinting and to provide personal descriptive information to be forwarded along with the applicant's or licensee's fingerprints through the Central Criminal Records Exchange to the Federal Bureau of Investigation for the purpose of obtaining criminal history record information regarding such applicant or licensee. The locality may require such applicant or licensee to pay the cost of the fingerprinting or a criminal records check or both.

The Central Criminal Records Exchange, upon receipt of an applicant's or licensee's record or notification that no record exists, shall make a report to the county, city or town manager, or chief law-enforcement officer or his designee, who must belong to a governmental entity. If an applicant is denied employment or a licensee is denied a license because of the information appearing in his criminal history record, the locality shall notify the applicant or licensee that information obtained from the Central Criminal Records Exchange contributed to such denial. *The applicant or licensee shall be entitled to obtain a copy of any background check report, to challenge the accuracy and completeness of any information contained in such report, and to obtain a prompt determination as to the validity of such challenge before a final determination is made by the locality.* The information shall not be disseminated except as provided for in this section.

§ 15.2-4517.1. Background checks of certain applicants and employees.

Any commission created by this chapter may require any (i) applicant for employment with the commission or any of its contractors engaged in directly providing transit services to the public, or (ii) employee of any contractor when such employee is to be assigned to directly provide transit services to the public under a contract with the commission to submit to fingerprinting and to provide personal descriptive information to be forwarded along with the applicant's or employee's fingerprints through the Central Criminal Records Exchange to the Federal Bureau of Investigation for the purpose of obtaining criminal history record information regarding such applicant or employee. *The commission may require such applicant, employee or contractor to pay the cost of the fingerprinting or a criminal records check or both.*

The Central Criminal Records Exchange, upon receipt of an applicant's or employee's record or notification that no record exists, shall make a report to the commission's chief administrative officer, who must belong to a governmental entity. If an applicant is denied employment or a contractor's employee is denied assignment to the commission's contract because of the information appearing in his criminal history record, the commission shall notify the applicant or the contractor, who shall notify the employee, that information obtained from the Central Criminal Records Exchange contributed to such denial. *The applicant or employee shall be entitled to obtain a copy of any background check report, to challenge the accuracy and completeness of any information contained in such report, and to obtain a prompt determination as to the validity of such challenge before a final determination is made by the commission or its contractor. The information shall not be disseminated except as provided for in this section.*

§ 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

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59 purposes of the administration of criminal justice and the screening of an employment application or  
60 review of employment by a criminal justice agency with respect to its own employees or applicants, and  
61 dissemination to the Virginia Parole Board, pursuant to this subdivision, of such information on all  
62 state-responsible inmates for the purpose of making parole determinations pursuant to subdivisions 1, 2,  
63 3, and 5 of § 53.1-136 shall include collective dissemination by electronic means every 30 days;

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

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

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

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

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

83 7. Agencies of any political subdivision of the Commonwealth, *public transportation companies*  
84 *owned, operated or controlled by any political subdivision, and any public service corporation that*  
85 *operates a public transit system owned by a local government* for the conduct of investigations of  
86 applicants for public employment, permit, or license whenever, in the interest of public welfare or  
87 safety, it is necessary to determine under a duly enacted ordinance if the past criminal conduct of a  
88 person with a conviction record would be compatible with the nature of the employment, permit, or  
89 license under consideration;

90 *7a. Commissions created pursuant to the Transportation District Act of 1964 (§ 15.2-4500 et seq.)*  
91 *and their contractors for the conduct of investigations of applicants for employment whenever, in the*  
92 *interest of public welfare or safety and as authorized in the Transportation District Act of 1964*  
93 *(§ 15.2-4500 et seq.), it is necessary to determine if the past criminal conduct of a person with a*  
94 *conviction record would be compatible with the nature of the employment under consideration;*

95 8. Public or private agencies when authorized or required by federal or state law or interstate  
96 compact to investigate (i) applicants for foster or adoptive parenthood or (ii) any individual, and the  
97 adult members of that individual's household, with whom the agency is considering placing a child or  
98 from whom the agency is considering removing a child due to abuse or neglect, on an emergency,  
99 temporary, or permanent basis pursuant to §§ 63.2-901.1 and 63.2-1505, subject to the restriction that  
100 the data shall not be further disseminated to any party other than a federal or state authority or court as  
101 may be required to comply with an express requirement of law;

102 9. To the extent permitted by federal law or regulation, public service companies as defined in  
103 § 56-1, for the conduct of investigations of applicants for employment when such employment involves  
104 personal contact with the public or when past criminal conduct of an applicant would be incompatible  
105 with the nature of the employment under consideration;

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

108 11. A person requesting a copy of his own criminal history record information as defined in  
109 § 9.1-101 at his cost, except that criminal history record information shall be supplied at no charge to a  
110 person who has applied to be a volunteer with (i) a Virginia affiliate of Big Brothers/Big Sisters of  
111 America; (ii) a volunteer fire company or volunteer rescue squad; (iii) the Volunteer Emergency  
112 Families for Children; (iv) any affiliate of Prevent Child Abuse, Virginia; (v) any Virginia affiliate of  
113 Compeer; or (vi) any board member or any individual who has been offered membership on the board  
114 of a Crime Stoppers, Crime Solvers or Crime Line program as defined in § 15.2-1713.1;

115 12. Administrators and board presidents of and applicants for licensure or registration as a child  
116 welfare agency as defined in § 63.2-100 for dissemination to the Commissioner of Social Services'  
117 representative pursuant to § 63.2-1702 for the conduct of investigations with respect to employees of and  
118 volunteers at such facilities, caretakers, and other adults living in family day-care homes or homes  
119 approved by family day-care systems, and foster and adoptive parent applicants of private child-placing  
120 agencies, pursuant to §§ 63.2-1719 through 63.2-1721, subject to the restriction that the data shall not be

121 further disseminated by the facility or agency to any party other than the data subject, the Commissioner  
122 of Social Services' representative or a federal or state authority or court as may be required to comply  
123 with an express requirement of law for such further dissemination;

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

127 14. The State Lottery Department for the conduct of investigations as set forth in the State Lottery  
128 Law (§ 58.1-4000 et seq.), and the Department of Agriculture and Consumer Services for the conduct of  
129 investigations as set forth in Article 1.1:1 (§ 18.2-340.15 et seq.) of Chapter 8 of Title 18.2;

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

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

138 17. The Alcoholic Beverage Control Board for the conduct of investigations as set forth in  
139 § 4.1-103.1;

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

143 19. The Commissioner of Behavioral Health and Developmental Services for those individuals who  
144 are committed to the custody of the Commissioner pursuant to §§ 19.2-169.2, 19.2-169.6, 19.2-176,  
145 19.2-177.1, 19.2-182.2, 19.2-182.3, 19.2-182.8, and 19.2-182.9 for the purpose of placement, evaluation,  
146 and treatment planning;

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

150 21. Residential facilities for juveniles regulated or operated by the Department of Social Services, the  
151 Department of Education, or the Department of Behavioral Health and Developmental Services for the  
152 purpose of determining applicants' fitness for employment or for providing volunteer or contractual  
153 services;

154 22. The Department of Behavioral Health and Developmental Services and facilities operated by the  
155 Department for the purpose of determining an individual's fitness for employment pursuant to  
156 departmental instructions;

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

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

164 25. Executive directors of community services boards or the personnel director serving the  
165 community services board for the purpose of determining an individual's fitness for employment  
166 pursuant to §§ 37.2-506 and 37.2-607;

167 26. Executive directors of behavioral health authorities as defined in § 37.2-600 for the purpose of  
168 determining an individual's fitness for employment pursuant to §§ 37.2-506 and 37.2-607;

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

173 28. Authorized officers or directors of agencies licensed pursuant to Article 2 (§ 37.2-403 et seq.) of  
174 Chapter 4 of Title 37.2 by the Department of Behavioral Health and Developmental Services for the  
175 purpose of determining if any applicant who accepts employment in any direct consumer care position  
176 has been convicted of a crime that affects their fitness to have responsibility for the safety and  
177 well-being of persons with mental illness, mental retardation and substance abuse pursuant to  
178 §§ 37.2-416, 37.2-506, and 37.2-607;

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

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

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

191 32. The Office of the Attorney General, for all criminal justice activities otherwise permitted under  
192 subdivision A 1 and for purposes of performing duties required by the Civil Commitment of Sexually  
193 Violent Predators Act (§ 37.2-900 et seq.);

194 33. Shipyards, to the extent permitted by federal law or regulation, engaged in the design,  
195 construction, overhaul, or repair of nuclear vessels for the United States Navy, including their subsidiary  
196 companies, for the conduct of investigations of applications for employment or for access to facilities,  
197 by contractors, leased laborers, and other visitors;

198 34. Any employer of individuals whose employment requires that they enter the homes of others, for  
199 the purpose of screening individuals who apply for, are offered, or have accepted such employment;

200 35. Public agencies when and as required by federal or state law to investigate (i) applicants as  
201 providers of adult foster care and home-based services or (ii) any individual with whom the agency is  
202 considering placing an adult on an emergency, temporary, or permanent basis pursuant to § 63.2-1601.1,  
203 subject to the restriction that the data shall not be further disseminated by the agency to any party other  
204 than a federal or state authority or court as may be required to comply with an express requirement of  
205 law for such further dissemination, subject to limitations set out in subsection G;

206 36. The Department of Medical Assistance Services, or its designee, for the purpose of screening  
207 individuals who, through contracts, subcontracts, or direct employment, volunteer, apply for, are offered,  
208 or have accepted a position related to the provision of transportation services to enrollees in the  
209 Medicaid Program or the Family Access to Medical Insurance Security (FAMIS) Program, or any other  
210 program administered by the Department of Medical Assistance Services;

211 37. The State Corporation Commission for the purpose of investigating individuals who are members,  
212 senior officers, directors, and principals of an applicant for licensure as a mortgage lender or mortgage  
213 broker, or a licensed mortgage lender or mortgage broker for the purpose of investigating individuals  
214 applying for a position of employment in which the individual may have access to or process personal  
215 identifying or financial information from a member of the public, pursuant to Chapter 16 (§ 6.1-408 et  
216 seq.) of Title 6.1. Notwithstanding any other provision of law, if an application for a mortgage lender or  
217 mortgage broker license is denied based in whole or in part on information obtained from the Central  
218 Criminal Records Exchange pursuant to § 6.1-414, the Commissioner of Financial Institutions or his  
219 designee may disclose such information to the applicant or its designee;

220 38. The Department of Professional and Occupational Regulation for the purpose of investigating  
221 individuals for initial licensure pursuant to § 54.1-2106.1; and

222 39. Other entities as otherwise provided by law.

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

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

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

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

239 D. Criminal justice agencies shall establish procedures to query the Central Criminal Records  
240 Exchange prior to dissemination of any criminal history record information on offenses required to be  
241 reported to the Central Criminal Records Exchange to ensure that the most up-to-date disposition data is  
242 being used. Inquiries of the Exchange shall be made prior to any dissemination except in those cases  
243 where time is of the essence and the normal response time of the Exchange would exceed the necessary

244 time period. A criminal justice agency to whom a request has been made for the dissemination of  
245 criminal history record information that is required to be reported to the Central Criminal Records  
246 Exchange may direct the inquirer to the Central Criminal Records Exchange for such dissemination.  
247 Dissemination of information regarding offenses not required to be reported to the Exchange shall be  
248 made by the criminal justice agency maintaining the record as required by § 15.2-1722.

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

252 F. Criminal history information provided to licensed assisted living facilities, licensed district homes  
253 for adults, and licensed adult day-care centers pursuant to subdivision 16 of subsection A shall be  
254 limited to the convictions on file with the Exchange for any offense specified in § 63.1-189.1 or  
255 63.2-1720.

256 G. Criminal history information provided to public agencies pursuant to subdivision 35 of subsection  
257 A shall be limited to the convictions on file with the Exchange for any offense specified in § 63.2-1719.

258 H. Upon receipt of a written request from an employer or prospective employer, the Central Criminal  
259 Records Exchange, or the criminal justice agency in cases of offenses not required to be reported to the  
260 Exchange, shall furnish at the employer's cost a copy of conviction data covering the person named in  
261 the request to the employer or prospective employer making the request; provided that the person on  
262 whom the data is being obtained has consented in writing to the making of such request and has  
263 presented a photo-identification to the employer or prospective employer. In the event no conviction data  
264 is maintained on the person named in the request, the requesting employer or prospective employer shall  
265 be furnished at his cost a certification to that effect. The criminal history record search shall be  
266 conducted on forms provided by the Exchange.