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SENATE BILL NO. 28

AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the House Committee on Counties, Cities and Towns
on February 19, 2010)

(Patron Prior to Substitute—Senator Puller)

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.

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 (i) shall require any (i) applicant who is offered or accepts employment with the locality or, (ii) shall require any prospective licensee for any categories of license designated by ordinance, or (iii) may require any individual who is offered or accepts employment with a contractor or public service corporation that 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 information shall not be disseminated except as provided for in this section.

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

A. Any commission created pursuant to this chapter may require any individual who is offered a position of employment with the commission, or with any contractor of the commission when such individual 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 individual'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 individual. The commission shall bear all costs of obtaining criminal history record information regarding such individual, including expenses incurred by the Virginia State Police in connection with such fingerprinting or criminal records check. The commission may require such individual or contractor to reimburse the commission for the cost of the fingerprinting or a criminal records check or both.

B. The Central Criminal Records Exchange, upon receipt of an individual'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. 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 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 30 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 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

60 pending;

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

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

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

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

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

80 *7a. Commissions created pursuant to the Transportation District Act of 1964 (§ 15.2-4500 et seq.)*
81 *and their contractors, for the conduct of investigations of individuals who have been offered a position*
82 *of employment whenever, in the interest of public welfare or safety and as authorized in the*
83 *Transportation District Act of 1964, it is necessary to determine if the past criminal conduct of a person*
84 *with a conviction record would be compatible with the nature of the employment under consideration;*

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

92 9. To the extent permitted by federal law or regulation, public service companies as defined in
93 § 56-1, for the conduct of investigations of applicants for employment when such employment involves
94 personal contact with the public or when past criminal conduct of an applicant would be incompatible
95 with the nature of the employment under consideration;

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

98 11. A person requesting a copy of his own criminal history record information as defined in
99 § 9.1-101 at his cost, except that criminal history record information shall be supplied at no charge to a
100 person who has applied to be a volunteer with (i) a Virginia affiliate of Big Brothers/Big Sisters of
101 America; (ii) a volunteer fire company or volunteer rescue squad; (iii) the Volunteer Emergency
102 Families for Children; (iv) any affiliate of Prevent Child Abuse, Virginia; (v) any Virginia affiliate of
103 Compeer; or (vi) any board member or any individual who has been offered membership on the board
104 of a Crime Stoppers, Crime Solvers or Crime Line program as defined in § 15.2-1713.1;

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

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

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

120 15. Licensed nursing homes, hospitals and home care organizations for the conduct of investigations
121 of applicants for compensated employment in licensed nursing homes pursuant to § 32.1-126.01, hospital

pharmacies pursuant to § 32.1-126.02, and home care organizations pursuant to § 32.1-162.9:1, subject to the limitations set out in subsection E;

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

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

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

19. The Commissioner of Behavioral Health and Developmental Services for those individuals who are committed to the custody of the Commissioner pursuant to §§ 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 the purpose of placement, evaluation, and treatment planning;

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

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

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

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

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 §§ 37.2-506 and 37.2-607;

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

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 Article 2 (§ 37.2-403 et seq.) of Chapter 4 of Title 37.2 by the Department of Behavioral Health and Developmental 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 §§ 37.2-416, 37.2-506, and 37.2-607;

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;

31. 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 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;

32. The Office of the Attorney General, for all criminal justice activities otherwise permitted under subdivision A 1 and for purposes of performing duties required by the Civil Commitment of Sexually

183 Violent Predators Act (§ 37.2-900 et seq.);

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

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

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

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

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

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

212 39. Other entities as otherwise provided by law.

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

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

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

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

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

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

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

245 63.2-1720.

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

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