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**HOUSE BILL NO. 93**

Offered January 8, 2014

Prefiled December 13, 2013

A *BILL to amend the Code of Virginia by adding a section numbered 2.2-2812.1 and by adding in Article 1 of Chapter 3 of Title 40.1 a section numbered 40.1-28.7:5, relating to employer inquiries regarding criminal convictions, charges, and arrests; civil penalty.*

Patron—Krupicka

Referred to Committee on General Laws

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

**1. That the Code of Virginia is amended by adding a section numbered 2.2-2812.1 and by adding in Article 1 of Chapter 3 of Title 40.1 a section numbered 40.1-28.7:5 as follows:**

**§ 2.2-2812.1. Prohibition of questions on employment applications regarding arrests, charges, or convictions; limitations on such inquiries prior to conditional offer of employment.**

A. As used in this section:

"Conviction" means any adjudication that an individual committed a crime, a finding of guilt after a criminal trial by a court of competent jurisdiction, or any plea of guilty or nolo contendere to a criminal charge.

"State agency" means any authority, board, department, instrumentality, institution, agency, or other unit of state government. "State agency" does not include any county, city, or town or any local or regional governmental authority.

B. No state agency shall include on any application for employment a question inquiring whether the prospective employee has ever been arrested or charged with, or convicted of, any crime. The prohibition in this subsection against including such a question on any employment application shall not apply to applications for positions designated as sensitive pursuant to § 2.2-1201.1, law-enforcement agency positions, or positions related to law-enforcement agencies.

C. No state agency shall inquire whether a prospective employee has ever been convicted of any crime unless the inquiry takes place after the prospective employee has received a conditional offer of employment, which offer may be withdrawn if the prospective employee has a conviction record that bears a rational relationship to the duties and responsibilities of the position. The prohibition in this subsection against a state agency's inquiring into a prospective employee's criminal conviction record prior to the time that the prospective employee has received a conditional offer of employment shall not apply to applications for positions designated as sensitive pursuant to § 2.2-1201.1 or to state agencies that are expressly permitted to inquire into an individual's criminal history for employment purposes pursuant to any provision of federal or state law.

D. No state agency shall inquire whether a prospective employee has ever been arrested or charged with a crime unless the inquiry takes place after the prospective employee has received a conditional offer of employment, which offer may be withdrawn if (i) the prospective employee's criminal arrest or charge resulted in the prospective employee's conviction of a crime and (ii) the crime of which he was convicted bears a rational relationship to the duties and responsibilities of the position. The prohibition in this subsection against a state agency's inquiring into a prospective employee's record of criminal arrests or charges shall not apply to applications for positions designated as sensitive pursuant to § 2.2-1201.1 or to state agencies that are expressly permitted to inquire into an individual's criminal arrests or charges for employment purposes pursuant to any provision of federal or state law.

**§ 40.1-28.7:5. Prohibition of questions on employment applications regarding arrests, charges, or convictions; limitations on such inquiries prior to conditional offer of employment; civil penalty.**

A. As used in this section, "conviction" means any adjudication that an individual committed a crime, a finding of guilt after a criminal trial by a court of competent jurisdiction, or any plea of guilty or nolo contendere to a criminal charge.

B. No employer shall include on any application for employment a question inquiring whether the prospective employee has ever been arrested or charged with, or convicted of, any crime. The prohibition in this subsection against including such a question on any employment application shall not apply to applications for law-enforcement agency positions or positions related to law-enforcement agencies.

C. No employer shall inquire whether a prospective employee has ever been convicted of any crime unless the inquiry takes place after the prospective employee has received a conditional offer of employment, which offer may be withdrawn if the prospective employee has a conviction record that

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59 bears a rational relationship to the duties and responsibilities of the position. The prohibition in this  
60 subsection against an employer's inquiring into a prospective employee's criminal conviction record  
61 prior to the time that the prospective employee has received a conditional offer of employment shall not  
62 apply to employers who are expressly permitted to inquire into an individual's criminal history for  
63 employment purposes pursuant to any provision of federal or state law.

64 D. No employer shall inquire whether a prospective employee has ever been arrested or charged  
65 with a crime unless the inquiry takes place after the prospective employee has received a conditional  
66 offer of employment, which offer may be withdrawn if (i) the prospective employee's criminal arrest or  
67 charge resulted in the prospective employee's conviction of a crime and (ii) the crime of which he was  
68 convicted bears a rational relationship to the duties and responsibilities of the position. The prohibition  
69 in this subsection against an employer's inquiring into a prospective employee's record of criminal  
70 arrests or charges shall not apply to employers who are expressly permitted to inquire into an  
71 individual's criminal arrests or charges for employment purposes pursuant to any provision of federal or  
72 state law.

73 E. Any employer who violates the provisions of this section shall be subject to a civil penalty not to  
74 exceed \$100 for each violation. A penalty determination by the Commissioner shall be final, unless  
75 within 15 days after receipt of such notice the person charged with the violation notifies the  
76 Commissioner by certified mail that he intends to contest the proposed penalty before the appropriate  
77 general district court. Civil penalties owed under this section shall be paid to the Commissioner for  
78 deposit into the general fund of the Treasury of the Commonwealth. The Commissioner shall prescribe  
79 procedures for the payment of proposed penalties that are not contested by employers.