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SENATE BILL NO. 542

Offered January 8, 2014

A *BILL to amend and reenact §§ 19.2-389 and 38.2-3455 of the Code of Virginia and to amend the Code of Virginia by adding in Article 7 of Chapter 34 of Title 38.2 sections numbered 38.2-3457, 38.2-3458, and 38.2-3459, relating to the regulation of navigators for health benefit exchanges.*

Patron—Martin

Referred to Committee on Commerce and Labor

Be it enacted by the General Assembly of Virginia:

1. That §§ 19.2-389 and 38.2-3455 of the Code of Virginia are amended and reenacted and that the Code of Virginia is amended by adding in Article 7 of Chapter 34 of Title 38.2 sections numbered 38.2-3457, 38.2-3458, and 38.2-3459 as follows:

§ 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 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, public transportation companies owned, operated or controlled by any political subdivision, and any public service corporation that operates a public transit system owned by a local government for the conduct of investigations of applicants for 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;

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

8. Public or private agencies when authorized or required by federal or state law or interstate compact to investigate (i) applicants for foster or adoptive parenthood or (ii) any individual, and the adult members of that individual's household, with whom the agency is considering placing a child or from whom the agency is considering removing a child due to abuse or neglect, on an emergency, temporary, or permanent basis pursuant to §§ 63.2-901.1 and 63.2-1505, subject to the restriction that

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59 the data shall not be further disseminated to any party other than a federal or state authority or court as
60 may be required to comply with an express requirement of law;

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

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

67 11. A person requesting a copy of his own criminal history record information as defined in
68 § 9.1-101 at his cost, except that criminal history record information shall be supplied at no charge to a
69 person who has applied to be a volunteer with (i) a Virginia affiliate of Big Brothers/Big Sisters of
70 America; (ii) a volunteer fire company; (iii) the Volunteer Emergency Families for Children; (iv) any
71 affiliate of Prevent Child Abuse, Virginia; (v) any Virginia affiliate of Compeer; or (vi) any board
72 member or any individual who has been offered membership on the board of a Crime Stoppers, Crime
73 Solvers or Crime Line program as defined in § 15.2-1713.1;

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, 63.2-1720, and 63.2-1721, subject to the restriction that the data
80 shall not be further disseminated by the facility or agency to any party other than the data subject, the
81 Commissioner of Social Services' representative or a federal or state authority or court as may be
82 required to comply 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.), and the Department of Agriculture and Consumer Services for the conduct of
88 investigations as set forth in Article 1.1:1 (§ 18.2-340.15 et seq.) of Chapter 8 of Title 18.2;

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

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

97 17. The Alcoholic Beverage Control Board for the conduct of investigations as set forth in
98 § 4.1-103.1;

99 18. The State Board of Elections and authorized officers and employees thereof and general registrars
100 appointed pursuant to § 24.2-110 in the course of conducting necessary investigations with respect to
101 voter registration, limited to any record of felony convictions;

102 19. The Commissioner of Behavioral Health and Developmental Services for those individuals who
103 are committed to the custody of the Commissioner pursuant to §§ 19.2-169.2, 19.2-169.6, 19.2-182.2,
104 19.2-182.3, 19.2-182.8, and 19.2-182.9 for 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 Behavioral Health and Developmental Services for the
110 purpose of determining applicants' fitness for employment or for providing volunteer or contractual
111 services;

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

115 23. Pursuant to § 22.1-296.3, the governing boards or administrators of private or religious
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

121 who are offered or accept employment;

122 25. Members of a threat assessment team established by a public institution of higher education
123 pursuant to § 23-9.2:10 or by a private nonprofit institution of higher education, for the purpose of
124 assessing or intervening with an individual whose behavior may present a threat to safety; however, no
125 member of a threat assessment team shall redisclose any criminal history record information obtained
126 pursuant to this section or otherwise use any record of an individual beyond the purpose that such
127 disclosure was made to the threat assessment team;

128 26. Executive directors of community services boards or the personnel director serving the
129 community services board for the purpose of determining an individual's fitness for employment
130 pursuant to §§ 37.2-506 and 37.2-607;

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

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

136 29. Authorized officers or directors of agencies licensed pursuant to Article 2 (§ 37.2-403 et seq.) of
137 Chapter 4 of Title 37.2 by the Department of Behavioral Health and Developmental Services for the
138 purpose of determining if any applicant who accepts employment in any direct care position has been
139 convicted of a crime that affects his fitness to have responsibility for the safety and well-being of
140 individuals with mental illness, intellectual disability, or substance abuse pursuant to §§ 37.2-416,
141 37.2-506, and 37.2-607;

142 30. The Commissioner of the Department of Motor Vehicles, for the purpose of evaluating applicants
143 for and holders of a motor carrier certificate or license subject to the provisions of Chapters 20
144 (§ 46.2-2000 et seq.) and 21 (§ 46.2-2100 et seq.) of Title 46.2;

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

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

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

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

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

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

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

174 38. The State Corporation Commission for the purpose of investigating individuals who are current
175 or proposed members, senior officers, directors, and principals of an applicant or person licensed under
176 Chapter 16 (§ 6.2-1600 et seq.) of Title 6.2. Notwithstanding any other provision of law, if an
177 application is denied based in whole or in part on information obtained from the Central Criminal
178 Records Exchange pursuant to § 6.2-1605, the Commissioner of Financial Institutions or his designee
179 may disclose such information to the applicant or its designee;

180 39. The Department of Professional and Occupational Regulation for the purpose of investigating
181 individuals for initial licensure pursuant to § 54.1-2106.1;

40. The Department for Aging and Rehabilitative Services and the Department for the Blind and Vision Impaired for the purpose of evaluating an individual's fitness for various types of employment and for the purpose of delivering comprehensive vocational rehabilitation services pursuant to Article 11 (§ 51.5-170 et seq.) of Chapter 14 of Title 51.5 that will assist the individual in obtaining employment;

41. Bail bondsmen, in accordance with the provisions of § 19.2-120;

42. The State Treasurer for the purpose of determining whether a person receiving compensation for wrongful incarceration meets the conditions for continued compensation under § 8.01-195.12;

43. The Department of Social Services and directors of local departments of social services for the purpose of screening individuals seeking to enter into a contract with the Department of Social Services or a local department of social services for the provision of child care services for which child care subsidy payments may be provided; and

44. *The State Corporation Commission for the purpose of investigating individuals who are applicants for registration as navigators under Article 7 (§ 38.2-3455 et seq.) of Chapter 34 of Title 38.2. Notwithstanding any other provision of law, if an application is denied based in whole or in part on information obtained from the Central Criminal Records Exchange pursuant to § 38.2-3457, the Commission may disclose such information to the applicant; and*

45. 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 A 15 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 A 16 shall be limited to the convictions on file with the Exchange for any offense specified in § 63.1-189.1 or 63.2-1720.

G. Criminal history information provided to public agencies pursuant to subdivision A 36 shall be limited to the convictions on file with the Exchange for any offense specified in § 63.2-1719.

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

§ 38.2-3455. Definitions.

As used in this article, unless the context requires otherwise:

"Exchange" means a health benefit exchange established or operated in the Commonwealth, including a health benefit exchange established or operated by the U.S. Secretary of Health and Human Services, pursuant to § 1311(b) of the Patient Protection and Affordable Care Act, P.L. 111-148, as amended.

"Qualified dental plan" means a limited scope dental plan that has in effect a certification that the plan meets the criteria for certification described in § 1311(d)(2)(B)(ii) of the Patient Protection and Affordable Care Act, P.L. 111-148, as amended.

"Qualified health plan" means a health benefit plan that has in effect a certification that the plan meets the criteria for certification described in § 1311(c) of the Patient Protection and Affordable Care Act, P.L. 111-148, as amended.

"Navigator" means an individual or entity described a person who is selected to perform in the Commonwealth the activities and duties identified in 42 U.S.C. § 1311(i)(2) that is selected to perform the activities and duties identified in 42 U.S.C. § 18031(i) in the Commonwealth and includes any person who receives grant moneys from the U.S. Department of Health and Human Services, the Commonwealth, or a health care exchange or private moneys to perform any of the activities or duties identified in 42 U.S.C. § 18031(i). "Navigator" does not include an individual or entity licensed as an agent under Chapter 18 (§ 38.2-1800 et seq.) of this title to sell, solicit, or negotiate contracts of insurance or annuity in the Commonwealth.

"Other affordable care options" means the programs provided under the state plan for medical assistance services pursuant to Title XIX of the Social Security Act, as amended, and the Family Access to Medical Insurance Security (FAMIS) Plan developed pursuant to Title XXI of the Social Security Act, as amended.

"Qualified dental plan" means a limited scope dental plan that has in effect a certification that the plan meets the criteria for certification described in § 1311(d)(2)(B)(ii) of the Patient Protection and Affordable Care Act, P.L. 111-148, as amended.

"Qualified health plan" means a health benefit plan that has in effect a certification that the plan meets the criteria for certification described in § 1311(c) of the Patient Protection and Affordable Care Act, P.L. 111-148, as amended.

"Secretary" means the Secretary of the U.S. Department of Health and Human Services.

§ 38.2-3457. Navigator registration and reporting.

A. A person shall not act as or hold himself out to be a navigator in the Commonwealth unless that person registers with the Commission and meets all of the following requirements:

1. Submits application and registration fees in the amounts prescribed by the Commission;
2. Has received a high school diploma or general equivalency diploma;
3. Successfully completes all federally required training programs; and
4. Furnishes information concerning the applicant's identity, including fingerprints and personal descriptive information, for submission to the Federal Bureau of Investigation or any federal or state governmental agency or entity authorized to receive such information for a state and national criminal history background check, as prescribed by the Commission, and personal history and experience in a form prescribed by the Commission.

B. Prior to allowing a person to register, the Commission shall submit a full set of the applicant's fingerprints and personal descriptive information to the Central Criminal Records Exchange to be forwarded to the Federal Bureau of Investigation for the purpose of obtaining criminal history record information regarding the applicant. The Central Criminal Records Exchange, upon receipt of an individual's record or notification that no record exists, shall submit an eligibility report to the Commission. If an applicant is denied registration because of information appearing in his criminal history record and the person disputes the information upon which the denial was based, the Commission shall notify the applicant that information obtained from the Central Criminal Records Exchange contributed to such denial. The Central Criminal Records Exchange shall, upon written request, furnish to the applicant the procedures for obtaining a copy of the criminal history record from the Federal Bureau of Investigation. The information provided to the Commission shall not be disseminated except as provided in this section. The applicant shall bear the costs of the fingerprinting and obtaining the criminal history record.

C. The Commission shall not allow a person to be registered as a navigator if the person has been convicted of a misdemeanor involving fraud or dishonesty or convicted of a felony. The Commission may deny, suspend, or revoke a registration of a navigator if:

1. The navigator is charged with a felony;
2. The navigator is charged with a misdemeanor involving fraud or dishonesty;
3. The Commission receives credible reports that the navigator has provided false or fraudulent information to consumers; or
4. The navigator has engaged in intentional or negligent conduct that has resulted in the release of a consumer's personally identifiable information.

305 D. An organization employing a navigator shall report to the Commission any event that results in
306 the unauthorized release of a consumer's personally identifiable information. The organization shall
307 attempt to report this unauthorized release of personally identifiable information to the affected
308 individual whose personal information was released within 24 hours after discovering the breach. The
309 Commission shall submit a report on or before February 1 of each year to the Speaker of the House of
310 Delegates and the President Pro Tempore of the Senate detailing the number of breaches reported to
311 the Commission pursuant to this subsection and the circumstances of each breach.

312 E. Notwithstanding any other law, a navigator shall not sell, solicit, or negotiate insurance in the
313 Commonwealth for any class or classes of insurance when assisting individuals with enrollment or any
314 other navigator activities or duties through any exchange established or operating in the
315 Commonwealth, including any exchange established or operated by the U.S. Department of Health and
316 Human Services.

317 F. All personal health information shall be secured by all navigators and their administrative staff in
318 accordance with health care industry standards. Failure to do so shall result in revocation of the
319 navigator's registration.

320 G. The Commission shall maintain a website for the purpose of providing the public with a complete
321 list of all currently registered navigators in the Commonwealth.

322 **§ 38.2-3458. Current navigators.**

323 A person who is acting as a navigator pursuant to 42 U.S.C. § 18031(i) on July 1, 2014, shall
324 register by October 1, 2014, with the Commission pursuant to § 38.2-3457 in order to continue
325 performing the duties and activities of a navigator in the Commonwealth after October 1, 2014.

326 **§ 38.2-3459. Penalties.**

327 A. If the Commission determines that a registered navigator has violated this article, or any order or
328 regulation adopted thereunder, after notice and opportunity to be heard, the Commission may impose a
329 penalty in accordance with §§ 38.2-218 and 38.2-219 and place on probation, suspend, or revoke any
330 individual's or entity's registration.

331 B. The registration of any navigator shall terminate immediately when such navigator becomes
332 decertified by the U.S. Department of Health and Human Services, whether or not the Commission has
333 been notified of such decertification.