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## SENATE BILL NO. 534

Offered January 13, 2016

Prefiled January 13, 2016

A *BILL to amend and reenact § 8.01-40.3 of the Code of Virginia, relating to dissemination of criminal history record information; civil actions.*

\_\_\_\_\_  
Patron—Surovell

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Referred to Committee for Courts of Justice

**Be it enacted by the General Assembly of Virginia:****1. That § 8.01-40.3 of the Code of Virginia is amended and reenacted as follows:****§ 8.01-40.3. Unauthorized dissemination, etc., of criminal history record information; civil action.**A. *As used in this section:*

"Criminal history provider" means any person or organization that compiles a criminal history report for its own use or provides such report to any person or organization other than a criminal justice agency or a law-enforcement agency. "Criminal history provider" does not include (i) a criminal justice agency; (ii) a law-enforcement agency; (iii) a person employed by or affiliated with a newspaper or other periodical issued at regular intervals and having a general circulation; (iv) a recognized press association or wire service, provided that such association or person receives income from the gathering, writing, editing, interpreting, announcing, or broadcasting of news; (v) a circuit court clerk or any employee of the judicial branch of the Commonwealth that provides such information in his official capacity; or (vi) any other person who gathers, records, compiles, or disseminates criminal history record information or criminal history reports solely for governmental use or for journalistic, academic, or legal research purposes.

"Criminal history record information" means the same as that term is defined in § 9.1-101.

"Criminal history report" means criminal history record information that has been furnished to a third party other than for governmental use or for journalistic, academic, or legal research.

"Criminal justice agency" means the same as that term is defined in § 9.1-101.

"Law-enforcement agency" means any sheriff's office, police department, adult or youth correctional facility, or other agency or department that employs persons who have law-enforcement authority that is under the direction and control of the Commonwealth or any local governing body. "Law-enforcement agency" includes, by order of the Governor, the Virginia National Guard.

B. A criminal history provider shall not include criminal history record information in a criminal history report if the criminal history record information fails to reflect any material change to the official record occurring 60 or more days before the delivery of the criminal history report. A criminal history provider does not violate this section if the material change was not contained in the official record at least 60 days before the delivery of the criminal history report.

C. Except as provided in subsection B, if any criminal history provider disseminates, publishes, or maintains or causes to be disseminated, published, or maintained a criminal history record report that such criminal history provider knows or has reason to know contains criminal history information relating to a record that (i) has been expunged, (ii) is restricted by a court or the rules of a court and is marked as restricted from public disclosure or is not accessible to the public, or (iii) is materially inaccurate or incomplete, the criminal history provider shall be liable to the subject of the criminal history record report for actual damages or \$500, whichever is greater. The court may also award reasonable attorney fees and costs. However, a criminal history provider shall not be liable under this subsection if the dissemination or publication of such information was not prohibited at the time of the dissemination or publication or if the dissemination or publication is otherwise required by law.

D. Any person who disseminates, publishes, or maintains or causes to be disseminated, published, or maintained the criminal history record information as defined in ~~§ 9.1-101~~ of an individual pertaining to that individual's charge or arrest for a criminal offense and solicits, requests, or accepts money or other thing of value for removing such criminal history record information shall be liable to the individual who is the subject of the information for actual damages or \$500, whichever is greater, in addition to reasonable attorney fees and costs.

~~B. E.~~ Nothing in this section shall be construed to impose liability on:

~~1. An~~ an interactive computer service, as defined in 47 U.S.C. § 230(f), for content provided by another person, nor shall it be deemed to prohibit an individual from bringing an action on the individual's own behalf under the federal Fair Credit Reporting Act (15 U.S.C. § 1681 et seq.).

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59 2. Any speech protected by Article I, Section 12 of the Constitution of Virginia.  
60 C. As used in this section, "criminal history record information" means the same as that term is  
61 defined in ~~§ 9.1-101.~~