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SENATE BILL NO. 386

Offered January 22, 1996

A BILL to amend the Code of Virginia by adding in Title 2.1 a chapter numbered 10.1:3, consisting of sections numbered 2.1-116.9:7 through 2.1-116.9:15, relating to Law-Enforcement Officers and Employees Privacy Act.

Patrons—Houck, Howell, Saslaw and Woods; Delegates: Darner, Keating, Plum, Puller and Scott

Referred to the Committee on General Laws

Be it enacted by the General Assembly of Virginia:

1. That the Code of Virginia is amended by adding in Title 2.1 a chapter numbered 10.1:3, consisting of sections numbered 2.1-116.9:7 through 2.1-116.9:15, as follows:

CHAPTER 10.1:3.

LAW-ENFORCEMENT OFFICERS AND EMPLOYEES PRIVACY ACT.

§ 2.1-116.9:7. Definitions.

As used in this chapter:

"Law-enforcement employee" or "employee" means a person, currently employed or formerly employed by an employer, who was or is not a law-enforcement officer.

"Law-enforcement employer" or "employer" means any state, county, city or town law-enforcement agency which has four or more officers or employees, including any agent of the employer.

"Law-enforcement officer" or "officer" means any full- or part-time employee or former employee who was or is responsible for the prevention and detection of crime and the enforcement of the penal, traffic or highway laws of the Commonwealth.

"Personnel record" means any record created or kept by an employer, including separate files kept by a criminal investigation agency as part of an investigation, that identifies the officer or employee to the extent that such record has been or could be used to affect such officer's or employee's employment, promotion, transfer, additional compensation, or disciplinary action. A personnel record shall not include (i) references supplied to the employer if the identity of the person making the reference would be disclosed; (ii) materials relating to the employer's staff and personnel planning, including salary increases, management bonus plans, promotions, and job assignments; (iii) information of a personal nature about a person other than the officer or employee if disclosure of the information would constitute a clearly unwarranted invasion of the other person's privacy; or (iv) information that is kept separately from other records and that relates to an ongoing investigation by the employer pursuant to § 2.1-116.9:14.

§ 2.1-116.9:8. Officer's and employee's right to review records.

Upon request, an employer shall provide any officer or employee with an opportunity to review the officer's or employee's own personnel record as provided by law. The review shall take place at the location where the employer keeps the record and during normal office hours. The employer may allow the review to take place at another time or location that would be more convenient to the officer or employee. If a review during normal office hours would require an officer or employee to take time off from work with that employer, then the employer shall provide some other reasonable time for the review.

§ 2.1-116.9:9. Scope; limitations.

Personnel-record information which was not disclosed or included in the personnel record when reviewed by the officer or employee pursuant to § 2.1-116.9:8 but should have been, shall not be used by an employer in any judicial or quasi-judicial proceeding against an officer or employee. However, materials which should have been discussed or included in such personnel record shall be used at the request of the officer or employee.

§ 2.1-116.9:10. Duplication of records; fee.

After the review provided in § 2.1-116.9:8, a law-enforcement officer or employee may obtain copies of any and all information contained in his personnel record. An employer may charge a fee for providing copies of the information contained in the personnel record. The fee shall be limited to the actual incremental cost of duplicating the information.

§ 2.1-116.9:11. Removal or correction.

If there is disagreement about information contained in a personnel record, the employer and the officer or employee may mutually agree to remove or correct such information. If a mutual agreement is not reached, the officer or employee may place in the file a written statement explaining his position. The statement shall not exceed five sheets of 8-1/2 inch by 11 inch paper and shall be included with

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60 information which is divulged to a third party as long as the contested information is a part of the file.
61 If any officer, employee, or employer knowingly places information in the personal record which is
62 false, legal action shall be available to the other parties to have such false information expunged.

63 § 2.1-116.9:12. Disclosure of records.

64 A. An employer or former employer shall not divulge a disciplinary report, letter of reprimand, or
65 other disciplinary action to: (i) a third party, (ii) a party who is not a part of the employer's
66 organization, or (iii) a party who is not a part of a labor organization representing the officer or
67 employee.

68 B. Records may be disclosed if: (i) the officer or employee has specifically waived his rights under
69 this section as part of a written, signed employment application with another employer; (ii) the
70 disclosure is ordered in a legal action or arbitration to a party in that legal action or arbitration; or
71 (iii) the information is requested by a government agency as a result of a claim or complaint by an
72 officer or employee.

73 § 2.1-116.9:13. Expungement of record.

74 An employer shall delete disciplinary reports, letters of reprimand or other records of disciplinary
75 action after four years from the date of occurrence.

76 § 2.1-116.9:14. Separate records.

77 If the employer is a criminal justice agency which is involved in the investigation of an alleged
78 criminal activity or the violation of an agency rule by an officer or employee, the employer shall
79 maintain a separate confidential file of information relating to the investigation. Once the investigation
80 is completed, any record created pursuant to this section shall be considered a personnel record as
81 defined in this chapter. Upon completion of the investigation, if the investigation reveals that the
82 allegations are unfounded or unsubstantiated or disciplinary action was not taken, the officer or
83 employee shall be notified that an investigation was conducted. The separate confidential file shall
84 contain a notation of the final disposition of the investigation and information in the file shall not be
85 used in any future consideration of promotion, transfer, additional compensation, or disciplinary action
86 of the officer or employee.

87 § 2.1-116.9:15. Penalty for noncompliance.

88 If an employer violates this chapter, an officer or employee may commence an action in the circuit
89 court to compel compliance with this chapter. The circuit court for the county in which (i) the
90 complainant resides, (ii) the complainant is employed, or (iii) the personnel record is maintained, shall
91 have jurisdiction to issue the order. Failure to comply with an order of the court shall be punished as
92 contempt.