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HOUSE BILL NO. 1293

AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the House Committee on Health, Welfare and Institutions
on February 13, 1998)

(Patron Prior to Substitute—Delegate Christian)

A BILL to amend and reenact §§ 19.2-389, 37.1-20.3, and 37.1-197.2 of the Code of Virginia and to amend the Code of Virginia by adding a section numbered 37.1-20.4, relating to criminal background checks; central registry.

Be it enacted by the General Assembly of Virginia:

1. That §§ 19.2-389, 37.1-20.3, and 37.1-197.2 of the Code of Virginia are amended and reenacted and that the Code of Virginia is amended by adding a section numbered 37.1-20.4 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 § 9-169, 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 thirty days;

2. Such other individuals and agencies which 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 and/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 which 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 which 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 for the conduct of investigations of applicants for public 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;

8. Public or private agencies when and as required by federal or state law or interstate compact to investigate applicants for foster or adoptive parenthood subject to the restriction that the data shall not be further disseminated by the agency to any party other than a federal or state authority or court as may be required to comply with an express requirement of law for such further dissemination;

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

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

11. A person requesting a copy of his own criminal history record information as defined in § 9-169 at his cost, except that criminal history record information shall be supplied at no charge to a person who has applied to be a volunteer (i) with a Virginia affiliate of Big Brothers/Big Sisters of America, (ii) with a volunteer fire company or volunteer rescue squad, or (iii) with the Volunteer Emergency Families for Children;

60 12. Administrators and board presidents of and applicants for licensure or registration as a child
61 welfare agency as defined in § 63.1-195 for dissemination to the Commissioner of Social Services'
62 representative pursuant to § 63.1-198 for the conduct of investigations with respect to employees of and
63 volunteers at such facilities, caretakers, and other adults living in family day-care homes or homes
64 approved by family day-care systems, and foster and adoptive parent applicants of private child-placing
65 agencies, pursuant to § 63.1-198.1, subject to the restriction that the data shall not be further
66 disseminated by the facility or agency to any party other than the data subject, the Commissioner of
67 Social Services' representative or a federal or state authority or court as may be required to comply with
68 an express requirement of law for such further dissemination;

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

72 14. The State Lottery Department for the conduct of investigations as set forth in the State Lottery
73 Law (§ 58.1-4000 et seq.);

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

78 16. Licensed homes for adults, licensed district homes for adults, and licensed adult day-care centers
79 for the conduct of investigations of applicants for compensated employment in licensed homes for adults
80 pursuant to § 63.1-173.2, in licensed district homes for adults pursuant to § 63.1-189.1, and in licensed
81 adult day-care centers pursuant to § 63.1-194.13, subject to the limitations set out in subsection F;

82 17. The Alcoholic Beverage Control Board for the conduct of investigations as set forth in
83 § 4.1-103.1;

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

87 19. The Commissioner of the Department of Mental Health, Mental Retardation and Substance Abuse
88 Services for those individuals who are committed to the custody of the Commissioner pursuant to
89 §§ 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
90 the purpose of placement, evaluation, and treatment planning;

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

94 21. Residential facilities for juveniles regulated or operated by the Department of Social Services, the
95 Department of Education, or the Department of Mental Health, Mental Retardation and Substance Abuse
96 Services for the purpose of determining applicants' fitness for employment or for providing volunteer or
97 contractual services;

98 22. The Department of Mental Health, Mental Retardation and Substance Abuse Services and
99 facilities operated by the Department for the purpose of determining an individual's fitness for
100 employment pursuant to departmental instructions;

101 23. Pursuant to § 22.1-296.3, the governing boards or administrators of private or parochial
102 elementary or secondary schools which are accredited by a statewide accrediting organization
103 recognized, prior to January 1, 1996, by the State Board of Education;

104 24. State-supported colleges and universities for the purpose of screening individuals who are offered
105 or accept public employment;

106 25. Executive directors of community services boards or *personnel directors serving community*
107 *services boards* for the purpose of determining an individual's fitness for employment pursuant to
108 § 37.1-197.2;

109 26. Executive directors of behavioral health authorities as defined in § 15.1-1677 for the purpose of
110 determining an individual's fitness for employment pursuant to § 37.1-197.2;

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

115 28. *The Department of Mental Health, Mental Retardation and Substance Abuse Services for the*
116 *purpose of determining an individual's fitness for employment by any program licensed pursuant to*
117 *§ 37.1-179.1 and directly operated by a hospital as defined in § 32.1-123 or § 37.1-1 or any other*
118 *licensed program that is not under contract with a community services board or behavioral health*
119 *authority; and*

120 29. Other entities as otherwise provided by law.

121 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 § 15.1-135.1.

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 adult care residences, 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 §§ 63.1-173.2, 63.1-189.1 or § 63.1-194.13.

§ 37.1-20.3. Background check required.

A. As a condition of employment, the Department shall require any individual who (i) accepts a position of employment at a state facility as defined in § 37.1-1 and was not employed by that state facility prior to July 1, 1996; ~~or~~ (ii) accepts a position with the Department that receives, monitors or disburses funds of the Commonwealth and was not employed by the Department prior to July 1, 1996; *or (iii) accepts a position in direct client care with any program licensed by the Department directly operated by a hospital as defined in § 37.1-1 or § 32.1-123 or any other licensed program that is not under contract to a community services board or behavioral health authority and was not employed by that program prior to July 1, 1998,* to submit to fingerprinting and to provide personal descriptive information to be forwarded along with the applicant'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.

The Central Criminal Records Exchange, upon receipt of an individual's record or notification that no record exists, shall submit a report to the state facility or to the Department. If an individual is denied employment because of information appearing on his criminal history record *and the applicant disputes the information upon which the denial was based, the state facility or Department shall provide, upon written request, a copy of the information obtained from the Central Criminal Records Exchange that resulted in the denial of employment to the individual shall, upon request, furnish the applicant the procedures for obtaining a copy of the criminal history record from the Federal Bureau of Investigation.* The information provided to the state facility or Department shall not be disseminated except as provided in this section.

B. Those individuals listed in clause (i) of subsection A also shall provide the state facility or Department a copy of information from the central registry maintained pursuant to § 63.1-248.8 on any investigation of child abuse or neglect undertaken on him.

C. The Board may promulgate regulations to comply with the provisions of this section. Copies of any information received by the state facility or Department pursuant to this section shall be available to the Department and to the applicable state facility but shall not be disseminated further, except as permitted by state or federal law. The cost of obtaining the criminal history record and the central registry information shall be borne by the applicant, unless the Department, at its option, decides to pay

183 such cost.

184 § 37.1-20.4. *Central registry; disclosure of information.*

185 *On or after July 1, 1998, every community services board, behavioral health authority, and*
186 *employing agency that provides services under contract with a community services board or behavioral*
187 *health authority, or any employing entity for programs licensed by the Department, shall report all*
188 *founded events of consumer abuse or neglect to the Department within fifteen calendar days of the*
189 *finding; such report shall be maintained by the Department in the central client abuse registry. The*
190 *central registry shall contain such information as shall be prescribed by Board regulation. The*
191 *information contained in the central registry shall not be open to inspection by the public. However,*
192 *appropriate disclosure may be made in accordance with Board regulations. Any person making a report*
193 *of client abuse or neglect required by this section shall be immune from any civil liability alleged to*
194 *have resulted therefrom unless such person acted in bad faith or with malicious intent.*

195 § 37.1-197.2. *Background checks required.*

196 A. Every community services board ~~and~~, behavioral health authority, and employing agency that
197 provides services under contract with a community services board or behavioral health authority shall,
198 on and after July 1, ~~1997~~1998, require any applicant who accepts employment in any direct client care
199 position with the community services board ~~or~~, behavioral health authority, employing agency that
200 provides services under contract with a community services board or behavioral health authority, or any
201 employing entity for programs licensed by the Department to submit to fingerprinting and provide
202 personal descriptive information to be forwarded through the Central Criminal Records Exchange to the
203 Federal Bureau of Investigation (FBI) for the purpose of obtaining national criminal history record
204 information regarding such applicant.

205 The Central Criminal Records Exchange, upon receipt of an individual's record or notification that no
206 record exists, shall submit a report to the requesting executive director of the community services board
207 or *personnel director serving a community services board, the executive director of the behavioral health*
208 *authority or the Department of Mental Health, Mental Retardation and Substance Abuse Services for*
209 *any program directly operated by a hospital as defined in § 32.1-123 or § 37.1-1 or any other licensed*
210 *program that is not under contract with a community services board or behavioral health authority. If*
211 *any applicant is denied employment because of information appearing on the criminal history record and*
212 *the applicant disputes the information upon which the denial was based, the Central Criminal Records*
213 *Exchange shall, upon request, furnish the applicant the procedures for obtaining a copy of the criminal*
214 *history record from the Federal Bureau of Investigation. The information provided to the executive*
215 *director of any community services board or behavioral health authority shall not be disseminated except*
216 *as provided in this section.*

217 B. The community services boards ~~and~~, behavioral health authorities, employing agencies that
218 provide services under contract with community services boards or behavioral health authorities, and
219 employing entities for any program licensed by the Department shall also require, as a condition of
220 employment for all such applicants, written consent and personal information necessary to obtain a
221 search of the registry of founded complaints of child abuse and neglect maintained by the Department of
222 Social Services pursuant to § 63.1-248.8 and the central client abuse registry maintained by the
223 Department pursuant to § 37.1-20.4.

224 C. The cost of obtaining the criminal history record and search of the child abuse and neglect
225 registry record shall be borne by the applicant, unless the community services board ~~or~~, behavioral
226 health authority, employing agency that provides services under contract with a community services
227 board or behavioral health authority, or employing entity for programs licensed by the Department, at
228 its option, decides to pay such cost.

229 D. As used in this section, the term "direct client care position" means any position with a job
230 description that includes responsibility for (i) treatment, case management, health, safety, development or
231 well-being of a client, or (ii) immediately supervising a person in a position with such responsibility.