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HOUSE BILL NO. 1707

House Amendments in [] - February 3, 2011

A *BILL to amend and reenact § 19.2-389 of the Code of Virginia, relating to dissemination of criminal history record information; Department of Rehabilitative Services.*

Patron Prior to Engrossment—Delegate Merricks

Referred to Committee for Courts of Justice

Be it enacted by the General Assembly of Virginia:**1. That § 19.2-389 of the Code of Virginia is amended and reenacted 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 the data shall not be further disseminated to any party other than a federal or state authority or court as may be required to comply with an express requirement of law;

9. To the extent permitted by federal law or regulation, public service companies as defined in

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59 § 56-1, for the conduct of investigations of applicants for employment when such employment involves
60 personal contact with the public or when past criminal conduct of an applicant would be incompatible
61 with the nature of the employment under consideration;

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

64 11. A person requesting a copy of his own criminal history record information as defined in
65 § 9.1-101 at his cost, except that criminal history record information shall be supplied at no charge to a
66 person who has applied to be a volunteer with (i) a Virginia affiliate of Big Brothers/Big Sisters of
67 America; (ii) a volunteer fire company or volunteer rescue squad; (iii) the Volunteer Emergency
68 Families for Children; (iv) any affiliate of Prevent Child Abuse, Virginia; (v) any Virginia affiliate of
69 Compeer; or (vi) any board member or any individual who has been offered membership on the board
70 of a Crime Stoppers, Crime Solvers or Crime Line program as defined in § 15.2-1713.1;

71 12. Administrators and board presidents of and applicants for licensure or registration as a child
72 welfare agency as defined in § 63.2-100 for dissemination to the Commissioner of Social Services'
73 representative pursuant to § 63.2-1702 for the conduct of investigations with respect to employees of and
74 volunteers at such facilities, caretakers, and other adults living in family day-care homes or homes
75 approved by family day-care systems, and foster and adoptive parent applicants of private child-placing
76 agencies, pursuant to §§ 63.2-1719 through 63.2-1721, subject to the restriction that the data shall not be
77 further disseminated by the facility or agency to any party other than the data subject, the Commissioner
78 of Social Services' representative or a federal or state authority or court as may be required to comply
79 with an express requirement of law for such further dissemination;

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

83 14. The State Lottery Department for the conduct of investigations as set forth in the State Lottery
84 Law (§ 58.1-4000 et seq.), and the Department of Agriculture and Consumer Services for the conduct of
85 investigations as set forth in Article 1.1:1 (§ 18.2-340.15 et seq.) of Chapter 8 of Title 18.2;

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

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

94 17. The Alcoholic Beverage Control Board for the conduct of investigations as set forth in
95 § 4.1-103.1;

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

99 19. The Commissioner of Behavioral Health and Developmental Services for those individuals who
100 are committed to the custody of the Commissioner pursuant to §§ 19.2-169.2, 19.2-169.6, 19.2-182.2,
101 19.2-182.3, 19.2-182.8, and 19.2-182.9 for the purpose of placement, evaluation, and treatment planning;

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

105 21. Residential facilities for juveniles regulated or operated by the Department of Social Services, the
106 Department of Education, or the Department of Behavioral Health and Developmental Services for the
107 purpose of determining applicants' fitness for employment or for providing volunteer or contractual
108 services;

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

112 23. Pursuant to § 22.1-296.3, the governing boards or administrators of private or religious
113 elementary or secondary schools which are accredited by a statewide accrediting organization
114 recognized, prior to January 1, 1996, by the State Board of Education or a private organization
115 coordinating such records information on behalf of such governing boards or administrators pursuant to
116 a written agreement with the Department of State Police;

117 24. Public and nonprofit private colleges and universities for the purpose of screening individuals
118 who are offered or accept employment;

119 25. Members of a threat assessment team established by a public institution of higher education
120 pursuant to § 23-9.2:10, for the purpose of assessing or intervening with an individual whose behavior

may present a threat to safety;

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

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

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

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

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

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

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

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

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

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

36. Public agencies when and as required by federal or state law to investigate (i) applicants as providers of adult foster care and home-based services or (ii) any individual with whom the agency is considering placing an adult on an emergency, temporary, or permanent basis pursuant to § 63.2-1601.1, 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, subject to limitations set out in subsection G;

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

38. (Effective until October 1, 2010) The State Corporation Commission for the purpose of investigating individuals who are members, senior officers, directors, and principals of an applicant for licensure as a mortgage lender or mortgage broker, or a licensed mortgage lender or mortgage broker for the purpose of investigating individuals applying for a position of employment in which the individual may have access to or process personal identifying or financial information from a member of the public, pursuant to Chapter 16 (§ 6.1-408 et seq.) of Title 6.1. Notwithstanding any other provision of law, if an application for a mortgage lender or mortgage broker license is denied based in whole or in part on information obtained from the Central Criminal Records Exchange pursuant to § 6.1-414, the Commissioner of Financial Institutions or his designee may disclose such information to the applicant or its designee;

(Effective October 1, 2010) The State Corporation Commission for the purpose of investigating individuals who are members, senior officers, directors, and principals of an applicant for licensure as a mortgage lender or mortgage broker, or a licensed mortgage lender or mortgage broker for the purpose

182 of investigating individuals applying for a position of employment in which the individual may have
183 access to or process personal identifying or financial information from a member of the public, pursuant
184 to Chapter 16 (§ 6.2-1600 et seq.) of Title 6.2. Notwithstanding any other provision of law, if an
185 application for a mortgage lender or mortgage broker license is denied based in whole or in part on
186 information obtained from the Central Criminal Records Exchange pursuant to § 6.2-1605, the
187 Commissioner of Financial Institutions or his designee may disclose such information to the applicant or
188 its designee;

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

191 40. *The Department of Rehabilitative Services [and the Department for the Blind and Vision*
192 *Impaired] for the purpose of evaluating an individual's fitness for various types of employment and for*
193 *the purpose of delivering comprehensive vocational rehabilitation services pursuant to Chapter 5*
194 *(§ 51.5-15 et seq.) of Title 51.5 that will assist the individual in obtaining employment;*

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

196 ~~41~~ 42. Other entities as otherwise provided by law.

197 Upon an ex parte motion of a defendant in a felony case and upon the showing that the records
198 requested may be relevant to such case, the court shall enter an order requiring the Central Criminal
199 Records Exchange to furnish the defendant, as soon as practicable, copies of any records of persons
200 designated in the order on whom a report has been made under the provisions of this chapter.

201 Notwithstanding any other provision of this chapter to the contrary, upon a written request sworn to
202 before an officer authorized to take acknowledgments, the Central Criminal Records Exchange, or the
203 criminal justice agency in cases of offenses not required to be reported to the Exchange, shall furnish a
204 copy of conviction data covering the person named in the request to the person making the request;
205 however, such person on whom the data is being obtained shall consent in writing, under oath, to the
206 making of such request. A person receiving a copy of his own conviction data may utilize or further
207 disseminate that data as he deems appropriate. In the event no conviction data is maintained on the data
208 subject, the person making the request shall be furnished at his cost a certification to that effect.

209 B. Use of criminal history record information disseminated to noncriminal justice agencies under this
210 section shall be limited to the purposes for which it was given and may not be disseminated further.

211 C. No criminal justice agency or person shall confirm the existence or nonexistence of criminal
212 history record information for employment or licensing inquiries except as provided by law.

213 D. Criminal justice agencies shall establish procedures to query the Central Criminal Records
214 Exchange prior to dissemination of any criminal history record information on offenses required to be
215 reported to the Central Criminal Records Exchange to ensure that the most up-to-date disposition data is
216 being used. Inquiries of the Exchange shall be made prior to any dissemination except in those cases
217 where time is of the essence and the normal response time of the Exchange would exceed the necessary
218 time period. A criminal justice agency to whom a request has been made for the dissemination of
219 criminal history record information that is required to be reported to the Central Criminal Records
220 Exchange may direct the inquirer to the Central Criminal Records Exchange for such dissemination.
221 Dissemination of information regarding offenses not required to be reported to the Exchange shall be
222 made by the criminal justice agency maintaining the record as required by § 15.2-1722.

223 E. Criminal history information provided to licensed nursing homes, hospitals and to home care
224 organizations pursuant to subdivision A 15 shall be limited to the convictions on file with the Exchange
225 for any offense specified in §§ 32.1-126.01, 32.1-126.02, and 32.1-162.9:1.

226 F. Criminal history information provided to licensed assisted living facilities, licensed district homes
227 for adults, and licensed adult day-care centers pursuant to subdivision A 16 shall be limited to the
228 convictions on file with the Exchange for any offense specified in § 63.1-189.1 or 63.2-1720.

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

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