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SENATE BILL NO. 124

Offered January 11, 2012

Prefiled January 10, 2012

A BILL to amend and reenact §§ 6.2-1605, 6.2-1608, and 19.2-389 of the Code of Virginia, relating to criminal background checks for mortgage lenders and mortgage brokers.

Patron—Watkins

Referred to Committee on Commerce and Labor

Be it enacted by the General Assembly of Virginia:

1. That §§ 6.2-1605, 6.2-1608, and 19.2-389 of the Code of Virginia are amended and reenacted as follows:

§ 6.2-1605. Investigation of applications.

A. The Commissioner may make such investigations as he deems necessary to determine if the applicant has complied with all applicable provisions of law and regulations.

B. For the purpose of investigating individuals who are members, senior officers, directors, and principals of an applicant, such persons shall consent to a national and state criminal history records check and submit to fingerprinting by a local or state law enforcement agency. Each member, senior officer, director, and principal shall pay for the cost of such fingerprinting and criminal records check. Upon receipt of the records check fees along with such individuals' Such persons shall cause their fingerprints and their, personal descriptive information, the and records check fees to be submitted to either of the following, as prescribed by the Commission:

1. The Commissioner, who shall forward these items to the Central Criminal Records Exchange. The Central Criminal Records Exchange shall (i) conduct a search of its own criminal history records and forward such individuals' fingerprints and personal descriptive information to the Federal Bureau of Investigation for the purpose of obtaining national criminal history record information regarding such individuals. The Central Criminal Records Exchange shall and (ii) forward the results of the state and national records search to the Commissioner or his designee, who shall be an employee of the Commission; or

2. The Registry, provided that it is capable of processing such criminal history records check.

C. If any member, senior officer, director, or principal of an applicant fails to submit cause his fingerprints, personal descriptive information, or records check fees to the Commissioner or his designee be submitted in accordance with subsection B, the application for licensure as a mortgage lender or mortgage broker shall be denied.

§ 6.2-1608. Acquisition of control; application.

A. Except as provided in this section, no person shall acquire directly or indirectly 25 percent or more of the voting shares of a corporation or 25 percent or more of the ownership of any licensee unless such person first:

1. Files an application with the Commission in such form as the Commissioner may prescribe from time to time;

2. Delivers such other information to the Commissioner as the Commissioner may require concerning the financial responsibility, background, experience, and activities of the applicant, its directors, senior officers, principals and members, and of any proposed new directors, senior officers, principals, or members of the licensee;

3. Submits and furnishes to the Commissioner information concerning the identity of the directors, senior officers, principals, and members of the applicant, and of any proposed new directors, senior officers, principals, or members of the licensee; including fingerprints 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, national, and international criminal history background check, as prescribed by the Commission; and pays any fees associated therewith. In the event that the Registry is capable of processing criminal history background checks, this information shall instead be submitted to the Registry. Such individuals shall (i) consent to a national and state criminal history records check, submit to fingerprinting, and pay for the cost of such fingerprinting and criminal records check and (ii) cause their fingerprints, personal descriptive information, and records check fees to be submitted to either of the following, as prescribed by the Commission:

a. The Commissioner, who shall forward these items to the Central Criminal Records Exchange. The Central Criminal Records Exchange shall (i) conduct a search of its own criminal history records and forward such individuals' fingerprints and personal descriptive information to the Federal Bureau of

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59 *Investigation for the purpose of obtaining national criminal history record information regarding such*
60 *individuals and (ii) forward the results of the state and national records search to the Commissioner or*
61 *his designee, who shall be an employee of the Commission; or*

62 *b. The Registry, provided that it is capable of processing such criminal history records checks; and*

63 4. Pays such application fee as the Commission may prescribe.

64 B. Upon the filing and investigation of an application, the Commission shall permit the applicant to
65 acquire the interest in the licensee if it finds that the applicant, its members if applicable, its directors,
66 senior officers and principals, and any proposed new directors, members, senior officers and principals
67 have the financial responsibility, character, reputation, experience and general fitness to warrant belief
68 that the business will be operated efficiently and fairly, in the public interest, and in accordance with
69 law. The Commission shall grant or deny the application within 60 days from the date a completed
70 application accompanied by the required fee is filed unless the period is extended by order of the
71 Commissioner reciting the reasons for the extension. If the application is denied, the Commission shall
72 notify the applicant of the denial and the reasons for the denial. *If an applicant or any individual*
73 *specified in subdivision A 3 fails to comply with the requirements of this section, the application shall*
74 *be denied.*

75 C. The provisions of this section shall not apply to (i) the acquisition of an interest in a licensee
76 directly or indirectly including an acquisition by merger or consolidation by or with another licensee or
77 a person exempt from this chapter under the provisions of subdivisions 2 through 11 of § 6.2-1602, (ii)
78 the acquisition of an interest in a licensee directly or indirectly including an acquisition by merger or
79 consolidation by or with a person affiliated through common ownership with the licensee, or (iii) the
80 acquisition of an interest in a licensee by a person by bequest, descent, or survivorship or by operation
81 of law. The person acquiring an interest in a licensee in a transaction which is exempt from filing an
82 application by this subsection shall send written notice to the Commissioner of such acquisition within
83 30 days of its closing.

84 § 19.2-389. Dissemination of criminal history record information.

85 A. Criminal history record information shall be disseminated, whether directly or through an
86 intermediary, only to:

87 1. Authorized officers or employees of criminal justice agencies, as defined by § 9.1-101, for
88 purposes of the administration of criminal justice and the screening of an employment application or
89 review of employment by a criminal justice agency with respect to its own employees or applicants, and
90 dissemination to the Virginia Parole Board, pursuant to this subdivision, of such information on all
91 state-responsible inmates for the purpose of making parole determinations pursuant to subdivisions 1, 2,
92 3, and 5 of § 53.1-136 shall include collective dissemination by electronic means every 30 days;

93 2. Such other individuals and agencies that require criminal history record information to implement
94 a state or federal statute or executive order of the President of the United States or Governor that
95 expressly refers to criminal conduct and contains requirements or exclusions expressly based upon such
96 conduct, except that information concerning the arrest of an individual may not be disseminated to a
97 noncriminal justice agency or individual if an interval of one year has elapsed from the date of the
98 arrest and no disposition of the charge has been recorded and no active prosecution of the charge is
99 pending;

100 3. Individuals and agencies pursuant to a specific agreement with a criminal justice agency to provide
101 services required for the administration of criminal justice pursuant to that agreement which shall
102 specifically authorize access to data, limit the use of data to purposes for which given, and ensure the
103 security and confidentiality of the data;

104 4. Individuals and agencies for the express purpose of research, evaluative, or statistical activities
105 pursuant to an agreement with a criminal justice agency that shall specifically authorize access to data,
106 limit the use of data to research, evaluative, or statistical purposes, and ensure the confidentiality and
107 security of the data;

108 5. Agencies of state or federal government that are authorized by state or federal statute or executive
109 order of the President of the United States or Governor to conduct investigations determining
110 employment suitability or eligibility for security clearances allowing access to classified information;

111 6. Individuals and agencies where authorized by court order or court rule;

112 7. Agencies of any political subdivision of the Commonwealth, public transportation companies
113 owned, operated or controlled by any political subdivision, and any public service corporation that
114 operates a public transit system owned by a local government for the conduct of investigations of
115 applicants for employment, permit, or license whenever, in the interest of public welfare or safety, it is
116 necessary to determine under a duly enacted ordinance if the past criminal conduct of a person with a
117 conviction record would be compatible with the nature of the employment, permit, or license under
118 consideration;

119 7a. Commissions created pursuant to the Transportation District Act of 1964 (§ 15.2-4500 et seq.)
120 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 § 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 § 9.1-101 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 with (i) a Virginia affiliate of Big Brothers/Big Sisters of America; (ii) a volunteer fire company or volunteer rescue squad; (iii) the Volunteer Emergency Families for Children; (iv) any affiliate of Prevent Child Abuse, Virginia; (v) any Virginia affiliate of Compeer; or (vi) any board member or any individual who has been offered membership on the board of a Crime Stoppers, Crime Solvers or Crime Line program as defined in § 15.2-1713.1;

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

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

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

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

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

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

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

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

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

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

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

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

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

192 25. Members of a threat assessment team established by a public institution of higher education
193 pursuant to § 23-9.2:10, for the purpose of assessing or intervening with an individual whose behavior
194 may present a threat to safety;

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

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

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

204 29. Authorized officers or directors of agencies licensed pursuant to Article 2 (§ 37.2-403 et seq.) of
205 Chapter 4 of Title 37.2 by the Department of Behavioral Health and Developmental Services for the
206 purpose of determining if any applicant who accepts employment in any direct consumer care position
207 has been convicted of a crime that affects their fitness to have responsibility for the safety and
208 well-being of persons with mental illness, mental retardation and substance abuse pursuant to
209 §§ 37.2-416, 37.2-506, and 37.2-607;

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

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

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

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

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

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

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

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

242 38. The State Corporation Commission for the purpose of investigating individuals who are *current*
243 *or proposed* 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 or person licensed under Chapter 16 (§ 6.2-1600 et seq.) of Title 6.2. 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 § 6.2-1605, the Commissioner of Financial Institutions or his designee may disclose such information to the applicant or its designee;

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

40. The Department of 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 Chapter 5 (§ 51.5-15 et seq.) of Title 51.5 that will assist the individual in obtaining employment;

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

42. 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.