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## HOUSE BILL NO. 1383

Offered January 9, 2013

Prefiled December 12, 2012

A *BILL to amend and reenact §§ 19.2-389 and 32.1-111.5 of the Code of Virginia, relating to criminal history record information.*

Patron—Pogge

Referred to Committee on Health, Welfare and Institutions

**Be it enacted by the General Assembly of Virginia:**

1. That §§ 19.2-389 and 32.1-111.5 of the Code of Virginia are 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;

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59 9. To the extent permitted by federal law or regulation, public service companies as defined in  
60 § 56-1, for the conduct of investigations of applicants for employment when such employment involves  
61 personal contact with the public or when past criminal conduct of an applicant would be incompatible  
62 with the nature of the employment under consideration;

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

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

72 12. Administrators and board presidents of and applicants for licensure or registration as a child  
73 welfare agency as defined in § 63.2-100 for dissemination to the Commissioner of Social Services'  
74 representative pursuant to § 63.2-1702 for the conduct of investigations with respect to employees of and  
75 volunteers at such facilities, caretakers, and other adults living in family ~~day-care~~ *day care* homes or  
76 homes approved by family ~~day-care~~ *day care* systems, and foster and adoptive parent applicants of  
77 private child-placing agencies, pursuant to §§ 63.2-1719, 63.2-1720, and 63.2-1721, subject to the  
78 restriction that the data shall not be further disseminated by the facility or agency to any party other  
79 than the data subject, the Commissioner of Social Services' representative or a federal or state authority  
80 or court as may be required to comply with an express requirement of law for such further  
81 dissemination;

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

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

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

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

97 17. The Alcoholic Beverage Control Board for the conduct of investigations as set forth in  
98 § 4.1-103.1;

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

102 19. The Commissioner of Behavioral Health and Developmental Services for those individuals who  
103 are committed to the custody of the Commissioner pursuant to §§ 19.2-169.2, 19.2-169.6, 19.2-182.2,  
104 19.2-182.3, 19.2-182.8, and 19.2-182.9 for the purpose of placement, evaluation, and treatment planning;

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

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

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

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

120 24. Public and nonprofit private colleges and universities for the purpose of screening individuals

who are offered or accept employment;

25. Members of a threat assessment team established by a public institution of higher education pursuant to § 23-9.2:10 or by a private nonprofit institution of higher education, for the purpose of assessing or intervening with an individual whose behavior may present a threat to safety; however, no member of a threat assessment team shall redisclose any criminal history record information obtained pursuant to this section or otherwise use any record of an individual beyond the purpose that such disclosure was made to the threat assessment team;

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 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 care position has been convicted of a crime that affects his fitness to have responsibility for the safety and well-being of individuals with mental illness, intellectual disability, or 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. The State Corporation Commission for the purpose of investigating individuals who are current or proposed members, senior officers, directors, and principals of an applicant or person licensed under Chapter 16 (§ 6.2-1600 et seq.) of Title 6.2. Notwithstanding any other provision of law, if an application 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 for Aging and 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 Article 11 (§ 51.5-170 et seq.) of Chapter 14 of Title 51.5 that will assist the individual in obtaining employment;

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

42. The State Treasurer for the purpose of determining whether a person receiving compensation for wrongful incarceration meets the conditions for continued compensation under § 8.01-195.12; and

43. *At no charge to a person applying to serve as a licensed provider in an emergency medical services agency licensed pursuant to Article 2.1 (§ 32.1-111.1 et seq.) of Chapter 4 of Title 32.1, including volunteer rescue squads, lifesaving crews, and volunteer fire departments providing emergency medical services, provided that, a person applying to a for-profit emergency medical services agency or a nonprofit local government emergency medical services agency and meeting the requirements in § 32.1-111.5 shall request, at his cost, his criminal history record information as defined in § 9.1-101;*

44. 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~~ 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.

#### **§ 32.1-111.5. Certification and recertification of emergency medical services personnel.**

A. The Board shall prescribe by regulation the qualifications required for certification of emergency medical care attendants, including those qualifications necessary for authorization to follow Do Not Resuscitate Orders pursuant to § 54.1-2987.1. Such regulations shall include criteria for determining whether an applicant's relevant practical experience and didactic and clinical components of education

and training completed during his service as a member of any branch of the armed forces of the United States may be accepted by the Commissioner as evidence of satisfaction of the requirements for certification.

B. Each person desiring certification as emergency medical services personnel shall apply to the Commissioner upon a form prescribed by the Board. Upon receipt of such application, the Commissioner shall cause the applicant to be examined or otherwise determined to be qualified for certification. When determining whether an applicant is qualified for certification, the Commissioner shall consider and may accept relevant practical experience and didactic and clinical components of education and training completed by an applicant during his service as a member of any branch of the armed forces of the United States as evidence of satisfaction of the requirements for certification. If the Commissioner determines that the applicant meets the requirements for certification as an emergency medical services personnel, he shall issue a certificate to the applicant. An emergency medical services personnel certificate so issued shall be valid for a period required by law or prescribed by the Board. The certificates may be renewed after successful reexamination of the holder. Any certificate so issued may be suspended at any time that the Commissioner determines that the holder no longer meets the qualifications prescribed for such emergency medical services personnel. The Commissioner may temporarily suspend any certificate without notice, pending a hearing or informal fact-finding conference, if the Commissioner finds that there is a substantial danger to public health or safety. When the Commissioner has temporarily suspended a certificate pending a hearing, the Commissioner shall seek an expedited hearing in accordance with the Administrative Process Act (§ 2.2-4000 et seq.).

C. The Board shall prescribe by regulation procedures and the qualifications required for the recertification of emergency medical services personnel. Such regulations shall include (i) authorization for continuing education and skills testing, in lieu of a written examination, with the signature of the relevant operational medical director; (ii) authorization for the relevant operational medical director to require the written examinations administered or approved by the Office of Emergency Medical Services, as deemed necessary, of certain emergency medical services personnel; (iii) authorization for exemptions from the written test for recertification by the relevant operational medical director; (iv) triennial recertification of advanced life support providers; (v) approval by the Office of Emergency Medical Services of continuing education modules in which each module may be tested separately; and (vi) effective on January 1, 1998, a sequential option for the completion of the skills tests for recertification.

D. The Commissioner may issue a temporary certificate when he finds that it is in the public interest. A temporary certificate shall be valid for a period not exceeding ~~ninety~~ 90 days.

E. *The State Board of Health shall require each emergency medical services provider to submit fingerprints and provide personal descriptive information to be forwarded along with his fingerprints through the Central Criminal Records Exchange to the Federal Bureau of Investigation, for the purpose of obtaining his criminal history record information.*

*For the purposes of this section, "emergency medical services provider" means a person who (i) applies for membership as a volunteer or salaried member in a volunteer rescue squad or lifesaving crew, or (ii) applies for a position as a salaried employee of a nonprofit or governmental emergency medical services agency, commercial emergency medical services agency, or volunteer or governmental fire department that provides emergency medical services and whose positions are generally described as being directly responsible for the health, safety, and welfare of the general populace or protection of critical infrastructures. All emergency medical services providers and agencies shall be certified or licensed by the Commissioner of Health.*