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SENATE BILL NO. 335

AMENDMENT IN THE NATURE OF A SUBSTITUTE
(Proposed by the Senate Committee on Commerce and Labor
on January 27, 2014)

(Patron Prior to Substitute—Senator Puckett)

A *BILL to amend and reenact §§ 6.2-1900, 6.2-1903 through 6.2-1907, 6.2-1910, 6.2-1914, 6.2-1916, 6.2-1917, 6.2-1919, and 19.2-389 of the Code of Virginia and to amend the Code of Virginia by adding sections numbered 6.2-1904.1 and 6.2-1906.1, relating to the regulation of money order sellers and money transmitters.*

Be it enacted by the General Assembly of Virginia:

1. That §§ 6.2-1900, 6.2-1903 through 6.2-1907, 6.2-1910, 6.2-1914, 6.2-1916, 6.2-1917, 6.2-1919, and 19.2-389 of the Code of Virginia are amended and reenacted and that the Code of Virginia is amended by adding sections numbered 6.2-1904.1 and 6.2-1906.1 as follows:

§ 6.2-1900. Definitions.

As used in this chapter, unless the context requires a different meaning:

"Authorized delegate" means a person designated or appointed by a licensee to sell money orders or provide money transmission services on behalf of the licensee.

"Licensee" means a person licensed under this chapter to engage in the business of selling money orders or the business of money transmission, or both.

"Member" means a person who owns or controls a five percent or greater interest in a limited liability company.

"Monetary value" means a medium of exchange, whether or not redeemable in money.

"Money order" means a check, traveler's check, draft, or other instrument for the transmission or payment of money or monetary value whether or not negotiable.

"Money order seller" means a person engaged in the business of selling money orders.

"Money transmission" means receiving money or monetary value for transmission by wire, facsimile, electronic means or other means or selling or issuing stored value.

"Money transmitter" means a person engaged in the business of money transmission.

"Outstanding" means:

1. With respect to a money order, a money order that has been issued and sold directly by a licensee, or sold by an authorized delegate of the licensee and reported to the licensee, that has not yet been paid by or on behalf of the licensee; or

2. With respect to a money transmission transaction, a money transmission transaction for which the licensee, directly or through an authorized delegate of the licensee, has received money or monetary value from a customer for transmission, but has not yet (i) completed the money transmission transaction by delivering the money or monetary value to the person designated by the customer, or (ii) refunded the money or monetary value to the customer.

"Principal" means any person who, directly or indirectly, owns or controls a 10 percent or greater interest in any form of entity.

"Stored value" means monetary value that is evidenced by an electronic record.

§ 6.2-1903. Application for license; financial statements; application fee.

A. Applications for a license shall be made on forms furnished by the ~~Commission~~ Commissioner and shall set forth the name and address of the applicant, which shall be an entity, a description of the manner in which and the locations at which it proposes to do business, and such additional relevant information as the ~~Commission~~ Commissioner requires. *If any material information provided by the applicant changes during the investigation period, the applicant shall immediately notify the Commissioner.*

B. The application shall be accompanied by such audited financial statements as the ~~Commission~~ Commissioner may require and an application fee of \$1,000. If an application for a license under this chapter is denied, the application fee shall not be refunded. The fee shall not be abated by the expiration, surrender, or revocation of the license.

§ 6.2-1904. Bond required.

A. The application for a license shall be accompanied by a surety bond satisfactory to the ~~Commission~~ Commissioner in the principal amount as determined by the ~~Commission~~ Commissioner. The amount of the bond shall be not less than \$25,000 nor more than \$ 1 million. The bond shall be conditioned as the ~~Commission~~ may require for the benefit of upon the licensee (i) performing its obligations to purchasers, payees, and holders of money orders and money transmission services sold by the licensee and its authorized delegates in the Commonwealth, and for the benefit of purchasers of money transmission services and (ii) conducting the licensed business in conformity with this chapter. If

60 any material information provided to the Commission in an application changes during the investigation
61 period; the applicant shall immediately notify the Commission.

62 B. As an alternative security device and in lieu of the surety bond required by subsection A, a
63 license applicant may deposit with a financial institution designated by such applicant and approved by
64 the ~~Commission~~ Commissioner for that purpose, cash, stocks and bonds, notes, debentures or other
65 obligations of the United States or any agency or instrumentality thereof, or guaranteed by the United
66 States, or of the Commonwealth, or of a locality or other political subdivision of the Commonwealth, in
67 an aggregate amount, based upon the principal amount or market value, whichever is lower, of not less
68 than the amounts required by the ~~Commission~~ Commissioner pursuant to subsection A. Such cash or
69 securities shall be deposited and held to secure obligations established in subsection A, but the licensee
70 shall be entitled to (i) receive all interest and dividends thereon and (ii) substitute, with the
71 ~~Commission's~~ Commissioner's prior approval, other securities for those deposited. The ~~Commission~~
72 Commissioner may also direct the licensee, for good cause shown, to substitute other securities for those
73 deposited.

74 C. The security device required by this section shall remain in place for five years after a licensee
75 ceases money order sales or money transmission activities ~~within the Commonwealth~~. The ~~Commission~~
76 Commissioner may permit the security device to be reduced or eliminated prior to that time to the extent
77 the amount of such licensee's *outstanding* money orders and money transmission transactions ~~outstanding~~
78 ~~in the Commonwealth~~ are reduced. The ~~Commission~~ Commissioner may also permit any licensee to
79 substitute a letter of credit, or such other form of security device as may be acceptable to the
80 ~~Commission~~ Commissioner, for the security device in place at the time the licensee ceases money order
81 sales or money transmission activities ~~in the Commonwealth~~.

82 **§ 6.2-1904.1. Investigation of applications.**

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

85 B. *For the purpose of investigating individuals who are members, senior officers, directors, and*
86 *principals of an applicant, such individuals shall comply with one or both of the following, as*
87 *applicable:*

88 1. *In the case of members, senior officers, directors, and principals who have resided in the United*
89 *States at any time within the previous 10 years, such individuals shall consent to a national and state*
90 *criminal history records check and submit to fingerprinting. Each member, senior officer, director, and*
91 *principal shall pay for the cost of such fingerprinting and criminal records check. Such individuals shall*
92 *cause their fingerprints, personal descriptive information, and records check fees to be submitted to the*
93 *Commissioner, who shall forward these items to the Central Criminal Records Exchange. The Central*
94 *Criminal Records Exchange shall (i) conduct a search of its own criminal history records and forward*
95 *such individuals' fingerprints and personal descriptive information to the Federal Bureau of*
96 *Investigation for the purpose of obtaining national criminal history record information regarding such*
97 *individuals and (ii) forward the results of the state and national records search to the Commissioner or*
98 *his designee, who shall be an employee of the Commission.*

99 2. *In the case of members, senior officers, directors, and principals who have resided outside of the*
100 *United States at any time within the previous 10 years, such individuals shall cause an investigative*
101 *background report to be submitted to the Commissioner. The report shall be prepared by an*
102 *independent search firm that is acceptable to the Commissioner and be in the English language. Each*
103 *member, senior officer, director, and principal shall pay for the cost of such report, and the report shall*
104 *be sent directly by the search firm to the Commissioner or his designee, who shall be an employee of*
105 *the Commission.*

106 C. *If any member, senior officer, director, or principal of an applicant fails to cause his fingerprints,*
107 *personal descriptive information, records check fees, or investigative background report to be submitted*
108 *in accordance with subsection B, the application for licensure shall be denied.*

109 **§ 6.2-1905. Annual fees; expenses; annual reports; renewal.**

110 A. Each licensee shall pay to the Commission annually on or before September 1 a license renewal
111 fee of \$750. All fees paid pursuant to this chapter shall be paid into the state treasury and credited to
112 the "Financial Institutions Special Fund - State Corporation Commission."

113 B. In order to defray the costs of their examination and supervision, every licensee under this chapter
114 shall pay an annual assessment calculated in accordance with a schedule set by the Commission. The
115 schedule shall bear a reasonable relationship to the dollar volume of money orders sold and Virginia
116 money transmission business conducted by licensees, either directly or through their authorized
117 delegates, the costs of their examinations, and to other factors relating to their supervision and
118 regulation. All such fees shall be assessed on or before August 1 for every calendar year. All such fees
119 shall be paid by licensees to the State Treasurer on or before September 1 following each assessment.

120 C. In addition to the annual assessment prescribed in subsection B, when it becomes necessary to
121 examine or investigate the *affairs, business, premises, books and, or records* of a licensee *or any of its*

authorized delegates at a location outside the Commonwealth, the licensee shall be liable for and shall pay to the Commission within 30 days of the presentation of an itemized statement, the actual travel and reasonable living expenses incurred on account of its examination and supervision or investigation, or shall pay a reasonable per diem rate approved by the Commission.

D. Each licensee under this chapter shall annually, on or before April 15, file a written report with the Commissioner along with such information as the Commissioner may require concerning the licensee's business, including audited financial statements. If a licensee is unable to furnish copies of its audited financial statements by April 15, the licensee may request an extension, which may be granted by the Commissioner for good cause shown.

E. Every license shall remain in force until it expires or has been surrendered or revoked. The expiration, surrender, or revocation of a license shall not affect any preexisting legal right or obligation of the licensee.

F. If a license has expired or has been surrendered or revoked, the former licensee shall immediately (i) cease selling money orders and engaging in the money transmission business, and (ii) instruct its authorized delegates to cease selling money orders and accepting funds for transmission on behalf of the licensee. The Commission may grant relief from this subsection for good cause shown.

G. F. A license issued under this chapter shall expire on September 30 of each year unless it is renewed by a licensee. A licensee may renew its license by complying with the following: (i) paying its license renewal fee in accordance with subsection A; (ii) paying its annual assessment in accordance with subsection B; (iii) filing its annual report and audited financial statements in accordance with subsection D; and (iv) maintaining the minimum net worth specified in subsection B of § 6.2-1906, as evidenced by its audited financial statements. Upon receiving a licensee's renewal fee, annual assessment, and the documents and other information required by this section, the Commissioner shall renew such person's license. If a license has expired, the former licensee may seek reinstatement within three months after the license expiration date. Upon receiving a former licensee's renewal fee, annual assessment, and the documents and other information required by this section, together with payment of a reinstatement fee of \$1,000, the Commissioner shall reinstate such person's license.

§ 6.2-1906. Conditions prerequisite to issuance of license; net worth requirement.

A. The Commission shall not issue a license to an applicant unless it determines that:

1. The applicant will be able to and will perform its obligations to purchasers of money transmission services and purchasers, payees, and holders of money orders sold by it and its authorized delegates in the Commonwealth; and

2. The financial responsibility, character, reputation, experience, and general fitness of the applicant and its members, senior officers, directors, and principals are such as to warrant belief that the business will be operated efficiently and fairly, in the public interest, and in accordance with applicable law and regulations.

B. Each licensee shall at all times have a net worth of not less than \$200,000, or a higher amount not to exceed \$1 million as determined by the Commission, calculated in accordance with generally accepted accounting principles. Any person who was licensed under this chapter on July 1, 2009, shall have three years from that date to comply with the minimum net worth requirement of this section, during which period the licensee shall at all times have a net worth of not less than \$100,000, or a higher amount not to exceed \$1 million as determined by the Commission, calculated in accordance with generally accepted accounting principles.

§ 6.2-1906.1. Licenses; places of business; changes.

A. Each license shall state the address at which the principal place of business is to be conducted and shall state fully the legal name of the licensee as well as any fictitious names by which the licensee is conducting business under this chapter. Licenses shall not be transferable or assignable, by operation of law or otherwise. No licensee shall use any names other than the legal name or fictitious names set forth on the license issued by the Commission.

B. Every licensee shall notify the Commissioner, in writing, at least 30 days prior to relocating its principal place of business and confirm the change in writing within five days after such relocation.

C. Every licensee shall within 10 days notify the Commissioner, in writing, of (i) any change to its legal name, (ii) any change to or additional fictitious name by which the licensee is conducting business under this chapter, and (iii) the name, address, and position of each new member, senior officer, director, or principal. At the direction of the Commissioner, any such individual shall be treated as a member, senior officer, director, or principal of an applicant for the purpose of being investigated pursuant to subsection B of § 6.2-1904.1. The licensee shall provide such other information with respect to the changes and persons identified in this subsection as the Commissioner may reasonably require.

D. Every license shall remain in force until it expires or has been surrendered or revoked. The expiration, surrender, or revocation of a license shall not affect any preexisting legal right or obligation of the licensee.

§ 6.2-1907. License revocation.

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 adopted thereunder.

B. The Commission may revoke a license issued under this chapter:

1. If it reasonably determines that (i) a licensee is engaging in one or more unsafe or unsound practices, (ii) a licensee may be unable to perform its obligations, or (iii) a licensee has willfully failed without reasonable cause to pay or provide for the payment of any of its obligations; or

2. Upon any of the following grounds:

a. Any ground for denial of a license under this chapter;

b. Any violation of the provisions of this chapter or regulations adopted by the Commission pursuant thereto, or a violation of any other law or regulation applicable to the conduct of the licensee's business;

c. Conviction of a felony or misdemeanor involving fraud, misrepresentation, or deceit;

d. Entry of a judgment against such licensee involving fraud, misrepresentation, or deceit;

e. Entry of a federal or state administrative order against such licensee for violation of any law or any regulation applicable to the conduct of his business;

f. Refusal to permit an investigation or examination by the Commission;

g. Failure to pay any fee or assessment imposed by this chapter; or

h. Failure to comply with any order of the Commission.

B. For the purposes of this section, acts of any officer, director, member, partner, or principal shall be deemed acts of the licensee.

§ 6.2-1910. Investigations; examinations; reporting violations.

A. The Commission shall have authority to *investigate and* examine the affairs, business, premises, books, and records of all money order sellers and money transmitters, ~~either directly or through and their authorized delegates.~~ Except as provided herein, the Commission shall make an examination of the books and records of each licensee at least once in every three-year period, and shall adjust the surety bond or alternative security device as it may deem necessary in accordance with § 6.2-1904. The Commission may also examine the books and records of any authorized delegate of a licensee as often as it is deemed to be in the public interest. Examinations under this section may be conducted in conjunction with examinations to be performed by representatives of agencies of the federal government or another state. The Commission, in lieu of an examination, may accept the examination report of the federal government or another state.

B. Any person designated by the Commission to make *investigations or* examinations pursuant to this section shall have authority to (i) administer oaths; (ii) examine under oath in the course of such *investigations or* examinations, the principals, members, owners, officers, directors, partners, and employees of any person required to be licensed by this chapter or such person's authorized delegates; and (iii) compel the production of documents. *The principals, members, owners, officers, directors, partners, and employees of any person being investigated or examined shall, upon demand of the person making such investigation or examination, afford full access to all premises, books, records, and information that the person making such investigation or examination deems necessary.*

C. The Commission shall report violations of the licensing requirements of § 6.2-1901 to the attorney for the Commonwealth of the city or county in which such violation occurs.

§ 6.2-1914. 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 other entity licensed to conduct business under this chapter unless such person first:

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

2. Delivers such information as the Commission 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; ~~and~~

3. *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. For the purpose of investigating these directors, senior officers, principals, and members, such individuals shall comply with one or both of the following, as applicable:*

a. *In the case of directors, senior officers, principals, and members who have resided in the United States at any time within the previous 10 years, such individuals shall consent to a national and state criminal history records check and submit to fingerprinting. Each director, senior officer, principal, and member shall pay for the cost of such fingerprinting and criminal records check. Such individuals shall cause their fingerprints, personal descriptive information, and records check fees to be submitted to 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, 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.

b. In the case of directors, senior officers, principals, and members who have resided outside of the United States at any time within the previous 10 years, such individuals shall cause an investigative background report to be submitted to the Commissioner. The report shall be prepared by an independent search firm that is acceptable to the Commissioner and be in the English language. Each director, senior officer, principal, and member shall pay for the cost of such report, and the report shall be sent directly by the search firm to the Commissioner or his designee, who shall be an employee of the Commission; and

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

B. If any material information provided to the Commission in an application by the applicant changes during the investigation period, the applicant shall immediately notify the Commission Commissioner.

C. Upon the filing and investigation of an application, the Commission shall permit the applicant to acquire the interest in the licensee if it finds that the applicant, its members if applicable, its directors, senior officers, and principals, and any proposed new directors, members, senior officers, and principals have the financial responsibility, character, reputation, experience, and general fitness to warrant belief that the business will be operated efficiently and fairly, in the public interest, and in accordance with the applicable laws and regulations. The Commission shall grant or deny the application within 90 days from the date a completed application, accompanied by the required fee, is filed unless the period is extended by the Commission. If the application is denied, the Commission shall notify the applicant of the denial and the reasons for the denial.

D. The provisions of this section shall not apply to the acquisition of an interest in a licensee directly or indirectly by merger, consolidation, or otherwise, (i) by or with a person licensed under this chapter, (ii) by or with a person affiliated through common ownership with the licensee, or (iii) by bequest, descent, survivorship, or by operation of law. The person acquiring an interest in a licensee in a transaction which is exempt from filing an application by this subsection shall send written notice to the Commission of such acquisition within 30 days after its closing.

E. If any person acquires an ownership interest in a licensee without obtaining prior approval from the Commission as required by this section, the Commission may for good cause shown order such person to divest himself or itself of such ownership interest.

F. The Commission may not enter an order requiring divestiture pursuant to subsection E until it has given the person 21 days' notice in writing of the reasons for the proposed divestiture and has given the person an opportunity to introduce evidence and be heard. The notice shall be sent by certified mail to such person and shall state with particularity the grounds for the contemplated action. Within 14 days of mailing the notice, the person named therein may file with the clerk of the Commission a written request for a hearing. If a hearing is requested, the Commission shall not require divestiture except based upon findings made at such hearing.

§ 6.2-1916. Retention of books, accounts, and records.

A. Every licensee shall maintain in its licensed offices principal place of business such books, accounts, and records as the Commission may reasonably require in order to determine whether such licensee is complying with the provisions of this chapter and other laws applicable to the conduct of its licensed business. Such books, accounts, and records shall be maintained apart and separate from any other business in which the licensee is involved.

B. Each licensee shall retain the following records for at least three years:

1. A record of each money transmission transaction and money order sold;
2. A general ledger posted at least monthly containing all asset, liability, capital, income, and expense accounts;
3. Bank statements and bank reconciliation records;
4. Records of outstanding money orders and money transmission transactions;
5. Records of each money order and money transmission transaction paid or completed within the three-year period; and
6. A list of the names, addresses, and telephone numbers of all of the licensee's authorized delegates.

C. Each licensee shall maintain policies and procedures sufficient for it to comply with this chapter and all other laws and regulations applicable to the conduct of its licensed business. A licensee shall furnish copies of its policies and procedures, as amended, to all of its authorized delegates.

§ 6.2-1917. Other reporting requirements.

A. A licensee or other person shall file a report with the Commission Commissioner within 15 days after the licensee or other person becomes aware of any material changes in information previously provided in an application filed under § 6.2-1903 or 6.2-1914. This requirement shall be applicable only

to material changes that occur within one year after the date the licensee begins business or the acquisition is consummated.

B. A licensee shall file with the ~~Commission~~ *Commissioner* no later than 45 days after the end of each fiscal quarter its quarterly financial statements along with a current list of all authorized delegates and locations ~~in the Commonwealth~~ where the licensee or an authorized delegate of the licensee sells money orders or receives money for transmission. The licensee shall state the name, street address, and telephone number of each location and authorized delegate.

C. A licensee shall file a report with the ~~Commission~~ *Commissioner* within one business day after the licensee becomes aware of the occurrence of any of the following events:

1. The filing of a petition by or against the licensee for bankruptcy or reorganization;

2. The filing of a petition by or against the licensee for receivership, the commencement of any other judicial or administrative proceeding for its dissolution or reorganization, or the making of a general assignment for the benefit of its creditors;

3. The commencement of administrative or regulatory proceedings against the licensee by any governmental authority;

4. The cancellation or other impairment of the licensee's bond or other security;

5. Any felony indictment of the licensee or any of its members, partners, directors, officers, principals, or authorized delegates;

6. Any felony conviction of the licensee or any of its members, partners, directors, officers, principals, or authorized delegates; or

7. Such other events as the Commission may prescribe by regulation.

D. A licensee shall within 10 days notify the Commissioner, in writing, of the name, address and position of each new member, senior officer, partner, or director and provide such other information with respect to any such change as the Commissioner may reasonably require.

§ 6.2-1919. Types of permissible investments.

A. Except to the extent otherwise limited by the Commission pursuant to § 6.2-1918, the following investments are permissible under § 6.2-1918:

1. Cash, a certificate of deposit, or senior debt obligation of an insured depository institution, as defined in section 3 of the Federal Deposit Insurance Act (12 U.S.C. § 1813).

2. A banker's acceptance or bill of exchange that is eligible for purchase upon endorsement by a member bank of the Federal Reserve System and is eligible for purchase by a Federal Reserve Bank.

3. An investment bearing a rating of one of the three highest grades, as defined by a nationally recognized organization that rates securities.

4. An investment security that is an obligation of the United States or a department, agency, or instrumentality thereof; an investment in an obligation that is guaranteed fully as to principal and interest by the United States; or an investment in an obligation of a state or a governmental subdivision, agency, or instrumentality thereof.

5. Receivables that are payable to a licensee from its authorized delegates, *pursuant to contracts and in the ordinary course of business, pursuant to contracts which that* are not past due or doubtful of collection *if the licensee does not hold at one time. A receivable shall be deemed to be past due or doubtful of collection if the money owed to the licensee is not remitted within seven business days. However, the aggregate amount of receivables under this paragraph subdivision from any one person aggregating shall not comprise more than 10 percent of the licensee's total permissible investments. An authorized delegate shall remit all money owing to the licensee in accordance with the terms of the contract between the licensee and the authorized delegate but in no event more than seven business days.*

6. A share or a certificate issued by an open-end management investment company that is registered with the U.S. Securities and Exchange Commission under the Investment Companies Act of 1940 (15 U.S.C. § 80a-1 et seq.), and whose portfolio is restricted by the management company's investment policy to investments specified in subdivisions 1 through 4.

B. The following investments are permissible under § 6.2-1918, but only to the extent specified:

1. An interest-bearing bill, note, bond, or debenture of a person whose equity shares are traded on a national securities exchange or on a national over-the-counter market, if the aggregate of investments under this subdivision does not exceed 20 percent of the total permissible investments of a licensee and the licensee does not at one time hold investments under this subdivision in any one person aggregating more than 10 percent of the licensee's total permissible investments;

2. A share of a person traded on a national securities exchange or a national over-the-counter market or a share or a certificate issued by an open-end management investment company that is registered with the U.S. Securities and Exchange Commission under the Investment Companies Act of 1940 (15 U.S.C. § 80a-1 et seq.), and whose portfolio is restricted by the management company's investment policy to shares of a person traded on a national securities exchange or a national over-the-counter market, if the aggregate of investments under this subdivision does not exceed 20 percent of the total permissible

investments of a licensee and the licensee does not at one time hold investments in any one person aggregating more than 10 percent of the licensee's total permissible investments;

3. A demand-borrowing agreement made to a corporation or a subsidiary of a corporation whose securities are traded on a national securities exchange if the aggregate of the amount of principal and interest outstanding under demand-borrowing agreements under this subdivision does not exceed 20 percent of the total permissible investments of a licensee and the licensee does not at one time hold principal and interest outstanding under demand-borrowing agreements under this subdivision with any one person aggregating more than 10 percent of the licensee's total permissible investments; and

4. Any other investment the Commission designates, to the extent specified by the Commission.

C. The aggregate of investments under subsection B may not exceed 50 percent of the total permissible investments of a licensee calculated in accordance with § 6.2-1918.

§ 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 § 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

429 with the nature of the employment under consideration;

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

432 11. A person requesting a copy of his own criminal history record information as defined in
433 § 9.1-101 at his cost, except that criminal history record information shall be supplied at no charge to a
434 person who has applied to be a volunteer with (i) a Virginia affiliate of Big Brothers/Big Sisters of
435 America; (ii) a volunteer fire company; (iii) the Volunteer Emergency Families for Children; (iv) any
436 affiliate of Prevent Child Abuse, Virginia; (v) any Virginia affiliate of Compeer; or (vi) any board
437 member or any individual who has been offered membership on the board of a Crime Stoppers, Crime
438 Solvers or Crime Line program as defined in § 15.2-1713.1;

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

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

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

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

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

462 17. The Alcoholic Beverage Control Board for the conduct of investigations as set forth in
463 § 4.1-103.1;

464 18. The State Board of Elections and authorized officers and employees thereof and general registrars
465 appointed pursuant to § 24.2-110 in the course of conducting necessary investigations with respect to
466 voter registration, limited to any record of felony convictions;

467 19. The Commissioner of Behavioral Health and Developmental Services for those individuals who
468 are committed to the custody of the Commissioner pursuant to §§ 19.2-169.2, 19.2-169.6, 19.2-182.2,
469 19.2-182.3, 19.2-182.8, and 19.2-182.9 for the purpose of placement, evaluation, and treatment planning;

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

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

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

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

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

487 25. Members of a threat assessment team established by a public institution of higher education
488 pursuant to § 23-9.2:10 or by a private nonprofit institution of higher education, for the purpose of
489 assessing or intervening with an individual whose behavior may present a threat to safety; however, no
490 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 and holders of 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.) or Chapter 19 (§ 6.2-1900 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~~ Chapter 16 or 19 of Title 6.2, 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;

43. The Department of Social Services and directors of local departments of social services for the purpose of screening individuals seeking to enter into a contract with the Department of Social Services or a local department of social services for the provision of child care services for which child care subsidy payments may be provided; and

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 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.