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SENATE BILL NO. 1171

Offered January 11, 2017

Prefiled January 10, 2017

A BILL to amend the Code of Virginia by adding sections numbered 2.2-2812.1 and 15.2-1500.1, relating to public employment; inquiries by state agencies and localities regarding criminal convictions, charges, and arrests.

Patrons—Dance, Ebbin and McClellan; Delegate: Tyler

Referred to Committee on General Laws and Technology

Be it enacted by the General Assembly of Virginia:

1. That the Code of Virginia is amended by adding sections numbered 2.2-2812.1 and 15.2-1500.1 as follows:

§ 2.2-2812.1. Prohibition of questions on employment applications regarding arrests, charges, or convictions; limitations on such inquiries prior to conditional offer of employment.

A. As used in this section:

"Conviction" means any adjudication that an individual committed a crime, a finding of guilt after a criminal trial by a court of competent jurisdiction, or any plea of guilty or nolo contendere to a criminal charge.

"State agency" means any authority, board, department, instrumentality, institution, agency, or other unit of state government.

B. No state agency shall include on any application for employment a question inquiring whether the prospective employee has ever been arrested or charged with, or convicted of, any crime. The prohibition in this subsection against including such a question on any employment application shall not apply to applications for positions designated as sensitive pursuant to § 2.2-1201.1, law-enforcement agency positions, or positions related to law-enforcement agencies.

C. No state agency shall inquire whether a prospective employee has ever been convicted of any crime unless the inquiry takes place after the prospective employee has received a conditional offer of employment, which offer may be withdrawn if the prospective employee has a conviction record that directly relates to the duties and responsibilities of the position. The prohibition in this subsection against a state agency's inquiring into a prospective employee's criminal conviction record prior to the time that the prospective employee has received a conditional offer of employment shall not apply to applications for positions designated as sensitive pursuant to § 2.2-1201.1 or to state agencies that are expressly permitted to inquire into an individual's criminal history for employment purposes pursuant to any provision of federal or state law.

D. No state agency shall inquire whether a prospective employee has ever been arrested or charged with a crime unless the inquiry takes place after the prospective employee has received a conditional offer of employment, which offer may be withdrawn if (i) the prospective employee's criminal arrest or charge resulted in the prospective employee's conviction of a crime and (ii) the crime of which he was convicted directly relates to the duties and responsibilities of the position. In determining whether a criminal conviction directly relates to the duties and responsibilities of the position, the following criteria may be considered: (a) the nature and seriousness of the crime; (b) the relationship of the crime to the work to be performed in the position applied for; (c) the extent to which the position applied for might afford an opportunity to engage in further criminal activity of the same type as that in which the applicant had been involved; (d) the relationship of the crime to the ability, capacity, or fitness required to perform the duties and discharge the responsibilities of the position being sought; (e) the extent and nature of the applicant's past criminal activity; (f) the age of the applicant at the time of the commission of the crime; (g) the amount of time that has elapsed since the applicant's last involvement in the commission of a crime; (h) the conduct and work activity of the applicant prior to and following the criminal activity; and (i) evidence of the applicant's rehabilitation or rehabilitative effort while incarcerated or following release.

E. The prohibition in this section against a state agency's inquiring into a prospective employee's record of criminal arrests or charges shall not apply to applications for positions designated as sensitive pursuant to § 2.2-1201.1 or to state agencies that are expressly permitted to inquire into an individual's criminal arrests or charges for employment purposes pursuant to any provision of federal or state law.

§ 15.2-1500.1. Authority to prohibit questions on employment applications regarding arrests, charges, or convictions; limitations on such inquiries prior to conditional offer of employment.

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59 A. As used in this section, "conviction" means any adjudication that an individual committed a crime,
60 a finding of guilt after a criminal trial by a court of competent jurisdiction, or any plea of guilty or
61 nolo contendere to a criminal charge.

62 B. Any locality may, by ordinance, prohibit the inclusion on any application for employment of a
63 question inquiring whether the prospective employee has ever been arrested or charged with, or
64 convicted of, any crime. Such a prohibition shall not apply to applications for law-enforcement agency
65 positions or positions related to law-enforcement agencies.

66 C. An ordinance adopted pursuant to subsection B shall prohibit a locality from inquiring whether a
67 prospective employee has ever been convicted of any crime unless the inquiry takes place after the
68 prospective employee has received a conditional offer of employment, which offer may be withdrawn if
69 the prospective employee has a conviction record that directly relates to the duties and responsibilities
70 of the position. In determining whether a conviction record directly relates to the duties and
71 responsibilities of the position, the following criteria may be considered: (i) the nature and seriousness
72 of the crime; (ii) the relationship of the crime to the work to be performed in the position applied for;
73 (iii) the extent to which the position applied for might afford an opportunity to engage in further
74 criminal activity of the same type as that in which the applicant had been involved; (iv) the relationship
75 of the crime to the ability, capacity, or fitness required to perform the duties and discharge the
76 responsibilities of the position being sought; (v) the extent and nature of the applicant's past criminal
77 activity; (vi) the age of the applicant at the time of the commission of the crime; (vii) the amount of
78 time that has elapsed since the applicant's last involvement in the commission of a crime; (viii) the
79 conduct and work activity of the applicant prior to and following the criminal activity; and (ix) evidence
80 of the applicant's rehabilitation or rehabilitative effort while incarcerated or following release.

81 D. An ordinance adopted pursuant to subsection B shall prohibit a locality from inquiring whether a
82 prospective employee has ever been arrested or charged with a crime unless the inquiry takes place
83 after the prospective employee has received a conditional offer of employment, which offer may be
84 withdrawn if (i) the prospective employee's criminal arrest or charge resulted in the prospective
85 employee's conviction of a crime and (ii) the crime of which he was convicted directly relates to the
86 duties and responsibilities of the position.