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HOUSE BILL NO. 4037

Offered July 19, 2019

A *BILL to amend and reenact § 52-46 of the Code of Virginia, relating to Department of State Police; noncriminal justice background checks; additional service fee; Federal Bureau of Investigation Next Generation Rap Back Service; report.*

Patron—McGuire

Referred to Committee on Militia, Police and Public Safety

Be it enacted by the General Assembly of Virginia:**1. That § 52-46 of the Code of Virginia is amended and reenacted as follows:****§ 52-46. Applicant Fingerprint Database; maintenance; dissemination; penalty.**

A. The Department of State Police shall keep and maintain an Applicant Fingerprint Database separate and apart from all other records maintained by the Department. The purpose of the database shall be to allow those agencies and entities who require a criminal background check as a condition of licensure, certification, employment, or volunteer service to be advised when an individual subject to such screening is arrested for, or convicted of, a criminal offense which would disqualify that individual from licensure, certification, employment or volunteer service with that entity. The Department is authorized to submit fingerprints and accompanying records to the Federal Bureau of Investigation (FBI) to be advised through the FBI's Next Generation Identification Rap Back ~~service~~ *Service* when an individual subject to a criminal background check is arrested for, or convicted of, a criminal offense not reported to the Department which would disqualify that individual from licensure, certification, employment, or volunteer service with that entity.

B. As used in this section:

"Participating entity" means an agency or organization that requires a fingerprint background check as a condition of licensure, certification, employment, or volunteer service, and that has elected to participate in the database.

"Individual" means any person who has submitted fingerprints to a participating entity in order to be licensed, certified, employed, or to perform volunteer service with that entity.

C. The Department of State Police shall notify forthwith the participating entity that employs, certifies, licenses, or accepts the volunteer services of an individual whose prints are maintained in the database upon receipt of a report that the individual has been arrested for or convicted of an offense that would disqualify that individual from licensure, certification, employment or volunteer service with that entity. The information contained in the notification shall be used by the entity for purposes of determining the eligibility of the continued service of the individual and shall not be further disseminated.

D. Use of the information contained in the database or received from the database for purposes not authorized by this section is prohibited, and a willful violation of this section with the intent to harass or intimidate another shall be punished as a Class 1 misdemeanor.

E. No liability shall be imposed upon any law-enforcement official who disseminates information or fails to disseminate information in good faith compliance with the requirements of this section, but this provision shall not be construed to grant immunity for gross negligence or willful misconduct.

F. The Department of State Police shall promulgate regulations governing the operation and maintenance of the database and the expungement of records on persons who are deceased, or who are no longer employed, licensed, certified, or in volunteer service for the entity that submitted the fingerprints.

G. 1. The Department of State Police may charge an annual fee not to exceed \$10 per individual entered into the database. The fee shall be paid no later than July 15 of each year by the participating entity or entities submitting fingerprints to the database or by the entity or entities requesting notification regarding an individual. An individual whose licensure, certification, employment, or volunteer service moves from one entity to another need not be reprinted. When more than one participating entity licenses, certifies, employs, or accepts the volunteer services of an individual in the database, both entities shall be responsible for paying the full cost for maintenance and notification. Any fees collected shall be deposited in a special account to be used to offset the costs of enhancing and administering the database.

2. *The Department of State Police may charge an additional service fee of no more than \$50 to individuals subject to screening as a condition of licensure, certification, employment, or volunteer service until January 1, 2025, and no more than \$25 thereafter. Such additional service fees shall be*

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59 *used to implement and maintain the Department of State Police's participation in the FBI's Next*
60 *Generation Identification Rap Back Service, including funding any necessary upgrades to current*
61 *computerized systems.*

62 H. The Department of State Police shall make the database available no later than January 1, 2005,
63 unless funds necessary to develop and operate the database are unavailable.

64 I. No entity authorized to submit fingerprints shall be considered negligent per se in a civil action
65 solely because the entity elected not to submit an individual's fingerprints to the database pursuant to
66 this section.

67 **2. The Department of State Police shall submit a report to the General Assembly by December 1,**
68 **2020, with recommendations for specific legislative changes necessary to fully implement and**
69 **participate in the FBI's Next Generation Rap Back Service.**