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HOUSE BILL NO. 2313

Offered January 11, 2023

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

Patron—Head

Referred to Committee for Courts of Justice

Be it enacted by the General Assembly of Virginia:**1. That § 19.2-389 of the Code of Virginia is 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, 4, and 6 of § 53.1-136 shall include collective dissemination by electronic means every 30 days. For purposes of this subdivision, criminal history record information includes information sent to the Central Criminal Records Exchange pursuant to §§ 37.2-819 and 64.2-2014 when disseminated to any full-time or part-time employee of the State Police, a police department or sheriff's office that is a part of or administered by the Commonwealth or any political subdivision thereof, and who is responsible for the prevention and detection of crime and the enforcement of the penal, traffic or highway laws of the Commonwealth for the purposes of the administration of criminal justice;

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 (§ 33.2-1900 et seq.) of Title 33.2 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

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59 adult members of that individual's household, with whom the agency is considering placing a child or
60 from whom the agency is considering removing a child due to abuse or neglect, on an emergency,
61 temporary, or permanent basis pursuant to §§ 63.2-901.1 and 63.2-1505, subject to the restriction that
62 the data shall not be further disseminated to any party other than a federal or state authority or court as
63 may be required to comply with an express requirement of law;

64 9. To the extent permitted by federal law or regulation, public service companies as defined in
65 § 56-1, for the conduct of investigations of applicants for employment when such employment involves
66 personal contact with the public or when past criminal conduct of an applicant would be incompatible
67 with the nature of the employment under consideration;

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

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

77 12. Administrators and board presidents of and applicants for licensure or registration as a child
78 welfare agency as defined in § 63.2-100 for dissemination to the Commissioner of Social Services'
79 representative pursuant to § 63.2-1702 for the conduct of investigations with respect to employees of and
80 volunteers at such facilities, caretakers, and foster and adoptive parent applicants of private child-placing
81 agencies, pursuant to §§ 63.2-1719, 63.2-1720, and 63.2-1721, subject to the restriction that the data
82 shall not be further disseminated by the facility or agency to any party other than the data subject, the
83 Commissioner of Social Services' representative or a federal or state authority or court as may be
84 required to comply with an express requirement of law for such further dissemination; however, nothing
85 in this subdivision shall be construed to prohibit the Commissioner of Social Services' representative
86 from issuing written certifications regarding the results of a background check that was conducted before
87 July 1, 2021, in accordance with subsection J of § 22.1-289.035 or § 22.1-289.039;

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

91 14. The Virginia Lottery for the conduct of investigations as set forth in the Virginia Lottery Law
92 (§ 58.1-4000 et seq.) and casino gaming as set forth in Chapter 41 (§ 58.1-4100 et seq.) of Title 58.1,
93 and the Department of Agriculture and Consumer Services for the conduct of investigations as set forth
94 in Article 1.1:1 (§ 18.2-340.15 et seq.) of Chapter 8 of Title 18.2;

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

99 16. Licensed assisted living facilities and licensed adult day care centers for the conduct of
100 investigations of applicants for compensated employment in licensed assisted living facilities and
101 licensed adult day care centers pursuant to § 63.2-1720, subject to the limitations set out in subsection F;

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

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

107 19. The Commissioner of Behavioral Health and Developmental Services (*the Commissioner*) for
108 ~~these~~ (i) individuals who are committed to the custody of *or being evaluated by* the Commissioner
109 pursuant to §§ 19.2-168.1, 19.2-169.1, 19.2-169.2, 19.2-169.5, 19.2-169.6, 19.2-182.2, 19.2-182.3,
110 19.2-182.8, and 19.2-182.9 for the purpose of placement, evaluation, ~~and~~ treatment, *or discharge*
111 *planning or (ii) any individual otherwise committed to the custody of the Commissioner when, in the*
112 *Commissioner's discretion, such information may be beneficial for the purpose of placement, evaluation,*
113 *treatment, or discharge planning;*

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

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

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

23. Pursuant to § 22.1-296.3, the governing boards or administrators of private elementary or secondary schools which are accredited pursuant to § 22.1-19 or a private organization coordinating such records information on behalf of such governing boards or administrators pursuant to a written agreement with the Department of State Police;

24. Public institutions of higher education and nonprofit private institutions of higher education for the purpose of screening individuals who are offered or accept employment;

25. Members of a threat assessment team established by a local school board pursuant to § 22.1-79.4, by a public institution of higher education pursuant to § 23.1-805, 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, approval as a sponsored residential service provider, permission to enter into a shared living arrangement with a person receiving medical assistance services pursuant to a waiver, or permission for any person under contract with the community services board to serve in a direct care position on behalf of the community services board 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, approval as a sponsored residential service provider, permission to enter into a shared living arrangement with a person receiving medical assistance services pursuant to a waiver, or permission for any person under contract with the behavioral health authority to serve in a direct care position on behalf of the behavioral health authority 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 or requests approval as a sponsored residential service provider, permission to enter into a shared living arrangement with a person receiving medical assistance services pursuant to a waiver, or permission for any person under contract with the provider to serve in a 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 Chairman of the Senate Committee on the Judiciary or the House Committee for Courts of Justice 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;

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

182 law for such further dissemination, subject to limitations set out in subsection G;

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

188 38. The State Corporation Commission for the purpose of investigating individuals who are current
189 or proposed members, senior officers, directors, and principals of an applicant or person licensed under
190 Chapter 16 (§ 6.2-1600 et seq.), Chapter 19 (§ 6.2-1900 et seq.), or Chapter 26 (§ 6.2-2600 et seq.) of
191 Title 6.2. Notwithstanding any other provision of law, if an application is denied based in whole or in
192 part on information obtained from the Central Criminal Records Exchange pursuant to Chapter 16, 19,
193 or 26 of Title 6.2, the Commissioner of Financial Institutions or his designee may disclose such
194 information to the applicant or its designee;

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

197 40. The Department for Aging and Rehabilitative Services and the Department for the Blind and
198 Vision Impaired for the purpose of evaluating an individual's fitness for various types of employment
199 and for the purpose of delivering comprehensive vocational rehabilitation services pursuant to Article 11
200 (§ 51.5-170 et seq.) of Chapter 14 of Title 51.5 that will assist the individual in obtaining employment;

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

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

204 43. The Department of Education or its agents or designees for the purpose of screening individuals
205 seeking to enter into a contract with the Department of Education or its agents or designees for the
206 provision of child care services for which child care subsidy payments may be provided;

207 44. The Department of Juvenile Justice to investigate any parent, guardian, or other adult members of
208 a juvenile's household when completing a predispositional or postdispositional report required by §
209 16.1-273 or a Board of Juvenile Justice regulation promulgated pursuant to § 16.1-233;

210 45. The State Corporation Commission, for the purpose of screening applicants for insurance
211 licensure under Chapter 18 (§ 38.2-1800 et seq.) of Title 38.2;

212 46. Administrators and board presidents of and applicants for licensure or registration as a child day
213 program or family day system, as such terms are defined in § 22.1-289.02, for dissemination to the
214 Superintendent of Public Instruction's representative pursuant to § 22.1-289.013 for the conduct of
215 investigations with respect to employees of and volunteers at such facilities pursuant to §§ 22.1-289.034
216 through 22.1-289.037, subject to the restriction that the data shall not be further disseminated by the
217 facility or agency to any party other than the data subject, the Superintendent of Public Instruction's
218 representative, or a federal or state authority or court as may be required to comply with an express
219 requirement of law for such further dissemination; however, nothing in this subdivision shall be
220 construed to prohibit the Superintendent of Public Instruction's representative from issuing written
221 certifications regarding the results of prior background checks in accordance with subsection J of
222 § 22.1-289.035 or § 22.1-289.039; and

223 47. Other entities as otherwise provided by law.

224 Upon an ex parte motion of a defendant in a felony case and upon the showing that the records
225 requested may be relevant to such case, the court shall enter an order requiring the Central Criminal
226 Records Exchange to furnish the defendant, as soon as practicable, copies of any records of persons
227 designated in the order on whom a report has been made under the provisions of this chapter.

228 Notwithstanding any other provision of this chapter to the contrary, upon a written request sworn to
229 before an officer authorized to take acknowledgments, the Central Criminal Records Exchange, or the
230 criminal justice agency in cases of offenses not required to be reported to the Exchange, shall furnish a
231 copy of conviction data covering the person named in the request to the person making the request;
232 however, such person on whom the data is being obtained shall consent in writing, under oath, to the
233 making of such request. A person receiving a copy of his own conviction data may utilize or further
234 disseminate that data as he deems appropriate. In the event no conviction data is maintained on the data
235 subject, the person making the request shall be furnished at his cost a certification to that effect.

236 B. Use of criminal history record information disseminated to noncriminal justice agencies under this
237 section shall be limited to the purposes for which it was given and may not be disseminated further,
238 except as otherwise provided in subdivision A 46.

239 C. No criminal justice agency or person shall confirm the existence or nonexistence of criminal
240 history record information for employment or licensing inquiries except as provided by law.

241 D. Criminal justice agencies shall establish procedures to query the Central Criminal Records
242 Exchange prior to dissemination of any criminal history record information on offenses required to be
243 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 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 § 63.2-1720.

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 set forth in clause (i) of the definition of barrier crime in § 19.2-392.02.

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.

I. Nothing in this section shall preclude the dissemination of a person's criminal history record information pursuant to the rules of court for obtaining discovery or for review by the court.