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HOUSE BILL NO. 566**AMENDMENT IN THE NATURE OF A SUBSTITUTE**

(Proposed by the House Committee on Health, Welfare and Institutions
on February 6, 1996)

(Patron Prior to Substitute—Delegate Landes)

A BILL to amend and reenact § 19.2-389 of the Code of Virginia; to amend the Code of Virginia by adding a section numbered 37.1-20.3; and to repeal § 37.1-20.2 of the Code of Virginia, relating to background checks.

Be it enacted by the General Assembly of Virginia:

1. That § 19.2-389 of the Code of Virginia is amended and reenacted and that the Code of Virginia is amended by adding a section numbered 37.1-20.3 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 § 9-169, 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 thirty days;

2. Such other individuals and agencies which 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 and/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 which 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 which 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 for the conduct of investigations of applicants for public 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;

8. Public or private agencies when and as required by federal or state law or interstate compact to investigate applicants for foster or adoptive parenthood 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;

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 with the nature of the employment under consideration;

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

11. A person requesting a copy of his own criminal history record information as defined in § 9-169 at his cost, except that criminal history record information shall be supplied at no charge to a person who has applied to be a volunteer (i) with a Virginia affiliate of Big Brothers/Big Sisters of America, (ii) with a volunteer fire company or volunteer rescue squad, (iii) as a court-appointed special advocate, or (iv) with the Volunteer Emergency Families for Children;

60 12. Administrators and board presidents of and applicants for licensure or registration as a child
61 welfare agency as defined in § 63.1-195 for dissemination to the Commissioner of Social Services'
62 representative pursuant to § 63.1-198 for the conduct of investigations with respect to employees of and
63 volunteers at such facilities, caretakers, and other adults living in family day-care homes or homes
64 approved by family day-care systems, and foster and adoptive parent applicants of private child-placing
65 agencies, pursuant to § 63.1-198.1, subject to the restriction that the data shall not be further
66 disseminated by the facility or agency to any party other than the data subject, the Commissioner of
67 Social Services' representative or a federal or state authority or court as may be required to comply with
68 an express requirement of law for such further dissemination;

69 13. The school boards of the Commonwealth for the purpose of screening individuals who are
70 offered or who accept public school employment;

71 14. The State Lottery Department for the conduct of investigations as set forth in the State Lottery
72 Law (§ 58.1-4000 et seq.);

73 15. Licensed nursing homes and home care organizations for the conduct of investigations of
74 applicants for compensated employment in licensed nursing homes pursuant to § 32.1-126.01 and home
75 care organizations pursuant to § 32.1-162.9:1, subject to the limitations set out in subsection E;

76 16. Licensed homes for adults, licensed district homes for adults, and licensed adult day-care centers
77 for the conduct of investigations of applicants for compensated employment in licensed homes for adults
78 pursuant to § 63.1-173.2, in licensed district homes for adults pursuant to § 63.1-189.1, and in licensed
79 adult day-care centers pursuant to § 63.1-194.13, subject to the limitations set out in subsection F;

80 17. The Alcoholic Beverage Control Board for the conduct of investigations as set forth in
81 § 4.1-103.1;

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

85 19. The Commissioner of the Department of Mental Health, Mental Retardation and Substance Abuse
86 Services for those individuals who are committed to the custody of the Commissioner pursuant to
87 §§ 19.2-169.2, 19.2-169.6, 19.2-176, 19.2-177.1, 19.2-182.2, 19.2-182.3, 19.2-182.8 and 19.2-182.9 for
88 the purpose of placement, evaluation, and treatment planning; and

89 20. *Facilities operated by the Department of Mental Health, Mental Retardation and Substance*
90 *Abuse Services for the purpose of determining applicants' fitness for employment or for providing*
91 *volunteer or contractual services pursuant to § 37.1-20.3; and*

92 21. Other entities as otherwise provided by law.

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

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

105 B. Use of criminal history record information disseminated to noncriminal justice agencies under this
106 section shall be limited to the purposes for which it was given and may not be disseminated further.

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

109 D. Criminal justice agencies shall establish procedures to query the Central Criminal Records
110 Exchange prior to dissemination of any criminal history record information on offenses required to be
111 reported to the Central Criminal Records Exchange to ensure that the most up-to-date disposition data is
112 being used. Inquiries of the Exchange shall be made prior to any dissemination except in those cases
113 where time is of the essence and the normal response time of the Exchange would exceed the necessary
114 time period. A criminal justice agency to whom a request has been made for the dissemination of
115 criminal history record information that is required to be reported to the Central Criminal Records
116 Exchange may direct the inquirer to the Central Criminal Records Exchange for such dissemination.
117 Dissemination of information regarding offenses not required to be reported to the Exchange shall be
118 made by the criminal justice agency maintaining the record as required by § 15.1-135.1.

119 E. Criminal history information provided to licensed nursing homes and to home care organizations
120 pursuant to subdivision A 15 shall be limited to the convictions on file with the Exchange for any
121 offense specified in §§ 32.1-126.01 and 32.1-162.9:1.

F. Criminal history information provided to licensed adult care residences, 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 § 63.1-173.2, 63.1-189.1 or § 63.1-194.13.

§ 37.1-20.3. *Background check required.*

A. As a condition of employment, volunteering or providing services on a regular basis at any state facility as defined in § 37.1-1, the Department shall require any individual who (i) accepts a position of employment at a state facility and was not employed by that state facility prior to July 1, 1996; (ii) volunteers at a state facility, is an adult, will be alone with a patient or resident in the performance of his duties, and was not a volunteer at such state facility prior to July 1, 1996; (iii) provides services at a state facility on a regular basis, will be alone with any patient or resident in the performance of his duties, and did not provide such services prior to July 1, 1996; or (iv) accepts a position with the Department that receives, monitors or disburses funds of the Commonwealth and was not employed by the Department prior to July 1, 1996, to submit to fingerprinting and to provide personal descriptive information to be forwarded along with the applicant's fingerprints through the Central Criminal Records Exchange to the Federal Bureau of Investigation for the purpose of obtaining criminal history record information regarding such applicant.

The Central Criminal Records Exchange, upon receipt of an individual's record or notification that no record exists, shall submit a report to the state facility or to the Department. If an individual is denied employment or the opportunity to volunteer or provide services at a state facility or the Department because of information appearing on his criminal history record, the state facility or Department shall provide, upon written request, a copy of the information obtained from the Central Criminal Records Exchange that resulted in the denial of employment to the individual. The information provided to the state facility or Department shall not be disseminated except as provided in this section.

B. Those individuals listed in clauses (i), (ii), (iii) and (iv) of subsection A also shall provide the state facility or Department a copy of information from the central registry maintained pursuant to § 63.1-248.8 on any investigation of child abuse or neglect undertaken on him.

C. The Board may promulgate regulations to comply with the provisions of this section. Copies of any information received by the state facility or Department pursuant to this section shall be available to the Department and to the applicable state facility but shall not be disseminated further, except as permitted by state or federal law. The cost of obtaining the criminal history record and the central registry information shall be borne by the applicant, unless the Department, at its option, decides to pay such cost. However, the Department shall pay the cost of obtaining the criminal history record and the central registry information for all volunteers.

D. If a state facility is covered by the provisions of this section and the provisions of § 63.1-248.7:2, the provisions of this section shall take precedence.

2. That § 37.1-20.2 of the Code of Virginia is repealed.