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SENATE BILL NO. 702

Offered January 21, 2022

A *BILL to amend and reenact § 19.2-389.3, as it is currently effective and as it may become effective, of the Code of Virginia, relating to marijuana criminal history information; disclosure to state and local governments by job applicants.*

Patron—Kiggans

Referred to Committee on Rehabilitation and Social Services

Be it enacted by the General Assembly of Virginia:

1. That § 19.2-389.3, as it is currently effective and as it may become effective, of the Code of Virginia is amended and reenacted as follows:

§ 19.2-389.3. (For contingent expiration date, see Acts 2021, Sp. Sess. I, cc. 524, 542, 550, and 551) Marijuana possession; limits on dissemination of criminal history record information; prohibited practices by employers, educational institutions, and state and local governments; penalty.

A. Records relating to the arrest, criminal charge, or conviction of a person for a misdemeanor violation of § 18.2-248.1 or a violation of § 18.2-250.1, including any violation charged under §§ 18.2-248.1 or 18.2-250.1 that was deferred and dismissed pursuant to § 18.2-251, maintained in the Central Criminal Records Exchange shall not be open for public inspection or otherwise disclosed, provided that such records may be disseminated (i) to make the determination as provided in § 18.2-308.2:2 of eligibility to possess or purchase a firearm; (ii) to aid in the preparation of a pretrial investigation report prepared by a local pretrial services agency established pursuant to Article 5 (§ 19.2-152.2 et seq.) of Chapter 9, a pre-sentence or post-sentence investigation report pursuant to § 19.2-299 or in the preparation of the discretionary sentencing guidelines worksheets pursuant to subsection C of § 19.2-298.01; (iii) to aid local community-based probation services agencies established pursuant to the Comprehensive Community Corrections Act for Local-Responsible Offenders (§ 9.1-173 et seq.) with investigating or serving adult local-responsible offenders and all court service units serving juvenile delinquent offenders; (iv) for fingerprint comparison utilizing the fingerprints maintained in the Automated Fingerprint Information System computer; (v) to attorneys for the Commonwealth to secure information incidental to sentencing and to attorneys for the Commonwealth and probation officers to prepare the discretionary sentencing guidelines worksheets pursuant to subsection C of § 19.2-298.01; (vi) 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 purposes of the administration of criminal justice as defined in § 9.1-101; (vii) to the Virginia Criminal Sentencing Commission for research purposes; (viii) to any full-time or part-time employee of the State Police or a police department or sheriff's office that is a part of or administered by the Commonwealth or any political subdivision thereof for the purpose of screening any person for full-time or part-time employment with the State Police or a police department or sheriff's office that is a part of or administered by the Commonwealth or any political subdivision thereof; (ix) to the State Health Commissioner or his designee for the purpose of screening any person who applies to be a volunteer with or an employee of an emergency medical services agency as provided in § 32.1-111.5; (x) to any full-time or part-time employee of the Department of Forensic Science for the purpose of screening any person for full-time or part-time employment with the Department of Forensic Science; (xi) to the chief law-enforcement officer of a locality, or his designee who shall be an individual employed as a public safety official of the locality, that has adopted an ordinance in accordance with §§ 15.2-1503.1 and 19.2-389 for the purpose of screening any person who applies to be a volunteer with or an employee of an emergency medical services agency as provided in § 32.1-111.5; and (xii) to any full-time or part-time employee of the Department of Motor Vehicles, any employer as defined in § 46.2-341.4, or any medical examiner as defined in 49 C.F.R. § 390.5 for the purpose of complying with the regulations of the Federal Motor Carrier Safety Administration.

B. An employer or educational institution shall not, in any application, interview, or otherwise, require an applicant for employment or admission to disclose information concerning any arrest, criminal charge, or conviction against him when the record relating to such arrest, criminal charge, or conviction is not open for public inspection pursuant to subsection A. An applicant need not, in answer to any question concerning any arrest, criminal charge, or conviction, include a reference to or information concerning any arrest, criminal charge, or conviction when the record relating to such arrest, criminal

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59 charge, or conviction is not open for public inspection pursuant to subsection A.

60 C. Agencies, officials, and employees of the state and local governments shall not, in any
61 application, interview, or otherwise, require an applicant for a license, permit, registration, or
62 governmental service to disclose information concerning any arrest, criminal charge, or conviction
63 against him when the record relating to such arrest, criminal charge, or conviction is not open for public
64 inspection pursuant to subsection A. An applicant need not, in answer to any question concerning any
65 arrest, criminal charge, or conviction, include a reference to or information concerning any arrest,
66 criminal charge, or conviction when the record relating to such arrest, criminal charge, or conviction is
67 not open for public inspection pursuant to subsection A. Such an application may not be denied solely
68 because of the applicant's refusal to disclose information concerning any such arrest, criminal charge, or
69 conviction.

70 D. A person who willfully violates subsection B or C is guilty of a Class 1 misdemeanor for each
71 violation.

72 **§ 19.2-389.3. (For contingent effective date, see Acts 2021, Sp. Sess. I, cc. 524, 542, 550, and**
73 **551) Marijuana possession; limits on dissemination of criminal history record information;**
74 **prohibited practices by employers, educational institutions, and state and local governments;**
75 **penalty.**

76 A. Criminal history record information contained in the Central Criminal Records Exchange,
77 including any records relating to an arrest, criminal charge, or conviction, for a misdemeanor violation
78 of § 18.2-248.1 or a violation of § 18.2-250.1, including any violation charged under §§ 18.2-248.1 or
79 18.2-250.1 that was deferred and dismissed pursuant to § 18.2-251, shall not be open for public
80 inspection or otherwise disclosed, provided that such records may be disseminated and used for the
81 following purposes: (i) to make the determination as provided in § 18.2-308.2:2 of eligibility to possess
82 or purchase a firearm; (ii) for fingerprint comparison utilizing the fingerprints maintained in the
83 Automated Fingerprint Information System; (iii) to the Virginia Criminal Sentencing Commission for its
84 research purposes; (iv) to any full-time or part-time employee of the State Police or a police department
85 or sheriff's office that is a part of or administered by the Commonwealth or any political subdivision
86 thereof for the purpose of screening any person for full-time or part-time employment with, or to be a
87 volunteer with, the State Police or a police department or sheriff's office that is a part of or administered
88 by the Commonwealth or any political subdivision thereof; (v) to the State Health Commissioner or his
89 designee for the purpose of screening any person who applies to be a volunteer with or an employee of
90 an emergency medical services agency as provided in § 32.1-111.5; (vi) to any full-time or part-time
91 employee of the Department of Forensic Science for the purpose of screening any person for full-time or
92 part-time employment with the Department of Forensic Science; (vii) to the chief law-enforcement
93 officer of a locality, or his designee who shall be an individual employed as a public safety official of
94 the locality, that has adopted an ordinance in accordance with §§ 15.2-1503.1 and 19.2-389 for the
95 purpose of screening any person who applies to be a volunteer with or an employee of an emergency
96 medical services agency as provided in § 32.1-111.5; (viii) to any full-time or part-time employee of the
97 Department of Motor Vehicles, any employer as defined in § 46.2-341.4, or any medical examiner as
98 defined in 49 C.F.R. § 390.5 for the purpose of complying with the regulations of the Federal Motor
99 Carrier Safety Administration; (ix) to any employer or prospective employer or its designee where
100 federal law requires the employer to inquire about prior criminal charges or convictions; (x) to any
101 employer or prospective employer or its designee where the position that a person is applying for, or
102 where access to the premises in or upon which any part of the duties of such position is performed or is
103 to be performed, is subject to any requirement imposed in the interest of the national security of the
104 United States under any security program in effect pursuant to or administered under any contract with,
105 or statute or regulation of, the United States or any Executive Order of the President; (xi) to any person
106 authorized to engage in the collection of court costs, fines, or restitution under subsection C of
107 § 19.2-349 for purposes of collecting such court costs, fines, or restitution; (xii) to administer and utilize
108 the DNA Analysis and Data Bank set forth in Article 1.1 (§ 19.2-310.2 et seq.) of Chapter 18; (xiii) to
109 publish decisions of the Supreme Court, Court of Appeals, or any circuit court; (xiv) to any full-time or
110 part-time employee of a court, the Office of the Executive Secretary, the Division of Legislative
111 Services, or the Chairs of the House Committee for Courts of Justice and the Senate Committee on the
112 Judiciary for the purpose of screening any person for full-time or part-time employment as a clerk,
113 magistrate, or judge with a court or the Office of the Executive Secretary; (xv) to any employer or
114 prospective employer or its designee where this Code or a local ordinance requires the employer to
115 inquire about prior criminal charges or convictions; (xvi) to any employer or prospective employer or its
116 designee that is allowed access to such sealed records in accordance with the rules and regulations
117 adopted pursuant to § 9.1-128 and procedures adopted pursuant to § 9.1-134; (xvii) to any business
118 screening service for purposes of complying with § 19.2-392.16; (xviii) to any attorney for the
119 Commonwealth and any person accused of a violation of law, or counsel for the accused, in order to
120 comply with any constitutional and statutory duties to provide exculpatory, mitigating, and impeachment

evidence to an accused; (xix) to any party in a criminal or civil proceeding for use as authorized by law in such proceeding; (xx) to any party for use in a protective order hearing as authorized by law; (xxi) to the Department of Social Services or any local department of social services for purposes of performing any statutory duties as required under Title 63.2; (xxii) to any party in a proceeding relating to the care and custody of a child for use as authorized by law in such proceeding; (xxiii) to the attorney for the Commonwealth and the court for purposes of determining eligibility for sealing pursuant to the provisions of § 19.2-392.12; (xxiv) to determine a person's eligibility to be empaneled as a juror; and (xxv) to the person arrested, charged, or convicted of the offense that was sealed.

B. Except as provided in subsection C, agencies, officials, and employees of state and local governments, private employers that are not subject to federal laws or regulations in the hiring process, and educational institutions shall not, in any application, interview, or otherwise, require an applicant for employment or admission to disclose information concerning any arrest, criminal charge, or conviction against him when the record relating to such arrest, criminal charge, or conviction is not open for public inspection pursuant to subsection A. An applicant need not, in answer to any question concerning any arrest, criminal charge, or conviction, include a reference to or information concerning any arrest, criminal charge, or conviction when the record relating to such arrest, criminal charge, or conviction is not open for public inspection pursuant to subsection A.

C. The provisions of subsection B shall not apply if:

1. The person is applying for full-time employment or part-time employment with, or to be a volunteer with, the State Police or a police department or sheriff's office that is a part of or administered by the Commonwealth or any political subdivision thereof;

2. This Code requires the employer to make such an inquiry;

3. Federal law requires the employer to make such an inquiry;

4. The position, or access to the premises in or upon which any part of the duties of such position is performed or is to be performed, is subject to any requirement imposed in the interest of the national security of the United States under any security program in effect pursuant to or administered under any contract with, or statute or regulation of, the United States or any Executive Order of the President; or

5. The rules and regulations adopted pursuant to § 9.1-128 and procedures adopted pursuant to § 9.1-134 allow the employer to access such sealed records.

~~D. Agencies, officials, and employees of the state and local governments shall not, in any application, interview, or otherwise, require an applicant for a license, permit, registration, or governmental service to disclose information concerning any arrest, criminal charge, or conviction against him when the record relating to such arrest, criminal charge, or conviction is not open for public inspection pursuant to subsection A. An applicant need not, in answer to any question concerning any arrest, criminal charge, or conviction, include a reference to or information concerning any arrest, criminal charge, or conviction when the record relating to such arrest, criminal charge, or conviction is not open for public inspection pursuant to subsection A. Such an application may not be denied solely because of the applicant's refusal to disclose information concerning any such arrest, criminal charge, or conviction.~~

~~E. No person, as defined in § 36-96.1:1, shall, in any application for the sale or rental of a dwelling, as defined in § 36-96.1:1, require an applicant to disclose information concerning any arrest, criminal charge, or conviction against him when the record relating to such arrest, criminal charge, or conviction is not open for public inspection pursuant to subsection A. An applicant need not, in answer to any question concerning any arrest, criminal charge, or conviction, include a reference to or information concerning arrests, criminal charges, or convictions when the record relating to such arrest, criminal charge, or conviction is not open for public inspection pursuant to subsection A. Such an application may not be denied solely because of the applicant's refusal to disclose information concerning any such arrest, criminal charge, or conviction.~~

~~F. E. No insurance company, as defined in § 38.2-100, shall, in any application for insurance, as defined in § 38.2-100, require an applicant to disclose information concerning any arrest, criminal charge, or conviction against him when the record relating to such arrest, criminal charge, or conviction is not open for public inspection pursuant to subsection A. An applicant need not, in answer to any question concerning any arrest, criminal charge, or conviction, include a reference to or information concerning arrests, criminal charges, or convictions when the record relating to such arrest, criminal charge, or conviction is not open for public inspection pursuant to subsection A. Such an application may not be denied solely because of the applicant's refusal to disclose information concerning any such arrest, criminal charge, or conviction.~~

~~G. F. If any entity or person listed under subsection B, D, or E, or F includes a question about a prior arrest, criminal charge, or conviction in an application for one or more of the purposes set forth in such subsections, such application shall include, or such entity or person shall provide, a notice to the applicant that an arrest, criminal charge, or conviction that is not open for public inspection pursuant to~~

182 subsection A does not have to be disclosed in the application. Such notice need not be included on any
183 application for one or more of the purposes set forth in subsection C.

184 ~~H.~~ G. The provisions of this section shall not prohibit the disclosure of any arrest, criminal charge,
185 or conviction that is not open for public inspection pursuant to subsection A or any information from
186 such records among law-enforcement officers and attorneys when such disclosures are made by such
187 officers or attorneys while engaged in the performance of their duties for purposes solely relating to the
188 disclosure or use of exculpatory, mitigating, and impeachment evidence or between attorneys for the
189 Commonwealth when related to the prosecution of a separate crime.

190 ~~I.~~ H. A person who willfully violates subsection B, D, *or* E; ~~or~~ F is guilty of a Class 1 misdemeanor
191 for each violation.