

22104596D

SENATE BILL NO. 742

Offered January 21, 2022

A *BILL to amend and reenact §§ 9.1-128, as it shall become effective, 17.1-205.1, 19.2-392.2, 19.2-392.6, as it shall become effective, 19.2-392.12, as it shall become effective, and 19.2-392.16, as it shall become effective, of the Code of Virginia and to repeal §§ 19.2-389.3, 19.2-392.2:1, and 19.2-392.2:2 of the Code of Virginia, relating to expungement of offenses; civil penalty.*

Patron—Surovell

Referred to Committee on the Judiciary

Be it enacted by the General Assembly of Virginia:

1. That §§ 9.1-128, as it shall become effective, 17.1-205.1, 19.2-392.2, 19.2-392.6, as it shall become effective, 19.2-392.12, as it shall become effective, and 19.2-392.16, as it shall become effective, of the Code of Virginia are amended and reenacted as follows:

§ 9.1-128. (For contingent effective date, see Acts 2021, Sp. Sess. I, cc. 524 and 542) **Dissemination of criminal history record information; Board to adopt regulations and procedures.**

A. Criminal history record information shall be disseminated, whether directly or through an intermediary, only in accordance with § 19.2-389.

B. The Board shall adopt regulations and procedures for the interstate dissemination of criminal history record information by which criminal justice agencies of the Commonwealth shall ensure that the limitations on dissemination of criminal history record information set forth in § 19.2-389 are accepted by recipients and will remain operative in the event of further dissemination.

C. The Board shall adopt regulations and procedures for the validation of an interstate recipient's right to obtain criminal history record information from criminal justice agencies of the Commonwealth.

D. The Board shall adopt regulations and procedures for the dissemination of sealed criminal history record information, including any records relating to an arrest, charge, or conviction, by which the criminal justice agencies of the Commonwealth and other persons, agencies, and employers can access such sealed records and shall ensure that access to and dissemination of such sealed records are made in accordance with the limitations on dissemination and use set forth in §§ 19.2-389; ~~19.2-389.3~~; and 19.2-392.13.

§ 17.1-205.1. Sealing Fee Fund.

There is hereby created in the state treasury a special nonreverting fund to be known as the Sealing Fee Fund, referred to in this section as "the Fund." The Fund shall be established on the books of the Comptroller. All funds accruing to the Fund pursuant to §§ 19.2-392.12 and 19.2-392.16 and all funds appropriated for such purpose and any gifts, donations, grants, bequests, and other funds received on its behalf shall be paid into the state treasury and credited to the Fund. Interest earned on moneys in the Fund shall remain in the Fund and be credited to it. Any moneys remaining in the Fund, including interest thereon, at the end of each fiscal year shall not revert to the general fund but shall remain in the Fund. The Fund shall be administered by the Executive Secretary of the Supreme Court, who shall use such funds solely to fund the costs for the compensation of court-appointed counsel under the provisions of *subsection L of § 19.2-392.2 and subsection L of § 19.2-392.12*. Expenditures from the Fund shall be limited by an appropriation in the general appropriation act. Expenditures and disbursements from the Fund shall be made by the State Treasurer on warrants issued by the Comptroller upon request of the Executive Secretary of the Supreme Court.

§ 19.2-392.2. Expungement of police and court records.

A. If a person is charged with the commission of a crime, a civil offense, or any offense defined in Title 18.2, and

1. ~~Is (i) is~~ acquitted, or

2. A (ii) a nolle prosequi is taken, or (iii) the charge is otherwise dismissed, including dismissal by accord and satisfaction pursuant to § 19.2-151, he may file a petition setting forth the relevant facts and requesting expungement of the police records and the court records relating to the charge.

B. If any person whose name or other identification has been used without his consent or authorization by another person who has been charged or arrested using such name or identification, he may file a petition with the court disposing of the charge for relief pursuant to this section. Such person shall not be required to pay any fees for the filing of a petition under this subsection. A petition filed under this subsection shall include one complete set of the petitioner's fingerprints obtained from a law-enforcement agency.

C. The petition with a copy of the warrant, summons, or indictment if reasonably available shall be

INTRODUCED

SB742

59 filed in the circuit court of the county or city in which the case was disposed of by acquittal or being
60 otherwise dismissed and shall contain, except where not reasonably available, the date of arrest and the
61 name of the arresting agency. Where this information is not reasonably available, the petition shall state
62 the reason for such unavailability. The petition shall further state the specific criminal charge or civil
63 offense to be expunged, the date of final disposition of the charge as set forth in the petition, the
64 petitioner's date of birth, and the full name used by the petitioner at the time of arrest.

65 D. A copy of the petition shall be served on the attorney for the Commonwealth of the city or
66 county in which the petition is filed. The attorney for the Commonwealth may file an objection or
67 answer to the petition or may give written notice to the court that he does not object to the petition
68 within 21 days after it is served on him.

69 E. The petitioner shall obtain from a law-enforcement agency one complete set of the petitioner's
70 fingerprints and shall provide that agency with a copy of the petition for expungement. The
71 law-enforcement agency shall submit the set of fingerprints to the Central Criminal Records Exchange
72 (CCRE) with a copy of the petition for expungement attached. The CCRE shall forward under seal to
73 the court a copy of the petitioner's criminal history, a copy of the source documents that resulted in the
74 CCRE entry that the petitioner wishes to expunge, if applicable, and the set of fingerprints. Upon
75 completion of the hearing, the court shall return the fingerprint card to the petitioner. If no hearing was
76 conducted, upon the entry of an order of expungement or an order denying the petition for
77 expungement, the court shall cause the fingerprint card to be destroyed unless, within 30 days of the
78 date of the entry of the order, the petitioner requests the return of the fingerprint card in person from the
79 clerk of the court or provides the clerk of the court a self-addressed, stamped envelope for the return of
80 the fingerprint card.

81 F. After receiving the criminal history record information from the CCRE, the court shall conduct a
82 hearing on the petition. If the court finds that the continued existence and possible dissemination of
83 information relating to the arrest of the petitioner causes or may cause circumstances which constitute a
84 manifest injustice to the petitioner, it shall enter an order requiring the expungement of the police and
85 court records, including electronic records, relating to the charge. Otherwise, it shall deny the petition.
86 However, if the petitioner has no prior criminal record and the arrest was for a misdemeanor violation
87 or the charge was for a civil offense, the petitioner shall be entitled, in the absence of good cause shown
88 to the contrary by the Commonwealth, to expungement of the police and court records relating to the
89 charge, and the court shall enter an order of expungement. If the attorney for the Commonwealth of the
90 county or city in which the petition is filed (i) gives written notice to the court pursuant to subsection D
91 that he does not object to the petition and (ii) when the charge to be expunged is a felony, stipulates in
92 such written notice that the continued existence and possible dissemination of information relating to the
93 arrest of the petitioner causes or may cause circumstances which constitute a manifest injustice to the
94 petitioner, the court may enter an order of expungement without conducting a hearing.

95 G. The Commonwealth shall be made party defendant to the proceeding. Any party aggrieved by the
96 decision of the court may appeal, as provided by law in civil cases.

97 H. Notwithstanding any other provision of this section, when the charge is dismissed because the
98 court finds that the person arrested or charged is not the person named in the summons, warrant,
99 indictment or presentment, the court dismissing the charge shall, upon motion of the person improperly
100 arrested or charged, enter an order requiring expungement of the police and court records relating to the
101 charge. Such order shall contain a statement that the dismissal and expungement are ordered pursuant to
102 this subsection and shall be accompanied by the complete set of the petitioner's fingerprints filed with
103 his petition. Upon the entry of such order, it shall be treated as provided in subsection K.

104 I. Notwithstanding any other provision of this section, upon receiving a copy pursuant to § 2.2-402
105 of an absolute pardon for the commission of a crime that a person did not commit, the court shall enter
106 an order requiring expungement of the police and court records relating to the charge and conviction.
107 Such order shall contain a statement that the expungement is ordered pursuant to this subsection. Upon
108 the entry of such order, it shall be treated as provided in subsection K.

109 J. Upon receiving a copy of a writ vacating a conviction pursuant to § 19.2-327.5 or 19.2-327.13, the
110 court shall enter an order requiring expungement of the police and court records relating to the charge
111 and conviction. Such order shall contain a statement that the expungement is ordered pursuant to this
112 subsection. Upon the entry of the order, it shall be treated as provided in subsection K.

113 K. Upon the entry of an order of expungement, the clerk of the court shall cause a copy of such
114 order to be forwarded to the Department of State Police, which shall, pursuant to rules and regulations
115 adopted pursuant to § 9.1-134, direct the manner by which the appropriate expungement or removal of
116 such records shall be effected, *including the removal of criminal history record information in*
117 *accordance with § 19.2-392.16.*

118 L. Costs shall be as provided by § 17.1-275, *but unless a person files a petition to proceed without*
119 *the payment of fees and costs, and the court with which such person files his petition finds such person*
120 *to be indigent pursuant to § 19.2-159. Costs shall not be recoverable against the Commonwealth.*

If a person files a petition to proceed without the payment of fees and costs pursuant to this subsection and has requested court-appointed counsel, the court shall then appoint counsel to file the petition for expungement and represent the petitioner in the expungement proceedings. Counsel appointed to represent such a petitioner shall be compensated for his services subject to guidelines issued by the Executive Secretary of the Supreme Court of Virginia, in a total amount not to exceed \$120, as determined by the court, and such compensation shall be paid from the Sealing Fee Fund as provided in § 17.1-205.1.

If the court enters an order of expungement and the petitioner did not file a petition to proceed without the payment of fees and costs, or the court with which such petitioner filed his petition to proceed without the payment of fees and costs did not find such petitioner to be indigent, the clerk of the court shall refund to the petitioner such costs paid by the petitioner.

M. Any order entered where (i) the court or parties failed to strictly comply with the procedures set forth in this section or (ii) the court enters an order of expungement contrary to law, shall be voidable upon motion and notice made within three years of the entry of such order.

N. Any petition for expungement or petition to proceed without the payment of fees and costs filed in accordance with this section shall be kept under seal.

§ 19.2-392.6. (For contingent effective date, see Acts 2021, Sp. Sess. I, cc. 524 and 542) Automatic sealing of offenses resulting in a deferred and dismissed disposition or conviction.

A. If a person was charged with an offense in violation of § 4.1-305 or former § 18.2-250.1, and such offense was deferred and dismissed as provided in § 4.1-305 or 18.2-251, such offense, including any records relating to such offense, shall be ordered to be automatically sealed in the manner set forth in § 19.2-392.7, subject to the provisions of subsections C and D.

B. If a person was convicted of a violation of any of the following sections, such conviction, including any records relating to such conviction, shall be ordered to be automatically sealed in the manner set forth in § 19.2-392.7, subject to the provisions of subsections C and D: § 4.1-305, 18.2-96, 18.2-103, 18.2-119, 18.2-120, or 18.2-134; a misdemeanor violation of § 18.2-248.1; or former § 18.2-250.1, or 18.2-415.

C. Subject to the provisions of subsection D, any offense listed under subsection A and any conviction listed under subsection B shall be ordered to be automatically sealed if seven years have passed since the date of the dismissal or conviction and the person charged with or convicted of such offense has not been convicted of violating any law of the Commonwealth that requires a report to the Central Criminal Records Exchange under subsection A of § 19.2-390 or any other state, the District of Columbia, or the United States or any territory thereof, excluding traffic infractions under Title 46.2, during that time period.

D. No offense listed under subsection A shall be automatically sealed if, on the date of the deferral or dismissal, the person was convicted of another offense that is not eligible for automatic sealing under subsection A or B. No conviction listed under subsection B shall be automatically sealed if, on the date of the conviction, the person was convicted of another offense that is not eligible for automatic sealing under subsection A or B.

E. If a person was charged with any criminal or civil offense and such offense concluded with any final disposition as either a misdemeanor violation of former § 18.2-248.1 or a violation of former § 18.2-250.1, or was charged with an offense in violation of former § 18.2-250.1, and such offense was deferred and dismissed as provided in § 18.2-251, such offense, including any records related to such offenses, such as criminal history record information and court records related to any violation of the terms and conditions of a suspended sentence or probation for such conviction, shall be ordered to be automatically sealed in the manner set forth in § 19.2-392.7.

F. This section shall not be construed as prohibiting a person from seeking sealing in the circuit court pursuant to the provisions of § 19.2-392.12.

§ 19.2-392.12. (For contingent effective date, see Acts 2021, Sp. Sess. I, cc. 524 and 542) Sealing of offenses resulting in a deferred and dismissed disposition or conviction by petition.

A. Except for a conviction or deferral and dismissal of a violation of § 18.2-36.1, 18.2-36.2, 18.2-51.4, 18.2-51.5, 18.2-57.2, 18.2-266, or 46.2-341.24, a person who has been convicted of or had a charge deferred and dismissed for a (i) misdemeanor offense, (ii) Class 5 or 6 felony, or (iii) violation of § 18.2-95 or any other felony offense in which the defendant is deemed guilty of larceny and punished as provided in § 18.2-95, or (iv) a felony violation of former § 18.2-248.1 may file a petition setting forth the relevant facts and requesting sealing of the criminal history record information and court records relating to the charge or conviction, provided that such person has (a) never been convicted of a Class 1 or 2 felony or any other felony punishable by imprisonment for life, (b) not been convicted of a Class 3 or 4 felony within the past 20 years, or (c) not been convicted of any other felony within the past 10 years of his petition.

B. A person shall not be required to pay any fees or costs for filing a petition pursuant to this

section if such person files a petition to proceed without the payment of fees and costs, and the court with which such person files his petition finds such person to be indigent pursuant to § 19.2-159.

C. The petition with a copy of the warrant, summons, or indictment, if reasonably available, shall be filed in the circuit court of the county or city in which the case was disposed of and shall contain, except when not reasonably available, the date of arrest, the name of the arresting agency, and the date of conviction. When this information is not reasonably available, the petition shall state the reason for such unavailability. The petition shall further state the charge or conviction to be sealed; the date of final disposition of the charge or conviction as set forth in the petition; the petitioner's date of birth, sex, race, and social security number, if available; and the full name used by the petitioner at the time of arrest or summons. A petitioner may only have two petitions granted pursuant to this section within his lifetime, *but a petition that is granted solely to seal a felony violation of former § 18.2-248.1, a violation of subsection A of § 18.2-265.3 as it relates to marijuana, or a probation violation shall not count against the petitioner's lifetime maximum.*

D. The Commonwealth shall be made party to the proceeding. The petitioner shall provide a copy of the petition by delivery or by first-class mail, postage prepaid, to the attorney for the Commonwealth of the city or county in which the petition is filed. The attorney for the Commonwealth may file an objection or answer to the petition or may give written notice to the court that he does not object to the petition within 21 days after it is delivered to him or received in the mail.

E. Upon receipt of the petition, the circuit court shall order that the attorney for the Commonwealth or a law-enforcement officer, as defined in § 9.1-101, provide the court with a sealed copy of the criminal history record of the petitioner. Upon completion of the hearing, the court shall cause the criminal history record to be destroyed unless, within 30 days of the date of the entry of the final order in the matter, the petitioner or the attorney for the Commonwealth notes an appeal to the Supreme Court of Virginia.

F. After receiving the criminal history record of the petitioner, the court may conduct a hearing on the petition. The court shall enter an order requiring the sealing of the criminal history record information and court records, including electronic records, relating to the charge or conviction, only if the court finds that all criteria in subdivisions 1 through 4 are met, as follows:

1. During a period after the date of (i) dismissal of a deferred charge, (ii) conviction, or (iii) release from incarceration of the charge or conviction set forth in the petition, whichever date occurred later, the person has not been convicted of violating any law of the Commonwealth that requires a report to the Central Criminal Records Exchange under subsection A of § 19.2-390 or any other state, the District of Columbia, or the United States or any territory thereof, excluding traffic infractions under Title 46.2, for:

- a. Seven years for any misdemeanor offense; or
- b. Ten years for any felony offense;

2. If the records relating to the offense indicate that the occurrence leading to the deferral or conviction involved the use or dependence upon alcohol or any narcotic drug or any other self-administered intoxicant or drug of whatsoever nature, the petitioner has demonstrated his rehabilitation;

3. The petitioner has not previously obtained the sealing of two other deferrals or convictions arising out of different sentencing events; and

4. The continued existence and possible dissemination of information relating to the charge or conviction of the petitioner causes or may cause circumstances that constitute a manifest injustice to the petitioner.

G. If the attorney for the Commonwealth of the county or city in which the petition is filed (i) gives written notice to the court pursuant to subsection D that he does not object to the petition and (ii) stipulates in such written notice that the petitioner is eligible to have such offense sealed, and the continued existence and possible dissemination of information relating to the charge or conviction of the petitioner causes or may cause circumstances that constitute a manifest injustice to the petitioner, the court may enter an order of sealing without conducting a hearing.

H. Any party aggrieved by the decision of the court may appeal, as provided by law in civil cases.

I. Upon the entry of an order of sealing, the clerk of the court shall cause an electronic copy of such order to be forwarded to the Department of State Police. Such electronic order shall contain the petitioner's full name, date of birth, sex, race, and social security number, if available, as well as the petitioner's state identification number from the criminal history record, the court case number of the charge or conviction to be sealed, if available, and the document control number, if available. Upon receipt of such electronic order, the Department of State Police shall seal such records in accordance with § 19.2-392.13. When sealing such charge or conviction, the Department of State Police shall include a notation on the criminal history record that such offense was sealed pursuant to this section. The Department of State Police shall also electronically notify the Office of the Executive Secretary of the Supreme Court and any other agencies and individuals known to maintain or to have obtained such

a record that such record has been ordered to be sealed and may only be disseminated in accordance with § 19.2-392.13 and pursuant to the rules and regulations adopted pursuant to § 9.1-128 and the procedures adopted pursuant to § 9.1-134.

J. Costs shall be as provided by § 17.1-275 but shall not be recoverable against the Commonwealth. Any costs collected pursuant to this section shall be deposited in the Sealing Fee Fund created pursuant to § 17.1-205.1.

K. Any order entered where (i) the court or parties failed to strictly comply with the procedures set forth in this section or (ii) the court enters an order for the sealing of records contrary to law shall be voidable upon motion and notice made within two years of the entry of such order.

L. If a petitioner qualifies to file a petition for sealing of records without the payment of fees and costs pursuant to subsection B and has requested court-appointed counsel, the court shall then appoint counsel to file the petition for sealing of records and represent the petitioner in the sealed records proceedings. Counsel appointed to represent such a petitioner shall be compensated for his services subject to guidelines issued by the Executive Secretary of the Supreme Court of Virginia, in a total amount not to exceed \$120, as determined by the court, and such compensation shall be paid from the Sealing Fee Fund as provided in § 17.1-205.1.

M. A petition filed under this section and any responsive pleadings filed by the attorney for the Commonwealth shall be maintained under seal by the clerk unless otherwise ordered by the court. Any order to seal issued pursuant to this section shall be sealed and may only be disseminated for the purposes set forth in § 19.2-392.13 and pursuant to rules and regulations adopted pursuant to § 9.1-128 and procedures adopted pursuant to § 9.1-134.

N. A conviction or deferral and dismissal of § 18.2-36.1, 18.2-36.2, 18.2-51.4, 18.2-51.5, 18.2-57.2, 18.2-266, or 46.2-341.24 is ineligible for the sealing of records under this section.

O. Nothing in this chapter shall prohibit the circuit court from entering an order to seal a charge or conviction under this section when such charge or conviction is eligible for sealing under some other section of this chapter.

§ 19.2-392.16. (For contingent effective date see Acts 2021, Sp. Sess. I, cc. 524 and 542) Dissemination of criminal history records and traffic history records by business screening services.

A. For the purposes of this section:

"Business screening service" means a person engaged in the business of collecting, assembling, evaluating, or disseminating Virginia criminal history records or traffic history records on individuals.

"Business screening service" does not include any government entity or the news media.

"Criminal history record" means any information collected by a business screening service on individuals containing any personal identifying information, photograph, or other identifiable descriptions pertaining to an individual and any information regarding arrests, detentions, indictments, or other formal criminal charges, and any disposition arising therefrom, including acquittal, sentencing, correctional supervision, or release.

"Delete" means that a criminal history record shall not be disseminated in any manner, except to any entity authorized to receive and use such information pursuant to § 19.2-392.13 and pursuant to the rules and regulations adopted pursuant to § 9.1-128 and the procedures adopted pursuant to § 9.1-134, but may be retained in order to resolve any disputes relating to this section, the accuracy of the record consistent with the federal Fair Credit Reporting Act, 15 U.S.C. § 1681 et seq., or the Gramm-Leach-Bliley Act, 15 U.S.C. § 6801 et seq.

"Expunged record" means a Virginia criminal history record or a traffic history record that has been expunged pursuant to § 19.2-392.2.

"Sealed record" means a Virginia criminal history record or a traffic history record that has been sealed pursuant to § 19.2-392.7, 19.2-392.10, 19.2-392.11, or 19.2-392.12.

"Traffic history record" means any information collected by a business screening service on individuals containing any personal identifying information, photograph, or other identifiable descriptions pertaining to an individual and any information regarding arrests, detentions, indictments, or other formal traffic infraction charges, and any disposition arising therefrom.

B. If a business screening service knows that a criminal history record or a traffic history record has been sealed, the business screening service shall promptly delete the record.

If a business screening service knows that a criminal history record or a traffic history record is an expunged record, the business screening service shall promptly destroy such record and may not disseminate such record in any manner.

C. A business screening service shall register with the Department of State Police to electronically receive copies of orders of expungement and of orders of sealing provided to the Department of State Police pursuant to §§ 19.2-392.2, 19.2-392.7, 19.2-392.10, 19.2-392.11, and 19.2-392.12. The Department of State Police may charge an annual licensing fee to the business screening service for

305 accessing such information, with a portion of such fee to be used to cover the cost of providing such
306 records and the remainder of such fee to be deposited into the Sealing Fee Fund pursuant to
307 § 17.1-205.1. The contract between the Department of State Police and the business screening service
308 shall prohibit dissemination of the *orders of expungement and the orders of sealing* and shall require
309 compliance by the business screening service with the provisions of subsections D, E, and F. The *orders*
310 *of expungement and the orders of sealing* received by the business screening service shall remain
311 confidential and shall not be disseminated or resold. The *orders of expungement and the orders of*
312 *sealing* shall be used for the sole purpose of deleting criminal history records that have been sealed. The
313 business screening service shall destroy the copies of the *orders of expungement and the orders of*
314 *sealing* after deleting the information contained in such orders from *expunged and sealed* records. The
315 Department of State Police shall require that the business screening service seeking access to the
316 information identify themselves, certify the purposes for which the information is sought, and certify that
317 the information will be used for no other purpose. The Department of State Police shall further require
318 that a business screening service acknowledge receipt of all electronic copies of *orders of expungement*
319 *and the orders of sealing* provided by the Department of State Police. The Department of State Police
320 shall maintain a public list within its website identifying the business screening services that are licensed
321 to receive such records.

322 D. A business screening service that disseminates a criminal history record or a traffic history record
323 on or after the effective date of this section shall include the date when the record was collected by the
324 business screening service and a notice that the information may include records that have been sealed
325 since that date.

326 E. A business screening service shall implement and follow reasonable procedures to assure that it
327 does not maintain or sell criminal history records or traffic history records that are inaccurate or
328 incomplete *or expunged records*. If the completeness or accuracy of a criminal history record or traffic
329 history record maintained by a business screening service is disputed by the individual who is the
330 subject of the record, the business screening service shall, without charge, investigate the disputed
331 record. If, upon investigation, the business screening service determines that the record does not
332 accurately reflect the content of the official record, the business screening service shall correct the
333 disputed record so as to accurately reflect the content of the official record. If the disputed record is
334 found to have been sealed pursuant to § 19.2-392.7, 19.2-392.10, 19.2-392.11, or 19.2-392.12, the
335 business screening service shall promptly delete the record. *If the disputed record is found to have been*
336 *an expunged record, the business screening service shall promptly destroy the record*. A business
337 screening service may terminate an investigation of a disputed record if the business screening service
338 reasonably determines that the dispute is frivolous, which may be based on the failure of the subject of
339 the record to provide sufficient information to investigate the disputed record. Upon making a
340 determination that the dispute is frivolous, the business screening service shall inform the subject of the
341 record of the specific reasons why it has determined that the dispute is frivolous and shall provide a
342 description of any information required to investigate the disputed record. The business screening service
343 shall notify the subject of the disputed record of the correction or deletion of the record or of the
344 termination or completion of the investigation related to the record within 30 days of the date when the
345 business screening service receives notice of the dispute from the subject of the record.

346 F. A business screening service shall implement procedures for individuals to submit a request to
347 obtain their own criminal history record and traffic history record information maintained by the
348 business screening service and any other information that may be sold to another entity by the business
349 screening service regarding the individual.

350 G. A business screening service that violates this section is liable to the person who is the subject of
351 the criminal history record or traffic history record for a penalty of \$1,000 or actual damages caused by
352 the violation, whichever is greater, plus costs and reasonable attorney fees. Within 10 days of service of
353 any suit by an individual, the business screening service may make a cure offer in writing to the
354 individual claiming to have suffered a loss as a result of a violation of this section. Such offer shall be
355 in writing and include one or more things of value, including the payment of money. A cure offer shall
356 be reasonably calculated to remedy a loss claimed by the individual, as well as any attorney fees or
357 other fees, expenses, or other costs of any kind that such individual may incur in relation to such loss.
358 No cure offer shall be admissible in any proceeding initiated under this section, unless the cure offer is
359 delivered by the business screening service to the individual claiming loss or to any attorney
360 representing such individual prior to the filing of the business screening service's initial responsive
361 pleading in such proceeding. The business screening service shall not be liable for such individual's
362 attorney fees and court costs incurred following delivery of the cure offer unless the actual damages
363 found to have been sustained and awarded, without consideration of attorney fees and court costs,
364 exceed the value of the cure offer.

365 H. The Attorney General may file a civil action to enforce this section. If the court finds that a
366 business screening service has willfully engaged in an act or practice in violation of this section, the

Attorney General may recover for the Literary Fund, upon petition to the court, a civil penalty of not more than \$2,500 per violation. For the purposes of this section, prima facie evidence of a willful violation may be shown when the Attorney General notifies the alleged violator by certified mail that an act or practice is a violation of this section and the alleged violator, after receipt of said notice, continues to engage in the act or practice. In any civil action pursuant to this subsection, in addition to any civil penalty awarded, the Attorney General may also recover any costs and reasonable expenses incurred by the state in investigating and preparing the case, not to exceed \$1,000 per violation, and attorney fees. Such additional costs and expenses shall be paid into the general fund of the Commonwealth.

I. A business screening service that disseminates criminal history records or traffic history records in the Commonwealth is deemed to have consented to service of process in the Commonwealth and to the jurisdiction of courts of the Commonwealth for actions involving a violation of this section or for the recovery of remedies under this section.

J. A business screening service that is a consumer reporting agency and that is in compliance with the applicable provisions of the federal Fair Credit Reporting Act, 15 U.S.C. § 1681 et seq., or the Gramm-Leach-Bliley Act, 15 U.S.C. § 6801 et seq., is considered to be in compliance with the comparable provisions of this section. A business screening service is subject to the state remedies under this section if its actions would violate this section and federal law.

K. Any business screening service or person who engages in the conduct of a business screening service, as set forth in this section, that fails to register with the Department of State Police as required by subsection C and that disseminates criminal history records or traffic history records in the Commonwealth may be subject to (i) suit by any person injured by such dissemination and (ii) enforcement actions by the Attorney General as set forth in subsection H.

L. Nothing in the section shall prohibit the prosecution of any person who willfully violates the provisions of § 19.2-392.3.

2. That §§ 19.2-389.3, 19.2-392.2:1, and 19.2-392.2:2 of the Code of Virginia are repealed.

3. That the provisions of subsection K of § 19.2-392.2 of the Code of Virginia, as amended by this act, and §§ 19.2-392.6, 19.2-392.12, and 19.2-392.16 of the Code of Virginia, as amended by this act, shall become effective on the earlier of (i) the date on which the processes to seal criminal history record information and court records pursuant to Chapters 524 and 542 of the Acts of Assembly of 2021, Special Session I, become effective or (ii) July 1, 2025.

4. That the provisions of § 19.2-392.6 of the Code of Virginia, as amended by this act, shall not become effective unless the provisions of Chapters 550 and 551 of the Acts of Assembly of 2021, Special Session I, repealing § 18.2-248.1 of the Code of Virginia are reenacted by the 2022 Session of the General Assembly.

5. That any petition for expungement of police and court records granted pursuant to § 19.2-392.2 of the Code of Virginia, as amended by this act, prior to July 1, 2022, shall be placed and kept under seal.