

Senate Bill No. 19—Committee on Judiciary

CHAPTER.....

AN ACT relating to records of criminal history; establishing provisions authorizing certain entities to obtain information relating to the records of criminal history of certain persons responsible for the safety and well-being of children, elderly persons or persons with disabilities; providing a fee; and providing other matters properly relating thereto.

Legislative Counsel's Digest:

Existing federal law authorizes a state to establish by statute or regulation procedures that require designated qualified entities, which are businesses or organizations that provide care or care placement services to children, elderly persons or persons with disabilities, to contact an authorized state agency to request a nationwide background check to determine whether certain persons have been convicted of a crime that bears upon the person's fitness to have responsibility for the safety and well-being of children, elderly persons or persons with disabilities. (34 U.S.C. §§ 40102(a)(1), 40104(9), 40104(10)) Existing federal law also provides that such procedures include certain requirements. (34 U.S.C. § 40102(b)) Accordingly, this bill establishes provisions that authorize a qualified entity to obtain information relating to the records of criminal history of employees, volunteers, persons applying to be an employee or volunteer and covered individuals of the qualified entity who have access to children, elderly persons or persons with disabilities.

This bill requires a qualified entity to: (1) before submitting a request for screening an employee, volunteer, person applying to be an employee or volunteer or covered individual of the qualified entity, establish an account with the Central Repository for Nevada Records of Criminal History, provide certain written notification to the person regarding his or her rights and obtain from the person a signed waiver that allows the release of information relating to the records of criminal history of the person to the qualified entity; and (2) submit any request for screening a person to the Central Repository by submitting the fingerprints of the person to the Central Repository for its criminal history report and for forwarding to the Federal Bureau of Investigation (FBI) for its criminal history report. Such a request must be accompanied by the payment of a fee for information relating to records of criminal history and the amount required by the FBI for its report.

This bill also requires a qualified entity to determine, after receiving information relating to the records of criminal history of a person, whether the person is fit to have responsibility for the safety and well-being of children, elderly persons or persons with disabilities. Additionally, this bill provides that a qualified entity is not liable for damages solely arising out of the accuracy of any information included in or omitted from the records of criminal history of a person and that this State, any political subdivision of this State or any agency, officer or employee thereof is not liable for damages for providing any requested information. Finally, this bill authorizes the Central Repository to audit any qualified entity that submits a request for screening to ensure compliance with all applicable state and federal laws.



THE PEOPLE OF THE STATE OF NEVADA, REPRESENTED IN
SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

Section 1. Chapter 179A of NRS is hereby amended by adding thereto a new section to read as follows:

1. Before submitting a request for screening pursuant to subsection 2, a qualified entity must:

(a) Establish an account with the Central Repository and, as part of the establishment of such an account, agree to comply with all applicable state and federal laws by signing an agreement approved by the Central Repository.

(b) Provide written notification to any person being screened regarding the right of the person to obtain a copy of his or her background screening report, including, without limitation, any records of criminal history contained in the report, to appeal the results of the background screening report to challenge the accuracy and completeness of any information contained therein, and to obtain a determination as to the validity of such a challenge before the qualified entity makes a final determination as to the fitness of the person to have responsibility for the safety and well-being of children, elderly persons or persons with disabilities. The notification must also include instructions on how to complete the appeals process.

(c) Obtain a signed waiver from any person being screened, on a form approved by the Division, that allows the release of information relating to the records of criminal history of the person to the qualified entity and contains the information required by 34 U.S.C. § 40102(b)(1).

2. A qualified entity shall submit to the Central Repository any request for screening an employee, volunteer, person applying to be an employee or volunteer or covered individual of the qualified entity who has supervised or unsupervised access to children, elderly persons or persons with disabilities by submitting the fingerprints of the person to the Central Repository for its report on the criminal history of the person and for forwarding to the Federal Bureau of Investigation for its report on the criminal history of the person. Each request must be voluntary and conform to the requirements established in the National Child Protection Act of 1993, Public Law 103-209, as amended by the Volunteers for Children Act, Public Law 105-251, 34 U.S.C. §§ 40101 et seq.



3. A request submitted pursuant to subsection 2 must be accompanied by the payment of a fee to the Central Repository as authorized by NRS 179A.140, plus the amount prescribed by the Federal Bureau of Investigation for its report on the criminal history of the person, in accordance with the provisions of 34 U.S.C. § 40102(e).

4. After a request is submitted pursuant to subsection 2, the Central Repository shall provide directly to the qualified entity, as authorized by the signed waiver obtained by the qualified entity pursuant to subsection 1:

(a) Any records of criminal history of the person being screened that are not otherwise confidential pursuant to statute or law. Such a person may challenge the accuracy of such records of criminal history only as provided in this chapter.

(b) Any records of criminal history of the person being screened that were received from the Federal Bureau of Investigation. Any records of criminal history obtained are available for qualified entities to use only for the purpose of screening employees, volunteers, persons applying to be an employee or volunteer or covered individuals of the qualified entity who have supervised or unsupervised access to children, elderly persons or persons with disabilities.

5. The making of a determination as to the fitness of a person to have responsibility for the safety and well-being of children, elderly persons or persons with disabilities is the sole responsibility of the qualified entity that submitted the request for screening. The qualified entity shall make such a determination pursuant to the procedures set forth in the VECCHS program based on whether the information relating to the records of criminal history of the person indicates that the person has been convicted of or is subject to pending criminal charges or a pending indictment for any crime that bears upon his or her fitness to have responsibility for the safety and well-being of children, elderly persons or persons with disabilities. The provisions of this section must not be construed to require the Central Repository to make such a determination on behalf of any qualified entity.

6. A qualified entity that is required by law to apply screening criteria, including, without limitation, any right to contest or request an exemption from disqualification, shall apply such screening criteria to any information relating to records of criminal history received from the Central Repository.



7. *If a person chooses to appeal the results of a background screening report, the appeals process must meet the requirements established in 34 U.S.C. § 40102(b)(2)(C).*

8. *A qualified entity is not liable for damages solely arising out of the accuracy of any information included in or omitted from records of criminal history authorized to be obtained pursuant to this section, and the State of Nevada, any political subdivision of the State or any agency, officer or employee thereof is not liable for damages for providing any information relating to records of criminal history requested pursuant to this section.*

9. *The Central Repository may audit any qualified entity that submits a request for screening pursuant to this section to ensure compliance with all applicable state and federal laws. Each qualified entity shall maintain all signed waivers obtained pursuant to subsection 1 for the purpose of such an audit for one audit cycle as determined by the Department.*

10. *In addition to complying with the provisions of this section, each qualified entity and the Central Repository shall comply with all applicable provisions of 34 U.S.C. § 40102.*

II. As used in this section:

(a) *“Children” has the meaning ascribed to “child” in NRS 432B.040.*

(b) *“Covered individual” has the meaning ascribed to it in 34 U.S.C. § 40104(9).*

(c) *“Disability” has the meaning ascribed to it in NRS 426.068.*

(d) *“Division” means the Records, Communications and Compliance Division of the Department.*

(e) *“Elderly persons” means any persons who are 60 years of age or older.*

(f) *“Record of criminal history” has the meaning ascribed to it in NRS 179A.070 and also includes, unless the context otherwise requires, records of criminal history obtained from the Federal Bureau of Investigation.*

(g) *“Qualified entity” has the meaning ascribed to it in 34 U.S.C. § 40104(10).*

(h) *“VECHS program” means the Volunteer and Employee Criminal History System program of the Division through which information relating to the records of criminal history of a person may be requested and obtained by a qualified entity.*

Sec. 2. NRS 179A.070 is hereby amended to read as follows:

179A.070 1. “Record of criminal history” means information contained in records collected and maintained by agencies of



criminal justice, the subject of which is a natural person, consisting of descriptions which identify the subject and notations of summons in a criminal action, warrants, arrests, citations for misdemeanors issued pursuant to NRS 171.1773, citations issued for violations of NRS 484C.110, 484C.120, 484C.130 and 484C.430, detentions, decisions of a district attorney or the Attorney General not to prosecute the subject, indictments, informations or other formal criminal charges and dispositions of charges, including, without limitation, dismissals, acquittals, convictions, sentences, information set forth in NRS 209.353 concerning an offender in prison, any postconviction relief, correctional supervision occurring in Nevada, information concerning the status of an offender on parole or probation, and information concerning a convicted person who has registered as such pursuant to chapter 179C of NRS. The term includes only information contained in a record, maintained in written or electronic form, of a formal transaction between a person and an agency of criminal justice in this State, including, without limitation, the fingerprints and other biometric identifiers of a person who is arrested and taken into custody and of a person who is placed on parole or probation and supervised by the Division of Parole and Probation of the Department.

2. “Record of criminal history” does not include:

(a) Investigative or intelligence information, reports of crime or other information concerning specific persons collected in the course of the enforcement of criminal laws;

(b) Information concerning juveniles;

(c) Posters, announcements or lists intended to identify fugitives or wanted persons and aid in their apprehension;

(d) Original records of entry maintained by agencies of criminal justice if the records are chronological and not cross-indexed;

(e) Records of application for and issuance, suspension, revocation or renewal of occupational licenses, including, without limitation, permits to work in the gaming industry;

(f) Except as otherwise provided in subsection 1, court indexes and records of public judicial proceedings, court decisions and opinions, and information disclosed during public judicial proceedings;

(g) Except as otherwise provided in subsection 1, records of traffic violations constituting misdemeanors;

(h) Records of traffic offenses maintained by the Department to regulate the issuance, suspension, revocation or renewal of drivers’ or other operators’ licenses;



(i) Announcements of actions by the State Board of Pardons Commissioners and the State Board of Parole Commissioners, except information concerning the status of an offender on parole or probation; or

(j) ~~Records~~ *Except as otherwise provided in section 1 of this act, records* which originated in an agency other than an agency of criminal justice in this State.

Sec. 3. This act becomes effective upon passage and approval.



