

Amendment No. 582

|                                                                               |              |
|-------------------------------------------------------------------------------|--------------|
| Senate Amendment to Senate Bill No. 38 First Reprint                          | (BDR 14-343) |
| Proposed by: Senator Smith                                                    |              |
| Amends: Summary: No Title: Yes Preamble: No Joint Sponsorship: No Digest: Yes |              |

| ASSEMBLY ACTION |                          | Initial and Date              | SENATE ACTION |                          | Initial and Date              |
|-----------------|--------------------------|-------------------------------|---------------|--------------------------|-------------------------------|
| Adopted         | <input type="checkbox"/> | Lost <input type="checkbox"/> | Adopted       | <input type="checkbox"/> | Lost <input type="checkbox"/> |
| Concurred In    | <input type="checkbox"/> | Not <input type="checkbox"/>  | Concurred In  | <input type="checkbox"/> | Not <input type="checkbox"/>  |
| Receded         | <input type="checkbox"/> | Not <input type="checkbox"/>  | Receded       | <input type="checkbox"/> | Not <input type="checkbox"/>  |

EXPLANATION: Matter in (1) *blue bold italics* is new language in the original bill; (2) *green bold italic underlining* is new language proposed in this amendment; (3) ~~red strikethrough~~ is deleted language in the original bill; (4) ~~purple double strikethrough~~ is language proposed to be deleted in this amendment; (5) orange double underlining is deleted language in the original bill that is proposed to be retained in this amendment; and (6) *green bold underlining* is newly added transitory language.

BAW



Date: 4/23/2013

S.B. No. 38—Revises provisions governing the dissemination by the Central Repository for Nevada Records of Criminal History of information relating to certain offenses. (BDR 14-343)



## SENATE BILL NO. 38—COMMITTEE ON JUDICIARY

(ON BEHALF OF THE RECORDS AND TECHNOLOGY DIVISION)

PREFILED DECEMBER 20, 2012

Referred to Committee on Judiciary

SUMMARY—Revises provisions governing the dissemination by the Central Repository for Nevada Records of Criminal History of information relating to certain offenses. (BDR 14-343)

FISCAL NOTE: Effect on Local Government: No.  
Effect on the State: Yes.

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EXPLANATION – Matter in ***bolded italics*** is new; matter between brackets ~~omitted material~~ is material to be omitted.

AN ACT relating to criminal records; authorizing the dissemination of certain information concerning the criminal history of certain prospective and current employees and volunteers who work in positions involving children, elderly persons or persons with disabilities; and providing other matters properly relating thereto.

**Legislative Counsel's Digest:**

Existing law authorizes the dissemination of certain information concerning the criminal history of prospective and current employees who work in positions involving children. (NRS 179A.180-179A.240) This bill expands these provisions: (1) to apply to persons who work in positions involving elderly persons and persons with disabilities; and (2) to authorize the dissemination of such information concerning certain prospective and current volunteers.

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

**Section 1.** NRS 179A.180 is hereby amended to read as follows:

179A.180 As used in NRS 179A.180 to 179A.240, inclusive, unless the context otherwise requires:

1. ***"Elderly person" means a person who is 60 years of age or older.***

2. "Employee" means a person who renders time and services to an employer ~~for compensation~~, and whose regular course of duties places that person in a position to:

(a) Exercise supervisory or disciplinary control over children ~~or~~, ***elderly persons or persons with disabilities;***

(b) Have direct access to or contact with children ~~or~~, ***elderly persons or persons with disabilities who are*** served by the employer; or

(c) Have access to information or records maintained by the employer relating to identifiable children , *elderly persons or persons with disabilities who are served by the employer,*

➤ and includes a prospective employee . ~~†, but does not include a volunteer or prospective volunteer.~~

~~†, ‡~~ 3. “Employer” means a person, or a governmental agency or political subdivision of this State that is not an agency of criminal justice, whose employees *or volunteers* regularly render services to children, *elderly persons or persons with disabilities*, including without limitation care, treatment, transportation, instruction, companionship, entertainment and custody. *The term includes, without limitation, a person, or a governmental agency or political subdivision of this State that is not an agency of criminal justice, that licenses or certifies others to render services to children, elderly persons or persons with disabilities.*

4. “Person with a disability” means a person who:

(a) *Has a physical or mental impairment that substantially limits one or more of the major life activities of the person;*

(b) *Has a record of such an impairment; or*

(c) *Is regarded as having such an impairment.*

~~†, ‡~~ 5. ~~“Volunteer”~~ *Except as otherwise provided in this subsection, “volunteer” means a person who renders time and services to an employer without compensation, and whose regular course of duties place that person in a position to:*

(a) *Exercise supervisory or disciplinary control over children, elderly persons or persons with disabilities;*

(b) *Have direct access to or contact with children, elderly persons or persons with disabilities who are served by the employer; or*

(c) *Have access to information or records maintained by the employer relating to identifiable children, elderly persons or persons with disabilities who are served by the employer,*

➤ *and includes a prospective volunteer. The term does not include a person who renders time and services for a public school or for an activity that is part of the program for a public school. As used in this subsection, “public school” has the meaning ascribed to it in NRS 385.007.*

Sec. 2. NRS 179A.190 is hereby amended to read as follows:

179A.190 1. Notice of information relating to the offenses listed in subsection 4 may be disseminated to employers pursuant to NRS 179A.180 to 179A.240, inclusive.

2. An employer may consider such a notice of information concerning an employee *or a volunteer* when making a decision to hire, retain, suspend or discharge the employee ~~†~~ *or volunteer*, and is not liable in an action alleging discrimination based upon consideration of information obtained pursuant to NRS 179A.180 to 179A.240, inclusive.

3. The provisions of NRS 179A.180 to 179A.240, inclusive, do not limit or restrict any other statute specifically permitting the dissemination or release of information relating to the offenses listed in subsection 4.

4. The offenses for which a notice of information may be disseminated pursuant to subsection 1 includes information contained in or concerning a record of criminal history, or the records of criminal history of the United States or another state, relating in any way to:

(a) A sexual offense;

(b) A conviction for a felony within the immediately preceding 7 years;

(c) An act committed outside this State that would constitute a sexual offense if committed in this State or a conviction for an act committed outside this State that would constitute a felony if committed in this State; and

(d) The aiding, abetting, attempting or conspiring to engage in any such act in this State or another state.

**Sec. 3.** NRS 179A.200 is hereby amended to read as follows:

179A.200 1. In addition to any other information which an employer is authorized to request pursuant to this chapter, an employer may request from the Central Repository notice of information relating to the offenses listed in subsection 4 of NRS 179A.190 concerning an employee ~~or~~ *or a volunteer*.

2. A request for notice of information relating to the offenses listed in subsection 4 of NRS 179A.190 from an employer must conform to the requirements of the Central Repository. The request must include:

(a) The name and address of the employer, and the name and signature of the person requesting the notice on behalf of the employer;

(b) The name and address of the employer's facility in which the employee *or volunteer* is employed *or volunteering* or *is* seeking to become employed ~~or~~ *or to volunteer*;

(c) The name, a complete set of fingerprints and other identifying information of the employee ~~or~~ *or volunteer*;

(d) Signed consent by the employee *or volunteer* authorizing:

(1) The employer to forward the fingerprints of the employee *or volunteer* to the Central Repository for submission to the Federal Bureau of Investigation for its report;

(2) A search of information relating to the offenses listed in subsection 4 of NRS 179A.190 concerning the employee ~~or~~ *or volunteer*; and

(3) The release of a notice concerning that information;

(e) The mailing address of the employee *or volunteer* or a signed waiver of the right of the employee *or volunteer* to be sent a copy of the information disseminated to the employer as a result of the search of the records of criminal history; and

(f) The signature of the employee *or volunteer* indicating that the employee *or volunteer* has been notified : ~~that~~

(1) ~~That his or her fingerprints will be used as the basis of a check of his or her records of criminal history;~~

(2) *Of the* types of information for which notice is subject to dissemination pursuant to NRS 179A.210, or a description of the information;

~~(2) The~~

(3) *Of the* employer's right to require a check of the records of criminal history as a condition of employment ~~or~~ *or volunteering*; and

~~(3) The~~

(4) *Of the* employee's *or volunteer's* right, pursuant to NRS 179A.150, to challenge the accuracy or sufficiency of any information disseminated to the employer.

**Sec. 4.** NRS 179A.210 is hereby amended to read as follows:

179A.210 1. Upon receipt of a request from an employer for notice of information relating to the offenses listed in subsection 4 of NRS 179A.190, the Central Repository shall undertake a search for the information, unless the request does not conform to the requirements of the Repository. The search must be based on the fingerprints of the employee ~~or~~ *or volunteer*, or on a number furnished to the employee *or volunteer* for identification pursuant to a previous search, as provided by the employer, and must include:

(a) Identifying any information relating to the offenses listed in subsection 4 of NRS 179A.190 concerning the employee *or volunteer* in the Central Repository;

(b) Requesting information relating to the offenses listed in subsection 4 of NRS 179A.190 concerning the employee *or volunteer* from repositories of the United States or other states, if authorized by federal law or an agreement entered into pursuant to NRS 179A.075;

(c) If the information pertains to an arrest for which no disposition has been reported, contacting appropriate officers in the local jurisdiction where the arrest or prosecution occurred to verify and update the information; and

(d) Determining whether the information relating to the offenses listed in subsection 4 of NRS 179A.190 is the type of information for which notice is subject to dissemination pursuant to this section.

2. Notice of information relating to the offenses listed in subsection 4 of NRS 179A.190 may be disseminated to an employer who has requested it only if a check of the pertinent records indicates:

(a) A conviction for any such offense, or a conviction based on an arrest or on an initial charge for any such offense;

(b) An arrest or an initial charge for a sexual offense that is pending at the time of the request; or

(c) Two or more incidents resulting in arrest or initial charge for a sexual offense that have not resulted in a conviction.

3. If a search of the records of the Central Repository reveals no information for which notice is subject to release, the Central Repository shall submit the fingerprints of the employee *or volunteer* to the Federal Bureau of Investigation for a search of its records of criminal history. The Central Repository shall review all information received from the Federal Bureau of Investigation. Notice of any information received from the Federal Bureau of Investigation may be disseminated only if the information is of a kind for which notice is subject to release pursuant to this section.

4. Within 30 days after receipt of a request by an employer for notice of information relating to the offenses listed in subsection 4 of NRS 179A.190, the Central Repository shall send a written report of the results of the search to the employer and to the employee *or volunteer*, except that if the employee *or volunteer* has waived the right to receive the results of the search, the report must be sent only to the employer. If the search revealed:

(a) No information for which notice is subject to release, the report must include a statement to that effect; or

(b) Information about the employee *or volunteer* for which notice is subject to release, the report must include a notice of the type of information, limited to the descriptions set forth in subsection 2, revealed by the search. The notice must not include any further facts or details concerning the information. A statement of the purpose for which the notice is being disseminated, and the procedures by which the employee *or volunteer* might challenge the accuracy and sufficiency of the information, must also be included with the report.

5. Upon receipt of corrected information relating to the offenses listed in subsection 4 of NRS 179A.190 for which notice was disseminated under this section, the Central Repository shall send written notice of the correction to:

(a) The employee *or volunteer* who was the subject of the search, unless the employee *or volunteer* has waived the right to receive such a notice;

(b) All employers to whom notice of the results of the search were disseminated within 3 months before the correction; and

(c) Upon request of the employee *or volunteer*, any other employers who previously received the information.

6. Upon receipt of new information relating to the offenses listed in subsection 4 of NRS 179A.190 concerning an employee *or volunteer* who was the subject of a search within the previous 3 months, for which notice is subject to dissemination under this section, the Central Repository shall send written notice of the information to:

(a) The employee *or volunteer* who was the subject of the search, unless the employee *or volunteer* has waived the right to receive such a notice;

(b) All employers to whom a report of the results of the search were disseminated within 3 months before the correction; and

(c) Upon request of the employee *or volunteer*, any other employers who previously received a report of the results of the search.

**Sec. 5.** NRS 179A.230 is hereby amended to read as follows:

179A.230 1. A person who is the subject of a request for notice of information pursuant to NRS 179A.180 to 179A.240, inclusive, may recover actual damages in a civil action against:

(a) The Central Repository for an intentional or grossly negligent:

(1) Dissemination of information relating to the offenses listed in subsection 4 of NRS 179A.190 not authorized for dissemination; or

(2) Release of information relating to the offenses listed in subsection 4 of NRS 179A.190 to a person not authorized to receive the information;

(b) The Central Repository for an intentional or grossly negligent failure to correct any notice of information relating to the offenses listed in subsection 4 of NRS 179A.190 which was disseminated pursuant to NRS 179A.180 to 179A.240, inclusive; or

(c) An employer, representative of an employer or employee for an intentional or grossly negligent violation of NRS 179A.110. Punitive damages may be awarded against an employer, representative of an employer or employee whose violation of NRS 179A.110 is malicious.

2. An employer is liable to a child, *elderly person or person with a disability* served by the employer for damages suffered by the child, *elderly person or person with a disability* as a result of an offense listed in subsection 4 of NRS 179A.190 committed against the child, *elderly person or person with a disability* by an employee *or volunteer* if, at the time the employer hired the employee *or volunteer*, the employee *or volunteer* was the subject of information relating to the offenses for which notice was available for dissemination to the employer and the employer:

(a) Failed, without good cause, to request notice of the information pursuant to NRS 179A.180 to 179A.240, inclusive; or

(b) Was unable to obtain the information because the employee *or volunteer* refused to consent to the search and release of the information, and the employer hired or retained the employee *or volunteer* despite this refusal.

➤ The amount of damages for which an employer is liable pursuant to this subsection must be reduced by the amount of damages recovered by the child, *elderly person or person with a disability* in an action against the employee *or volunteer* for damages sustained as a result of an offense listed in subsection 4 of NRS 179A.190.

3. An action pursuant to this section must be brought within 3 years after:

(a) The occurrence upon which the action is based; or

(b) The date upon which the party bringing the action became aware or reasonably should have become aware of the occurrence, whichever was earlier, if the party was not aware of the occurrence at the time of the occurrence.

4. This section does not limit or affect any other rights, claims or causes of action arising by statute or common law.

1        **Sec. 6.** (Deleted by amendment.)