

ASSEMBLY BILL NO. 47—COMMITTEE ON JUDICIARY

(ON BEHALF OF THE OFFICE OF ECONOMIC DEVELOPMENT)

PREFILED DECEMBER 20, 2014

Referred to Committee on Judiciary

SUMMARY—Revises provisions governing the dissemination of records of criminal history. (BDR 14-294)

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

~

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

AN ACT relating to criminal records; revising provisions governing the dissemination of certain records of criminal history to employers and prospective employers by an agency of criminal justice or the Central Repository for Nevada Records of Criminal History; and providing other matters properly relating thereto.

Legislative Counsel’s Digest:

Under existing state law, an agency of criminal justice or the Central Repository for Nevada Records of Criminal History is required to disseminate to a current or prospective employer, upon request, certain information about the criminal history of a current or prospective employee or volunteer. (NRS 179A.100) Under existing federal law, a “consumer report” is defined to include the communication of any information by a consumer reporting agency that bears upon a person’s character, general reputation and personal characteristics. (15 U.S.C. § 1681a(d)) This bill creates a legal fiction by allowing a person or entity designated to receive information about the criminal history of a current or prospective employee or volunteer on behalf of an employer to obtain such information by submitting to the Central Repository proof of the consent of an employee or volunteer allowing the employer to obtain a consumer report pursuant to 15 U.S.C. § 1681b(b)(2) in lieu of submitting a written consent of the employee or volunteer to obtain the information from the Central Repository.

This bill also specifies that a record of criminal history or the absence of such a record may be furnished to an employer by a person or entity designated to receive the information on behalf of the employer and who obtained the information pursuant to the statutory provisions governing the dissemination of such information. This bill further authorizes an agency of criminal justice to audit any employer or person or entity designated to receive records of criminal history on



behalf of an agency to whom the agency has disseminated certain records for purposes of ensuring that such disseminated records are securely maintained.

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

Section 1. NRS 179A.100 is hereby amended to read as follows:

179A.100 1. The following records of criminal history may be disseminated by an agency of criminal justice without any restriction pursuant to this chapter:

(a) Any which reflect records of conviction only; and

(b) Any which pertain to an incident for which a person is currently within the system of criminal justice, including parole or probation.

2. Without any restriction pursuant to this chapter, a record of criminal history or the absence of such a record may be:

(a) Disclosed among agencies which maintain a system for the mutual exchange of criminal records.

(b) Furnished by one agency to another to administer the system of criminal justice, including the furnishing of information by a police department to a district attorney.

(c) *Furnished to an employer by a person or entity designated to receive the information on behalf of the employer and who obtained the information pursuant to this section.*

(d) Reported to the Central Repository.

3. An agency of criminal justice shall , *upon request*, disseminate to a prospective *or current* employer ~~[, upon request,]~~ , *or a person or entity designated to receive the information on behalf of such an employer*, records of criminal history concerning ~~for~~ *an employee*, prospective employee , *volunteer* or *prospective* volunteer which are the result of a name-based inquiry and which:

(a) Reflect convictions only; or

(b) Pertain to an incident for which the *employee*, prospective employee , *volunteer* or *prospective* volunteer is currently within the system of criminal justice, including parole or probation.

4. *An agency of criminal justice may audit, at such times the agency deems necessary, any employer, or a person or entity designated to receive records of criminal history on behalf of an employer, to whom the agency has disseminated records of criminal history pursuant to subsection 3 for purposes of ensuring that such disseminated records are securely maintained.*

5. In addition to any other information to which an employer is entitled or authorized to receive from a name-based inquiry, the Central Repository shall disseminate to a prospective or current



1 employer, or a person or entity designated to receive the information
2 on behalf of such an employer, the information contained in a record
3 of registration concerning an employee, prospective employee,
4 volunteer or prospective volunteer who is a sex offender or an
5 offender convicted of a crime against a child, regardless of whether
6 the employee, prospective employee, volunteer or prospective
7 volunteer gives written consent to the release of that information.
8 The Central Repository shall disseminate such information in a
9 manner that does not reveal the name of an individual victim of an
10 offense or the information described in subsection 7 of NRS
11 179B.250. A request for information pursuant to this subsection
12 must conform to the requirements of the Central Repository and
13 must include:

14 (a) The name and address of the employer, and the name and
15 signature of the person or entity requesting the information on
16 behalf of the employer;

17 (b) The name and address of the employer's facility in which the
18 employee, prospective employee, volunteer or prospective volunteer
19 is employed or volunteers or is seeking to become employed or
20 volunteer; and

21 (c) The name and other identifying information of the employee,
22 prospective employee, volunteer or prospective volunteer.

23 ~~15.1~~ 6. In addition to any other information to which an
24 employer is entitled or authorized to receive, the Central Repository
25 shall disseminate to a prospective or current employer, or a person
26 or entity designated to receive the information on behalf of such an
27 employer, the information described in subsection 4 of NRS
28 179A.190 concerning an employee, prospective employee, volunteer
29 or prospective volunteer who gives ~~15.1~~ written consent to the release
30 of that information :

31 *(a) In writing to the employer* if the employer submits a request
32 in the manner set forth in NRS 179A.200 for obtaining a notice of
33 information ~~15.1~~ ; or

34 *(b) Pursuant to 15 U.S.C. § 1681b(b)(2) to the person or entity*
35 *designated to receive the information on behalf of the employer, if*
36 *the person or entity so designated submits to the Central*
37 *Repository proof of the consent given by the employee, prospective*
38 *employee, volunteer or prospective volunteer pursuant to 15*
39 *U.S.C. § 1681b(b)(2).*

40 *➔* The Central Repository shall search for and disseminate such
41 information in the manner set forth in NRS 179A.210 for the
42 dissemination of a notice of information.

43 ~~16.1~~ 7. Except as otherwise provided in subsection ~~15.1~~ 6, the
44 provisions of NRS 179A.180 to 179A.240, inclusive, do not apply



1 to an employer who requests information and to whom such
2 information is disseminated pursuant to subsections ~~4 and 5.~~

3 ~~—7.1~~ **5 and 6.**

4 **8.** Records of criminal history must be disseminated by an
5 agency of criminal justice, upon request, to the following persons or
6 governmental entities:

7 (a) The person who is the subject of the record of criminal
8 history for the purposes of NRS 179A.150.

9 (b) The person who is the subject of the record of criminal
10 history when the subject is a party in a judicial, administrative,
11 licensing, disciplinary or other proceeding to which the information
12 is relevant.

13 (c) The State Gaming Control Board.

14 (d) The State Board of Nursing.

15 (e) The Private Investigator's Licensing Board to investigate an
16 applicant for a license.

17 (f) A public administrator to carry out the duties as prescribed in
18 chapter 253 of NRS.

19 (g) A public guardian to investigate a ward or proposed ward or
20 persons who may have knowledge of assets belonging to a ward or
21 proposed ward.

22 (h) Any agency of criminal justice of the United States or of
23 another state or the District of Columbia.

24 (i) Any public utility subject to the jurisdiction of the Public
25 Utilities Commission of Nevada when the information is necessary
26 to conduct a security investigation of an employee or prospective
27 employee or to protect the public health, safety or welfare.

28 (j) Persons and agencies authorized by statute, ordinance,
29 executive order, court rule, court decision or court order as
30 construed by appropriate state or local officers or agencies.

31 (k) Any person or governmental entity which has entered into a
32 contract to provide services to an agency of criminal justice relating
33 to the administration of criminal justice, if authorized by the
34 contract, and if the contract also specifies that the information will
35 be used only for stated purposes and that it will be otherwise
36 confidential in accordance with state and federal law and regulation.

37 (l) Any reporter for the electronic or printed media in a
38 professional capacity for communication to the public.

39 (m) Prospective employers if the person who is the subject of
40 the information has given written consent to the release of that
41 information by the agency which maintains it.

42 (n) For the express purpose of research, evaluative or statistical
43 programs pursuant to an agreement with an agency of criminal
44 justice.



(o) An agency which provides child welfare services, as defined in NRS 432B.030.

(p) The Division of Welfare and Supportive Services of the Department of Health and Human Services or its designated representative, as needed to ensure the safety of investigators and caseworkers.

(q) The Aging and Disability Services Division of the Department of Health and Human Services or its designated representative, as needed to ensure the safety of investigators and caseworkers.

(r) An agency of this or any other state or the Federal Government that is conducting activities pursuant to Part D of Subchapter IV of Chapter 7 of Title 42 of the Social Security Act, 42 U.S.C. §§ 651 et seq.

(s) The State Disaster Identification Team of the Division of Emergency Management of the Department.

(t) The Commissioner of Insurance.

(u) The Board of Medical Examiners.

(v) The State Board of Osteopathic Medicine.

(w) The Board of Massage Therapists and its Executive Director.

(x) A multidisciplinary team to review the death of the victim of a crime that constitutes domestic violence organized or sponsored by the Attorney General pursuant to NRS 228.495.

(y) A court appointed special advocate program in a county whose population is less than 100,000, as needed to ensure the safety of a child for whom a special advocate has been appointed by a court.

~~18.1~~ **9.** Agencies of criminal justice in this State which receive information from sources outside this State concerning transactions involving criminal justice which occur outside Nevada shall treat the information as confidentially as is required by the provisions of this chapter.

Sec. 2. NRS 179A.105 is hereby amended to read as follows:

179A.105 An employer who fails to request:

1. The information contained in a record of registration concerning a volunteer or prospective volunteer who is a sex offender or an offender convicted of a crime against a child, as authorized pursuant to subsection ~~14~~ **5** of NRS 179A.100; or

2. The information described in subsection 4 of NRS 179A.190 concerning a volunteer or prospective volunteer, as authorized pursuant to subsection ~~15~~ **6** of NRS 179A.100,

is not liable to a child served by the employer for civil damages suffered by the child as a result of an offense listed in subsection 4



1 of NRS 179A.190 committed against the child by such a volunteer
2 or prospective volunteer.

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

4 179A.200 1. In addition to any other information which an
5 employer is authorized to request pursuant to this chapter, an
6 employer may request from the Central Repository notice of
7 information relating to the offenses listed in subsection 4 of NRS
8 179A.190 concerning an employee.

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

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

16 (b) The name and address of the employer's facility in which the
17 employee is employed or seeking to become employed;

18 (c) The name, a complete set of fingerprints and other
19 identifying information of the employee;

20 (d) Signed consent by the employee authorizing:

21 (1) The employer to forward the fingerprints of the employee
22 to the Central Repository for submission to the Federal Bureau of
23 Investigation for its report;

24 (2) A search of information relating to the offenses listed in
25 subsection 4 of NRS 179A.190 concerning the employee; and

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

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

31 (f) The signature of the employee indicating that the employee
32 has been notified of:

33 (1) The types of information for which notice is subject to
34 dissemination pursuant to NRS 179A.210, or a description of the
35 information;

36 (2) The employer's right to require a check of the records of
37 criminal history as a condition of employment; and

38 (3) The employee's right, pursuant to NRS 179A.150, to
39 challenge the accuracy or sufficiency of any information
40 disseminated to the employer.

41 **3. For the purposes of paragraph (b) of subsection 6 of NRS**
42 **179A.100, a request shall be deemed to include the information**
43 **required by paragraphs (d), (e) and (f) of subsection 2 if the**
44 **request includes proof that the employee consented pursuant to 15**
45 **U.S.C. § 1681b(b)(2) to the procurement of a consumer report**



1 *regarding himself or herself for employment purposes. As used in*
2 *this subsection, “consumer report” has the meaning ascribed to it*
3 *in 15 U.S.C. § 1681a(d).*

4 **Sec. 4.** This act becomes effective upon passage and approval.

