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HOUSE OF REPRESENTATIVES

141st GENERAL ASSEMBLY

HOUSE BILL NO. 412

AN ACT TO AMEND THE DELAWARE CODE RELATING TO CRIMINAL HISTORY BACKGROUND
CHECKS.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE:

1 Section 1. Amend § 8502(2), Title 11 of the Delaware Code, by striking the first sentence thereof in its entirety and
2 by substituting in lieu thereof the following:

3 "Criminal history record information" shall mean information collected by state or federal criminal justice
4 agencies on individuals consisting of identifiable descriptions and notations of arrests, detentions, indictments,
5 informations or other formal criminal charges, and any disposition arising therefrom, sentencing, correctional
6 supervision and release."

7 Section 2. Amend § 8502(3), Title 11 of the Delaware Code, by striking the word "and" as it appears at the end of
8 paragraph b.7. thereof.

9 Section 3. Amend § 8502(3), Title 11 of the Delaware Code, by striking the periods (".") that appear at the end of
10 paragraphs b.8. and b.9. thereof and by respectively substituting in lieu thereof semicolons (";").

11 Section 4. Amend § 8502(3)b., Title 11 of the Delaware Code, by adding thereto the following:

12 "10. The Federal Bureau of Investigation."

13 Section 5. Amend § 8502, Title 11 of the Delaware Code, by adding thereto the following new subsections and by
14 thereafter alphabetizing the section and redesignating each subsection thereof accordingly:

15 "(12) 'Recipient agency' means any government agency which is directed or authorized by law to conduct a
16 criminal history background check for the purposes of employing or licensing any individual in this
17 State.

- (13) 'Criminal history background check' means the acquisition of state or federal criminal history record information for an individual."

Section 6. Amend Chapter 85, Title 11 of the Delaware Code, by adding to the end of Subchapter I thereof the following new section:

"§ 8527. Criminal history background checks; State and/or Federal CHRI Reports; receipt by government agencies; procedures.

- (a) Notwithstanding any other provision of the law to the contrary, any recipient agency seeking a criminal history background check for the purposes of employing or licensing any individual in this State pursuant to a statutory mandate or authorization shall submit to the Bureau, in the manner and form designated by the Superintendent of State Police, fingerprints and other necessary information in order to obtain the following:

- (1) A report of the individual's entire state criminal history record information from the Bureau or a statement from the Bureau that the State Bureau of Identification Central Repository contains no such information relating to that person (State CHRI Report); and
- (2) A report of the individual's entire federal criminal history record information from the Federal Bureau of Investigation (Federal CHRI Report).

- (b) Unless otherwise specified by statute, the recipient agency shall pay to the Bureau all fees associated with the acquisition of State and Federal CHRI Reports.

- (c) All CHRI Reports obtained pursuant this section shall be forwarded to the recipient agency for review associated with the employment and/or licensing of the individual for whom the CHRI Reports are sought. For the purposes of this section the Bureau shall be the intermediary and the recipient agency shall be the screening point for the receipt of CHRI Reports.

- (d) All CHRI Reports obtained pursuant to this section are confidential and may only be disclosed to the chief officer of the recipient agency, or his or her designee, or to the individual employed by the recipient agency who has been designated by statute to receive CHRI Reports. If disclosed to a designee of the chief officer of the recipient agency, then prior to processing any State or Federal CHRI Reports, said designee shall receive training in confidentiality and shall sign an agreement to keep such information confidential. Notwithstanding the foregoing and unless otherwise specified by statute, any

recipient agency to whom a CHRI Report has been disclosed pursuant to this section shall review such CHRI Report with the individual for whom it was sought upon the individual's request.

(e) The State Bureau of Identification may release any subsequent CHRI Reports to a recipient agency when properly requested. No Federal CHRI Report shall be disclosed to any private entity at any time except as expressly authorized by the Federal Bureau of Investigation.

(f) Information provided to the recipient agency pursuant this section by the individual for whom any CHRI Report is being sought, shall be accompanied by an oath or affirmation provided by the recipient agency and signed by the individual under penalty of perjury:

(1) indicating that said information is true and complete to the best of the individual's knowledge; and

(2) acknowledging that knowingly and intentionally providing false, incomplete, or inaccurate information is a felony.

(g) Any person for whom a CHRI Report is being sought pursuant to this section who knowingly and intentionally provides a recipient agency or the Bureau with false, incomplete, or inaccurate information shall be guilty of a class F felony and shall be punished according to Chapter 42 of this title. Conviction pursuant to this subsection shall not preclude prosecution for perjury in the second degree pursuant to Chapter 5 of this Title.

(h) This section shall apply to any recipient agency seeking a State or Federal CHRI Report for the purposes of employing or licensing any individual in this State."

Section 7. Amend § 1441(a)(1), Title 11 of the Delaware Code, by striking the semi-colon (";") that appears at the end thereof and by substituting in lieu thereof the following:

"The person shall submit together with such application all information necessary to conduct a criminal history background check. The Superior Court may conduct a criminal history background check, pursuant to the procedures set forth in Chapter 85 of Title 11, for the purposes of licensing any person pursuant to this section."

Section 8. Amend § 2901(a), Title 14 of the Delaware Code, by adding to the end thereof a new sentence as follows:

"The Department may conduct a criminal history background check, pursuant to the procedures set forth in Chapter 85 of Title 11, for the purposes of employment or contractual employment of any school bus driver."

74 Section 9. Amend § 2708, Title 21 of the Delaware Code, by adding thereto a new subsection as follows:

75 "(f) The Department may conduct a criminal history background check, pursuant to the procedures set forth
76 in Chapter 85 of Title 11, for the purposes of issuing an S endorsement pursuant to this section."

77 Section 10. Amend § 2763, Title 21 of the Delaware Code, by adding thereto a new subsection as follows:

78 "(c) The Department may conduct a criminal history background check, pursuant to the procedures set forth
79 in Chapter 85 of Title 11, for the purposes of issuing a taxicab authorization or endorsement pursuant to
80 this section."

81 Section 11. Amend § 1203, Title 24 of the Delaware Code, by adding thereto a new subsection as follows:

82 "(e) The Division may conduct a criminal history background check, pursuant to the procedures set forth in
83 Chapter 85 of Title 11, for the purposes of licensing any individual pursuant to this chapter."

84 Section 12. Amend § 1204, Title 24 of the Delaware Code, by adding thereto a new subsection as follows:

85 "(3) The Superintendent may conduct a criminal history background check, pursuant to the procedures set
86 forth in Chapter 85 of Title 11, for the purposes of licensure review pursuant to this chapter."

87 Section 13. Amend § 1311, Title 24 of the Delaware Code, by adding thereto a new subsection as follows:

88 "(e) The Board may conduct a criminal history background check, pursuant to the procedures set forth in
89 Chapter 85 of Title 11, for the purposes of licensing any individual pursuant to this chapter."

SYNOPSIS

This Act codifies the process for the acquisition and review of criminal history background information in a central location in order to ensure compliance with Federal law and regulations. Currently, each time the General Assembly has chosen to authorize or require a department, agency, board, etc. to conduct a criminal history background check for the purposes of licensing or employing an individual in Delaware, the resulting legislation usually copied language located elsewhere in the Delaware Code regarding the conduct of those checks. Upon a review of the existing sections that require such checks, the Federal Bureau of Investigation has determined that several of these sections are inconsistent with its regulations. Thus, any department, agency, board, etc. conducting a background check pursuant to those sections is doing so in violation of federal law. In centralizing the law governing the process for conducting background checks, this Act ensures first that the standards required by the FBI are met in no uncertain terms, and next that any future additions to the list of those required to conduct background checks need only include authorization to do so and a list of the specific crimes, or categories of crimes, that would disqualify an individual from employment or licensure.