

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 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:

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

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

1 **Section 1.** NRS 179A.180 is hereby amended to read as
2 follows:
3 179A.180 As used in NRS 179A.180 to 179A.240, inclusive,
4 unless the context otherwise requires:



- 1 1. *“Elderly person” means a person who is 60 years of age or*
2 *older.*
- 3 2. “Employee” means a person who renders time and services
4 to an employer ~~for~~ *for compensation*, and whose regular course of
5 duties places that person in a position to:
- 6 (a) Exercise supervisory or disciplinary control over children ~~for~~
7 *, elderly persons or persons with disabilities;*
- 8 (b) Have direct access to or contact with children *, elderly*
9 *persons or persons with disabilities who are* served by the
10 employer; or
- 11 (c) Have access to information or records maintained by the
12 employer relating to identifiable children *, elderly persons or*
13 *persons with disabilities who are* served by the employer,
14 ~~and includes a prospective employee . for, but does not include a~~
15 ~~volunteer or prospective volunteer.~~
- 16 ~~for~~ 3. “Employer” means a person, or a governmental agency
17 or political subdivision of this State that is not an agency of criminal
18 justice, whose employees *or volunteers* regularly render services to
19 children, *elderly persons or persons with disabilities*, including
20 without limitation care, treatment, transportation, instruction,
21 companionship, entertainment and custody. *The term includes,*
22 *without limitation, a person, or a governmental agency or political*
23 *subdivision of this State that is not an agency of criminal justice,*
24 *that licenses or certifies others to render services to children,*
25 *elderly persons or persons with disabilities.*
- 26 4. “Person with a disability” means a person who:
27 (a) *Has a physical or mental impairment that substantially*
28 *limits one or more of the major life activities of the person;*
29 (b) *Has a record of such an impairment; or*
30 (c) *Is regarded as having such an impairment.*
- 31 5. “Volunteer” means a person who renders time and services
32 to an employer without compensation, and whose regular course
33 of duties place that person in a position to:
- 34 (a) *Exercise supervisory or disciplinary control over children,*
35 *elderly persons or persons with disabilities;*
- 36 (b) *Have direct access to or contact with children, elderly*
37 *persons or persons with disabilities who are served by the*
38 *employer; or*
- 39 (c) *Have access to information or records maintained by the*
40 *employer relating to identifiable children, elderly persons or*
41 *persons with disabilities who are served by the employer,*
42 ~~and includes a prospective volunteer.~~



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

2 179A.190 1. Notice of information relating to the offenses
3 listed in subsection 4 may be disseminated to employers pursuant to
4 NRS 179A.180 to 179A.240, inclusive.

5 2. An employer may consider such a notice of information
6 concerning an employee *or a volunteer* when making a decision to
7 hire, retain, suspend or discharge the employee ~~H~~ *or volunteer*, and
8 is not liable in an action alleging discrimination based upon
9 consideration of information obtained pursuant to NRS 179A.180 to
10 179A.240, inclusive.

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

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

20 (a) A sexual offense;

21 (b) A conviction for a felony within the immediately preceding
22 7 years;

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

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

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

30 179A.200 1. In addition to any other information which an
31 employer is authorized to request pursuant to this chapter, an
32 employer may request from the Central Repository notice of
33 information relating to the offenses listed in subsection 4 of NRS
34 179A.190 concerning an employee ~~H~~ *or a volunteer*.

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

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

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



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

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

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

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

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

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

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

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

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

22 ~~†(2) The†~~

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

26 ~~†(3) The†~~

27 (4) *Of the* employee's *or volunteer's* right, pursuant to NRS
28 179A.150, to challenge the accuracy or sufficiency of any
29 information disseminated to the employer.

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

31 179A.210 1. Upon receipt of a request from an employer for
32 notice of information relating to the offenses listed in subsection 4
33 of NRS 179A.190, the Central Repository shall undertake a search
34 for the information, unless the request does not conform to the
35 requirements of the Repository. The search must be based on the
36 fingerprints of the employee ~~†~~ *or volunteer*, or on a number
37 furnished to the employee *or volunteer* for identification pursuant to
38 a previous search, as provided by the employer, and must include:

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

42 (b) Requesting information relating to the offenses listed in
43 subsection 4 of NRS 179A.190 concerning the employee *or*
44 *volunteer* from repositories of the United States or other states, if



1 authorized by federal law or an agreement entered into pursuant to
2 NRS 179A.075;

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

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

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

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

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

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

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

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

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

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



1 accuracy and sufficiency of the information, must also be included
2 with the report.

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

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

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

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

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

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

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

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

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

29 179A.230 1. A person who is the subject of a request for
30 notice of information pursuant to NRS 179A.180 to 179A.240,
31 inclusive, may recover actual damages in a civil action against:

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

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

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

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

44 (c) An employer, representative of an employer or employee for
45 an intentional or grossly negligent violation of NRS 179A.110.



1 Punitive damages may be awarded against an employer,
2 representative of an employer or employee whose violation of NRS
3 179A.110 is malicious.

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

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

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

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

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

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

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

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

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

