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SENATE BILL NO. 767

Offered January 12, 2011

Prefiled December 8, 2010

A BILL to amend and reenact § 19.2-392.4 of the Code of Virginia and to amend the Code of Virginia by adding a section numbered 19.2-392.2:1, relating to expungement of protective orders.

Patron—Marsden

Referred to Committee for Courts of Justice

Be it enacted by the General Assembly of Virginia:

1. That § 19.2-392.4 of the Code of Virginia is amended and reenacted and that the Code of Virginia is amended by adding a section numbered 19.2-392.2:1 as follows:

§ 19.2-392.2:1. Expungement of protective orders.

A. If a protective order has been issued pursuant to § 16.1-253, 16.1-253.1, 16.1-253.4, 16.1-279.1, 19.2-152.8, 19.2-152.9, or 19.2-152.10, and such order is subsequently dissolved by the issuing court, the person against whom the protective order was issued may file a petition setting forth the relevant facts and requesting expungement of the police records and the court records relating to the protective order.

B. The petition, accompanied by a copy of the order dissolving the protective order and, if reasonably available, a copy of the protective order, shall be filed in the circuit court of the jurisdiction where the protective order was issued. Where the protective order is not reasonably available, the petition shall state the reason for such unavailability. The petition shall contain the date of the issuance of the protective order, the date of the issuance of the order dissolving the protective order, the petitioner's date of birth, and the full name used by the petitioner at the time of the issuance of the protective order.

C. A copy of the petition shall be served on the attorney for the Commonwealth of the jurisdiction in which the petition is filed. The attorney for the Commonwealth may file an objection or answer to the petition within 21 days after it is served on him.

D. The petitioner shall obtain from a law-enforcement agency one complete set of the petitioner's fingerprints and shall provide that agency with a copy of the petition for expungement. The law-enforcement agency shall submit the set of fingerprints to the Central Criminal Records Exchange (CCRE) with a copy of the petition for expungement attached. The CCRE shall forward under seal to the court a copy of the petitioner's criminal history, a copy of the source documents that resulted in the CCRE entry that the petitioner wishes to expunge, and the set of fingerprints. Upon completion of the hearing, the court shall return the fingerprint card to the petitioner.

E. After receiving the criminal history record information from the CCRE, the court shall conduct a hearing on the petition. If the court finds that the continued existence and possible dissemination of information relating to the protective order causes or may cause circumstances which constitute a manifest injustice to the petitioner, it shall enter an order requiring the expungement of the police and court records, including electronic records, relating to the protective order. Otherwise, it shall deny the petition.

F. The Commonwealth shall be made a party defendant to the proceeding. Any party aggrieved by the decision of the court may appeal, as provided by law in civil cases.

G. Upon the entry of an order of expungement, the clerk of the court shall cause a copy of such order to be forwarded to the Department of State Police, which shall, pursuant to rules and regulations adopted pursuant to § 9.1-134, direct the manner by which the appropriate expungement or removal of such records shall be effected.

H. Costs shall be as provided by § 17.1-275, but shall not be recoverable against the Commonwealth.

I. Any order entered where (i) the court or parties failed to strictly comply with the procedures set forth in this section or (ii) the court enters an order of expungement contrary to law, shall be voidable upon motion and notice made within three years of the entry of such order.

§ 19.2-392.4. Prohibited practices by employers, educational institutions, agencies, etc., of state and local governments.

A. An employer or educational institution shall not, in any application, interview, or otherwise, require an applicant for employment or admission to disclose information concerning any arrest or criminal charge against him or any protective order issued against him that has been expunged. An applicant need not, in answer to any question concerning any arrest or criminal charge that has not

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59 resulted in a conviction *or concerning a protective order issued against him*, include a reference to or
60 information concerning arrests ~~or~~, charges, *or protective orders* that have been expunged.

61 B. Agencies, officials, and employees of the state and local governments shall not, in any
62 application, interview, or otherwise, require an applicant for a license, permit, registration, or
63 governmental service to disclose information concerning any arrest or criminal charge against him *or*
64 *any protective order issued against him* that has been expunged. An applicant need not, in answer to
65 any question concerning any arrest or criminal charge that has not resulted in a conviction *or concerning*
66 *a protective order issued against him*, include a reference to or information concerning *arrests*, charges,
67 *or protective orders* that have been expunged. Such an application may not be denied solely because of
68 the applicant's refusal to disclose information concerning any arrest or criminal charge against him *or*
69 *any protective order issued against him* that has been expunged.

70 C. A person who willfully violates this section is guilty of a Class 1 misdemeanor for each violation.