

Amendment No. 97

Assembly Amendment to Assembly Bill No. 47	(BDR 14-294)
Proposed by: Assembly Committee on Judiciary	
Amends: Summary: Yes Title: Yes Preamble: No Joint Sponsorship: No Digest: Yes	
Adoption of this amendment will ADD a 2/3s majority vote requirement for final passage of A.B. 47 (§ 4).	

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) variations of green bold underlining is language proposed to be added 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 proposed to be retained in this amendment.

BAW



Date: 4/17/2015

A.B. No. 47—Revises provisions governing the dissemination of records of criminal history. (BDR 14-294)



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]~~ **Provides for the establishment within the Central Repository for Nevada Records of Criminal History of a service to conduct a name-based search of** records of criminal history. (BDR 14-294)

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

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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; ~~[revising provisions governing the dissemination of certain records of criminal history to employers and prospective employers by an agency of criminal justice or]~~ **providing for the establishment within** the Central Repository for Nevada Records of Criminal History ~~[of a service to conduct a name-based search of records of criminal history of an employee, prospective employee, volunteer or prospective volunteer]~~; 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. This bill provides for the establishment within the Central Repository of a service to conduct a name-based search of records of criminal history of an employee, prospective employee, volunteer or prospective volunteer. This bill sets forth certain requirements relating to the operation of that service, including, without limitation, provisions regarding: (1) eligibility to participate in the service; (2) fees for participation in the service; (3) the type of information that the Central Repository may release; (4) the requirements for obtaining the consent of the subject of a search for records of criminal history; (5) the authority of the Central Repository to conduct audits concerning the service; and (6) the ability of the Central Repository to terminate participation in the service under certain circumstances.~~

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 [a] 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 employer, or a person or entity designated to receive the information on behalf of such an employer, the information contained in a record of registration concerning an employee, prospective employee, volunteer or prospective volunteer who is a sex offender or an offender convicted of a crime against a child, regardless of whether the employee, prospective employee,~~

~~volunteer or prospective volunteer gives written consent to the release of that information. The Central Repository shall disseminate such information in a manner that does not reveal the name of an individual victim of an offense or the information described in subsection 7 of NRS 179B.250. A request for information pursuant to this subsection must conform to the requirements of the Central Repository and must include:~~

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

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

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

~~— [5.] 6. In addition to any other information to which an employer is entitled or authorized to receive, the Central Repository shall disseminate to a prospective or current employer, or a person or entity designated to receive the information on behalf of such an employer, the information described in subsection 4 of NRS 179A.190 concerning an employee, prospective employee, volunteer or prospective volunteer who gives [written] consent to the release of that information.~~

~~— (a) In writing to the employer if the employer submits a request in the manner set forth in NRS 179A.200 for obtaining a notice of information []; or~~

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

~~— The Central Repository shall search for and disseminate such information in the manner set forth in NRS 179A.210 for the dissemination of a notice of information.~~

~~— [6.] 7. Except as otherwise provided in subsection [5.] 6, the provisions of NRS 179A.180 to 179A.240, inclusive, do not apply to an employer who requests information and to whom such information is disseminated pursuant to subsections [4 and 5.]~~

~~— [7.] 5 and 6.~~

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

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

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

~~— (c) The State Gaming Control Board.~~

~~— (d) The State Board of Nursing.~~

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

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

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

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

~~— (i) Any public utility subject to the jurisdiction of the Public Utilities Commission of Nevada when the information is necessary to conduct a security~~

1 ~~investigation of an employee or prospective employee or to protect the public~~
2 ~~health, safety or welfare.~~

3 ~~— (j) Persons and agencies authorized by statute, ordinance, executive order,~~
4 ~~court rule, court decision or court order as construed by appropriate state or local~~
5 ~~officers or agencies.~~

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

11 ~~— (l) Any reporter for the electronic or printed media in a professional capacity~~
12 ~~for communication to the public.~~

13 ~~— (m) Prospective employers if the person who is the subject of the information~~
14 ~~has given written consent to the release of that information by the agency which~~
15 ~~maintains it.~~

16 ~~— (n) For the express purpose of research, evaluative or statistical programs~~
17 ~~pursuant to an agreement with an agency of criminal justice.~~

18 ~~— (o) An agency which provides child welfare services, as defined in NRS~~
19 ~~432B.030.~~

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

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

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

29 ~~— (s) The State Disaster Identification Team of the Division of Emergency~~
30 ~~Management of the Department.~~

31 ~~— (t) The Commissioner of Insurance.~~

32 ~~— (u) The Board of Medical Examiners.~~

33 ~~— (v) The State Board of Osteopathic Medicine.~~

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

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

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

41 ~~— [8.] 9. Agencies of criminal justice in this State which receive information~~
42 ~~from sources outside this State concerning transactions involving criminal justice~~
43 ~~which occur outside Nevada shall treat the information as confidentially as is~~
44 ~~required by the provisions of this chapter.] (Deleted by amendment.)~~

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

46 ~~— 179A.105 An employer who fails to request:~~

47 ~~1. The information contained in a record of registration concerning a~~
48 ~~volunteer or prospective volunteer who is a sex offender or an offender convicted~~
49 ~~of a crime against a child, as authorized pursuant to subsection [4] 5 of NRS~~
50 ~~179A.100; or~~

51 ~~2. The information described in subsection 4 of NRS 179A.190 concerning a~~
52 ~~volunteer or prospective volunteer, as authorized pursuant to subsection [5] 6 of~~
53 ~~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 of NRS 179A.190 committed against the child by such a volunteer or prospective volunteer.~~ (Deleted by amendment.)

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.~~

~~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 is employed or seeking to become employed;~~

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

~~(d) Signed consent by the employee authorizing:~~

~~(1) The employer to forward the fingerprints of the employee 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; and~~

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

~~(e) The mailing address of the employee or a signed waiver of the right of the employee 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 indicating that the employee has been notified of:~~

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

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

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

~~3. For the purposes of paragraph (b) of subsection 6 of NRS 179A.100, a request shall be deemed to include the information required by paragraphs (d), (e) and (f) of subsection 2 if the request includes proof that the employee consented pursuant to 15 U.S.C. § 1681b(b)(2) to the procurement of a consumer report regarding himself or herself for employment purposes. As used in this subsection, "consumer report" has the meaning ascribed to it in 15 U.S.C. § 1681a(d).~~ (Deleted by amendment.)

Sec. 4. Chapter 179A of NRS is hereby amended by adding thereto a new section to read as follows:

1. There is hereby established within the Central Repository a service to conduct a name-based search of records of criminal history of an employee, prospective employee, volunteer or prospective volunteer.

2. An eligible person that wishes to participate in the service must enter into a contract with the Central Repository.

3. The Central Repository may charge a reasonable fee for participation in the service.

4. A participant of the service may inquire about the records of criminal history of an employee, prospective employee, volunteer or prospective volunteer

1 to determine the suitability of the employee or prospective employee for
2 employment or the suitability of the volunteer or prospective volunteer for
3 volunteering.

4 5. The Central Repository shall disseminate to a participant of the service
5 information which:

6 (a) Reflects convictions only; or

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

10 6. An employee, prospective employee, volunteer or prospective volunteer
11 who is proposed to be the subject of a name-based search must provide his or her
12 written consent for the Central Repository to perform the search and to release
13 the information to a participant. The written consent form may be:

14 (a) A form designated by the Central Repository; or

15 (b) If the participant is an employment screening service, a form that
16 complies with the provisions of 15 U.S.C. § 1681b(b)2 for the procurement of a
17 consumer report.

18 7. An employment screening service that is designated to receive records of
19 criminal history on behalf of an employer or volunteer organization may provide
20 such records of criminal history to the employer or volunteer organization upon
21 request of the employer or volunteer organization.

22 8. The Central Repository may audit a participant, at such times as the
23 Central Repository deems necessary, to ensure that records of criminal history
24 are securely maintained.

25 9. The Central Repository may terminate participation in the service if a
26 participant fails:

27 (a) To pay the fees required to participate in the service; or

28 (b) To address, within a reasonable period, deficiencies identified in an audit
29 conducted pursuant to subsection 8.

30 10. As used in this section:

31 (a) "Consumer report" has the meaning ascribed to it in 15 U.S.C. §
32 1681a(d).

33 (b) "Eligible person" includes:

34 (1) An employer.

35 (2) A volunteer organization.

36 (3) An employment screening service.

37 (c) "Employer" means a person in this State that:

38 (1) Employs an employee; or

39 (2) Enters into a contract with an independent contractor.

40 (d) "Employment" includes performing services for an employer as an
41 independent contractor.

42 (e) "Employment screening service" means a person or entity designated by
43 an employer or volunteer organization to provide employment or volunteer
44 screening services to the employer or volunteer organization.

45 ~~{Sec. 4.}~~ Sec. 5. This act becomes effective upon passage and approval.