

VIRGINIA ACTS OF ASSEMBLY -- 2020 SESSION

CHAPTER 422

An Act to amend the Code of Virginia by adding sections numbered 2.2-2812.1 and 15.2-1505.3, relating to public employment; limitations on inquiries by state agencies and localities regarding criminal arrests, charges, or convictions.

[H 757]

Approved March 23, 2020

Be it enacted by the General Assembly of Virginia:

1. That the Code of Virginia is amended by adding sections numbered 2.2-2812.1 and 15.2-1505.3 as follows:

§ 2.2-2812.1. State agencies prohibited from inquiring about arrests, charges, or convictions on employment applications; exceptions.

A. As used in this section:

"Conviction" means any adjudication that an individual committed a crime, any finding of guilt after a criminal trial by a court of competent jurisdiction, or any plea of guilty or nolo contendere to a criminal charge.

"Staff interview" means any interview of a prospective employee for a job by current state agency staff.

"State agency" means any authority, board, department, instrumentality, institution, agency, or other unit of state government.

B. No state agency shall request a prospective employee to complete an application for employment that includes a question inquiring whether the prospective employee has ever been arrested for, charged with, or convicted of any crime. This prohibition shall not apply to any employment-related applications or questionnaires provided during or after a staff interview.

C. No state agency shall inquire whether a prospective employee has ever been arrested for, charged with, or convicted of any crime unless the inquiry takes place during or after a staff interview of the prospective employee.

D. Nothing in this section shall prevent a state agency from considering information received during or after a staff interview pertaining to a prospective employee having been arrested for, charged with, or convicted of any crime.

E. The prohibition in this section shall not apply to positions designated as sensitive pursuant to § 2.2-1201.1, to law-enforcement agency positions or positions related to law-enforcement agencies, or to state agencies that are expressly permitted to inquire into an individual's criminal arrests or charges for employment purposes pursuant to any provision of federal or state law.

§ 15.2-1505.3. Localities prohibited from inquiring about arrests, charges, or convictions on employment applications; exceptions.

A. As used in this section, "conviction" means any adjudication that an individual committed a crime, any finding of guilt after a criminal trial by a court of competent jurisdiction, or any plea of guilty or nolo contendere to a criminal charge.

B. No locality shall request a prospective employee to complete an application for employment that includes a question inquiring whether the prospective employee has ever been arrested for, charged with, or convicted of any crime. This prohibition shall not apply to (i) law-enforcement agency positions or positions related to law-enforcement agencies, (ii) positions for employment by the local school board, (iii) sensitive positions, or (iv) any employment-related applications or questionnaires provided during or after a staff interview. For purposes of this subsection, "sensitive positions" shall include those positions:

1. Responsible for the health, safety, and welfare of citizens or the protection of critical infrastructure;

2. That have access to sensitive information, including access to federal tax information in approved exchange agreements with the Internal Revenue Service or Social Security Administration; and

3. That are otherwise required by state or federal law to be designated as sensitive.

C. No locality shall inquire whether a prospective employee has ever been arrested for, or charged with, or convicted of any crime unless the inquiry takes place during or after a staff interview of the prospective employee.

D. Nothing in this section shall prevent a locality from considering information received during or after a staff interview pertaining to a prospective employee having been arrested for, charged with, or convicted of any crime.