

**Senate Bill No. 405**

(By Senator Walters)

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[Introduced February 3, 2015; referred to the Committee on the Judiciary.]  
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9 A BILL to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section,  
10 designated §15-2-24c, relating to authorizing qualified entities, as defined by this section, to  
11 access criminal history information provided by the Criminal Identification Bureau for use  
12 only for the purpose of screening employees, foster parents, adoptive parents and volunteers  
13 or persons applying to be an employee, foster parent, adoptive parent or volunteer with a  
14 qualified entity.

15 *Be it enacted by the Legislature of West Virginia:*

16 That the Code of West Virginia, 1931, as amended, be amended by adding thereto a new  
17 section, designated §15-2-24c, to read as follows:

18 **ARTICLE 2. WEST VIRGINIA STATE POLICE.**

19 **§15-2-24c. Access to criminal history information to qualified entities provided by the**  
20 **criminal identification bureau; limitations.**

21 (a) As used in this section, the terms:

22 (1) "Care" means the provision of care, treatment, education, training, instruction, supervision

1 or recreation to children, the elderly or individuals with disabilities; and

2 (2) "Qualified entity" means a business or organization, whether public, private, operated  
3 for profit, operated not for profit or voluntary, which provides care or care placement services,  
4 including a business or organization that licenses or certifies others to provide care or care placement  
5 services.

6 (b) A qualified entity shall register with the Criminal Identification Bureau before submitting  
7 a request for screening under this section. Each request shall be voluntary and conform to the  
8 requirements established in the National Child Protection Act of 1993, as amended. As a part of the  
9 registration, the qualified entity shall agree to comply with state and federal law and shall so indicate  
10 by signing an agreement approved by the Criminal Identification Bureau. The Criminal Identification  
11 Bureau may periodically audit qualified entities to ensure compliance with federal law and this  
12 section.

13 (c) A qualified entity shall submit a request to the criminal identification bureau for screening  
14 an employee or volunteer or person applying to be an employee or volunteer on a completed  
15 fingerprint card, or the request may be submitted electronically. The qualified entity shall maintain  
16 a signed waiver allowing the release of the state and national criminal history record information to  
17 the qualified entity. Each request shall be accompanied by a fee for a statewide criminal history  
18 check by the Criminal Identification Bureau, plus the amount currently prescribed by the Federal  
19 Bureau of Investigation for the national criminal history check in compliance with the National Child  
20 Protection Act of 1993, as amended.

21 (d) Any current or prospective employee or volunteer who is subject to a request for  
22 screening shall indicate to the qualified entity submitting the request the name and address of each

1 qualified entity that has submitted a previous request for screening regarding that employee or  
2 volunteer.

3 (e) The Criminal Identification Bureau shall provide the state criminal history records that  
4 are not exempt from disclosure under law to the qualified entity.

5 (f) The national criminal history data is available to qualified entities to use only for the  
6 purpose of screening employees, foster parents, adoptive parents and volunteers or persons applying  
7 to be an employee, foster parent, adoptive parent or volunteer with a qualified entity. The Criminal  
8 Identification Bureau shall provide this national criminal history record information to the qualified  
9 entity, as authorized by the written waiver required for submission of a request to the Criminal  
10 Identification Bureau.

11 (g) The determination whether the criminal history record shows that the employee or  
12 volunteer has been convicted of, or is under pending indictment, for any crime that bears upon the  
13 fitness of the employee or volunteer to have responsibility for the safety and well-being of children,  
14 the elderly or disabled persons shall be made solely by the qualified entity. This section does not  
15 require the Criminal Identification Bureau to make such a determination on behalf of any qualified  
16 entity.

17 (h) The qualified entity shall notify the person, in writing, of his or her right to obtain a copy  
18 of any background screening report, including the criminal history records, if any, contained in the  
19 report, and of the person's right to challenge the accuracy and completeness of any information  
20 contained in any such report and to obtain a determination as to the validity of the challenge before  
21 a final determination regarding the person is made by the qualified entity reviewing the criminal  
22 history information. A qualified entity that is required by law to apply screening criteria, including

1 any right to contest or request an exemption from disqualification, shall apply the screening criteria  
2 to the state and national criminal history record information received from the Criminal  
3 Identification Bureau for those persons subject to the required screening.

4 (I) The Criminal Identification Bureau may establish a database of registered qualified  
5 entities and make this data available free of charge to all registered qualified entities. The database  
6 shall include, at a minimum, the name, address and phone number of each qualified entity.

7 (j) A qualified entity is not liable for damages for failing to obtain the information authorized  
8 under this section with respect to an employee or volunteer. The state, any political subdivision of  
9 the state or any agency, officer or employee of the state or a political subdivision is not liable for  
10 damages for providing the information requested under this section.

11 (k) The Criminal Identification Bureau may propose rules for legislative approval in  
12 accordance with article three, chapter twenty-nine-a of this code for the implementation of this  
13 section.

NOTE: The purpose of this bill is to authorize qualified entities, as defined by this section, to access criminal history information provided by the Criminal Identification Bureau for use only for the purpose of screening employees, foster parents, adoptive parents and volunteers or persons applying to be an employee, foster parent, adoptive parent or volunteer with a qualified entity.

This section is new; therefore, strike-throughs and underscoring have been omitted.