

BILL ANALYSIS

Senate Research Center
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C.S.S.B. 1737
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Criminal Justice
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Committee Report (Substituted)

AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

Currently, notification of an order to expunge a criminal record is issued only to criminal justice agencies and other governmental entities and repositories. It is not certain that companies that sell background checks use the most current information available. There is no way for a person who has had a record expunged to know what information is being disseminated by the various private sector businesses that acquire and sell criminal history information. This complication can have serious effects on people who are looking for employment and housing.

C.S.S.B. 1737 requires the Department of Public Safety to notify private entities, at the same time that other repositories of criminal history information are notified, that a criminal history record has been ordered expunged. In addition, this bill compels private background check companies to obtain and use updated criminal history information.

RULEMAKING AUTHORITY

Rulemaking authority is expressly granted to the public safety director in SECTION 6 (Section 411.081, Government Code) of this bill.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Sections 2(b), (c), and (f), Article 55.02, Code of Criminal Procedure, as follows:

(b) Requires a petition for expunction to contain certain information, including a list of all private entities that compile and disseminate for compensation criminal history record information that the petitioner has reason to believe have information related to records or files that are subject to expunction.

(c) Requires the court to set a hearing on the matter of expunction no sooner than 30 days from the filing of the petition and to give to each official or agency or other governmental entity, rather than entity, named in the petition reasonable notice of the hearing in a certain manner, including electronic transmission. Deletes existing text requiring notice of the hearing to be requested in writing by the petitioner.

(f) Makes conforming changes.

SECTION 2. Amends Section 2a(c), Article 55.02, Code of Criminal Procedure, to make conforming changes.

SECTION 3. Amends Section 3, Article 55.02, Code of Criminal Procedure, by amending Subsection (c) and adding Subsections (c-1) and (c-2), as follows:

(c) Makes conforming changes.

(c-1) Creates this subsection from existing text. Makes conforming and nonsubstantive changes.

(c-2) Requires the Department of Public Safety (DPS) to also provide, by secure electronic mail, electronic transmission, or facsimile transmission, notice of the order of expunction to any private entity that is named in the order or that purchases criminal

history record information from DPS. Requires the notice to include an explanation of the effect of the order and a request that the entity destroy any criminal history record information in the possession of the entity that is subject to the order. Authorizes DPS to charge to a private entity that purchases criminal history record information from DPS a fee in an amount sufficient to recover costs incurred by DPS in providing notice under this subsection to the entity.

SECTION 4. Amends Sections 5a(a) and (f), Article 55.02, Code of Criminal Procedure, to make conforming changes.

SECTION 5. Amends Section 411.081(e), Government Code, to entitle a person to petition the court under Subsection (d) only under certain circumstances, including during the period of the deferred adjudication community supervision for which the order of nondisclosure is requested. Provides that a person is not entitled to petition the court under Subsection (d) if the person was placed on the deferred adjudication community supervision for or has been previously convicted or placed on any other deferred adjudication for certain offenses.

SECTION 6. Reenacts and amends Sections 411.081(g), Government Code, as amended by Chapter 177 and 1309, Acts of the 79th Legislature, Regular Session, 2005, and Section 411.081(g-1) as added by Chapters 177 and 1309, Acts of the 79th Legislature, Regular Session, 2005, as Sections 411.081(g), (g-1), (g-1a), (g-1b), and (g-1c), as follows:

(g) Creates this subsection from existing text. Requires the clerk of the court, not later than the 15th business day after the date an order of nondisclosure is issued under this section, to send all relevant criminal history record information contained in the order or a copy of the order by certified mail, return receipt requested, or secure electronic mail, electronic transmission, or facsimile transmission to the Crime Records Service of DPS.

(g-1) Requires DPS, not later than 10 business days after the receipt of relevant criminal history record information contained in an order or a copy of an order under Subsection (g), to seal any criminal history record information maintained by DPS that is the subject of the order. Requires DPS to also send all relevant criminal history record information contained in the order or a copy of the order by certified mail, return receipt requested, or secure electronic mail, electronic transmission, or facsimile transmission, to certain entities, including to all private entities that purchase criminal history record information that is subject to the order. Makes conforming changes.

(g-1a) Requires the public safety director (director) to adopt rules regarding minimum standards for the security of secure electronic mail, electronic transmissions, and facsimile transmissions under Subsections (g) and (g-1). Requires the director, in adopting rules under this subsection, to consult with the Office of Court Administration of the Texas Judicial System.

(g-1b) Requires an individual or entity described by Subsection (g-1)(1), not later than 30 business days after receipt of relevant criminal history record information contained in an order or a copy of an order from DPS under Subsection (g-1), to seal any criminal history record information maintained by the individual or entity that is the subject of the order. Deletes existing text of Subsection (g-1).

(g-1c) Authorizes DPS to charge to a private entity that purchases criminal history record information from DPS a fee in an amount sufficient to recover costs incurred by DPS in providing relevant criminal history record information contained in an order or a copy of an order under Subsection (g-1)(3).

SECTION 7. Amends Subchapter F, Chapter 411, Government Code, by adding Sections 411.0835 and 411.0851, as follows:

Sec. 411.0835. PROHIBITION AGAINST DISSEMINATION TO CERTAIN PRIVATE ENTITIES. Prohibits DPS from releasing any criminal history record information to an entity until the first anniversary of the date of the most recent violation if DPS receives information indicating that a private entity that purchases that information from DPS has

been found by a court to have committed three or more violations of Section 552.1425 (Civil Penalty: Records of Certain Differed Adjudications) by compiling or disseminating information with respect to which an order of expunction or an order of nondisclosure has been issued.

Sec. 411.0851. DUTY OF PRIVATE ENTITY TO UPDATE CRIMINAL HISTORY RECORD INFORMATION; CIVIL LIABILITY. (a) Requires a private entity that compiles and disseminates for compensation criminal history record information to destroy, and prohibits the entity from disseminating, any information in the possession of the entity with respect to which the entity has received notice that an order of expunction or nondisclosure has been issued.

(b) Authorizes a private entity described by Subsection (a) that purchases criminal history record information from DPS or another governmental agency or entity in this state to disseminate that information only if the entity originally obtains or verifies the information within the 90-day period preceding the date of dissemination, subject to Subsection (c). Requires the private entity to notify DPS if the entity sells any compilation of the information to another similar entity.

(c) Provides that a private entity that disseminates information in violation of this section is liable for any damages that are sustained as a result of the violation by the person who is the subject of that information. Entitles a person who prevails in an action brought under this section to recover court costs and reasonable attorney's fees.

SECTION 8. Amends Section 411.085(d), Government Code, to require DPS to provide a copy of this section to certain persons and to each private entity that purchases criminal history record information from DPS.

SECTION 9. Amends the heading to Section 552.1425, Government Code, to read as follows:

Sec. 552.1425. CIVIL PENALTY: DISSEMINATION OF CERTAIN CRIMINAL HISTORY INFORMATION.

SECTION 10. Amends Sections 552.1425(a) and (b), Government Code, as follows:

(a) Prohibits a private entity that compiles and disseminates for compensation criminal history record information from compiling or disseminating information with respect to which the entity has received notice that an order of expunction or nondisclosure has been issued.

(b) Authorizes a district court to issue a warning to a private entity for a first violation of Subsection (a). Provides that the private entity is liable to the state for a civil penalty not to exceed \$1,000, rather than \$500, for each subsequent violation after receiving a warning for the first violation.

SECTION 11. Repealer: Section 411.081(j) (prohibiting DPS from releasing certain information to certain entities), Government Code.

SECTION 12. (a) Makes application of Article 55.02, Code of Criminal Procedure, as amended by this Act, retroactive.

(b) Makes application of Section 411.081, Government Code, as amended by this Act, prospective, except as provided by Subsection (c).

(c) Makes application of Section 411.081(e), Government Code, as amended by this Act, prospective.

(d) Requires DPS, not later than January 1, 2008, to adopt rules concerning the standards for secure electronic mail, electronic transmissions, and facsimile transmissions as required by Section 411.081, Government Code, as amended by this Act.

(e) Requires a court that issues and transmits orders of nondisclosure as described by Section 411.081, Government Code, as amended by this Act, and the Crime Records Service of DPS to comply with the secure electronic mail, electronic transmission, and facsimile transmission standards adopted by DPS under Section 411.081, Government Code.

(f) Makes application of Section 411.0835, Government Code, as added by this Act, prospective.

(g) Makes application of Section 411.0851, Government Code, as added by this Act, prospective.

(h) Makes application of Section 552.1425, Government Code, as amended by this Act, prospective.

SECTION 13. Effective date: September 1, 2007.