

## BILL ANALYSIS

Senate Research Center  
82R5536 ACP-F

S.B. 1270  
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Open Government  
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As Filed

### AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

S.B. 1270 cleans up portions of the Texas Public Information Act (PIA) and ensures that information relating to "Suspicious Activity Reports" and other Bank Secrecy Act information obtainable through the United States Treasury's Financial Crimes Enforcement Network (FinCEN) and similar sources is confidential and not subject to disclosure under PIA.

Section 552.274 (Reports by Attorney General and State Agencies on Cost of Copies), Government Code, requires state agencies to publish reports on the agencies' websites describing the agencies' procedures for charging and collecting fees for information requested under PIA. This section also requires the Office of the Attorney General (OAG) to issue a biennial report on the charges made by state agencies for public information. During the 79th Legislature, two subsections lettered as Subsection (b) were added to Section 552.274. This proposed legislation would re-letter one of those subsections.

Section 552.117(a)(3) excepts from disclosure the home address, home phone number, and social security number of a current or former employee of the Texas Department of Criminal Justice regardless of whether the current or former employee complies with Section 552.1175 (Confidentiality of Addresses, Telephone Numbers, Social Security Numbers, and Personal Family Information of Peace Officers, County Jailers, Security Officers, and Employees of the Texas Department of Criminal Justice or a Prosecutor's Office). Section 552.117(a)(3) also excepts from disclosure information that reveals whether the employee has family members. Under Section 552.024 (Electing to Disclose Address and Telephone Number), public employees may elect to withhold the above-mentioned categories of information. Section 552.117(a)(3) is the only subsection of Section 552.117 (Exception: Certain Addresses, Telephone Numbers, Social Security Numbers, and Personal Family Information) that does not contain a reference to Section 552.024 and thereby causes confusion. The proposed legislation corrects that omission.

Under Section 552.305 (Information Involving Privacy or Property Interests of Third Party), a governmental body that receives a written request for a third party's proprietary information must notify that third party of its right to submit comments to the Open Records Division explaining why the requested information should not be released. Section 552.305(d)(2)(A) states that one item a governmental body must include in its notification to the third party is a copy of the written request for the information, if any, received by the governmental body. Since a governmental body's responsibilities under PIA are not triggered unless the governmental body receives a written request for information, this proposed legislation deletes the words "if any."

Additionally, the language in Section 552.305 stating that a governmental body should notify an individual if it believes the requested records are education records subject to Section 552.114 (Exception: Student Records) is unnecessary and potentially confusing to educational entities trying to comply with PIA's requirements. This legislation removes the reference to Section 552.114.

Finally, financial institutions are required by federal law to file Suspicious Activity Reports (SARs), Currency Transaction Reports (CTRs), and other reports required by the Bank Secrecy Act (31 U.S.C. §§ 5311.5330 and 31 C.F.R. Part 103) when they process transactions that meet certain dollar thresholds or if the transaction otherwise leads bank officials to suspect illegal activity. Although BSA information is protected from disclosure under the federal Freedom of Information Act, there is no equivalent state statute that specifically protects the information

from disclosure. The proposed addition of Section 552.153 (Exception: Bank Secrecy Act Reports) to PIA does so.

As proposed, S.B. 1270 amends the public information law.

### **RULEMAKING AUTHORITY**

This bill does not expressly grant any additional rulemaking authority to a state officer, institution, or agency.

### **SECTION BY SECTION ANALYSIS**

SECTION 1. Amends Section 552.117(a), Government Code, as follows:

(a) Provides that information is excepted from the requirements of Section 552.021 (Availability of Public Information) if it is information that relates to the home address, home telephone number, or social security number of the following person or that reveals whether the person has family members:

(1) and (2) Makes no changes to these subdivisions;

(3) a current or former employee of the Texas Department of Criminal Justice or of the predecessor in function of the department or any division of the department, regardless of whether the current or former employee complies with Section 552.024 (Electing to Disclose Address and Telephone Number) or 552.1175 (Confidentiality of Addresses, Telephone Numbers, Social Security Numbers, and Personal Family Information of Peace Officers, County Jailers, Security Officers, and Employees of the Texas Department of Criminal Justice or a Prosecutor's Office); or

(4)-(6) Makes no changes to these subdivisions.

SECTION 2. Amends Subchapter C, Chapter 552, Government Code, by adding Section 552.153, as follows:

Sec. 552.153. EXCEPTION: BANK SECRECY ACT REPORTS. (a) Provides that information is confidential and not subject to disclosure under this chapter if the information:

(1) was obtained by a governmental body for a law enforcement purpose; and

(2) is a report required by the Bank Secrecy Act (31 U.S.C. Section 5311 et seq.) or is derived from a report required by the Bank Secrecy Act.

(b) Authorizes a governmental body, in obtaining information described by Subsection (a)(2) for a purpose described by Subsection (a)(1), to sign a confidentiality agreement that covers information made confidential by this section and requires that:

(1) the information not be disclosed outside the governmental body, or within the governmental body for purposes other than the purpose for which it was obtained;

(2) the information be labeled as confidential; and

(3) the information be kept securely.

SECTION 3. Reenacts Section 552.274, Government Code, as amended by Chapters 329 (S.B. 727) and 716 (S.B. 452), Acts of the 79th Legislature, Regular Session, 2005, and amends it as follows:

Sec. 552.274. REPORTS BY ATTORNEY GENERAL AND STATE AGENCIES ON COST OF COPIES. (a) Makes no changes to this subsection.

(a-1) Redesignates an existing Subsection (b) as Subsection (a-1). Makes no further changes to this subsection.

(b) Makes no changes to this subsection.

(c) Redefines "state agency" in this section.

SECTION 4. Amends Sections 552.305(a) and (d), Government Code, as follows:

(a) Authorizes a governmental body, in a case in which information is requested under this chapter and a person's privacy or property interests may be involved, including a case under Section 552.101 (Exception: Confidential Information), 552.104 (Exception: Information Related to Competition or Bidding), or 552.110 (Exception: Trade Secrets; Certain Commercial or Financial Information), rather than under Section 552.101, 552.104, 552.110, or 552.114 (Exception: Student Records), to decline to release the information for the purpose of requesting an attorney general decision.

(d) Makes a conforming change.

SECTION 5. Makes application of the changes in law made by this Act to Sections 552.117 and 552.305, Government Code, prospective.

SECTION 6. Effective date: September 1, 2011.