

## BILL ANALYSIS

Senate Research Center  
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S.B. 1185  
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Criminal Justice  
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### AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

More and more businesses now perform criminal history background checks as a part of pre-employment screening practices. Accordingly, the number of private sector companies that sell criminal history information has increased dramatically over the last decade.

While the Texas Department of Public Safety (DPS) is the official repository and custodian of criminal history information for the state, they are not the sole source of all criminal history information made available to the public. Criminal history records are also accessed by private entities at the county level. This presents a problem because DPS is the only entity that sends notice to federal, state, and local repositories and to private subscribers to advise them when criminal history information has been updated by activities of the court system. As a result, there is no guarantee that information obtained and disclosed by some private sector vendors is accurate and current.

The accuracy of this information is critical to jobseekers and to those seeking residency in multifamily housing units. An expunction or order of non-disclosure are rendered meaningless when outdated or otherwise inaccurate criminal history information is disseminated to the public.

S.B. 1185 seeks to ensure that criminal history record information disclosed to the public is accurate and up-to-date, and that companies who sell that information are accountable for the accuracy of the information they disclose.

S.B. 1185 amends current law relating to criminal history record information obtained or disseminated by certain private entities; provides a civil penalty; and authorizes fees.

This legislation was debated by the 83rd Legislature. S.B. 990 83rd Legislative Session, Regular Session, 2013, passed the Senate 31-0 on 4/11/13 and died in House Calendars on 5/19/13.

S.B. 1185:

1. Prohibits a private background check company from releasing records related to an offense for which the subject has received an expunction or order of nondisclosure. p.1 (a-1).
2. Requires that a private background check company may release information only if within 60 days, the information has been updated from DPS or other governmental source. (changed from 90 days) p.2 (b)(1).
3. Requires a private background check company to provide DPS with the name and contact information of another similar entity that it sold criminal history information to on a quarterly basis. p.3 (B)(2).
4. Requires all companies that sell criminal history record information in this state to, upon written request, provide to the person who is the subject of that information a free copy of the information held and disseminated by that company within 30 days. p.3 Sec. 411.0852 (a)(b).
5. Requires the private background check company to respond to the subject within 30 days of receiving a written request that disputes the information contained in the report. The company is

required to investigate the complaint and make any corrections required. A company who does not comply is liable for damages and costs. pgs. 3,4 Sec. 411.0852 (c)(d).

6. Requires all private background check companies who do business in the state to provide their name and contact information to DPS. Failure to do so results in a civil penalty of \$500 per day. Fines collected go to the department for operation of the chapter. pgs.4-5 411.0853 (a)-(d).

7. Requires DPS to post on its website the name and contact information of all private background check companies who do business in the state. p.5 411.0853(b).

8. Requires a private background check company to provide to the employer/requestor the sources of the information provided and the date the information was last updated. pgs. 5,6 Sec. 411.0854.

9. Requires the entity or business who requests criminal history information on an individual for employment licensing or housing to disclose to that individual the company that supplied the information and to provide contact information for that company if that information resulted in an "adverse decision." p.6 Sec. 411.0855 (b).

10. Amends the Business & Commerce Code to exempt federal agencies from requirement of the bill. p.6 Section 20.071 (a).

11. Amends the Business & Commerce Code to require private background check companies to provide complete and up-to-date information. p.6,7 (b)(1)(2).

As proposed, S.B. 1185 amends current law relating to criminal history record information obtained or disseminated by certain private entities and provides a civil penalty.

### **RULEMAKING AUTHORITY**

Rulemaking authority is expressly granted to the Texas Department of Public Safety in SECTION 2 (Section 411.0853, Government Code) of this bill.

### **SECTION BY SECTION ANALYSIS**

SECTION 1. Amends Section 411.0851, Government Code, by amending Subsections (a) and (b) and adding Subsections (a-1) and (d), as follows:

(a) Provides that this section applies only to a private entity that compiles and disseminates for compensation criminal history record information of individuals and provides the information to a customer on request without verifying the information after receipt of the request. Makes nonsubstantive changes.

(a-1) Creates this subsection from existing text. Requires a private entity described by Subsection (a) to destroy and prohibits a private entity from disseminating any information in the possession of the entity with respect to which the entity has received a certain certified or noncertified copy of the order showing or notice from the Texas Department of Public Safety (DPS).

(b) Provides that a private entity described by Subsection (a) that purchases or otherwise obtains criminal history record information that originates from DPS, a custodian of court records, or another government agency or entity in this state, except as otherwise provided by federal law:

(1) is authorized to disseminate that information if within the 60-day period, rather than 90-day period, preceding the date of dissemination, the entity verifies, rather than originally obtains, that the information was obtained from certain government sources within that same 60-day period; or with a notice that the information was received from the governmental source more than 60 days before the date it is being provided and may not reflect the current state of the criminal

history record information and should be verified before taking any action based on the information to law enforcement agency or a certain investigations agency; and

(2) is required, on a quarterly basis, to notify DPS of the name and contact information of each similar entity to which the entity sold any compilation of the information in the previous quarter.

Makes conforming and nonsubstantive changes.

(d) Provides that information reported to DPS under Subsection (b)(2) is not subject to Chapter 552 (Public Information).

SECTION 2. Amends Subchapter F, Chapter 411, Government Code, by adding Sections 411.0852, 411.0853, 411.0854, and 411.0855, as follows:

Sec. 411.0852. ACCESS TO CRIMINAL HISTORY RECORD INFORMATION MAINTAINED BY PRIVATE ENTITY; DISPUTES OF ACCURACY. (a) Requires a private entity, on written request by a person who is the subject of criminal history record information maintained by a private entity described by Section 411.0851(a), to provide to the person a copy of all records regarding that person maintained by the entity not later than the 30th business day after the receipt of the request.

(b) Provides that a person is entitled to receive one copy of the person's criminal history record information pursuant to a request under Subsection (a) at no charge to the person each calendar year. Authorizes an entity described by Section 411.0851(a) to charge a reasonable fee for subsequent copies requested by the person within a calendar year.

(c) Authorizes a person, if a person disputes the accuracy of any portion of the person's criminal history record information maintained by a private entity described by Section 411.0851(a), to submit a written request to the entity for verification along with any supporting documentation, including a copy of a court order, if applicable. Requires the entity, on receipt of a written request under this subsection, to promptly initiate an investigation into the accuracy of the disputed information. Requires the entity, not later than the 30th day after the date the written request is received, to complete the investigation, notify the person who is the subject of the disputed information of the outcome of the investigation, and correct the information as applicable.

(d) Authorizes a person, if a person disputes the criminal history record information maintained by a private entity described by Section 411.0851(a) on the basis of an order of nondisclosure of criminal history record information or an order of expunction, to submit a written request to the entity for removal of the person's information. Requires the entity, not later than the 15th day after receipt of the request accompanied by a certified or uncertified copy of the court order, to remove the information that is the subject of the court order.

(e) Provides that a private entity described by Section 411.0851(a) that fails to comply with Subsection (c) or (d) is liable for any damages that are sustained as a result of the violation by the person who is the subject of that information. Provides that a person who prevails in an action brought under this subsection is also entitled to recover court costs and reasonable attorney's fees.

Sec. 411.0853. PUBLIC DISCLOSURES BY PRIVATE ENTITIES; CIVIL PENALTY. (a) Requires each private entity described by Section 411.0851(a) to, not later than the 30th day after the date the entity begins doing business in this state, disclose the entity's name and contact information to DPS in the form and manner prescribed by DPS.

(b) Provides that disclosures required under this section are subject to Chapter 552. Requires DPS to publish the disclosures required under this section on DPS's Internet website.

(c) Requires DPS to adopt rules to implement this section.

(d) Provides that an entity that fails to comply with Subsection (a) is liable to the state for a civil penalty of \$500 for each violation. Provides that each day the violation continues constitutes a separate violation for purposes of this subsection.

(e) Authorizes the Texas attorney general (attorney general), at the request of DPS, to bring an action to recover the civil penalty authorized by Subsection (d). Authorizes the attorney general and DPS to recover reasonable expenses incurred in obtaining the civil penalty, including certain costs and expenses.

(f) Requires a civil penalty collected under Subsection (d) to be deposited in the state treasury to the credit of DPS for the administration of this chapter.

Sec. 411.0854. DISCLOSURES BY PRIVATE ENTITIES TO PURCHASERS OR OTHER RECIPIENTS. Requires a private entity described by Section 411.0851(a) to disclose to each purchaser or recipient of criminal history record information at the time the information is provided certain information.

Sec. 411.0855. DUTIES OF PURCHASER OR RECIPIENT OF CRIMINAL HISTORY RECORD INFORMATION USED FOR EMPLOYMENT, LICENSING, OR HOUSING. (a) Defines "adverse decision."

(b) Requires a person who purchases, accesses, or otherwise receives criminal history record information and uses the information as the basis for an adverse decision regarding the individual who is the subject of the information to disclose to that individual the name and contact information of the entity from which the person received the information.

SECTION 3. Amends Subchapter C, Chapter 20, Business & Commerce Code, by adding Section 20.071, as follows:

Sec. 20.071. FURNISHING OF CONSUMER REPORT FOR EMPLOYMENT OR HOUSING PURPOSES; EXCEPTION FOR NATIONAL SECURITY INVESTIGATION. (a) Provides that this section does not apply to the furnishing of a consumer report to an agency or department of the federal government that seeks to obtain and use the report for employment purposes and whose agency or department head makes a written finding as prescribed by 15 U.S.C. Section 1681b(b)(4)(A).

(b) Requires a consumer reporting agency that compiles and reports information related to a consumer's criminal history for purposes of furnishing a consumer report for employment or housing purposes to implement and maintain strict procedures designed to ensure that the criminal history record information reported is complete and up to date. Provides that, for purposes of this subsection, criminal history record information contained in a consumer report is considered complete if the information reflects certain information and up to date if the information related to an arrest, filing of criminal charges, or conviction or other disposition of the case reflects the most recent public record status of certain information at the time the consumer report is requested.

SECTION 4. (a) Makes application of Section 411.0851, Government Code, as amended by this Act, prospective.

(b) Requires a private entity that compiles and disseminates for compensation criminal history record information, not later than October 1, 2017, to submit the initial quarterly notification under Section 411.0851, Government Code, as amended by this Act.

(c) Requires DPS to adopt rules to implement Section 411.0853, Government Code, as added by this Act, not later than January 1, 2018.

(d) Exempts an entity subject to Section 411.0853, Government Code, as added by this Act, from being required to submit the initial disclosures required under that section before February 1, 2018.

(e) Makes application of Section 411.0854, Government Code, as added by this Act, prospective.

(f) Makes application of Section 411.0855, Government Code, as added by this Act, prospective.

SECTION 5. Effective date: September 1, 2017.