

1-1 By: Allen (Senate Sponsor - Deuell) H.B. No. 2622  
1-2 (In the Senate - Received from the House May 5, 2003;  
1-3 May 7, 2003, read first time and referred to Committee on Criminal  
1-4 Justice; May 21, 2003, reported favorably by the following vote:  
1-5 Yeas 6, Nays 0; May 21, 2003, sent to printer.)

1-6 A BILL TO BE ENTITLED  
1-7 AN ACT

1-8 relating to certain governmental agency and private entity access  
1-9 to and use of criminal history record information maintained by the  
1-10 Department of Public Safety.

1-11 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

1-12 SECTION 1. Section 411.084, Government Code, is amended to  
1-13 read as follows:

1-14 Sec. 411.084. USE OF CRIMINAL HISTORY RECORD INFORMATION.

1-15 (a) Criminal history record information obtained from the  
1-16 department under this subchapter:

1-17 (1) is for the exclusive use of the authorized  
1-18 recipient of the information; and

1-19 (2) may be disclosed or used by the recipient only if,  
1-20 and only to the extent that, disclosure or use is authorized or  
1-21 directed by:

1-22 (A) this subchapter;

1-23 (B) another statute;

1-24 (C) a rule adopted under a statute; or

1-25 (D) an order of a court of competent  
1-26 jurisdiction.

1-27 (b) Notwithstanding Subsection (a) or any other provision  
1-28 in this subchapter, criminal history record information obtained  
1-29 from the Federal Bureau of Investigation may be released or  
1-30 disclosed only to a governmental entity or as authorized by federal  
1-31 statute, federal rule, or federal executive order.

1-32 SECTION 2. Section 411.093, Government Code, is amended to  
1-33 read as follows:

1-34 Sec. 411.093. ACCESS TO CRIMINAL HISTORY RECORD  
1-35 INFORMATION: TEXAS DEPARTMENT OF LICENSING AND REGULATION. [~~(a)~~]

1-36 The Texas Department of Licensing and Regulation is entitled to  
1-37 obtain from the department criminal history record information  
1-38 maintained by the department that relates to a person who is:

1-39 (1) an applicant for a license, certificate,  
1-40 registration, title, or permit issued by the department [under the  
1-41 Texas Boxing and Wrestling Act (Article 8501-1, Vernon's Texas  
1-42 Civil Statutes)]; or

1-43 (2) the holder of a license, certificate,  
1-44 registration, title, or permit issued by the department [under that  
1-45 Act].

1-46 [~~(b) The Texas Department of Licensing and Regulation is~~  
1-47 ~~entitled only to criminal history record information that relates~~  
1-48 ~~to the arrest or conviction of the person.]~~

1-49 SECTION 3. Section 411.094(d), Government Code, is amended  
1-50 to read as follows:

1-51 (d) Criminal history record [~~Conviction~~] information  
1-52 received by an institution of higher education under Subsection (b)  
1-53 may not be released or disclosed to any person except on court  
1-54 order.

1-55 SECTION 4. The heading to Section 411.104, Government Code,  
1-56 is amended to read as follows:

1-57 Sec. 411.104. ACCESS TO CRIMINAL HISTORY RECORD  
1-58 INFORMATION: TEXAS WORKFORCE [~~EMPLOYMENT~~] COMMISSION.

1-59 SECTION 5. Sections 411.104(a) and (b), Government Code,  
1-60 are amended to read as follows:

1-61 (a) In this section, "security sensitive position" has the  
1-62 meaning assigned by Section 301.042(c) [~~202.042(h)~~], Labor Code.

1-63 (b) The Texas Workforce [~~Employment~~] Commission is entitled  
1-64 to obtain from the department criminal history record information

2-1 maintained by the department that relates to a person who is an  
2-2 applicant for a security sensitive position.

2-3 SECTION 6. Section 411.105, Government Code, is amended to  
2-4 read as follows:

2-5 Sec. 411.105. ACCESS TO CRIMINAL HISTORY RECORD  
2-6 INFORMATION: TEXAS STATE BOARD OF PUBLIC ACCOUNTANCY. The Texas  
2-7 State Board of Public Accountancy is entitled to obtain from the  
2-8 department criminal history record information maintained by the  
2-9 department that relates to a person who is:

2-10 (1) an applicant for certification as a certified  
2-11 public accountant under Chapter 901, Occupations Code [~~the Public~~  
2-12 ~~Accountancy Act of 1991 (Article 41a-1, Vernon's Texas Civil~~  
2-13 ~~Statutes)];~~

2-14 (2) an applicant to take the uniform CPA examination  
2-15 under that Act; or

2-16 (3) an applicant to register under Section 901.412,  
2-17 Occupations Code [14 of that Act].

2-18 SECTION 7. Section 411.115(e), Government Code, is amended  
2-19 to read as follows:

2-20 (e) The Texas Department of Mental Health and Mental  
2-21 Retardation, a local mental health or mental retardation authority,  
2-22 or a community center shall collect and destroy criminal history  
2-23 record [conviction] information that relates to a person  
2-24 immediately after making an employment decision or taking a  
2-25 personnel action relating to the person who is the subject of the  
2-26 criminal history record information.

2-27 SECTION 8. Sections 411.1236(a) and (b), Government Code,  
2-28 are amended to read as follows:

2-29 (a) The [~~This section applies only to a circumstance in~~  
2-30 ~~which:~~

2-31 [~~(1) the~~] Texas Commission on Fire Protection is  
2-32 entitled to obtain from the department criminal history record  
2-33 information maintained by the department that relates to a person  
2-34 who is:

2-35 (1) an applicant for or holder of a license issued  
2-36 under Chapter 419; or

2-37 (2) an applicant for employment by or an employee of  
2-38 the commission [~~(A) issues or renews to an individual a license,~~  
2-39 ~~permit, certificate, or other similar authorization; and~~

2-40 [~~(B) is authorized or required by law to obtain~~  
2-41 ~~criminal history record information relating to the individual,~~  
2-42 ~~and~~

2-43 [~~(2) another person, including a state agency or local~~  
2-44 ~~government:~~

2-45 [~~(A) is authorized or required to obtain the same~~  
2-46 ~~information; and~~

2-47 [~~(B) did obtain that information not earlier than~~  
2-48 ~~the 90th day before the date on which the individual makes an~~  
2-49 ~~application to the Texas Commission on Fire Protection for issuance~~  
2-50 ~~or renewal of the license, permit, certificate, or other similar~~  
2-51 ~~authorization].~~

2-52 (b) Criminal history record information obtained by [In a  
2-53 circumstance described by Subsection (a),] the Texas Commission on  
2-54 Fire Protection under Subsection (a) may not be released to any  
2-55 person or agency except on court order, unless the information is  
2-56 entered into evidence by the board in an administrative, civil, or  
2-57 criminal hearing under Chapter 419 [shall obtain criminal history  
2-58 record information from the person who has obtained the required  
2-59 information as described by Subsection (a)(2). On request from the  
2-60 Texas Commission on Fire Protection under this section, the person  
2-61 shall provide the information to the Texas Commission on Fire  
2-62 Protection].

2-63 SECTION 9. Subchapter F, Chapter 411, Government Code, is  
2-64 amended by adding Sections 411.1385, 411.1386, 411.1387, and  
2-65 411.1388 to read as follows:

2-66 Sec. 411.1385. ACCESS TO CRIMINAL HISTORY RECORD  
2-67 INFORMATION: SAVINGS AND LOAN COMMISSIONER. (a) The savings and  
2-68 loan commissioner is entitled to obtain from the department  
2-69 criminal history record information maintained by the department

3-1 that relates to a person who is an applicant for or holder of a  
 3-2 mortgage broker or loan officer license issued under Chapter 156,  
 3-3 Finance Code.

3-4 (b) Criminal history record information obtained by the  
 3-5 savings and loan commissioner under Subsection (a) may be released  
 3-6 or disclosed only as provided by Section 156.206, Finance Code.

3-7 Sec. 411.1386. ACCESS TO CRIMINAL HISTORY RECORD  
 3-8 INFORMATION: COURT CLERK; GUARDIANSHIPS. (a) The clerk of the  
 3-9 county having venue over a proceeding for the appointment of a  
 3-10 guardian under Chapter 13, Probate Code, is entitled to obtain from  
 3-11 the department criminal history record information maintained by  
 3-12 the department that relates to:

3-13 (1) a private professional guardian;

3-14 (2) each person who represents or plans to represent  
 3-15 the interests of a ward as a guardian on behalf of the private  
 3-16 professional guardian; or

3-17 (3) each person employed by a private professional  
 3-18 guardian who will:

3-19 (A) have personal contact with a ward or proposed  
 3-20 ward;

3-21 (B) exercise control over and manage a ward's  
 3-22 estate; or

3-23 (C) perform any duties with respect to the  
 3-24 management of a ward's estate.

3-25 (b) Criminal history record information obtained by a clerk  
 3-26 under Subsection (a) is for the exclusive use of the court and may  
 3-27 be used only in determining whether to appoint, remove, or continue  
 3-28 the appointment of a private professional guardian.

3-29 (c) Criminal history record information obtained by a clerk  
 3-30 under Subsection (a) may not be released or disclosed to any person  
 3-31 or agency except on court order or with the consent of the person  
 3-32 who is the subject of the information. The clerk may destroy the  
 3-33 criminal history record information after the information is used  
 3-34 for the purposes authorized by this section.

3-35 Sec. 411.1387. ACCESS TO CRIMINAL HISTORY RECORD  
 3-36 INFORMATION: FACILITY, REGULATORY AGENCY, OR PRIVATE AGENCY. (a)  
 3-37 In this section, "facility," "regulatory agency," and "private  
 3-38 agency" have the meanings assigned by Section 250.001, Health and  
 3-39 Safety Code.

3-40 (b) A facility, regulatory agency, or private agency on  
 3-41 behalf of a facility is entitled to obtain from the department  
 3-42 criminal history record information maintained by the department  
 3-43 that relates to a person who is:

3-44 (1) an applicant for employment at or an employee of a  
 3-45 facility other than a facility licensed under Chapter 142, Health  
 3-46 and Safety Code; or

3-47 (2) an applicant for employment at or an employee of a  
 3-48 facility licensed under Chapter 142, Health and Safety Code, if the  
 3-49 duties of employment involve direct contact with a consumer in the  
 3-50 facility.

3-51 (c) A facility may:

3-52 (1) obtain directly from the department criminal  
 3-53 history record information on an applicant or employee described by  
 3-54 Subsection (b); or

3-55 (2) authorize a private agency to obtain that  
 3-56 information from the department.

3-57 (d) A private agency obtaining criminal history record  
 3-58 information on behalf of a facility under Subsection (c) shall  
 3-59 forward the information received to the facility requesting the  
 3-60 information.

3-61 (e) Criminal history record information obtained by a  
 3-62 facility, regulatory agency, or private agency on behalf of a  
 3-63 facility under Subsection (b) may not be released or disclosed to  
 3-64 any person or agency except on court order or with the consent of  
 3-65 the person who is the subject of the information.

3-66 Sec. 411.1388. ACCESS TO CRIMINAL HISTORY RECORD  
 3-67 INFORMATION: INTERAGENCY COUNCIL ON SEX OFFENDER TREATMENT. (a)  
 3-68 The Interagency Council on Sex Offender Treatment is entitled to  
 3-69 obtain from the department criminal history record information

maintained by the department that relates to a person who:

(1) is registered to provide mental health or medical services for the rehabilitation of sex offenders under Chapter 462, Acts of the 68th Legislature, Regular Session, 1983 (Article 4413(51), Vernon's Texas Civil Statutes); or

(2) has applied for registration or renewal of a registration to provide mental health or medical services for the rehabilitation of sex offenders under Chapter 462, Acts of the 68th Legislature, Regular Session, 1983 (Article 4413(51), Vernon's Texas Civil Statutes).

(b) Criminal history record information obtained by the Interagency Council on Sex Offender Treatment under Subsection (a) may not be released or disclosed to any person or agency except on court order or with the consent of the person who is the subject of the information.

(c) The Interagency Council on Sex Offender Treatment shall destroy criminal history record information obtained under Subsection (a) not later than the first anniversary of the date the council makes a decision as to the person's eligibility for registration or the renewal of a registration.

SECTION 10. Section 156.206(b), Finance Code, as amended by Chapters 337, 407, and 867, Acts of the 77th Legislature, Regular Session, 2001, is reenacted and amended to read as follows:

(b) The commissioner shall obtain criminal history record information on an applicant that is maintained by the Department of Public Safety and shall obtain criminal history record information from ~~from [on an applicant maintained by]~~ the Federal Bureau of Investigation on each applicant. Each applicant must submit with the application fingerprint and other information necessary to implement this section. The commissioner may submit the fingerprint and other information to the Federal Bureau of Investigation, and the Department of Public Safety is designated to be the recipient of the criminal history record information. ~~[By rule, the finance commission may require applicants to submit information and fingerprints necessary for the commissioner to obtain criminal background information from the Federal Bureau of Investigation.]~~ The commissioner may also obtain criminal history record information from any court or any local, state, or national governmental agency.

SECTION 11. Section 156.206, Finance Code, is amended by adding Subsection (d) to read as follows:

(d) Notwithstanding Subsection (c), criminal history record information obtained from the Federal Bureau of Investigation may be released or disclosed only to a governmental entity or as authorized by federal statute, federal rule, or federal executive order.

SECTION 12. The following sections of Chapter 411, Government Code, are repealed:

- (1) Section 411.095(b);
- (2) Section 411.115(c);
- (3) Section 411.118(c);
- (4) Section 411.122(b);
- (5) Section 411.123(b);
- (6) Section 411.1235(b);
- (7) Sections 411.1236(c) and (d);
- (8) Section 411.124(b);
- (9) Section 411.125(b); and
- (10) Section 411.131(c).

SECTION 13. This Act takes effect September 1, 2003.

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