

BILL ANALYSIS

S.B. 1737
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Criminal Jurisprudence
Committee Report (Unamended)

BACKGROUND AND PURPOSE

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.

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 being 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 Department of Public Safety in SECTION 6 (Section 411.081(g-1a), Government Code) of this bill.

ANALYSIS

Senate Bill 1737 amends Article 55.02, Code of Criminal Procedure (CCP), by requiring a petition for expunction and an ex parte petition filed under Article 55.02(e), CCP, 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. Requires the court to set a hearing on the matter of petition for expunction no sooner than 30 days from the filing of the petition and to give to each official or agency or other governmental entity named in the petition reasonable notice of the hearing in certain manners, including electronic transmission. Makes conforming changes. The bill also clarifies language by adding the word, "governmental," before the word, "entity," and makes conforming changes throughout the bill. The bill strikes the language, "if requested in writing by the petitioner" under Section 2, Article 55.02(c)(2), CCP.

The bill also requires the state's attorney, after verifying the allegations in an application received under Article 55.02(a), CCP, to attach to the copy of the application a list of all private entities that compile and disseminate for compensation criminal history record information that are reasonably likely to have records or files containing information that is subject to expunction, in addition to other information. The bill strikes the language, "if requested in writing by the person who is the subject of the order," under Section 3, Article 55.02(c), CCP. Requires the Department of Public Safety (DPS) to also provide, by secure electronic mail, electronic transmission, or facsimile transmission, notice of the expunction order (order) 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 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 to the entity.

The bill amends Section 411.081(e), Government Code, to entitle a person to petition the court under Section 411.081(d), Government Code, only if during the period of the deferred adjudication community supervision for which the order of nondisclosure is requested and

during other applicable periods already specified in law, the person meets certain requirements. Provides that a person is not entitled to petition the court under Section 411.081(d), Government Code, 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.

The bill amends and reenacts portions of the Government Code to provide that not later than the 15th business day after the date an order of nondisclosure is issued under Section 411.081(g), Government Code, the clerk of the court must 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. 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 Section 411.081(g), Government Code, to seal any criminal history record information maintained by DPS that is the subject of the order. DPS must 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 from DPS or that otherwise are likely to have criminal history record information that is subject to the order. 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 Sections 411.081(g) and (g-1), Government Code. In adopting rules, the director shall consult with the Office of Court Administration of the Texas Judicial System. Makes conforming changes to Section 411.081(g-1b), Government Code. The bill adds that DPS may 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 Section 411.081(g-1)(3), Government Code, to the entity.

The bill adds Section 411.0835, Government Code, which provides that if DPS receives information indicating that a private entity that purchases criminal history record information from DPS has been found by a court to have committed three or more violations of Section 552.1425, Government Code, by compiling or disseminating information with respect to which an order of expunction or an order of nondisclosure has been issued, DPS may not release any criminal history record information to that entity until the first anniversary of the date of the most recent violation.

The bill adds Section 411.0835, Government Code, which provides that a private entity that compiles and disseminates for compensation criminal history record information must destroy and is not authorized to disseminate any information in the possession of the entity with respect to which the entity has received notice that an order of expunction has been issued under Article 55.02, Code of Criminal Procedure, or an order of nondisclosure has been issued under Section 411.081(d), Government Code. A private entity that purchases criminal history record information from DPS or from another governmental agency or entity in this state subject to Section 411.0835(c), Government Code, may disseminate that information only if the entity originally obtains or verifies the information within the 90-day period preceding the date of dissemination, and must notify DPS if the entity sells any compilation of the information to another similar entity. A private entity that disseminates information in violation of Section 411.0835, Government Code, is liable for any damages that are sustained as a result of the violation by the person who is the subject of that information. A person who prevails in an action brought under Section 411.0835, Government Code, is also entitled to recover court costs and reasonable attorney's fees.

The bill provides that DPS must provide a copy of Section 411.085, Government Code, to each person who applies for access to criminal history record information maintained by DPS, and each private entity that purchases criminal history record information from DPS.

The bill changes the heading to Section 552.1425, Government Code, to read "Civil Penalty: Dissemination of Certain Criminal History Information."

The bill provides that a private entity that compiles and disseminates for compensation criminal history record information may not compile or disseminate information with respect to which the

entity has received notice that an order of expunction has been issued under Article 55.02, CCP. After receiving a warning for a first violation of Section 552.1425(a), Government Code, the private entity is liable to the state for a civil penalty not to exceed \$1,000 for each subsequent violation.

Subsection (j), Section 411.081, Government Code, is repealed.

The change in law made by this Act to Article 55.02, Code of Criminal Procedure, applies to a person seeking expunction of arrest records and files regardless of whether the arrest occurred before, on, or after the effective date of this Act.

Except as provided by Section 411.081(c), Government Code, the change in law made by this Act to Section 411.081, Government Code, applies to any order of nondisclosure issued under that section on or after the effective date of this Act.

Subsection (e), Section 411.081, Government Code, as amended by this Act for purposes of clarification, applies to any person who on or after the effective date of this Act petitions the court for an order of nondisclosure under Subsection (d), Section 411.081, Government Code, regardless of whether the order of nondisclosure was requested for conduct occurring before, on, or after the effective date of this Act.

Not later than January 1, 2008, the Department of Public Safety of the State of Texas shall 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.

Not later than June 1, 2008, 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 the Department of Public Safety of the State of Texas must comply with the secure electronic mail, electronic transmission, and facsimile transmission standards adopted by the Department of Public Safety under Section 411.081, Government Code.

The change in law made by this Act in adding Section 411.0835, Government Code, and in repealing Subsection (j), Section 411.081, Government Code, applies to any private entity that purchases criminal history record information from the Texas Department of Criminal Justice and that, as found by a court, commits a third or subsequent violation of Section 552.1425, Government Code, on or after the effective date of this Act.

The change in law made by this Act in adding Section 411.0851, Government Code, applies to any dissemination of information that occurs on or after the effective date of this Act.

The change in law made by this Act to Section 552.1425, Government Code, applies to any private entity that receives notice under Subsection (a) of that section on or after the effective date of this Act.

EFFECTIVE DATE

September 1, 2007.