

1-1 By: Pena (Senate Sponsor - West) H.B. No. 1303
1-2 (In the Senate - Received from the House April 23, 2007;
1-3 April 24, 2007, read first time and referred to Committee on
1-4 Criminal Justice; May 14, 2007, reported adversely, with favorable
1-5 Committee Substitute by the following vote: Yeas 7, Nays 0;
1-6 May 14, 2007, sent to printer.)

1-7 COMMITTEE SUBSTITUTE FOR H.B. No. 1303 By: Whitmire

1-8 A BILL TO BE ENTITLED
1-9 AN ACT

1-10 relating to certain requirements applicable to orders of expunction
1-11 or nondisclosure of criminal history records and to the protection
1-12 of information that is the subject of one of those orders; providing
1-13 penalties.

1-14 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

1-15 SECTION 1. Subsections (b), (c), and (f), Section 2,
1-16 Article 55.02, Code of Criminal Procedure, are amended to read as
1-17 follows:

1-18 (b) The petition must be verified and shall include the
1-19 following or an explanation for why one or more of the following is
1-20 not included:

- 1-21 (1) the petitioner's:
1-22 (A) full name;
1-23 (B) sex;
1-24 (C) race;
1-25 (D) date of birth;
1-26 (E) driver's license number;
1-27 (F) social security number; and
1-28 (G) address at the time of the arrest;
1-29 (2) the offense charged against the petitioner;
1-30 (3) the date the offense charged against the
1-31 petitioner was alleged to have been committed;
1-32 (4) the date the petitioner was arrested;
1-33 (5) the name of the county where the petitioner was
1-34 arrested and if the arrest occurred in a municipality, the name of
1-35 the municipality;
1-36 (6) the name of the agency that arrested the
1-37 petitioner;
1-38 (7) the case number and court of offense; and
1-39 (8) a list of all:

1-40 (A) law enforcement agencies, jails or other
1-41 detention facilities, magistrates, courts, prosecuting attorneys,
1-42 correctional facilities, central state depositories of criminal
1-43 records, and other officials or agencies or other entities of this
1-44 state or of any political subdivision of this state;

1-45 (B) ~~[and of all]~~ central federal depositories of
1-46 criminal records that the petitioner has reason to believe have
1-47 records or files that are subject to expunction; and

1-48 (C) private entities that compile and
1-49 disseminate for compensation criminal history record information
1-50 that the petitioner has reason to believe have information related
1-51 to records or files that are subject to expunction.

1-52 (c) The court shall set a hearing on the matter no sooner
1-53 than thirty days from the filing of the petition and shall give to
1-54 each official or agency or other governmental entity named in the
1-55 petition reasonable notice of the hearing by:

- 1-56 (1) certified mail, return receipt requested; or
1-57 (2) ~~[if requested in writing by the petitioner,]~~
1-58 secure electronic mail, electronic transmission, or facsimile
1-59 transmission.

1-60 (f) An ex parte petition filed under Subsection (e) must be
1-61 verified and must include the following or an explanation for why
1-62 one or more of the following is not included:

- 1-63 (1) the person's:

- (A) full name;
- (B) sex;
- (C) race;
- (D) date of birth;
- (E) driver's license number;
- (F) social security number; and
- (G) address at the time of the arrest;
- (2) the offense charged against the person;
- (3) the date the offense charged against the person was alleged to have been committed;
- (4) the date the person was arrested;
- (5) the name of the county where the person was arrested and if the arrest occurred in a municipality, the name of the municipality;
- (6) the name of the agency that arrested the person;
- (7) the case number and court of offense; and
- (8) a list of all:

(A) law enforcement agencies, jails or other detention facilities, magistrates, courts, prosecuting attorneys, correctional facilities, central state depositories of criminal records, and other officials or agencies or other entities of this state or of any political subdivision of this state;

(B) ~~[and of all]~~ central federal depositories of criminal records that the person has reason to believe have records or files that are subject to expunction; and

(C) private entities that compile and disseminate for compensation criminal history record information that the person has reason to believe have information relating to records or files that are subject to expunction.

SECTION 2. Subsection (c), Section 2a, Article 55.02, Code of Criminal Procedure, is amended to read as follows:

(c) After verifying the allegations in an application received under Subsection (a), the attorney representing the state shall:

(1) include on the application information regarding the arrest that was requested of the applicant but was unknown by the applicant;

(2) forward a copy of the application to the district court for the county;

(3) attach to the copy a list of all:

(A) law enforcement agencies, jails or other detention facilities, magistrates, courts, prosecuting attorneys, correctional facilities, central state depositories of criminal records, and other officials or agencies or other entities of this state or of any political subdivision of this state;

(B) ~~[and of all]~~ central federal depositories of criminal records that are reasonably likely to have records or files containing information that is subject to expunction; and

(C) 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; and

(4) request the court to enter an order directing expunction based on an entitlement to expunction under Article 55.01(d).

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

(c) When the order of expunction is final, the clerk of the court shall send a certified copy of the order to the Crime Records Service of the Department of Public Safety and to each official or agency or other governmental entity of this state or of any political subdivision of this state designated by the person who is the subject of the order. The certified copy of the order must be sent by secure electronic mail, electronic transmission, or facsimile transmission, ~~[if requested in writing by the person who is the subject of the order,]~~ or otherwise by certified mail, return receipt requested. In sending the order to a governmental ~~[an]~~ entity designated by the person, the clerk may elect to substitute

hand delivery for certified mail under this subsection, but the clerk must receive a receipt for that hand-delivered order.

(c-1) The Department of Public Safety shall notify any central federal depository of criminal records by any means, including secure electronic mail, electronic transmission, or facsimile transmission, of the order with an explanation of the effect of the order and a request that the depository, as appropriate, either:

(1) destroy or return to the court the records in possession of the depository that are subject to the order, including any information with respect to the order; or

(2) comply with Section 5(f) [~~of this article~~] pertaining to information contained in records and files of a person entitled to expunction under Article 55.01(d).

(c-2) The Department of Public Safety shall also provide, by secure electronic mail, electronic transmission, or facsimile transmission, notice of the order to any private entity that is named in the order or that purchases criminal history record information from the department. The notice must 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. The department may charge to a private entity that purchases criminal history record information from the department a fee in an amount sufficient to recover costs incurred by the department in providing notice under this subsection to the entity.

SECTION 4. Subsections (a) and (f), Section 5, Article 55.02, Code of Criminal Procedure, are amended to read as follows:

(a) Except as provided by Subsection (f), on receipt of the order, each official or agency or other governmental entity named in the order shall:

(1) return all records and files that are subject to the expunction order to the court or, if removal is impracticable, obliterate all portions of the record or file that identify the person who is the subject of the order and notify the court of its action; and

(2) delete from its public records all index references to the records and files that are subject to the expunction order.

(f) On receipt of an order granting expunction to a person entitled to expunction under Article 55.01(d), each official, agency, or other governmental entity named in the order:

(1) shall:

(A) obliterate all portions of the record or file that identify the petitioner; and

(B) substitute for all obliterated portions of the record or file any available information that identifies the person arrested; and

(2) may not return the record or file or delete index references to the record or file.

SECTION 5. Subsection (e), Section 411.081, Government Code, is amended to read as follows:

(e) A person is entitled to petition the court under Subsection (d) only if during the period of the deferred adjudication community supervision for which the order of nondisclosure is requested and during the applicable period described by Subsection (d)(1), (2), or (3), as appropriate, the person is not convicted of or placed on deferred adjudication community supervision under Section 5, Article 42.12, Code of Criminal Procedure, for any offense other than an offense under the Transportation Code punishable by fine only. 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:

(1) an offense requiring registration as a sex offender under Chapter 62, Code of Criminal Procedure;

(2) an offense under Section 20.04, Penal Code, regardless of whether the offense is a reportable conviction or

adjudication for purposes of Chapter 62, Code of Criminal Procedure;

(3) an offense under Section 19.02, 19.03, 22.04, 22.041, 25.07, or 42.072, Penal Code; or

(4) any other offense involving family violence, as defined by Section 71.004, Family Code.

SECTION 6. Subsection (g), Section 411.081, Government Code, as amended by Chapters 177 and 1309, Acts of the 79th Legislature, Regular Session, 2005, and Subsection (g-1), Section 411.081, Government Code, as added by Chapters 177 and 1309, Acts of the 79th Legislature, Regular Session, 2005, are reenacted as Subsections (g), (g-1), (g-1a), (g-1b), and (g-1c), Section 411.081, and amended to read as follows:

(g) Not later than the 15th business day after the date ~~[When an order of nondisclosure is issued under this subsection, the clerk of the court shall send to the Crime Records Service of the Department of Public Safety a copy of the order by:~~

~~[(1) certified mail, return receipt requested, or~~
~~[(2) if requested in writing by the petitioner, secure electronic mail or facsimile transmission.~~

~~[(g) When]~~ an order of nondisclosure is issued under this section, the clerk of the court shall 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 the Department of Public Safety.

(g-1) Not later than 10 business days after receipt of relevant criminal history record information contained in an [the] order or a copy of an order under Subsection (g), the Department of Public Safety shall seal any criminal history record information maintained by the department that is the subject of the order. The department shall 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 [means] to all:

(1) law enforcement agencies, jails or other detention facilities, magistrates, courts, prosecuting attorneys, correctional facilities, central state depositories of criminal records, and other officials or agencies or other entities of this state or of any political subdivision of this state;

(2) central federal depositories of criminal records that there is reason to believe have criminal history record information that is the subject of the order; and

(3) private entities that purchase criminal history record information from the department or that otherwise are likely to have criminal history record information that is subject to the order.

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

~~(g-1b) [(g-1) The Department of Public Safety shall send a copy of the order by mail or secure electronic mail or facsimile transmission to all law enforcement agencies, jails or other detention facilities, magistrates, courts, prosecuting attorneys, correctional facilities, central state depositories of criminal records, and other officials or agencies or other entities of this state or of any political subdivision of this state, and to all central federal depositories of criminal records that there is reason to believe have criminal history record information that is the subject of the order.~~

~~[(g-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 the Department of Public Safety under Subsection (g-1) ~~[(g)]~~, an individual or entity described by

Subsection (g-1)(1) [~~(g)(1)~~] shall seal any criminal history record information maintained by the individual or entity that is the subject of the order.

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

SECTION 7. Subchapter F, Chapter 411, Government Code, is amended by adding Sections 411.0835 and 411.0851 to read as follows:

Sec. 411.0835. PROHIBITION AGAINST DISSEMINATION TO CERTAIN PRIVATE ENTITIES. If the department receives information indicating that a private entity that purchases criminal history record information from the department has been found by a court to have committed three or more violations of Section 552.1425 by compiling or disseminating information with respect to which an order of expunction or an order of nondisclosure has been issued, the department may not release any criminal history record information to that entity until the first anniversary of the date of the most recent violation.

Sec. 411.0851. DUTY OF PRIVATE ENTITY TO UPDATE CRIMINAL HISTORY RECORD INFORMATION; CIVIL LIABILITY. (a) A private entity that compiles and disseminates for compensation criminal history record information shall destroy and may not disseminate any information in the possession of the entity with respect to which the entity has received notice that:

(1) an order of expunction has been issued under Article 55.02, Code of Criminal Procedure; or

(2) an order of nondisclosure has been issued under Section 411.081(d).

(b) A private entity described by Subsection (a) that purchases criminal history record information from the department or from another governmental agency or entity in this state:

(1) subject to Subsection (c), 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

(2) shall notify the department if the entity sells any compilation of the information to another similar entity.

(c) 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. A person who prevails in an action brought under this section is also entitled to recover court costs and reasonable attorney's fees.

SECTION 8. Subsection (d), Section 411.085, Government Code, is amended to read as follows:

(d) The department shall provide a copy of this section to:

(1) each person who applies for access to criminal history record information maintained by the department; and

(2) each private entity that purchases criminal history record information from the department [with a copy of this section].

SECTION 9. The heading to Section 552.1425, Government Code, is amended to read as follows:

Sec. 552.1425. CIVIL PENALTY: DISSEMINATION [RECORDS] OF CERTAIN CRIMINAL HISTORY INFORMATION [DEFERRED ADJUDICATIONS].

SECTION 10. Subsections (a) and (b), Section 552.1425, Government Code, are amended to read as follows:

(a) 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:

(1) an order of expunction has been issued under Article 55.02, Code of Criminal Procedure; or

(2) an order of nondisclosure has been issued under Section 411.081(d).

6-1 (b) A district court may issue a warning to a private entity
6-2 for a first violation of Subsection (a). After receiving a warning
6-3 for the first violation, the private entity is liable to the state
6-4 for a civil penalty not to exceed \$1,000 [~~\$500~~] for each subsequent
6-5 violation.

6-6 SECTION 11. Subsection (j), Section 411.081, Government
6-7 Code, is repealed.

6-8 SECTION 12. (a) The change in law made by this Act to
6-9 Article 55.02, Code of Criminal Procedure, applies to a person
6-10 seeking expunction of arrest records and files regardless of
6-11 whether the arrest occurred before, on, or after the effective date
6-12 of this Act.

6-13 (b) Except as provided by Subsection (c), the change in law
6-14 made by this Act to Section 411.081, Government Code, applies to any
6-15 order of nondisclosure issued under that section on or after the
6-16 effective date of this Act.

6-17 (c) Subsection (e), Section 411.081, Government Code, as
6-18 amended by this Act for purposes of clarification, applies to any
6-19 person who on or after the effective date of this Act petitions the
6-20 court for an order of nondisclosure under Subsection (d), Section
6-21 411.081, Government Code, regardless of whether the order of
6-22 nondisclosure was requested for conduct occurring before, on, or
6-23 after the effective date of this Act.

6-24 (d) Not later than January 1, 2008, the Department of Public
6-25 Safety of the State of Texas shall adopt rules concerning the
6-26 standards for secure electronic mail, electronic transmissions,
6-27 and facsimile transmissions as required by Section 411.081,
6-28 Government Code, as amended by this Act.

6-29 (e) Not later than June 1, 2008, a court that issues and
6-30 transmits orders of nondisclosure as described by Section 411.081,
6-31 Government Code, as amended by this Act, and the Crime Records
6-32 Service of the Department of Public Safety of the State of Texas
6-33 must comply with the secure electronic mail, electronic
6-34 transmission, and facsimile transmission standards adopted by the
6-35 Department of Public Safety under Section 411.081, Government Code.

6-36 (f) The change in law made by this Act in adding Section
6-37 411.0835, Government Code, and in repealing Subsection (j), Section
6-38 411.081, Government Code, applies to any private entity that
6-39 purchases criminal history record information from the Texas
6-40 Department of Criminal Justice and that, as found by a court,
6-41 commits a third or subsequent violation of Section 552.1425,
6-42 Government Code, on or after the effective date of this Act.

6-43 (g) The change in law made by this Act in adding Section
6-44 411.0851, Government Code, applies to any dissemination of
6-45 information that occurs on or after the effective date of this Act.

6-46 (h) The change in law made by this Act to Section 552.1425,
6-47 Government Code, applies to any private entity that receives notice
6-48 under Subsection (a) of that section on or after the effective date
6-49 of this Act.

6-50 SECTION 13. This Act takes effect September 1, 2007.

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