

By: West

S.B. No. 1737

A BILL TO BE ENTITLED

AN ACT

1  
2 relating to certain requirements applicable to orders of expunction  
3 or nondisclosure of criminal history records and to the protection  
4 of information that is the subject of one of those orders; providing  
5 penalties.

6 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

7 SECTION 1. Subsections (b), (c), and (f), Section 2,  
8 Article 55.02, Code of Criminal Procedure, are amended to read as  
9 follows:

10 (b) The petition must be verified and shall include the  
11 following or an explanation for why one or more of the following is  
12 not included:

13 (1) the petitioner's:

14 (A) full name;

15 (B) sex;

16 (C) race;

17 (D) date of birth;

18 (E) driver's license number;

19 (F) social security number; and

20 (G) address at the time of the arrest;

21 (2) the offense charged against the petitioner;

22 (3) the date the offense charged against the  
23 petitioner was alleged to have been committed;

24 (4) the date the petitioner was arrested;

1           (5) the name of the county where the petitioner was  
2 arrested and if the arrest occurred in a municipality, the name of  
3 the municipality;

4           (6) the name of the agency that arrested the  
5 petitioner;

6           (7) the case number and court of offense; and

7           (8) a list of all:

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

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

16                 (C) private entities that compile and  
17 disseminate for compensation criminal history record information  
18 that the petitioner has reason to believe have information related  
19 to records or files that are subject to expunction.

20           (c) The court shall set a hearing on the matter no sooner  
21 than thirty days from the filing of the petition and shall give to  
22 each official or agency or other governmental entity named in the  
23 petition reasonable notice of the hearing by:

24                 (1) certified mail, return receipt requested; or

25                 (2) ~~[if requested in writing by the petitioner,]~~  
26 secure electronic mail, electronic transmission, or facsimile  
27 transmission.

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

4 (1) the person's:

5 (A) full name;

6 (B) sex;

7 (C) race;

8 (D) date of birth;

9 (E) driver's license number;

10 (F) social security number; and

11 (G) address at the time of the arrest;

12 (2) the offense charged against the person;

13 (3) the date the offense charged against the person  
14 was alleged to have been committed;

15 (4) the date the person was arrested;

16 (5) the name of the county where the person was  
17 arrested and if the arrest occurred in a municipality, the name of  
18 the municipality;

19 (6) the name of the agency that arrested the person;

20 (7) the case number and court of offense; and

21 (8) a list of all:

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

27 (B) ~~[and of all]~~ central federal depositories of

1 criminal records that the person has reason to believe have records  
2 or files that are subject to expunction; and

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

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

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

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

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

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

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

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

26 (C) private entities that compile and  
27 disseminate for compensation criminal history record information

1 that are reasonably likely to have records or files containing  
2 information that is subject to expunction; and

3 (4) request the court to enter an order directing  
4 expunction based on an entitlement to expunction under Article  
5 55.01(d).

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

9 (c) When the order of expunction is final, the clerk of the  
10 court shall send a certified copy of the order to the Crime Records  
11 Service of the Department of Public Safety and to each official or  
12 agency or other governmental entity of this state or of any  
13 political subdivision of this state designated by the person who is  
14 the subject of the order. The certified copy of the order must be  
15 sent by secure electronic mail, electronic transmission, or  
16 facsimile transmission~~[, if requested in writing by the person who~~  
17 ~~is the subject of the order,]~~ or otherwise by certified mail, return  
18 receipt requested. In sending the order to a governmental ~~[an]~~  
19 entity designated by the person, the clerk may elect to substitute  
20 hand delivery for certified mail under this subsection, but the  
21 clerk must receive a receipt for that hand-delivered order.

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

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

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

7           (c-2) The Department of Public Safety shall also provide, by  
8 secure electronic mail, electronic transmission, or facsimile  
9 transmission, notice of the order to any private entity that is  
10 named in the order or that purchases criminal history record  
11 information from the department. The notice must include an  
12 explanation of the effect of the order and a request that the entity  
13 destroy any information in the possession of the entity that is  
14 subject to the order. The department may charge to a private entity  
15 that purchases criminal history record information from the  
16 department a fee in an amount sufficient to recover costs incurred  
17 by the department in providing notice under this subsection to the  
18 entity.

19           SECTION 4. Subsections (a) and (f), Section 5, Article  
20 55.02, Code of Criminal Procedure, are amended to read as follows:

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

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

1 action; and

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

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

8 (1) shall:

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

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

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

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

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

1 was placed on the deferred adjudication community supervision for  
2 or has been previously convicted or placed on any other deferred  
3 adjudication for:

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

6 (2) an offense under Section 20.04, Penal Code,  
7 regardless of whether the offense is a reportable conviction or  
8 adjudication for purposes of Chapter 62, Code of Criminal  
9 Procedure;

10 (3) an offense under Section 19.02, 19.03, 22.04,  
11 22.041, 25.07, or 42.072, Penal Code; or

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

14 SECTION 6. Subsection (g), Section 411.081, Government  
15 Code, as amended by Chapters 177 and 1309, Acts of the 79th  
16 Legislature, Regular Session, 2005, and Subsection (g-1), Section  
17 411.081, Government Code, as added by Chapters 177 and 1309, Acts of  
18 the 79th Legislature, Regular Session, 2005, are reenacted as  
19 Subsections (g), (g-1), (g-1a), (g-1b), and (g-1c), Section  
20 411.081, and amended to read as follows:

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

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



1            [~~(g)~~—When] an order of nondisclosure is issued under this  
2 section, the clerk of the court shall send all relevant criminal  
3 history record information contained in the order or a copy of the  
4 order by certified mail, return receipt requested, or secure  
5 electronic mail, electronic transmission, or facsimile  
6 transmission to the Crime Records Service of the Department of  
7 Public Safety.

8            (g-1) Not later than 10 business days after receipt of  
9 relevant criminal history record information contained in an [the]  
10 order or a copy of an order under Subsection (g), the Department of  
11 Public Safety shall seal any criminal history record information  
12 maintained by the department that is the subject of the order. The  
13 department shall also send all relevant criminal history record  
14 information contained in the order or a copy of the order by  
15 certified mail, return receipt requested, or secure electronic  
16 mail, electronic transmission, or facsimile transmission [means]  
17 to all:

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

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

26            (3) private entities that purchase criminal history  
27 record information from the department or that otherwise are likely

1 to have criminal history record information that is subject to the  
2 order.

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

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

19 [~~(g-1)~~] Not later than 30 business days after receipt of  
20 relevant criminal history record information contained in an order  
21 or a copy of an order from the Department of Public Safety under  
22 Subsection (g-1) [~~(g)~~], an individual or entity described by  
23 Subsection (g-1)(1) [~~(g)(1)~~] shall seal any criminal history record  
24 information maintained by the individual or entity that is the  
25 subject of the order.

26 (g-1c) The department may charge to a private entity that  
27 purchases criminal history record information from the department a

1 fee in an amount sufficient to recover costs incurred by the  
2 department in providing relevant criminal history record  
3 information contained in an order or a copy of an order under  
4 Subsection (g-1)(3) to the entity.

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

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

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

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

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

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

4           (1) subject to Subsection (c), may disseminate that  
5 information only if the entity originally obtains or verifies the  
6 information within the 90-day period preceding the date of  
7 dissemination; and

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

10       (c) A private entity that disseminates information in  
11 violation of this section is liable for any damages that are  
12 sustained as a result of the violation by the person who is the  
13 subject of that information. A person who prevails in an action  
14 brought under this section is also entitled to recover court costs  
15 and reasonable attorney's fees.

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

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

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

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

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

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

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

3 (a) A private entity that compiles and disseminates for  
4 compensation criminal history record information may not compile or  
5 disseminate information with respect to which the entity has  
6 received notice that:

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

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

11 (b) A district court may issue a warning to a private entity  
12 for a first violation of Subsection (a). After receiving a warning  
13 for the first violation, the private entity is liable to the state  
14 for a civil penalty not to exceed \$1,000 [~~\$500~~] for each subsequent  
15 violation.

16 SECTION 11. Subsection (j), Section 411.081, Government  
17 Code, is repealed.

18 SECTION 12. (a) The change in law made by this Act to  
19 Article 55.02, Code of Criminal Procedure, applies to a person  
20 seeking expunction of arrest records and files regardless of  
21 whether the arrest occurred before, on, or after the effective date  
22 of this Act.

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

27 (c) Subsection (e), Section 411.081, Government Code, as

1 amended by this Act for purposes of clarification, applies to any  
2 person who on or after the effective date of this Act petitions the  
3 court for an order of nondisclosure under Subsection (d), Section  
4 411.081, Government Code, regardless of whether the order of  
5 nondisclosure was requested for conduct occurring before, on, or  
6 after the effective date of this Act.

7 (d) Not later than January 1, 2008, the Department of Public  
8 Safety of the State of Texas shall adopt rules concerning the  
9 standards for secure electronic mail, electronic transmissions,  
10 and facsimile transmissions as required by Section 411.081,  
11 Government Code, as amended by this Act.

12 (e) Not later than June 1, 2008, a court that issues and  
13 transmits orders of nondisclosure as described by Section 411.081,  
14 Government Code, as amended by this Act, and the Crime Records  
15 Service of the Department of Public Safety of the State of Texas  
16 must comply with the secure electronic mail, electronic  
17 transmission, and facsimile transmission standards adopted by the  
18 Department of Public Safety under Section 411.081, Government Code.

19 (f) The change in law made by this Act in adding Section  
20 411.0835, Government Code, and in repealing Subsection (j), Section  
21 411.081, Government Code, applies to any private entity that  
22 purchases criminal history record information from the Texas  
23 Department of Criminal Justice and that, as found by a court,  
24 commits a third or subsequent violation of Section 552.1425,  
25 Government Code, on or after the effective date of this Act.

26 (g) The change in law made by this Act in adding Section  
27 411.0851, Government Code, applies to any dissemination of

1 information that occurs on or after the effective date of this Act.

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

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