

By: West, Royce

S.B. No. 1737

A BILL TO BE ENTITLED

AN ACT

relating to protecting criminal history record information that is the subject of an order of expunction or an order of nondisclosure; providing penalties.

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

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

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

(1) the petitioner'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 petitioner;

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

(4) the date the petitioner was arrested;

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

1 the municipality;

2 (6) the name of the agency that arrested the  
3 petitioner;

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

5 (8) a list of all:

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

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

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

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

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

23 (2) if requested in writing by the petitioner, secure  
24 electronic mail or facsimile transmission.

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

(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

1 disseminate for compensation criminal history record information  
2 that the person has reason to believe have information relating to  
3 records or files that are subject to expunction.

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

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

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

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

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

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

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

23 (C) private entities that compile and  
24 disseminate for compensation criminal history record information  
25 that are reasonably likely to have records or files containing  
26 information that is subject to expunction; and

27 (4) request the court to enter an order directing

1 expunction based on an entitlement to expunction under Article  
2 55.01(d).

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

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

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

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

27 (2) comply with Section 5(f) ~~[of this article]~~

1 pertaining to information contained in records and files of a  
2 person entitled to expunction under Article 55.01(d).

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

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

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

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

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

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

(g) 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 a copy of the order by certified mail, return receipt requested, to the Crime Records Service of the Department of Public Safety.]~~

(g-1) Not later than 10 business days after receipt of the

1 order, the Department of Public Safety shall seal any criminal  
2 history record information maintained by the department that is the  
3 subject of the order. The department shall also send a copy of the  
4 order by mail or secure electronic mail or facsimile transmission  
5 ~~[means]~~ to all:

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

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

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

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



(g-1a) [~~(g-1)~~] Not later than 30 business days after receipt 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-1b) 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 a copy of an order under Subsection (g-1)(3) to the entity.

SECTION 6. 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

1 record information shall destroy and may not disseminate any  
2 information in the possession of the entity with respect to which  
3 the entity has received notice that:

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

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

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

11 (1) subject to Subsection (c), may disseminate that  
12 information only if the entity originally obtains or verifies the  
13 information within the 90-day period preceding the date of  
14 dissemination; and

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

17 (c) A private entity that disseminates information in  
18 violation of this section is liable for any damages that are  
19 sustained as a result of the violation by the person who is the  
20 subject of that information. A person who prevails in an action  
21 brought under this section is also entitled to recover court costs  
22 and reasonable attorney's fees.

23 SECTION 7. Section 411.085(d), Government Code, is amended  
24 to read as follows:

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

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

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

4           SECTION 8. The heading to Section 552.1425, Government  
5 Code, is amended to read as follows:

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

8           SECTION 9. Sections 552.1425(a) and (b), Government Code,  
9 are amended to read as follows:

10           (a) A private entity that compiles and disseminates for  
11 compensation criminal history record information may not compile or  
12 disseminate information with respect to which the entity has  
13 received notice that:

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

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

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

23           SECTION 10. Section 411.081(j), Government Code, is  
24 repealed.

25           SECTION 11. (a) The change in law made by this Act to  
26 Article 55.02, Code of Criminal Procedure, applies to a person  
27 seeking expunction of arrest records and files regardless of

1 whether the arrest occurred before, on, or after the effective date  
2 of this Act.

3 (b) The change in law made by this Act to Section 411.081,  
4 Government Code, applies to any order issued under that section on  
5 or after the effective date of this Act.

6 (c) The change in law made by this Act in adding Section  
7 411.0835, Government Code, and in repealing Section 411.081(j),  
8 Government Code, applies to any private entity that purchases  
9 criminal history record information from the Texas Department of  
10 Criminal Justice and that, as found by a court, commits a third or  
11 subsequent violation of Section 552.1425, Government Code, on or  
12 after the effective date of this Act.

13 (d) The change in law made by this Act in adding Section  
14 411.0851, Government Code, applies to any dissemination of  
15 information that occurs on or after the effective date of this Act.

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

20 SECTION 12. This Act takes effect September 1, 2007.