

1-1 By: West S.B. No. 1737
1-2 (In the Senate - Filed March 9, 2007; March 21, 2007, read
1-3 first time and referred to Committee on Criminal Justice;
1-4 April 23, 2007, reported adversely, with favorable Committee
1-5 Substitute by the following vote: Yeas 6, Nays 0; April 23, 2007,
1-6 sent to printer.)

1-7 COMMITTEE SUBSTITUTE FOR S.B. No. 1737 By: Seliger

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:

- 2-1 (A) full name;
- 2-2 (B) sex;
- 2-3 (C) race;
- 2-4 (D) date of birth;
- 2-5 (E) driver's license number;
- 2-6 (F) social security number; and
- 2-7 (G) address at the time of the arrest;
- 2-8 (2) the offense charged against the person;
- 2-9 (3) the date the offense charged against the person
- 2-10 was alleged to have been committed;
- 2-11 (4) the date the person was arrested;
- 2-12 (5) the name of the county where the person was
- 2-13 arrested and if the arrest occurred in a municipality, the name of
- 2-14 the municipality;
- 2-15 (6) the name of the agency that arrested the person;
- 2-16 (7) the case number and court of offense; and
- 2-17 (8) a list of all:
- 2-18 (A) law enforcement agencies, jails or other
- 2-19 detention facilities, magistrates, courts, prosecuting attorneys,
- 2-20 correctional facilities, central state depositories of criminal
- 2-21 records, and other officials or agencies or other entities of this
- 2-22 state or of any political subdivision of this state;
- 2-23 (B) ~~[and of all]~~ central federal depositories of
- 2-24 criminal records that the person has reason to believe have records
- 2-25 or files that are subject to expunction; and
- 2-26 (C) private entities that compile and
- 2-27 disseminate for compensation criminal history record information
- 2-28 that the person has reason to believe have information relating to
- 2-29 records or files that are subject to expunction.

2-30 SECTION 2. Subsection (c), Section 2a, Article 55.02, Code

2-31 of Criminal Procedure, is amended to read as follows:

2-32 (c) After verifying the allegations in an application

2-33 received under Subsection (a), the attorney representing the state

2-34 shall:

2-35 (1) include on the application information regarding

2-36 the arrest that was requested of the applicant but was unknown by

2-37 the applicant;

2-38 (2) forward a copy of the application to the district

2-39 court for the county;

2-40 (3) attach to the copy a list of all:

2-41 (A) law enforcement agencies, jails or other

2-42 detention facilities, magistrates, courts, prosecuting attorneys,

2-43 correctional facilities, central state depositories of criminal

2-44 records, and other officials or agencies or other entities of this

2-45 state or of any political subdivision of this state;

2-46 (B) ~~[and of all]~~ central federal depositories of

2-47 criminal records that are reasonably likely to have records or

2-48 files containing information that is subject to expunction; and

2-49 (C) private entities that compile and

2-50 disseminate for compensation criminal history record information

2-51 that are reasonably likely to have records or files containing

2-52 information that is subject to expunction; and

2-53 (4) request the court to enter an order directing

2-54 expunction based on an entitlement to expunction under Article

2-55 55.01(d).

2-56 SECTION 3. Section 3, Article 55.02, Code of Criminal

2-57 Procedure, is amended by amending Subsection (c) and adding

2-58 Subsections (c-1) and (c-2) to read as follows:

2-59 (c) When the order of expunction is final, the clerk of the

2-60 court shall send a certified copy of the order to the Crime Records

2-61 Service of the Department of Public Safety and to each official or

2-62 agency or other governmental entity of this state or of any

2-63 political subdivision of this state designated by the person who is

2-64 the subject of the order. The certified copy of the order must be

2-65 sent by secure electronic mail, electronic transmission, or

2-66 facsimile transmission~~[, if requested in writing by the person who~~

2-67 ~~is the subject of the order,]~~ or otherwise by certified mail, return

2-68 receipt requested. In sending the order to a governmental ~~[an]~~

2-69 entity designated by the person, the clerk may elect to substitute

3-1 hand delivery for certified mail under this subsection, but the
3-2 clerk must receive a receipt for that hand-delivered order.

3-3 (c-1) The Department of Public Safety shall notify any
3-4 central federal depository of criminal records by any means,
3-5 including secure electronic mail, electronic transmission, or
3-6 facsimile transmission, of the order with an explanation of the
3-7 effect of the order and a request that the depository, as
3-8 appropriate, either:

3-9 (1) destroy or return to the court the records in
3-10 possession of the depository that are subject to the order,
3-11 including any information with respect to the order; or

3-12 (2) comply with Section 5(f) [~~of this article~~]
3-13 pertaining to information contained in records and files of a
3-14 person entitled to expunction under Article 55.01(d).

3-15 (c-2) The Department of Public Safety shall also provide, by
3-16 secure electronic mail, electronic transmission, or facsimile
3-17 transmission, notice of the order to any private entity that is
3-18 named in the order or that purchases criminal history record
3-19 information from the department. The notice must include an
3-20 explanation of the effect of the order and a request that the entity
3-21 destroy any information in the possession of the entity that is
3-22 subject to the order. The department may charge to a private entity
3-23 that purchases criminal history record information from the
3-24 department a fee in an amount sufficient to recover costs incurred
3-25 by the department in providing notice under this subsection to the
3-26 entity.

3-27 SECTION 4. Subsections (a) and (f), Section 5, Article
3-28 55.02, Code of Criminal Procedure, are amended to read as follows:

3-29 (a) Except as provided by Subsection (f), on receipt of the
3-30 order, each official or agency or other governmental entity named
3-31 in the order shall:

3-32 (1) return all records and files that are subject to
3-33 the expunction order to the court or, if removal is impracticable,
3-34 obliterate all portions of the record or file that identify the
3-35 person who is the subject of the order and notify the court of its
3-36 action; and

3-37 (2) delete from its public records all index
3-38 references to the records and files that are subject to the
3-39 expunction order.

3-40 (f) On receipt of an order granting expunction to a person
3-41 entitled to expunction under Article 55.01(d), each official,
3-42 agency, or other governmental entity named in the order:

3-43 (1) shall:
3-44 (A) obliterate all portions of the record or file
3-45 that identify the petitioner; and

3-46 (B) substitute for all obliterated portions of
3-47 the record or file any available information that identifies the
3-48 person arrested; and

3-49 (2) may not return the record or file or delete index
3-50 references to the record or file.

3-51 SECTION 5. Subsection (e), Section 411.081, Government
3-52 Code, is amended to read as follows:

3-53 (e) A person is entitled to petition the court under
3-54 Subsection (d) only if during the period of the deferred
3-55 adjudication community supervision for which the order of
3-56 nondisclosure is requested and during the applicable period
3-57 described by Subsection (d)(1), (2), or (3), as appropriate, the
3-58 person is not convicted of or placed on deferred adjudication
3-59 community supervision under Section 5, Article 42.12, Code of
3-60 Criminal Procedure, for any offense other than an offense under the
3-61 Transportation Code punishable by fine only. A person is not
3-62 entitled to petition the court under Subsection (d) if the person
3-63 was placed on the deferred adjudication community supervision for
3-64 or has been previously convicted or placed on any other deferred
3-65 adjudication for:

3-66 (1) an offense requiring registration as a sex
3-67 offender under Chapter 62, Code of Criminal Procedure;

3-68 (2) an offense under Section 20.04, Penal Code,
3-69 regardless of whether the offense is a reportable conviction or

4-1 adjudication for purposes of Chapter 62, Code of Criminal
4-2 Procedure;

4-3 (3) an offense under Section 19.02, 19.03, 22.04,
4-4 22.041, 25.07, or 42.072, Penal Code; or

4-5 (4) any other offense involving family violence, as
4-6 defined by Section 71.004, Family Code.

4-7 SECTION 6. Subsection (g), Section 411.081, Government
4-8 Code, as amended by Chapters 177 and 1309, Acts of the 79th
4-9 Legislature, Regular Session, 2005, and Subsection (g-1), Section
4-10 411.081, Government Code, as added by Chapters 177 and 1309, Acts of
4-11 the 79th Legislature, Regular Session, 2005, are reenacted as
4-12 Subsections (g), (g-1), (g-1a), (g-1b), and (g-1c), Section
4-13 411.081, and amended to read as follows:

4-14 (g) Not later than the 15th business day after the date
4-15 ~~[When an order of nondisclosure is issued under this subsection,~~
4-16 ~~the clerk of the court shall send to the Crime Records Service of~~
4-17 ~~the Department of Public Safety a copy of the order by:~~

4-18 ~~[(1) certified mail, return receipt requested; or~~

4-19 ~~[(2) if requested in writing by the petitioner, secure~~
4-20 ~~electronic mail or facsimile transmission.~~

4-21 ~~[(g) When]~~ an order of nondisclosure is issued under this
4-22 section, the clerk of the court shall send all relevant criminal
4-23 history record information contained in the order or a copy of the
4-24 order by certified mail, return receipt requested, or secure
4-25 electronic mail, electronic transmission, or facsimile
4-26 transmission to the Crime Records Service of the Department of
4-27 Public Safety.

4-28 (g-1) Not later than 10 business days after receipt of
4-29 relevant criminal history record information contained in an [the]
4-30 order or a copy of an order under Subsection (g), the Department of
4-31 Public Safety shall seal any criminal history record information
4-32 maintained by the department that is the subject of the order. The
4-33 department shall also send all relevant criminal history record
4-34 information contained in the order or a copy of the order by
4-35 certified mail, return receipt requested, or secure electronic
4-36 mail, electronic transmission, or facsimile transmission [means]
4-37 to all:

4-38 (1) law enforcement agencies, jails or other detention
4-39 facilities, magistrates, courts, prosecuting attorneys,
4-40 correctional facilities, central state depositories of criminal
4-41 records, and other officials or agencies or other entities of this
4-42 state or of any political subdivision of this state;

4-43 (2) central federal depositories of criminal records
4-44 that there is reason to believe have criminal history record
4-45 information that is the subject of the order; and

4-46 (3) private entities that purchase criminal history
4-47 record information from the department or that otherwise are likely
4-48 to have criminal history record information that is subject to the
4-49 order.

4-50 (g-1a) The director shall adopt rules regarding minimum
4-51 standards for the security of secure electronic mail, electronic
4-52 transmissions, and facsimile transmissions under Subsections (g)
4-53 and (g-1). In adopting rules under this subsection, the director
4-54 shall consult with the Office of Court Administration of the Texas
4-55 Judicial System.

4-56 (g-1b) ~~[(g-1) The Department of Public Safety shall send a~~
4-57 ~~copy of the order by mail or secure electronic mail or facsimile~~
4-58 ~~transmission to all law enforcement agencies, jails or other~~
4-59 ~~detention facilities, magistrates, courts, prosecuting attorneys,~~
4-60 ~~correctional facilities, central state depositories of criminal~~
4-61 ~~records, and other officials or agencies or other entities of this~~
4-62 ~~state or of any political subdivision of this state, and to all~~
4-63 ~~central federal depositories of criminal records that there is~~
4-64 ~~reason to believe have criminal history record information that is~~
4-65 ~~the subject of the order.~~

4-66 ~~[(g-1)]~~ Not later than 30 business days after receipt of
4-67 relevant criminal history record information contained in an order
4-68 or a copy of an order from the Department of Public Safety under
4-69 Subsection (g-1) [(g)], an individual or entity described by

5-1 Subsection (g-1)(1) [~~(g)(1)~~] shall seal any criminal history record
5-2 information maintained by the individual or entity that is the
5-3 subject of the order.

5-4 (g-1c) The department may charge to a private entity that
5-5 purchases criminal history record information from the department a
5-6 fee in an amount sufficient to recover costs incurred by the
5-7 department in providing relevant criminal history record
5-8 information contained in an order or a copy of an order under
5-9 Subsection (g-1)(3) to the entity.

5-10 SECTION 7. Subchapter F, Chapter 411, Government Code, is
5-11 amended by adding Sections 411.0835 and 411.0851 to read as
5-12 follows:

5-13 Sec. 411.0835. PROHIBITION AGAINST DISSEMINATION TO
5-14 CERTAIN PRIVATE ENTITIES. If the department receives information
5-15 indicating that a private entity that purchases criminal history
5-16 record information from the department has been found by a court to
5-17 have committed three or more violations of Section 552.1425 by
5-18 compiling or disseminating information with respect to which an
5-19 order of expunction or an order of nondisclosure has been issued,
5-20 the department may not release any criminal history record
5-21 information to that entity until the first anniversary of the date
5-22 of the most recent violation.

5-23 Sec. 411.0851. DUTY OF PRIVATE ENTITY TO UPDATE CRIMINAL
5-24 HISTORY RECORD INFORMATION; CIVIL LIABILITY. (a) A private entity
5-25 that compiles and disseminates for compensation criminal history
5-26 record information shall destroy and may not disseminate any
5-27 information in the possession of the entity with respect to which
5-28 the entity has received notice that:

5-29 (1) an order of expunction has been issued under
5-30 Article 55.02, Code of Criminal Procedure; or

5-31 (2) an order of nondisclosure has been issued under
5-32 Section 411.081(d).

5-33 (b) A private entity described by Subsection (a) that
5-34 purchases criminal history record information from the department
5-35 or from another governmental agency or entity in this state:

5-36 (1) subject to Subsection (c), may disseminate that
5-37 information only if the entity originally obtains or verifies the
5-38 information within the 90-day period preceding the date of
5-39 dissemination; and

5-40 (2) shall notify the department if the entity sells
5-41 any compilation of the information to another similar entity.

5-42 (c) A private entity that disseminates information in
5-43 violation of this section is liable for any damages that are
5-44 sustained as a result of the violation by the person who is the
5-45 subject of that information. A person who prevails in an action
5-46 brought under this section is also entitled to recover court costs
5-47 and reasonable attorney's fees.

5-48 SECTION 8. Subsection (d), Section 411.085, Government
5-49 Code, is amended to read as follows:

5-50 (d) The department shall provide a copy of this section to:

5-51 (1) each person who applies for access to criminal
5-52 history record information maintained by the department; and

5-53 (2) each private entity that purchases criminal
5-54 history record information from the department [with a copy of this
5-55 section].

5-56 SECTION 9. The heading to Section 552.1425, Government
5-57 Code, is amended to read as follows:

5-58 Sec. 552.1425. CIVIL PENALTY: DISSEMINATION [RECORDS] OF
5-59 CERTAIN CRIMINAL HISTORY INFORMATION [DEFERRED ADJUDICATIONS].

5-60 SECTION 10. Subsections (a) and (b), Section 552.1425,
5-61 Government Code, are amended to read as follows:

5-62 (a) A private entity that compiles and disseminates for
5-63 compensation criminal history record information may not compile or
5-64 disseminate information with respect to which the entity has
5-65 received notice that:

5-66 (1) an order of expunction has been issued under
5-67 Article 55.02, Code of Criminal Procedure; or

5-68 (2) an order of nondisclosure has been issued under
5-69 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.

6-51 * * * * *