

## **BILL ANALYSIS**

C.S.S.B. 990

By: West

Homeland Security & Public Safety  
Committee Report (Substituted)

### **BACKGROUND AND PURPOSE**

Despite changes made in state law by previous Texas Legislatures to update and revise procedures regarding the accuracy of criminal history record information made available to the public, interested parties note that problems persist. The parties report that more businesses now perform criminal history background checks as a part of pre-employment screening practices and that the number of private entities selling criminal history record information has increased dramatically over the last decade. While the Department of Public Safety (DPS) is the official repository and custodian of criminal history record information for the state, DPS is not the sole source of such information made available and disseminated to the public. As a result, there is no guarantee that such information obtained through private entities is accurate and current. The accuracy of this information is critical to individuals seeking employment and residency in multifamily housing and also impacts the work of courts and criminal defense attorneys when an issued expunction or nondisclosure order is rendered meaningless because outdated or otherwise inaccurate criminal history record information continues to be disseminated to the public. C.S.S.B. 990 seeks to ensure that criminal history record information disclosed to the public is accurate and up-to-date, and that private entities selling this information are held accountable for the accuracy of the disclosed information.

### **RULEMAKING AUTHORITY**

It is the committee's opinion that rulemaking authority is expressly granted to the Department of Public Safety in SECTIONS 2 and 4 of this bill.

### **ANALYSIS**

C.S.S.B. 990 amends the Government Code to clarify that statutory provisions regarding the duty of a private entity that compiles and disseminates for compensation criminal history record information to update that information apply to a private entity that provides such information of individuals to a customer on request without verifying the information after receipt of the request. The bill, in a provision requiring a private entity to destroy and prohibiting the entity from disseminating any criminal history record information in the entity's possession with respect to which the entity has received notice that an order of expunction or nondisclosure has been issued, establishes as a condition for such requirement to destroy and prohibition against dissemination the entity's receipt of a certified or noncertified copy of the order showing that the order has been issued and specifies that such a copy or the notice is received from the Department of Public Safety (DPS).

C.S.S.B. 990 clarifies that a private entity's authorization to disseminate criminal history record information purchased from DPS or another governmental agency or entity in Texas applies except as otherwise provided by federal law, rather than unless the entity is regulated by specified federal laws; that the authorization applies also to such a private entity that otherwise obtains the information from DPS or those state agencies or entities; and that the authorization applies to information that originates from DPS, a custodian of court records, or another governmental agency or entity in Texas. The bill removes as a condition of such authorization to

disseminate that information the entity originally obtaining that information or receiving that information as updated record information to its database within the 90-day period preceding the date of dissemination and instead authorizes such a private entity to disseminate criminal history record information either if the entity verifies within the 60-day period preceding the date of dissemination that the information was obtained from or verified by DPS, a custodian of court records, or another governmental agency or entity in Texas within that same 60-day period or with a notice that the information was received from the governmental source more than 60 days before the date it is being provided and may not reflect the current state of the criminal history record information and should be verified before taking any action based on the information to a law enforcement agency or a licensed investigations agency if the recipient of the information has certified in writing that the information will be used exclusively for the purpose of generating investigative leads and will not be shared with any other party unless verified as accurate and up to date under the bill's provisions regarding consumer reports.

C.S.S.B. 990 requires a private entity's notification to DPS regarding the entity's sales of any compilation of the criminal history record information to another similar entity to be made on a quarterly basis, requires the notification to provide the name and contact information of each similar entity to which the private entity sold any such compilation in the previous quarter, and requires such a private entity to submit the initial quarterly notification to DPS not later than October 1, 2013. The bill exempts name and contact information provided in such a quarterly notification to DPS from state public information law.

C.S.S.B. 990 requires such a private entity to provide to a person who is the subject of criminal history record information maintained by the entity, on the person's written request, a copy of all of the entity's records regarding that person not later than the 30th business day after the receipt of the request. The bill entitles that person to receive one such copy at no charge each calendar year but authorizes the private entity to charge a reasonable fee for subsequent copies requested by the person within a calendar year. The bill authorizes a person who disputes the accuracy of such information maintained by the entity to submit a written request to the entity for verification along with supporting documentation, including a copy of any applicable court order, and requires the entity on receipt of the request to promptly initiate an investigation into the accuracy of the disputed information. The bill requires the entity, not later than the 30th day after the date the request is received, to complete the investigation, notify the person who is the subject of the disputed information of the outcome of the investigation, and correct the information as applicable. The bill authorizes a person who disputes information on the basis of a nondisclosure or expunction order to submit a written request to the entity for removal of the person's information and requires the entity, not later than the 15th day after receipt of the request accompanied by a certified or uncertified copy of the court order, to remove the information that is subject to the court order. The bill makes a private entity that fails to comply with these disputed information requirements liable for any damages that are sustained as a result of the violation by the person who is the subject of the information and entitles such a person who prevails in such an action to recover court costs and reasonable attorney's fees.

C.S.S.B. 990 requires each private entity to whom the bill's provisions apply, not later than the 30th day after the date the entity begins doing business in Texas, to disclose the entity's name and contact information to DPS in the form and manner provided by DPS, makes such a disclosure subject to state public information law, and requires DPS to publish the disclosures on DPS's Internet website. The bill requires DPS, not later than January 1, 2014, to adopt rules to implement the disclosure requirements and specifies that an entity subject to the disclosure requirements is not required to submit the initial disclosures before February 1, 2014. The bill requires such a private entity, not later than October 1, 2013, to file the information required under such disclosure requirements. The bill makes an entity that fails to comply with the disclosure requirements liable to the state for a \$500 civil penalty for each violation and specifies that each day the violation continues constitutes a separate violation. The bill authorizes the attorney general to bring an action to recover the civil penalty, authorizes the attorney general and DPS to recover reasonable expenses incurred in obtaining the civil penalty, and requires the

civil penalty to be deposited in the state treasury to the credit of DPS for administrative purposes.

C.S.S.B. 990 requires such a private entity to disclose to each purchaser or recipient of criminal history record information at the time the information is provided the name of the governmental entity from which the information originated and the date on which the information was last received from or updated by the governmental entity. The bill requires a person who purchases, accesses, or otherwise receives criminal history record information and uses the information as the basis for an adverse decision regarding the employment, licensing, or housing of the individual who is the subject of the information to disclose to that individual the name and contact information of the entity from which the person received the information. The bill defines "adverse decision" as a decision to disqualify an individual or otherwise negatively affect the individual's eligibility for employment, licensing, or housing.

C.S.S.B. 990 amends the Business & Commerce Code to require a consumer reporting agency that compiles and reports information related to a consumer's criminal history for purposes of furnishing a consumer report for employment or housing purposes to implement and maintain strict procedures designed to ensure that the criminal history record information reported is complete and up to date. The bill establishes the circumstances under which the criminal history record information is considered complete and up to date for purposes of that requirement and makes the requirement inapplicable to the furnishing of a consumer report to a federal agency or department that seeks to obtain and use the report for employment purposes and whose agency or department head makes a written finding as prescribed by certain federal law.

### **EFFECTIVE DATE**

September 1, 2013.

### **COMPARISON OF ORIGINAL AND SUBSTITUTE**

While C.S.S.B. 990 may differ from the engrossed version in minor or nonsubstantive ways, the following comparison is organized and highlighted in a manner that indicates the substantial differences between the engrossed and committee substitute versions of the bill.

#### SENATE ENGROSSED

SECTION 1. Section 411.0851, Government Code, is amended by amending Subsections (a) and (b) and adding Subsections (a-1) and (b-1) to read as follows:

(a) This section applies only to a [A] private entity that:

(1) compiles and disseminates for compensation criminal history record information of individuals; and

(2) makes the information described by Subdivision (1) available to customers in searchable format.

(a-1) A private entity described by Subsection (a) shall destroy and may not disseminate any information in the possession of the entity with respect to which the entity has received notice that:

#### HOUSE COMMITTEE SUBSTITUTE

SECTION 1. Section 411.0851, Government Code, is amended by amending Subsections (a) and (b) and adding Subsections (a-1) and (d) to read as follows:

(a) This section applies only to a [A] private entity that:

(1) compiles and disseminates for compensation criminal history record information of individuals; and

(2) provides the information described by Subdivision (1) to a customer on request without verifying the information after receipt of the request.

(a-1) A private entity described by Subsection (a) shall destroy and may not disseminate any information in the possession of the entity with respect to which the entity has received a certified or noncertified copy of the order showing or

(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) Except as otherwise provided by federal law [~~Unless the entity is regulated by the federal Fair Credit Reporting Act (15 U.S.C. Section 1681 et seq.) or the Gramm-Leach-Bliley Act (15 U.S.C. Sections 6801 to 6809)~~], a private entity described by Subsection (a) that purchases or otherwise obtains criminal history record information that originates from the department, a custodian of court records, or [~~from~~] another governmental agency or entity in this state:

(1) may disseminate that information only if, within the 60-day [~~90-day~~] period preceding the date of dissemination, the entity:

(A) originally obtains that information; or

(B) receives that information as updated record information to its database; and

(2) shall on a quarterly basis notify the department of the name and contact information of each similar entity to which [~~if~~] the entity sold [~~sells~~] any compilation of the information in the previous quarter [~~to~~

notice from the department 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) Except as otherwise provided by federal law [~~Unless the entity is regulated by the federal Fair Credit Reporting Act (15 U.S.C. Section 1681 et seq.) or the Gramm-Leach-Bliley Act (15 U.S.C. Sections 6801 to 6809)~~], a private entity described by Subsection (a) that purchases or otherwise obtains criminal history record information that originates from the department, a custodian of court records, or [~~from~~] another governmental agency or entity in this state:

(1) may disseminate that information:

(A) [~~only~~] if, within the 60-day [~~90-day~~] period preceding the date of dissemination, the entity verifies [~~;~~

~~[(A) originally obtains]~~ that the information was obtained from or verified by the department, a custodian of court records, or another governmental agency or entity in this state within that same 60-day period; or

(B) with a notice [~~receives~~] that the information was received from the governmental source more than 60 days before the date it is being provided and may not reflect the current state of the criminal history record information and should be verified before taking any action based on the information, to:

(i) a law enforcement agency; or

(ii) an investigations agency licensed under Chapter 1702, Occupations Code, or similar statute of another state or a consumer reporting agency for a purpose regulated under the federal Fair Credit Reporting Act (15 U.S.C. Section 1681 et seq.), if the recipient of the information has certified in writing that the information will be used exclusively for the purpose of generating investigative leads and will not be shared with any other party unless verified as accurate and up to date under Section 20.022, Business & Commerce Code [~~as updated record information to its database~~]; and

(2) shall on a quarterly basis notify the department of the name and contact information of each similar entity to which [~~if~~] the entity sold [~~sells~~] any compilation of the information in the previous quarter [~~to~~

~~another similar entity].~~

~~(b-1) Except as otherwise provided by federal law, a private entity described by Subsection (a) that purchases or otherwise obtains criminal history record information from a similar entity or other private entity:~~

~~(1) may disseminate that information only if the private entity verifies that the information was originally obtained or updated by the department, a custodian of court records, or another governmental agency or entity in this state within the 60-day period preceding the date of dissemination; and~~

~~(2) shall on a quarterly basis notify the department of the name and contact information of each similar entity or other private entity to which the entity sold any compilation of the information in the previous quarter.~~

SECTION 2. Subchapter F, Chapter 411, Government Code, is amended by adding Sections 411.0852, 411.0853, 411.0854, and 411.0855 to read as follows:

Sec. 411.0852. ACCESS TO CRIMINAL HISTORY RECORD INFORMATION MAINTAINED BY PRIVATE ENTITY; DISPUTES OF ACCURACY. (a) On written request by a person who is the subject of criminal history record information maintained by a private entity described by Section 411.0851(a), the entity shall provide to the person a copy of all records regarding that person maintained by the entity not later than the 30th business day after the receipt of the request.

(b) A person is entitled to receive one copy of the person's criminal history record information pursuant to a request under Subsection (a) at no charge to the person each calendar year. An entity described by Section 411.0851(a) may charge a reasonable fee for subsequent copies requested by the person within a calendar year.

(c) If a person disputes the accuracy of any portion of the person's criminal history record information maintained by the private entity described by Section 411.0851(a), the person may submit a written request to the entity for verification.

~~another similar entity].~~

~~(d) Information reported to the department under Subsection (b)(2) is not subject to Chapter 552.~~

SECTION 2. Subchapter F, Chapter 411, Government Code, is amended by adding Sections 411.0852, 411.0853, 411.0854, and 411.0855 to read as follows:

Sec. 411.0852. ACCESS TO CRIMINAL HISTORY RECORD INFORMATION MAINTAINED BY PRIVATE ENTITY; DISPUTES OF ACCURACY. (a) On written request by a person who is the subject of criminal history record information maintained by a private entity described by Section 411.0851(a), the entity shall provide to the person a copy of all records regarding that person maintained by the entity not later than the 30th business day after the receipt of the request.

(b) A person is entitled to receive one copy of the person's criminal history record information pursuant to a request under Subsection (a) at no charge to the person each calendar year. An entity described by Section 411.0851(a) may charge a reasonable fee for subsequent copies requested by the person within a calendar year.

(c) If a person disputes the accuracy of any portion of the person's criminal history record information maintained by a private entity described by Section 411.0851(a), the person may submit a written request to the entity for verification ~~along with any~~

On receipt of a written request under this subsection, the entity shall promptly initiate an investigation into the accuracy of the disputed information. Not later than the 30th day after the date the written request is received, the entity shall complete the investigation, notify the person who is the subject of the disputed information of the outcome of the investigation, and correct the information as applicable.

(d) A private entity described by Section 411.0851(a) that fails to comply with 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.

Sec. 411.0853. PUBLIC DISCLOSURES BY PRIVATE ENTITIES; CIVIL PENALTY. (a) Each private entity described by Section 411.0851(a) shall, not later than the 30th day after the date the entity begins doing business in this state, disclose the entity's name and contact information to the department in the form and manner prescribed by the department.

(b)

The department shall publish the disclosures required under this section on the department's Internet website.

(c) The department may adopt rules to implement this section.

(d) An entity that fails to comply with Subsection (a) is liable to the state for a civil penalty of \$500 for each violation. Each day the violation continues constitutes a separate violation for purposes of this subsection.

supporting documentation, including a copy of a court order, if applicable.

On receipt of a written request under this subsection, the entity shall promptly initiate an investigation into the accuracy of the disputed information. Not later than the 30th day after the date the written request is received, the entity shall complete the investigation, notify the person who is the subject of the disputed information of the outcome of the investigation, and correct the information as applicable.

(d) If a person disputes the criminal history record information maintained by a private entity described by Section 411.0851(a) on the basis of an order of nondisclosure or an order of expunction, the person may submit a written request to the entity for removal of the person's information. Not later than the 15th day after receipt of the request accompanied by a certified or uncertified copy of the court order, the entity shall remove the information that is the subject of the court order.

(e) A private entity described by Section 411.0851(a) that fails to comply with Subsection (c) or (d) 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 subsection is also entitled to recover court costs and reasonable attorney's fees.

Sec. 411.0853. PUBLIC DISCLOSURES BY PRIVATE ENTITIES; CIVIL PENALTY. (a) Each private entity described by Section 411.0851(a) shall, not later than the 30th day after the date the entity begins doing business in this state, disclose the entity's name and contact information to the department in the form and manner prescribed by the department.

(b) Disclosures required under this section are subject to Chapter 552.

The department shall publish the disclosures required under this section on the department's Internet website.

(c) The department shall adopt rules to implement this section.

(d) An entity that fails to comply with Subsection (a) is liable to the state for a civil penalty of \$500 for each violation. Each day the violation continues constitutes a separate violation for purposes of this subsection.

(e) At the request of the department, the attorney general may bring an action to recover the civil penalty authorized by Subsection (d). The attorney general and the department may recover reasonable expenses incurred in obtaining the civil penalty, including court costs, reasonable attorney's fees, investigation costs, witness fees, and deposition expenses.

(f) A civil penalty collected under Subsection (d) shall be deposited in the state treasury to the credit of the department for the administration of this chapter.

Sec. 411.0854. DISCLOSURES BY PRIVATE ENTITIES TO PURCHASERS OR OTHER RECIPIENTS. A private entity described by Section 411.0851(a) shall disclose to each purchaser or recipient of criminal history record information at the time the information is provided:

(1) each source from which the entity compiled the information; and

(2) the date on which the information was last updated or verified by the department or custodian of the records.

Sec. 411.0855. DUTIES OF PURCHASER OR RECIPIENT OF CRIMINAL HISTORY RECORD INFORMATION USED FOR EMPLOYMENT, LICENSING, OR HOUSING.

SECTION 3. Chapter 20, Business & Commerce Code, is amended by adding Section 20.022 to read as follows:

Sec. 20.022. FURNISHING OF CONSUMER REPORT FOR EMPLOYMENT OR HOUSING PURPOSES; EXCEPTION FOR NATIONAL SECURITY INVESTIGATION. (a) This section does not apply to the furnishing of a consumer report to an agency or department of the federal government that seeks to obtain and use the report for employment purposes and whose agency or department head makes a written finding as prescribed by 15 U.S.C. Section 1681b(b)(4)(A).

(b) A consumer reporting agency that compiles and reports information related to a consumer's criminal history for purposes of furnishing a consumer report for employment or housing purposes shall implement and maintain strict procedures designed to ensure that the criminal history record information reported is complete and

(e) At the request of the department, the attorney general may bring an action to recover the civil penalty authorized by Subsection (d). The attorney general and the department may recover reasonable expenses incurred in obtaining the civil penalty, including court costs, reasonable attorney's fees, investigation costs, witness fees, and deposition expenses.

(f) A civil penalty collected under Subsection (d) shall be deposited in the state treasury to the credit of the department for the administration of this chapter.

Sec. 411.0854. DISCLOSURES BY PRIVATE ENTITIES TO PURCHASERS OR OTHER RECIPIENTS. A private entity described by Section 411.0851(a) shall disclose to each purchaser or recipient of criminal history record information at the time the information is provided:

(1) the name of the governmental entity from which the information originated; and

(2) the date on which the information was last received from or updated by the governmental entity.

Sec. 411.0855. DUTIES OF PURCHASER OR RECIPIENT OF CRIMINAL HISTORY RECORD INFORMATION USED FOR EMPLOYMENT, LICENSING, OR HOUSING.

SECTION 3. Chapter 20, Business & Commerce Code, is amended by adding Section 20.022 to read as follows:

Sec. 20.022. FURNISHING OF CONSUMER REPORT FOR EMPLOYMENT OR HOUSING PURPOSES; EXCEPTION FOR NATIONAL SECURITY INVESTIGATION. (a) This section does not apply to the furnishing of a consumer report to an agency or department of the federal government that seeks to obtain and use the report for employment purposes and whose agency or department head makes a written finding as prescribed by 15 U.S.C. Section 1681b(b)(4)(A).

(b) A consumer reporting agency that compiles and reports information related to a consumer's criminal history for purposes of furnishing a consumer report for employment or housing purposes shall implement and maintain strict procedures designed to ensure that the criminal history record information reported is complete and

up to date. For purposes of this subsection, criminal history record information contained in a consumer report is considered:

- (1) complete if the information reflects:
  - (A) the offense alleged;
  - (B) the jurisdiction in which the criminal history record information originated;
  - (C) the date of the arrest or filing of criminal charges;
  - (D) the current status of any criminal case proceeding, if charges have been filed; and
  - (E) the disposition of the case and the date of that disposition, if applicable; and
- (2) up to date if the information related to an arrest, filing of criminal charges, or conviction or other disposition of the case reflects the most recent public record status of the information described by Subdivision (1) at the time the consumer report is furnished.

SECTION 4. (a) Section 411.0851, Government Code, as amended by this Act, applies only to information disseminated on or after the effective date of this Act. Information disseminated before the effective date of this Act is governed by the law in effect on the date the information was disseminated, and the former law is continued in effect for that purpose.

(b) The Department of Public Safety of the State of Texas shall adopt rules to implement Section 411.0853, Government Code, as added by this Act, not later than January 1, 2014.

(c) An entity subject to Section 411.0853, Government Code, as added by this Act, is not required to submit the initial disclosures required under that section before February 1, 2014.

(d) Section 411.0854, Government Code, as added by this Act, applies only to criminal history record information provided to a purchaser or recipient on or after the effective date of this Act. Criminal history record information provided to a purchaser or recipient before the effective date of this Act is governed by the law in effect on the date the information was provided, and the former law is continued in effect for that purpose.

(e) Section 411.0855, Government Code, as added by this Act, applies only to criminal history record information purchased,

up to date. For purposes of this subsection, criminal history record information contained in a consumer report is considered:

- (1) complete if the information reflects:
  - (A) the offense alleged;
  - (B) the jurisdiction in which the criminal history record information originated;
  - (C) the date of the arrest or filing of criminal charges;
  - (D) the current status of any criminal case proceeding, if charges have been filed; and
  - (E) the disposition of the case and the date of that disposition, if applicable; and
- (2) up to date if the information related to an arrest, filing of criminal charges, or conviction or other disposition of the case reflects the most recent public record status of the information described by Subdivision (1) at the time the consumer report is requested.

SECTION 4. Substantially the same as engrossed version.



accessed, received, or otherwise used on or after the effective date of this Act. Criminal history record information purchased, accessed, received, or otherwise used before the effective date of this Act is governed by the law in effect on the date the information was purchased, accessed, received, or otherwise used, and the former law is continued in effect for that purpose.

SECTION 5. Not later than October 1, 2013, a private entity that compiles and disseminates for compensation criminal history record information shall:

- (1) submit the initial quarterly notification under Section 411.0851, Government Code, as amended by this Act; and
- (2) file the information required by Section 411.0853, Government Code, as added by this Act.

SECTION 6. This Act takes effect September 1, 2013.

SECTION 5. Same as engrossed version.

SECTION 6. Same as engrossed version.