

By: West

S.B. No. 990

A BILL TO BE ENTITLED

AN ACT

relating to criminal history record information obtained or disseminated by certain private entities; providing a civil penalty; authorizing fees.

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

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:

(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~~

1 ~~U.S.C. Sections 6801 to 6809~~], a private entity described by  
2 Subsection (a) that purchases or otherwise obtains criminal history  
3 record information that originates from the department, a custodian  
4 of court records, or [~~from~~] another governmental agency or entity  
5 in this state:

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

- 9 (A) originally obtains that information; or  
10 (B) receives that information as updated record  
11 information to its database; and

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

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

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

25 (2) shall on a quarterly basis notify the department  
26 of the name and contact information of each similar entity or other  
27 private entity to which the entity sold any compilation of the

1 information in the previous quarter.

2 SECTION 2. Subchapter F, Chapter 411, Government Code, is  
3 amended by adding Sections 411.0852, 411.0853, 411.0854, and  
4 411.0855 to read as follows:

5 Sec. 411.0852. ACCESS TO CRIMINAL HISTORY RECORD  
6 INFORMATION MAINTAINED BY PRIVATE ENTITY; DISPUTES OF ACCURACY.

7 (a) On written request by a person who is the subject of criminal  
8 history record information maintained by a private entity described  
9 by Section 411.0851(a), the entity shall provide to the person a  
10 copy of all records regarding that person maintained by the entity  
11 not later than the 30th business day after the receipt of the  
12 request.

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

19 (c) If a person disputes the accuracy of any portion of the  
20 person's criminal history record information maintained by the  
21 private entity described by Section 411.0851(a), the person may  
22 submit a written request to the entity for verification. On receipt  
23 of a written request under this subsection, the entity shall  
24 promptly initiate an investigation into the accuracy of the  
25 disputed information. Not later than the 30th day after the date  
26 the written request is received, the entity shall complete the  
27 investigation, notify the person who is the subject of the disputed

1 information of the outcome of the investigation, and correct the  
2 information as applicable.

3 (d) A private entity described by Section 411.0851(a) that  
4 fails to comply with this section is liable for any damages that are  
5 sustained as a result of the violation by the person who is the  
6 subject of that information. A person who prevails in an action  
7 brought under this section is also entitled to recover court costs  
8 and reasonable attorney's fees.

9 Sec. 411.0853. PUBLIC DISCLOSURES BY PRIVATE ENTITIES;  
10 CIVIL PENALTY. (a) Each private entity described by Section  
11 411.0851(a) shall, not later than the 30th day after the date the  
12 entity begins doing business in this state, disclose the entity's  
13 name and contact information to the department in the form and  
14 manner prescribed by the department.

15 (b) The department shall publish the disclosures required  
16 under this section on the department's Internet website.

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

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

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

1 investigation costs, witness fees, and deposition expenses.

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

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

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

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

14 Sec. 411.0855. DUTIES OF PURCHASER OR RECIPIENT OF CRIMINAL  
15 HISTORY RECORD INFORMATION USED FOR EMPLOYMENT, LICENSING, OR  
16 HOUSING. (a) In this section, "adverse decision" means a decision  
17 to disqualify an individual or otherwise negatively affect the  
18 eligibility of an individual for employment, licensing, or housing.

19 (b) A person who purchases, accesses, or otherwise receives  
20 criminal history record information and uses the information as the  
21 basis for an adverse decision regarding the employment, licensing,  
22 or housing of the individual who is the subject of the information  
23 shall disclose to that individual the name and contact information  
24 of the entity from which the person received the information.

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

27 Sec. 20.022. FURNISHING OF CONSUMER REPORT FOR EMPLOYMENT

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

7 (b) A consumer reporting agency that compiles and reports  
8 information related to a consumer's criminal history for purposes  
9 of furnishing a consumer report for employment or housing purposes  
10 shall implement and maintain strict procedures designed to ensure  
11 that the criminal history record information reported is complete  
12 and up to date. For purposes of this subsection, criminal history  
13 record information contained in a consumer report is considered:

14 (1) complete if the information reflects:

15 (A) the offense alleged;

16 (B) the jurisdiction in which the criminal  
17 history record information originated;

18 (C) the date of the arrest or filing of criminal  
19 charges;

20 (D) the current status of any criminal case  
21 proceeding, if charges have been filed; and

22 (E) the disposition of the case and the date of  
23 that disposition, if applicable; and

24 (2) up to date if the information related to an arrest,  
25 filing of criminal charges, or conviction or other disposition of  
26 the case reflects the most recent public record status of the  
27 information described by Subdivision (1) at the time the consumer

1 report is furnished.

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

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

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

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

21 (e) Section 411.0855, Government Code, as added by this Act,  
22 applies only to criminal history record information purchased,  
23 accessed, received, or otherwise used on or after the effective  
24 date of this Act. Criminal history record information purchased,  
25 accessed, received, or otherwise used before the effective date of  
26 this Act is governed by the law in effect on the date the  
27 information was purchased, accessed, received, or otherwise used,

1 and the former law is continued in effect for that purpose.

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

5 (1) submit the initial quarterly notification under  
6 Section 411.0851, Government Code, as amended by this Act; and

7 (2) file the information required by Section 411.0853,  
8 Government Code, as added by this Act.

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