

1-1 By: West S.B. No. 990
1-2 (In the Senate - Filed March 1, 2013; March 12, 2013, read
1-3 first time and referred to Committee on Criminal Justice;
1-4 April 2, 2013, reported adversely, with favorable Committee
1-5 Substitute by the following vote: Yeas 6, Nays 0; April 2, 2013,
1-6 sent to printer.)

1-7 COMMITTEE VOTE

	Yea	Nay	Absent	PNV
1-8				
1-9	Whitmire	X		
1-10	Huffman	X		
1-11	Carona		X	
1-12	Hinojosa	X		
1-13	Patrick	X		
1-14	Rodriguez	X		
1-15	Schwertner	X		

1-16 COMMITTEE SUBSTITUTE FOR S.B. No. 990 By: Hinojosa

1-17 A BILL TO BE ENTITLED
1-18 AN ACT

1-19 relating to criminal history record information obtained or
1-20 disseminated by certain private entities; providing a civil
1-21 penalty; authorizing fees.

1-22 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

1-23 SECTION 1. Section 411.0851, Government Code, is amended by
1-24 amending Subsections (a) and (b) and adding Subsections (a-1) and
1-25 (b-1) to read as follows:

1-26 (a) This section applies only to a [A] private entity that:
1-27 (1) compiles and disseminates for compensation
1-28 criminal history record information of individuals; and
1-29 (2) makes the information described by Subdivision (1)
1-30 available to customers in searchable format.

1-31 (a-1) A private entity described by Subsection (a) shall
1-32 destroy and may not disseminate any information in the possession
1-33 of the entity with respect to which the entity has received notice
1-34 that:

1-35 (1) an order of expunction has been issued under
1-36 Article 55.02, Code of Criminal Procedure; or

1-37 (2) an order of nondisclosure has been issued under
1-38 Section 411.081(d).

1-39 (b) Except as otherwise provided by federal law [Unless the
1-40 entity is regulated by the federal Fair Credit Reporting Act (15
1-41 U.S.C. Section 1681 et seq.) or the Gramm-Leach-Bliley Act (15
1-42 U.S.C. Sections 6801 to 6809)], a private entity described by
1-43 Subsection (a) that purchases or otherwise obtains criminal history
1-44 record information that originates from the department, a custodian
1-45 of court records, or [from] another governmental agency or entity
1-46 in this state:

1-47 (1) may disseminate that information only if, within
1-48 the 60-day [90-day] period preceding the date of dissemination, the
1-49 entity:

1-50 (A) originally obtains that information; or

1-51 (B) receives that information as updated record
1-52 information to its database; and

1-53 (2) shall on a quarterly basis notify the department
1-54 of the name and contact information of each similar entity to which
1-55 [if] the entity sold [sells] any compilation of the information in
1-56 the previous quarter [to another similar entity].

1-57 (b-1) Except as otherwise provided by federal law, a private
1-58 entity described by Subsection (a) that purchases or otherwise
1-59 obtains criminal history record information from a similar entity
1-60 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. 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.

(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. (a) In this section, "adverse decision" means a decision to disqualify an individual or otherwise negatively affect the eligibility of an individual for employment, licensing, or housing.

(b) 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 shall disclose to that individual the name and contact information of the entity from which the person received the information.

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,

4-1 accessed, received, or otherwise used on or after the effective
4-2 date of this Act. Criminal history record information purchased,
4-3 accessed, received, or otherwise used before the effective date of
4-4 this Act is governed by the law in effect on the date the
4-5 information was purchased, accessed, received, or otherwise used,
4-6 and the former law is continued in effect for that purpose.

4-7 SECTION 5. Not later than October 1, 2013, a private entity
4-8 that compiles and disseminates for compensation criminal history
4-9 record information shall:

4-10 (1) submit the initial quarterly notification under
4-11 Section 411.0851, Government Code, as amended by this Act; and

4-12 (2) file the information required by Section 411.0853,
4-13 Government Code, as added by this Act.

4-14 SECTION 6. This Act takes effect September 1, 2013.

4-15 * * * * *