

BILL ANALYSIS

C.S.H.B. 1258
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Judiciary & Civil Jurisprudence
Committee Report (Substituted)

BACKGROUND AND PURPOSE

Interested parties assert that state court documents should only be available to the public via electronic database if that database complies with applicable confidentiality and nondisclosure laws and if the documents within are clearly marked as unofficial. C.S.H.B. 1258 seeks to provide for such a database.

CRIMINAL JUSTICE IMPACT

It is the committee's opinion that this bill does not expressly create a criminal offense, increase the punishment for an existing criminal offense or category of offenses, or change the eligibility of a person for community supervision, parole, or mandatory supervision.

RULEMAKING AUTHORITY

It is the committee's opinion that this bill does not expressly grant any additional rulemaking authority to a state officer, department, agency, or institution.

ANALYSIS

C.S.H.B. 1258 amends the Government Code to authorize the Supreme Court of Texas to authorize the Office of Court Administration of the Texas Judicial System (OCA) to establish, operate, and maintain a state court document database and to limit the contents of the database to court documents filed with a court on or after the 60th day following the date on which OCA certifies to the supreme court that the database is fully operational and complies with the bill's provisions and any other documents authorized by the clerk of the court to be maintained in the database. The bill authorizes a person who establishes, maintains, or operates the state court document database for the supreme court to allow public access to a document filed with a court in this state and included in the database only if the database maintains each document included in a manner that complies with federal and state laws and orders of the court in which the document was filed related to confidentiality and nondisclosure of information and if a copy of each page of a document stored in the database clearly states that the document is an unofficial copy of a court document.

C.S.H.B. 1258 requires OCA to collect a fee, in an amount set by supreme court rule after consultation with court clerks, for each page or part of a page of a document electronically accessed by a member of the public from the state court document database and to deliver the collected fees to the clerk of the court in which the document was originally filed for deposit in the county general fund. The bill requires a person who establishes, maintains, or operates the state court document database to comply with the laws, rules, and court orders related to sensitive data and confidential documents that govern court documents in the custody of a court clerk. The bill establishes that a court clerk is not responsible for the management or removal of documents from the state court document database and exempts a court clerk from liability for damages resulting from the release of court documents if the clerk in good faith performs the duties as clerk as provided by law and the Texas Rules of Civil Procedure. The bill establishes

that a clerk shows that the clerk acted in good faith when the clerk shows that a reasonably prudent clerk, under the same or similar circumstances, could have believed that the clerk's conduct was justified based on the information the clerk possessed when the conduct occurred.

C.S.H.B. 1258 requires the Department of Public Safety to send all relevant criminal history record information contained in an order of nondisclosure of criminal history record information or a copy of the order to OCA and requires the clerk of a court to send a certified copy of a final order of expunction of criminal records to OCA.

C.S.H.B. 1258 requires the supreme court, not later than December 1, 2017, to adopt the rules, fees, and orders necessary to implement the bill's provisions. The bill applies to a court record filed before, on, or after the bill's effective date unless a restriction on court documents filed before that date would impair a contract entered into before that date.

EFFECTIVE DATE

On passage, or, if the bill does not receive the necessary vote, September 1, 2017.

COMPARISON OF ORIGINAL AND SUBSTITUTE

While C.S.H.B. 1258 may differ from the original in minor or nonsubstantive ways, the following comparison is organized and formatted in a manner that indicates the substantial differences between the introduced and committee substitute versions of the bill.

INTRODUCED

SECTION 1. Subchapter I, Chapter 51, Government Code, is amended by adding Section 51.808 to read as follows:

Sec. 51.808. INFORMATION PUBLICLY AVAILABLE IN ELECTRONIC COURT RECORD DATABASE.

No equivalent provision.

(a) In this section,

HOUSE COMMITTEE SUBSTITUTE

SECTION 1. Subchapter I, Chapter 51, Government Code, is amended by adding Section 51.808 to read as follows:

Sec. 51.808. STATE COURT DOCUMENT DATABASE; INFORMATION AVAILABLE; IMMUNITY.

(a) The purpose of this section is to ensure that advances in technology allowing the electronic transmission, retrieval, and storage of court documents do not compromise the integrity of official court records or violate the laws, rules, and court orders requiring the nondisclosure of sensitive or confidential information contained in the documents or in copies of those documents that are stored in a state court document database and accessible by the public.

(b) In this section:

(1) "Accessible by the public" related to a court document in the state court document database means that a person, other than a court clerk with whom the document was filed, a judge with subject matter jurisdiction over the case, the judge's staff, an attorney of record in the case, or a person

"electronic court record database" means a system for storing documents electronically filed with a court in this state that is accessible by the public regardless of whether a fee is charged.

(b) A person, including a governmental entity, who establishes, maintains, or operates an electronic court record database may not allow public access to any court document electronically filed with a county court, statutory county court, or district court in this state unless:

(1) the clerk of the court enters into a written agreement with the person authorizing public access to the document through the database; and

(2) the commissioner's court of the county in which the court is located approves the agreement described in Subdivision (1).

No equivalent provision.

No equivalent provision.

who maintains or operates the database, has access to the document through the system.

(2) "State court document database" means a database accessible by the public and established by the supreme court under this section for storing documents filed with a court in this state.

(c) A person who establishes, maintains, or operates the state court document database for the supreme court may allow public access to a document filed with a court in this state and included in the database only if:

(1) the database maintains each document included in a manner that complies with federal and state laws and orders of the court in which the document was filed related to confidentiality and nondisclosure of information; and

(2) a copy of each page of a document stored in the database clearly states that the document is an unofficial copy of a court document.

(d) The supreme court may authorize the Office of Court Administration of the Texas Judicial System to establish, operate, and maintain the state court document database under this section. The database may only include:

(1) court documents filed with a court on or after the 60th day following the date on which the Office of Court Administration of the Texas Judicial System certifies to the supreme court that the database is fully operational and complies with this section; and

(2) any other documents authorized by the clerk of the court to be maintained in the state court document database.

(e) The Office of Court Administration of the Texas Judicial System shall collect a fee for each page or part of a page of a document electronically accessed by a member of the public from the state court document database and deliver the fees collected under this section to the clerk of the court in which the document was originally filed for deposit in the county general fund. The fee is the amount set by rule by the supreme court after consultation with court clerks.

No equivalent provision.

(f) A person who establishes, maintains, or operates the state court document database under this section must comply with the laws, rules, and court orders related to sensitive data and confidential documents that govern court documents in the custody of a court clerk.

No equivalent provision.

(g) A court clerk is not responsible for the management or removal of documents from the state court document database and is not liable for damages resulting from the release of court documents if the clerk in good faith performs the duties as clerk as provided by law and the Texas Rules of Civil Procedure. A clerk shows that the clerk acted in good faith when the clerk shows that a reasonably prudent clerk, under the same or similar circumstances, could have believed that the clerk's conduct was justified based on the information the clerk possessed when the conduct occurred.

(c) Notwithstanding Section 22.004 or any other law, the supreme court may not adopt rules in conflict with or inconsistent with this section. To the extent this section conflicts with the Texas Rules of Civil Procedure or any other rule adopted by the supreme court, this section controls.

No equivalent provision.

No equivalent provision.

SECTION 2. Section 411.075(b), Government Code, is amended to read as follows:

(b) Not later than 10 business days after receipt of relevant criminal history record information contained in an order or a copy of an order under Subsection (a), the department shall seal any criminal history record information maintained by the department that is the subject of the order. The department shall also send all relevant criminal history record information contained in the order or a copy of the order by certified mail, return receipt requested, or secure electronic mail, electronic transmission, or facsimile transmission to the Office of Court Administration of the Texas Judicial System and to all:

(1) 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;

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

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

No equivalent provision.

SECTION 3. Section 3(c), Article 55.02, Code of Criminal Procedure, is amended to read as follows:

(c) When the order of expunction is final, the clerk of the court shall send a certified copy of the order to the Crime Records Service of the Department of Public Safety, to the Office of Court Administration of the Texas Judicial System, and to each official or agency or other governmental entity of this state or of any political subdivision of this state named in the order. The certified copy of the order must be sent by secure electronic mail, electronic transmission, or facsimile transmission or otherwise by certified mail, return receipt requested. In sending the order to a governmental entity named in the order, the clerk may elect to substitute hand delivery for certified mail under this subsection, but the clerk must receive a receipt for that hand-delivered order.

SECTION 2.

Section 51.808, Government Code, as added by this Act, applies to a court record filed before, on, or after the effective date of this Act unless a restriction on court records filed before that date would impair a contract entered into before that date.

SECTION 4. (a) Not later than December 1, 2017, the Texas Supreme Court shall adopt the rules, fees, and orders necessary to implement the changes in law made by this Act.

(b) Except as otherwise provided by this Act, Section 51.808, Government Code, as added by this Act, applies to a court document filed before, on, or after the effective date of this Act unless a restriction on court documents filed before that date would impair a contract entered before that date.

SECTION 3. This Act takes effect immediately if it receives a vote of two-

SECTION 5. Same as introduced version.

thirds of all the members elected to each house, as provided by Section 39, Article III, Texas Constitution. If this Act does not receive the vote necessary for immediate effect, this Act takes effect September 1, 2017.