

By: West

S.B. No. 1185

A BILL TO BE ENTITLED

AN ACT

1
2 relating to criminal history record information obtained or
3 disseminated by certain private entities; providing a civil
4 penalty.

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

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

9 (a) This section applies only to a [A] private entity that:
10 (1) compiles and disseminates for compensation
11 criminal history record information of individuals; and
12 (2) provides the information described by Subdivision
13 (1) to a customer on request without verifying the information
14 after receipt of the request.

15 (a-1) A private entity described by Subsection (a) shall
16 destroy and may not disseminate any information in the possession
17 of the entity with respect to which the entity has received a
18 certified or noncertified copy of the order showing or notice from
19 the department that:

20 (1) an order of expunction has been issued under
21 Article 55.02, Code of Criminal Procedure; or

22 (2) an order of nondisclosure of criminal history
23 record information has been issued under Subchapter E-1.

24 (b) Except as otherwise provided by federal law [~~Unless the~~

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

8 (1) may disseminate that information:

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

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

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

20 (i) a law enforcement agency; or

21 (ii) an investigations agency licensed
22 under Chapter 1702, Occupations Code, or similar statute of another
23 state or a consumer reporting agency for a purpose regulated under
24 the federal Fair Credit Reporting Act (15 U.S.C. Section 1681 et
25 seq.), if the recipient of the information has certified in writing
26 that the information will be used exclusively for the purpose of
27 generating investigative leads and will not be shared with any

1 other party unless verified as accurate and up to date under Section
2 20.071, Business & Commerce Code [~~as updated record information to~~
3 ~~its database~~]; and

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

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

10 SECTION 2. Subchapter F, Chapter 411, Government Code, is
11 amended by adding Sections 411.0852, 411.0853, 411.0854, and
12 411.0855 to read as follows:

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

15 (a) On written request by a person who is the subject of criminal
16 history record information maintained by a private entity described
17 by Section 411.0851(a), the entity shall provide to the person a
18 copy of all records regarding that person maintained by the entity
19 not later than the 30th business day after the receipt of the
20 request.

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

27 (c) If a person disputes the accuracy of any portion of the

1 person's criminal history record information maintained by a
2 private entity described by Section 411.0851(a), the person may
3 submit a written request to the entity for verification along with
4 any supporting documentation, including a copy of a court order, if
5 applicable. On receipt of a written request under this subsection,
6 the entity shall promptly initiate an investigation into the
7 accuracy of the disputed information. Not later than the 30th day
8 after the date the written request is received, the entity shall
9 complete the investigation, notify the person who is the subject of
10 the disputed information of the outcome of the investigation, and
11 correct the information as applicable.

12 (d) If a person disputes the criminal history record
13 information maintained by a private entity described by Section
14 411.0851(a) on the basis of an order of nondisclosure of criminal
15 history record information or an order of expunction, the person
16 may submit a written request to the entity for removal of the
17 person's information. Not later than the 15th day after receipt of
18 the request accompanied by a certified or uncertified copy of the
19 court order, the entity shall remove the information that is the
20 subject of the court order.

21 (e) A private entity described by Section 411.0851(a) that
22 fails to comply with Subsection (c) or (d) is liable for any damages
23 that are sustained as a result of the violation by the person who is
24 the subject of that information. A person who prevails in an action
25 brought under this subsection is also entitled to recover court
26 costs and reasonable attorney's fees.

27 Sec. 411.0853. PUBLIC DISCLOSURES BY PRIVATE ENTITIES;

1 CIVIL PENALTY. (a) Each private entity described by Section
2 411.0851(a) shall, not later than the 30th day after the date the
3 entity begins doing business in this state, disclose the entity's
4 name and contact information to the department in the form and
5 manner prescribed by the department.

6 (b) Disclosures required under this section are subject to
7 Chapter 552. The department shall publish the disclosures required
8 under this section on the department's Internet website.

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

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

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

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

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

1 is provided:

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

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

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

11 (b) A person who purchases, accesses, or otherwise receives
12 criminal history record information and uses the information as the
13 basis for an adverse decision regarding the individual who is the
14 subject of the information shall disclose to that individual the
15 name and contact information of the entity from which the person
16 received the information.

17 SECTION 3. Subchapter C, Chapter 20, Business & Commerce
18 Code, is amended by adding Section 20.071 to read as follows:

19 Sec. 20.071. FURNISHING OF CONSUMER REPORT FOR EMPLOYMENT
20 OR HOUSING PURPOSES; EXCEPTION FOR NATIONAL SECURITY
21 INVESTIGATION. (a) This section does not apply to the furnishing
22 of a consumer report to an agency or department of the federal
23 government that seeks to obtain and use the report for employment
24 purposes and whose agency or department head makes a written
25 finding as prescribed by 15 U.S.C. Section 1681b(b)(4)(A).

26 (b) A consumer reporting agency that compiles and reports
27 information related to a consumer's criminal history for purposes

1 of furnishing a consumer report for employment or housing purposes
2 shall implement and maintain strict procedures designed to ensure
3 that the criminal history record information reported is complete
4 and up to date. For purposes of this subsection, criminal history
5 record information contained in a consumer report is considered:

6 (1) complete if the information reflects:

7 (A) the offense alleged;

8 (B) the jurisdiction in which the criminal
9 history record information originated;

10 (C) the date of the arrest or filing of criminal
11 charges;

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

14 (E) the disposition of the case and the date of
15 that disposition, if applicable; and

16 (2) up to date if the information related to an arrest,
17 filing of criminal charges, or conviction or other disposition of
18 the case reflects the most recent public record status of the
19 information described by Subdivision (1) at the time the consumer
20 report is requested.

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

27 (b) Not later than October 1, 2017, a private entity that

1 compiles and disseminates for compensation criminal history record
2 information shall submit the initial quarterly notification under
3 Section 411.0851, Government Code, as amended by this Act.

4 (c) The Department of Public Safety shall adopt rules to
5 implement Section 411.0853, Government Code, as added by this Act,
6 not later than January 1, 2018.

7 (d) An entity subject to Section 411.0853, Government Code,
8 as added by this Act, is not required to submit the initial
9 disclosures required under that section before February 1, 2018.

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

17 (f) Section 411.0855, Government Code, as added by this Act,
18 applies only to criminal history record information purchased,
19 accessed, received, or otherwise used on or after the effective
20 date of this Act. Criminal history record information purchased,
21 accessed, received, or otherwise used before the effective date of
22 this Act is governed by the law in effect on the date the
23 information was purchased, accessed, received, or otherwise used,
24 and the former law is continued in effect for that purpose.

25 SECTION 5. This Act takes effect September 1, 2017.