

1-1 By: West S.B. No. 1185  
1-2 (In the Senate - Filed March 1, 2017; March 9, 2017, read  
1-3 first time and referred to Committee on Criminal Justice;  
1-4 May 3, 2017, reported favorably by the following vote: Yeas 7,  
1-5 Nays 0; May 3, 2017, sent to printer.)

1-6 COMMITTEE VOTE

	Yea	Nay	Absent	PNV
1-7				
1-8	X			
1-9			X	
1-10	X			
1-11	X			
1-12			X	
1-13	X			
1-14	X			
1-15	X			
1-16	X			

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.

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 (d) 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) provides the information described by Subdivision  
1-30 (1) to a customer on request without verifying the information  
1-31 after receipt of the request.

1-32 (a-1) A private entity described by Subsection (a) shall  
1-33 destroy and may not disseminate any information in the possession  
1-34 of the entity with respect to which the entity has received a  
1-35 certified or noncertified copy of the order showing or notice from  
1-36 the department that:

1-37 (1) an order of expunction has been issued under  
1-38 Article 55.02, Code of Criminal Procedure; or

1-39 (2) an order of nondisclosure of criminal history  
1-40 record information has been issued under Subchapter E-1.

1-41 (b) Except as otherwise provided by federal law [Unless the  
1-42 entity is regulated by the federal Fair Credit Reporting Act (15  
1-43 U.S.C. Section 1681 et seq.) or the Gramm-Leach-Bliley Act (15  
1-44 U.S.C. Sections 6801 to 6809)], a private entity described by  
1-45 Subsection (a) that purchases or otherwise obtains criminal history  
1-46 record information that originates from the department, a custodian  
1-47 of court records, or [from] another governmental agency or entity  
1-48 in this state:

1-49 (1) may disseminate that information:  
1-50 (A) [only] if, within the 60-day [90-day] period  
1-51 preceding the date of dissemination, the entity verifies[+]

1-52 [~~(A) originally obtains~~] that the information was  
1-53 obtained from or verified by the department, a custodian of court  
1-54 records, or another governmental agency or entity in this state  
1-55 within that same 60-day period; or

1-56 (B) with a notice [receives] that the information  
1-57 was received from the governmental source more than 60 days before  
1-58 the date it is being provided and may not reflect the current state  
1-59 of the criminal history record information and should be verified  
1-60 before taking any action based on the information, to:

1-61 (i) a law enforcement agency; or

2-1 (ii) an investigations agency licensed  
 2-2 under Chapter 1702, Occupations Code, or similar statute of another  
 2-3 state or a consumer reporting agency for a purpose regulated under  
 2-4 the federal Fair Credit Reporting Act (15 U.S.C. Section 1681 et  
 2-5 seq.), if the recipient of the information has certified in writing  
 2-6 that the information will be used exclusively for the purpose of  
 2-7 generating investigative leads and will not be shared with any  
 2-8 other party unless verified as accurate and up to date under Section  
 2-9 20.071, Business & Commerce Code [~~as updated record information to~~  
 2-10 ~~its database~~]; and

2-11 (2) shall on a quarterly basis notify the department  
 2-12 of the name and contact information of each similar entity to which  
 2-13 [~~if~~] the entity sold [~~sells~~] any compilation of the information in  
 2-14 the previous quarter [~~to another similar entity~~].

2-15 (d) Information reported to the department under Subsection  
 2-16 (b)(2) is not subject to Chapter 552.

2-17 SECTION 2. Subchapter F, Chapter 411, Government Code, is  
 2-18 amended by adding Sections 411.0852, 411.0853, 411.0854, and  
 2-19 411.0855 to read as follows:

2-20 Sec. 411.0852. ACCESS TO CRIMINAL HISTORY RECORD  
 2-21 INFORMATION MAINTAINED BY PRIVATE ENTITY; DISPUTES OF ACCURACY.

2-22 (a) On written request by a person who is the subject of criminal  
 2-23 history record information maintained by a private entity described  
 2-24 by Section 411.0851(a), the entity shall provide to the person a  
 2-25 copy of all records regarding that person maintained by the entity  
 2-26 not later than the 30th business day after the receipt of the  
 2-27 request.

2-28 (b) A person is entitled to receive one copy of the person's  
 2-29 criminal history record information pursuant to a request under  
 2-30 Subsection (a) at no charge to the person each calendar year. An  
 2-31 entity described by Section 411.0851(a) may charge a reasonable fee  
 2-32 for subsequent copies requested by the person within a calendar  
 2-33 year.

2-34 (c) If a person disputes the accuracy of any portion of the  
 2-35 person's criminal history record information maintained by a  
 2-36 private entity described by Section 411.0851(a), the person may  
 2-37 submit a written request to the entity for verification along with  
 2-38 any supporting documentation, including a copy of a court order, if  
 2-39 applicable. On receipt of a written request under this subsection,  
 2-40 the entity shall promptly initiate an investigation into the  
 2-41 accuracy of the disputed information. Not later than the 30th day  
 2-42 after the date the written request is received, the entity shall  
 2-43 complete the investigation, notify the person who is the subject of  
 2-44 the disputed information of the outcome of the investigation, and  
 2-45 correct the information as applicable.

2-46 (d) If a person disputes the criminal history record  
 2-47 information maintained by a private entity described by Section  
 2-48 411.0851(a) on the basis of an order of nondisclosure of criminal  
 2-49 history record information or an order of expunction, the person  
 2-50 may submit a written request to the entity for removal of the  
 2-51 person's information. Not later than the 15th day after receipt of  
 2-52 the request accompanied by a certified or uncertified copy of the  
 2-53 court order, the entity shall remove the information that is the  
 2-54 subject of the court order.

2-55 (e) A private entity described by Section 411.0851(a) that  
 2-56 fails to comply with Subsection (c) or (d) is liable for any damages  
 2-57 that are sustained as a result of the violation by the person who is  
 2-58 the subject of that information. A person who prevails in an action  
 2-59 brought under this subsection is also entitled to recover court  
 2-60 costs and reasonable attorney's fees.

2-61 Sec. 411.0853. PUBLIC DISCLOSURES BY PRIVATE ENTITIES;  
 2-62 CIVIL PENALTY. (a) Each private entity described by Section  
 2-63 411.0851(a) shall, not later than the 30th day after the date the  
 2-64 entity begins doing business in this state, disclose the entity's  
 2-65 name and contact information to the department in the form and  
 2-66 manner prescribed by the department.

2-67 (b) Disclosures required under this section are subject to  
 2-68 Chapter 552. The department shall publish the disclosures required  
 2-69 under this section on the department's Internet website.

3-1 (c) The department shall adopt rules to implement this  
3-2 section.

3-3 (d) An entity that fails to comply with Subsection (a) is  
3-4 liable to the state for a civil penalty of \$500 for each violation.  
3-5 Each day the violation continues constitutes a separate violation  
3-6 for purposes of this subsection.

3-7 (e) At the request of the department, the attorney general  
3-8 may bring an action to recover the civil penalty authorized by  
3-9 Subsection (d). The attorney general and the department may  
3-10 recover reasonable expenses incurred in obtaining the civil  
3-11 penalty, including court costs, reasonable attorney's fees,  
3-12 investigation costs, witness fees, and deposition expenses.

3-13 (f) A civil penalty collected under Subsection (d) shall be  
3-14 deposited in the state treasury to the credit of the department for  
3-15 the administration of this chapter.

3-16 Sec. 411.0854. DISCLOSURES BY PRIVATE ENTITIES TO  
3-17 PURCHASERS OR OTHER RECIPIENTS. A private entity described by  
3-18 Section 411.0851(a) shall disclose to each purchaser or recipient  
3-19 of criminal history record information at the time the information  
3-20 is provided:

3-21 (1) the name of the governmental entity from which the  
3-22 information originated; and

3-23 (2) the date on which the information was last  
3-24 received from or updated by the governmental entity.

3-25 Sec. 411.0855. DUTIES OF PURCHASER OR RECIPIENT OF CRIMINAL  
3-26 HISTORY RECORD INFORMATION USED FOR EMPLOYMENT, LICENSING, OR  
3-27 HOUSING. (a) In this section, "adverse decision" means a decision  
3-28 to disqualify an individual or otherwise negatively affect the  
3-29 eligibility of an individual for employment, licensing, or housing.

3-30 (b) A person who purchases, accesses, or otherwise receives  
3-31 criminal history record information and uses the information as the  
3-32 basis for an adverse decision regarding the individual who is the  
3-33 subject of the information shall disclose to that individual the  
3-34 name and contact information of the entity from which the person  
3-35 received the information.

3-36 SECTION 3. Subchapter C, Chapter 20, Business & Commerce  
3-37 Code, is amended by adding Section 20.071 to read as follows:

3-38 Sec. 20.071. FURNISHING OF CONSUMER REPORT FOR EMPLOYMENT  
3-39 OR HOUSING PURPOSES; EXCEPTION FOR NATIONAL SECURITY  
3-40 INVESTIGATION. (a) This section does not apply to the furnishing  
3-41 of a consumer report to an agency or department of the federal  
3-42 government that seeks to obtain and use the report for employment  
3-43 purposes and whose agency or department head makes a written  
3-44 finding as prescribed by 15 U.S.C. Section 1681b(b)(4)(A).

3-45 (b) A consumer reporting agency that compiles and reports  
3-46 information related to a consumer's criminal history for purposes  
3-47 of furnishing a consumer report for employment or housing purposes  
3-48 shall implement and maintain strict procedures designed to ensure  
3-49 that the criminal history record information reported is complete  
3-50 and up to date. For purposes of this subsection, criminal history  
3-51 record information contained in a consumer report is considered:

3-52 (1) complete if the information reflects:

3-53 (A) the offense alleged;

3-54 (B) the jurisdiction in which the criminal  
3-55 history record information originated;

3-56 (C) the date of the arrest or filing of criminal  
3-57 charges;

3-58 (D) the current status of any criminal case  
3-59 proceeding, if charges have been filed; and

3-60 (E) the disposition of the case and the date of  
3-61 that disposition, if applicable; and

3-62 (2) up to date if the information related to an arrest,  
3-63 filing of criminal charges, or conviction or other disposition of  
3-64 the case reflects the most recent public record status of the  
3-65 information described by Subdivision (1) at the time the consumer  
3-66 report is requested.

3-67 SECTION 4. (a) Section 411.0851, Government Code, as  
3-68 amended by this Act, applies only to information disseminated on or  
3-69 after the effective date of this Act. Information disseminated

4-1 before the effective date of this Act is governed by the law in  
4-2 effect on the date the information was disseminated, and the former  
4-3 law is continued in effect for that purpose.

4-4 (b) Not later than October 1, 2017, a private entity that  
4-5 compiles and disseminates for compensation criminal history record  
4-6 information shall submit the initial quarterly notification under  
4-7 Section 411.0851, Government Code, as amended by this Act.

4-8 (c) The Department of Public Safety shall adopt rules to  
4-9 implement Section 411.0853, Government Code, as added by this Act,  
4-10 not later than January 1, 2018.

4-11 (d) An entity subject to Section 411.0853, Government Code,  
4-12 as added by this Act, is not required to submit the initial  
4-13 disclosures required under that section before February 1, 2018.

4-14 (e) Section 411.0854, Government Code, as added by this Act,  
4-15 applies only to criminal history record information provided to a  
4-16 purchaser or recipient on or after the effective date of this Act.  
4-17 Criminal history record information provided to a purchaser or  
4-18 recipient before the effective date of this Act is governed by the  
4-19 law in effect on the date the information was provided, and the  
4-20 former law is continued in effect for that purpose.

4-21 (f) Section 411.0855, Government Code, as added by this Act,  
4-22 applies only to criminal history record information purchased,  
4-23 accessed, received, or otherwise used on or after the effective  
4-24 date of this Act. Criminal history record information purchased,  
4-25 accessed, received, or otherwise used before the effective date of  
4-26 this Act is governed by the law in effect on the date the  
4-27 information was purchased, accessed, received, or otherwise used,  
4-28 and the former law is continued in effect for that purpose.

4-29 SECTION 5. This Act takes effect September 1, 2017.

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