86R1445 JSC-D

By:  West S.B. No. 120

A BILL TO BE ENTITLED

AN ACT

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

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

(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 a certified or noncertified copy of the order showing or notice from the department that:

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

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

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

(1)  may disseminate that information:

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

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

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

(i)  a law enforcement agency; or

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

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

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

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 a private entity described by Section 411.0851(a), the person may submit a written request to the entity for verification along with any supporting documentation, including a copy of a court order, if applicable. 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)  If a person disputes the criminal history record information maintained by a private entity described by Section 411.0851(a) on the basis of an order of nondisclosure of criminal history record information or an order of expunction, the person may submit a written request to the entity for removal of the person's information. Not later than the 15th day after receipt of the request accompanied by a certified or uncertified copy of the court order, the entity shall remove the information that is the subject of the court order.

(e)  A private entity described by Section 411.0851(a) that fails to comply with Subsection (c) or (d) 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 subsection 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)  Disclosures required under this section are subject to Chapter 552. The department shall publish the disclosures required under this section on the department's Internet website.

(c)  The department shall 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)  the name of the governmental entity from which the information originated; and

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

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

Sec. 20.071.  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 requested.

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)  Not later than October 1, 2019, a private entity that compiles and disseminates for compensation criminal history record information shall submit the initial quarterly notification under Section 411.0851, Government Code, as amended by this Act.

(c)  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, 2020.

(d)  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, 2020.

(e)  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.

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

SECTION 5.  This Act takes effect September 1, 2019.