

BILL ANALYSIS

H.B. 4267
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Judiciary & Civil Jurisprudence
Committee Report (Unamended)

BACKGROUND AND PURPOSE

It has been suggested that the Texas Free Enterprise and Antitrust Act of 1983 could benefit from updates regarding the confidentiality of common investigative materials and information and from certain clarifications to the civil investigative demand process under the act to help ensure antitrust investigations are not being hindered. H.B. 4267 seeks to make those clarifications and necessary updates by, among other changes, permitting the attorney general to share civil investigative demand materials with the attorney general's agents, providing for electronic service of demands, authorizing the attorney general to file suit in Travis County to enforce demands, and making confidential certain documents and information discovered or produced in a suit relating to unlawful practices in restraint of trade or commerce.

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

H.B. 4267 amends the Business & Commerce Code to exempt from state public information law the attorney general's investigative file, wholly or partly, and any other information or documentary material provided to the attorney general under the Texas Free Enterprise and Antitrust Act of 1983. The bill defines "investigative file" as any documentary materials or information collected, assembled, or maintained by or on behalf of the attorney general with respect to an investigation or litigation conducted under the act and lists documents and communications included in the definition.

H.B. 4267 revises provisions relating to civil investigative demands with respect to service and proof of service, failure to comply with a demand, and the disclosure and use of material and information. Among other updates, the bill does the following:

- provides for service of any demand to be made upon any person by email or other electronic means if the person being served has consented to the electronic service in writing;
- authorizes the attorney general to file a petition for a court order for enforcement of the failure to comply with a demand in the district court in Travis County;
- removes the requirement for the petition to be filed, if a person transacts business in more than one county, in the county of the person's principal office or place of business in Texas or in any other county as may be agreed upon by the person and the attorney general;

- exempts an authorized official, employee, or agent of the attorney general from the prohibition against documentary material, answers to interrogatories, or transcripts of oral testimony, or copies or contents thereof, being available for examination or used by any person;
- excepts from such a prohibition a state agency, the United States, or another state or territory for official law enforcement purposes or as provided elsewhere in provisions relating to civil investigative demands; and
- authorizes the attorney general to make available for inspection or prepare copies of documentary material, answers to interrogatories, or transcripts of oral testimony in the attorney general's possession as may be required for official use by any authorized official, employee, or agent of the attorney general.

Information, documentary materials, and communication with the attorney general provided under a procedure not specified in those provisions is confidential but may be used in a judicial proceeding at the attorney general's discretion.

H.B. 4267 makes confidential the documents and other information discovered or produced in a suit brought by the attorney general to enforce any of the prohibitions against unlawful practices with respect to the restraint of trade or commerce.

EFFECTIVE DATE

September 1, 2021.