

BILL ANALYSIS

C.S.H.B. 4123
By: Guillen
Homeland Security & Public Safety
Committee Report (Substituted)

BACKGROUND AND PURPOSE

There are new federal requirements regarding FBI criteria for the use of criminal background check information that are intended to lead to a more efficient hiring process or contracting process while ensuring the security of private information. However, the state, in its wide variety of statutes authorizing applicable entities to obtain and use such information, has not yet explicitly aligned state law with the FBI criteria to clarify an entity's attendant duties and responsibilities with respect to that information. For instance, there is a lack of clarity in those wide-ranging statutes regarding the destruction of obtained information once it is used for the authorized purpose. C.S.H.B. 4123 seeks to update and reorganize, as applicable, the state's criminal background check requirements relating to access to and use of the information and to clarify, across multiple codes, the duties and responsibilities of an applicable entity with regard to that information and criteria.

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 rulemaking authority is expressly granted to the Department of Public Safety in SECTION 43 of this bill.

ANALYSIS

C.S.H.B. 4123 amends the Education Code, Estates Code, Finance Code, Government Code, and Occupations Code to, as follows:

- revise, reorganize, and clarify current law relating to, and to establish certain other clarifying provisions regarding, access to and use of certain criminal history record information by a wide range of entities, subject to the applicable code's provisions, for purposes authorized under state law regarding matters of hiring, contracting, and subcontracting;
- standardize, update and repeal, and clarify the applicable statutory authorizations and requirements with regard to those specific respective individual entities and organizations;
- expressly authorize and require, as applicable, the destruction by an entity of certain obtained information once the information has been used for its intended purpose, with certain exceptions to the destruction of information that is being used in a criminal proceeding, in a hearing, under court order, or with the subject's consent; and
- as applicable to an entity, expressly prohibit the release or disclosure to any person of criminal history record information obtained from the FBI.

Government Code Changes Generally Applicable to Criminal History Record Information

C.S.H.B. 4123 amends the Government Code, with respect to its current provisions generally governing access to and use of the criminal history record information maintained by the Department of Public Safety (DPS) by applicable entities, to do the following:

- define the following terms:
 - "applicant," which is an individual who submits an application for employment, licensure, certification, or registration that requires DPS to conduct a background check using criminal history record information; and
 - "application," which is an application submitted by hard copy or electronically for employment, licensure, certification, or registration that requires DPS to conduct a background check using criminal history record information;
- clarify that the restriction under current law applicable to the use of criminal history record information that limits release of information obtained from the FBI to a governmental entity or as authorized by federal law and regulations, federal executive orders, and federal policy is applicable notwithstanding any provision in applicable state law relating to the release or disclosure of such information;
- set out provisions clarifying that, as consistent with state public policy, entities specified by the bill, and as subsequently described with respect to the applicable code's revision, are expressly authorized to obtain the following as it relates to information about an applicable person as prescribed by the bill:
 - through the FBI, criminal history record information maintained or indexed by the FBI that pertains to the person; and
 - from DPS or any other state criminal justice agency, criminal history record information maintained by DPS or the applicable criminal justice agency that relates to the person; and
- set out provisions clarifying that any information obtained from DPS or any other state criminal justice agency under the bill's provisions may not be released or disclosed to any person except as provided by the bill and applicable state law.

Education Code Changes

Contracting and Subcontracting Entities

C.S.H.B. 4123 amends the Education Code to revise provisions relating to the review of criminal history record information for a person who is offered employment by an applicable entity that contracts with a school district, open-enrollment charter school, or shared services arrangement to provide services, if the person will have continuing duties related to the contracted services and will have direct contact with students, to do the following:

- make such provisions explicitly applicable to subcontractors of the contracting entities;
- with respect to such contracting or subcontracting entities:
 - remove a provision exempting from the applicability of such provisions an employee or applicant of a public works contract who is not an applicant for or holder of an applicable educator certificate who is employed by a contracting or subcontracting entity to provide engineering, architectural, or construction services to the district, school, or arrangement and who will have continuing duties related to the contracted services and the opportunity for direct contact with students in connection with the person's continuing duties; and
 - clarify that, if the contracting entity or subcontracting entity is not a qualified school contractor, as defined by the bill, the applicable person is required to submit to a national criminal history record information review by the school district, charter school, regional education service center, commercial transportation company, or education shared services arrangement;
- change the entities responsible for reviewing an applicable person's criminal history record information and certifying to the applicable entities that the review has taken

place from only an applicable contracting entity, as specified in current law, to a contracting or subcontracting entity, on the condition that the entity is a qualified school contractor or, as applicable, is the school district, charter school, regional education service center, commercial transportation company, or education shared services arrangement;

- require a qualified school contractor to certify to the school district, charter school, or shared services arrangement that the entity has received all criminal history record information relating to an applicable employee or applicant; and
- prohibit a school district, charter school, regional education service center, commercial transportation company, education shared services arrangement, or qualified school contractor or subcontractor from permitting an employee hired for a position that includes contact with students as specified by the bill to provide services at a school, if the employee has been convicted of a felony or misdemeanor offense that would prevent a person from being so employed under applicable state law.

Definition of Qualified School Contractor

C.S.H.B. 4123 defines "qualified school contractor," for purposes of these Education Code provisions, by reference to the bill's definition of the term, as added in the bill's Government Code provisions, as an entity that:

- contracts or subcontracts to provide services to a school district, charter school, or shared services arrangement; and
- is determined eligible by DPS to obtain criminal history record information under the federal National Child Protection Act of 1993 for an employee, applicant for employment, or volunteer of the qualified school contractor.

Criminal History Records of Volunteers and Applicants to Volunteer

C.S.H.B. 4123, in the provision authorizing a school district, charter school, or shared services arrangement to obtain from any law enforcement or criminal justice agency all criminal history record information that relates to a volunteer or a person applying to be a volunteer, clarifies that the information may be obtained from DPS.

Estates Code Changes

C.S.H.B. 4123 amends the Estates Code to revise provisions relating to guardianship appointments to do the following:

- require the clerk of a county having venue of a proceeding for the appointment of a guardian to obtain criminal history record information relating to an applicable guardian or potential guardian from the FBI, regardless of whether the Judicial Branch Certification Commission (JBCC) obtained information on such a person;
- repeal the condition that the court request criminal record information from DPS relating to a guardian before the JBCC must provide this information to the applicable court clerk;
- prohibit the JBCC from disseminating criminal history record information that was obtained from the FBI for purposes of determining whether an applicant is ineligible for certification as a guardian;
- remove the authorization for criminal history record information with respect to an applicable guardian to be released on the consent of the person being investigated; and
- restrict the use of applicable criminal history record information to determine whether to:
 - appoint, remove, or continue the appointment of a private professional guardian, a guardianship program, or the Health and Human Services Commission (HHSC); or
 - appoint any other person proposed to serve as a guardian, including a proposed temporary guardian or a proposed successor guardian, other than an attorney.

The bill repeals Estates Code provisions providing for a proposed guardian or DPS, on request of the court clerk, to submit criminal history record information to the court clerk.

C.S.H.B. 4123 repeals Government Code provisions providing for a court clerk and HHSC in a guardianship proceeding to receive applicable criminal history record information regarding the potential or current guardian from the guardian or potential guardian and from HHSC.

C.S.H.B. 4123, in the applicable Government Code provision, makes an applicable court clerk liable to those damaged if damage or loss results to a guardianship or ward because of the neglect or failure of the clerk to obtain the required criminal history record information.

Finance Code Changes

C.S.H.B. 4123 amends the Finance Code to include among the individuals for whom the Office of Consumer Credit Commissioner (OCCC) must obtain criminal history record information maintained by DPS, the FBI Identification Division, or another law enforcement agency, an applicant for or holder of an applicable license or registration, an applicant for employment, or an employee, volunteer, contractor, or subcontractor of the OCCC.

Government Code Changes

Judicial Branch Certification Commission

Court Professionals

C.S.H.B. 4123 amends the Government Code to set out provisions relating to the JBCC, with respect to the rules on ineligibility of an applicant for certification, registration, and licensing as a court professional, that do the following:

- require the JBCC, in accordance with applicable law and rules adopted by order of the U.S. Supreme Court, to obtain criminal history record information that is maintained by DPS or the FBI identification division on each applicant for certification, registration, or licensing as a court professional to be used only for the determination of each applicant's ineligibility under the adopted rules;
- prohibit the JBCC from using such information obtained from the FBI for any other purpose and from transferring that information to any other state agency, entity, or person; and
- require the JBCC to destroy the criminal history record information immediately after each determination of ineligibility is made.

Duty to Assist in Qualifying Certain Guardians

C.S.H.B. 4123, with respect to the duty under current law for the JBCC to obtain criminal history record information in order to assist in qualifying certain guardians, the bill requires the applicable court clerk, instead of the JBCC as provided under current law, to obtain fingerprint-based criminal history record information of a proposed guardian if the liquid assets of the estate of a ward exceed \$50,000 or the proposed guardian is not a Texas resident and to require a proposed guardian, if the liquid assets of the estate of a ward are \$50,000 or less and the proposed guardian is a Texas resident, to file with the JBCC proof of having submitted to a fingerprint-based criminal history search.

Prohibited Disclosure of Information by Specified Entities

C.S.H.B. 4123 prohibits the entities specified by the bill, except for the Texas Alcoholic Beverage Commission (TABC), from releasing or disclosing to any person such information if it is obtained from the FBI. The bill establishes that, other than as specified, this prohibition does not apply to the disclosure of the information obtained from DPS or any other state criminal

justice agency in a criminal proceeding or in a hearing conducted by an applicable specified entity. The following specified entities, however, do not provide for this exception with respect to criminal proceedings and entity hearings: an applicable receiver; HHSC, with respect to provisions regarding certain counselors and HHSC employment; the Early Childhood Intervention program; a local mental health or intellectual and developmental disability authority or a community center, as applicable; the clerk of a county having venue over a proceeding for the appointment of a guardian; a state agency that meets certain requirements; the JBCC; and a court of appeals.

This prohibition revises current law with respect to the entities that were not already prohibited under current law from disclosing such information except under such conditions or were authorized to disclose such information under other conditions.

Required Destruction of Information by Specified Entities

C.S.H.B. 4123 requires the specified entities, other than TABC, to destroy the information obtained under the bill's provisions after the information is used for its authorized purpose, or as provided by the bill. This provision applies with respect to the entities that were not already expressly required to destroy all applicable DPS, criminal justice agency, and FBI information after its authorized use.

Entities Entitled to Obtain Criminal History Record Information

C.S.H.B. 4123 entitles the following entities, to which the bill's prohibitions on disclosure and its requirements for destruction of the specified information apply, to obtain criminal history record information as provided by the bill from the FBI, DPS, and other state criminal justice agencies, with respect to persons for whom the entity is already entitled to obtain DPS criminal history record information and with respect to the additional specified persons:

- DPS, with respect to a person who is:
 - an applicant for or holder of a handgun license or an applicant for or holder of an instructor certification issued by DPS;
 - an applicant for or holder of a capitol access pass issued by DPS; or
 - an applicant for or holder of a license or commission issued by DPS under the Private Security Act;
- the State Board for Educator Certification (SBEC), with respect to a person who:
 - currently holds an applicable educator certificate issued by the SBEC;
- the Texas Education Agency (TEA), with respect to a person who:
 - is employed or is an applicant for employment by an entity that subcontracts with a school district, open-enrollment charter school, or shared services arrangement, if the applicant or employee has or will have continuing duties related to the contracted or subcontracted services and direct contact with students;
 - is employed or is an applicant for employment by TEA;
 - is subject to placement on the TEA registry of persons not eligible for employment in public schools; or
 - provides services as a tutor on behalf of a service provider that offers accelerated or supplemental instruction, if the tutor has or will have continuing duties related to the services provided and has or will have direct contact with students;
- the Texas Department of Licensing and Regulation (TDLR), with respect to:
 - applicants for or holders of driver education instructor licenses, licenses for specified health professions, massage therapists, and for individuals with certain interests in massage therapy businesses; or
 - a person who is an applicant for or holder of a license issued under applicable law governing professional employer organizations or a controlling person under such provisions;

- the consumer credit commissioner, with respect to an officer, director, owner, or employee of a person for whom the commissioner is entitled to obtain such information or another person having a substantial relationship with such a person;
- the Texas Racing Commission, with respect to:
 - a holder of a license issued under the Texas Racing Act;
 - an owner or manager of an applicant for or holder of a license issued under the act;
 - a person who has an interest in an entity to which that act applies;
 - an applicant for employment at or current employee of a place of employment within the Texas racing industry; or
 - a current employee of, or person who contracts or may contract to provide goods or services with the racing commission;
- an applicable school district, charter school, private school, regional education service center, commercial transportation company, or education shared services arrangement, or an entity that contracts to provide services to a school district, charter school, or shared services arrangement with respect to an applicable school district, charter school, private school, regional education service center, commercial transportation company, or education shared services arrangement, or an entity that contracts to provide services to a school district, charter school, or shared services arrangement, with respect to:
 - an employee of or applicant for employment by a subcontractor of an entity that contracts to provide services to such an entity; or
 - a tutor who provides services on behalf of a service provider that offers accelerated or supplemental instruction;
- the State Board of Veterinary Medical Examiners (TBVME), with respect to an applicant for or holder of a license, temporary license, or special license to practice veterinary medicine or a veterinary technician license;
- the Texas State Board of Public Accountancy (TSBPA), with respect to:
 - an applicant for a certified public accountant (CPA) license;
 - an applicant for reinstatement or renewal of a CPA license or certificate; or
 - an owner or an individual who seeks to become an owner of a CPA firm if the owner or prospective owner is not a CPA license holder;
- the Texas Department of Insurance (TDI), with respect to a director of an insurance company regulated by TDI;
- a receiver under the Insurer Receivership Act, with respect to a creditor or claimant of the receivership estate or against whom the receivership estate has a claim;
- the Texas Lottery Commission, with respect to a lottery operator or prospective lottery operator who has submitted a written proposal to the commission in connection with the procurement of lottery operations and services by the lottery commission;
- the comptroller of public accounts, with respect to a person who is an intern, learner, trainee, contractor, subcontractor, apprentice, or volunteer of, or who is an applicant for service in one of those capacities with, the comptroller's office in a position that involves certain tasks;
- the Department of State Health Services (DSHS) and HHSC, with respect to persons required to be fingerprinted who are:
 - certain persons for whom DSHS or HHSC may already obtain DPS information;
 - applicants or holders of specified licenses issued under the Texas Food, Drug, and Cosmetic Act; or
 - applicants for or holders of a license to manufacture consumable hemp products;
- the executive commissioner of HHSC or the executive commissioner's designee, with respect to persons required to be fingerprinted who are:
 - certain persons for whom HHSC may already obtain criminal history record information; or
 - applicants for a position in which the person, as a contractor or volunteer, would have access to sensitive personal or financial information, as determined by the executive commissioner, in specified HHSC roles;

- the Department of Family and Protective Services (DFPS) or HHSC, as applicable, with respect to persons required to be fingerprinted who are certain persons for whom DFPS or HHSC may already obtain criminal history record information;
- the Early Childhood Intervention program;
- HHSC, Medicaid agencies, and the HHSC office of the inspector general;
- a local mental health or intellectual and developmental disability authority, or a community center, as applicable;
- HHSC with respect to a person required to be fingerprinted who is an initial or renewal applicant for:
 - a nurse aide certification with inclusion in the nurse aide registry;
 - a medication aide permit issued for providing home health, hospice, habilitation, or personal assistance; or
 - a nursing facility administrator license issued for convalescent and nursing facilities and related institutions;
- the Texas Board of Nursing, with respect to a person who is accepted for enrollment in a nursing education program that prepares the person for licensure as a vocational, registered, or advanced practice registered nurse;
- an appraisal district and the Texas Appraiser Licensing and Certification Board (TALCB), with respect to a person who is an applicant for a license or certification as an appraiser trainee, licensed residential appraiser, certified residential appraiser, certified general appraiser, or an appraisal management company regulated by TALCB;
- the clerk of a county having venue over a proceeding for the appointment of a guardian;
- a state agency, as applicable to information technology personnel;
- the JBCC; and
- the Supreme Court of Texas, the Texas Court of Criminal Appeals, or a court of appeals.

C.S.H.B. 4123 entitles the following entities, to whom the bill's prohibitions on disclosure and requirement for destruction of the specified information apply, to obtain criminal history record information as provided by the bill from the FBI, DPS, and other state criminal justice agencies, with respect to the following specified persons:

- TABC, with respect to a person who is an applicant for or holds a license, permit, or certificate under the Texas Alcoholic Beverage Code;
- the Texas Behavioral Health Executive Council (BHEC), with respect to a person who is an applicant for or licensed as:
 - a licensed psychologist, licensed psychological associate, or licensed specialist in school psychology;
 - a licensed marriage and family therapist or licensed marriage and family therapist associate;
 - a licensed professional counselor or licensed professional counselor associate; or
 - a licensed baccalaureate social worker, licensed master social worker, or licensed clinical social worker;
- the Texas Board of Chiropractic Examiners (TBCE), with respect to a person who is an applicant for a license or registration or a holder of a license or registration to practice chiropractic;
- the State Board of Dental Examiners (SBDE), with respect to a person who:
 - is an applicant for or holder of a license, certificate, registration, permit, or other authorization under the Dental Practice Act;
 - requests a determination of eligibility for a license, certificate, registration, permit, or other authorization from the SBDE; or
 - is an applicant for employment at or current employee of the SBDE;
- a qualified school contractor, with respect to an employee, applicant for employment, or volunteer of the qualified school contractor;
- the Texas Commission on Environmental Quality (TCEQ), with respect to a person who:

- is an applicant for or holder of a license, permit, or registration to provide specified sanitation, waste disposal, sewage, irrigation, or water quality control services; or
- requests a determination of eligibility for such a license, permit, or registration from the TCEQ;
- the Texas Funeral Service Commission (TFSC), with respect to a person who is:
 - an applicant for a license or certificate as a funeral director or embalmer;
 - an applicant or holder of a license for certain crematory, funeral directing, and embalming services;
 - an applicant for employment at or current employee of the TFSC; or
 - a person authorized to access vital records or the vital records electronic registration system under applicable state law or a funeral director;
- the manufactured housing division of the Texas Department of Housing and Community Affairs (TDHCA) with respect to a person who is:
 - an applicant for or holder of a license under the Texas Manufactured Housing Standards Act; or
 - an owner, officer, or related person or manager of such a person;
- the state fire marshal, with respect to a person who is an applicant for a license or other authorization issued by the marshal to engage in specified regulated activity;
- the Texas Medical Board (TMB), with respect to a person who is an applicant or holder of a license to practice medicine or specified forms of treatment;
- the Texas Department of Motor Vehicles (TxDMV), with respect to a person who is:
 - an applicant for or holds a general distinguishing number (GDN);
 - an applicant for or holds a license for the distribution and sale of motor vehicles or the trade in salvage motor vehicles; or
 - an officer, director, member, manager, principal, partner, trustee, or other person acting in a representative capacity for an applicant, GDN holder, or license holder and whose act or omission would be cause for denying, revoking, or suspending a GDN or license issued under applicable law;
- the Texas Optometry Board, with respect to a person who is an applicant for or holder of a license to practice optometry;
- the Executive Council of Physical Therapy and Occupational Therapy Examiners (ECPTOTE), with respect to a person who is:
 - an applicant for or the holder of a physical therapist or physical therapist assistant license; or
 - an applicant for or the holder of an occupational therapist or occupational therapy assistant license;
- the Texas State Board of Plumbing Examiners (TSBPE), with respect to an applicant for a license, registration, endorsement, or certificate under the Plumbing License Law;
- the Texas Real Estate Commission (TREC), with respect to:
 - an applicant for an initial broker or sales agent license or renewal of a broker or sales agent license;
 - an applicant for an original certificate of registration as an easement or right-of-way agent or renewal of a certificate of registration as an easement or right-of-way agent; or
 - an applicant for an apprentice inspector license, a real estate inspector license, or a professional inspector license or renewal of any such license;
- TALCB, with respect to:
 - an applicant for an appraiser trainee license, a residential appraiser license, a residential appraiser certificate or a general appraiser certificate or renewal of any such license or certificate; or
 - an applicant for registration or renewal of a registration as an appraisal management company;

- the Texas Board of Professional Engineers and Land Surveyors, with respect to an applicant for or holder of a license under the Texas Engineering Practice Act or the Professional Land Surveying Practices Act;
- the Texas State Board of Pharmacy (TSBP), with respect to a person who:
 - is an applicant for or holder of a license, certificate, registration, permit, or other authorization relating to practicing pharmacy;
 - is an applicant for or holder of a Class A, Class B, Class C, Class D, or Class E pharmacy license;
 - requests a determination of eligibility for a license, certificate, registration, permit, or other authorization from the TSBP; or
 - is an applicant for employment at or current employee of the TSBP;
- the State Office of Administrative Hearings (SOAH), with respect to a person who is:
 - an employee of, or an applicant for employment with, SOAH; or
 - a contractor, subcontractor, volunteer, or intern of SOAH, or an applicant to serve in one of those capacities; and
- the Texas Board of Architectural Examiners (TBAE), with respect to a person who is:
 - an applicant for or holder of an architectural registration;
 - an applicant for or holder of a landscape architectural registration; or
 - an applicant for or holder of an interior design registration.

Information Obtained from DPS or Another State Criminal Justice Agency

C.S.H.B. 4123 does the following with respect to the information obtained from DPS or a state criminal justice agency:

- includes in the authorized uses of such information a purpose related to the reprimand or revocation of an SBEC certificate;
- authorizes such information to be disclosed between DSHS and HHSC to share with the other agency for the purposes authorized under applicable law;
- authorizes such information to be disclosed to a nursing board that is a member of the nurse licensure compact; and
- specifies that such information obtained by an applicable qualified school contractor is not subject to disclosure under state public information law.

Deadline for Destruction of Information

C.S.H.B. 4123 removes the deadline by which an applicable school district, charter school, private school, regional education service center, commercial transportation company, or education shared services arrangement or an entity that contracts to provide services to a school district, charter school, or shared services arrangement must destroy such information.

Other Government Code Revisions

Comptroller's Entitlement to Information

C.S.H.B. 4123 includes the following duties among those that, if given to an applicable person, trigger the comptroller's entitlement to obtain criminal history record information with respect to that person:

- performing work on a computer system; or
- having remote access to comptroller computer systems, information technology, or information technology resources.

Texas Alcoholic Beverage Commission: Authorization to Require Submission of Fingerprints

C.S.H.B. 4123 authorizes TABC to require any person for whom TABC is authorized to obtain and use criminal history record information to submit a complete and legible set of fingerprints to on a prescribed form for the purpose of obtaining such information. The bill establishes that

criminal history record information obtained by TABC from the FBI may be released or disclosed only to a governmental entity or as authorized by federal law and regulations, federal executive orders, and federal policy.

Fitness Determination by Qualified School Contractor and DPS Rulemaking

C.S.H.B. 4123 authorizes an applicable qualified school contractor to provide a fitness determination based on the information obtained under the bill's provisions to a school district, charter school, or shared services arrangement. The bill authorizes DPS, in coordination with the commissioner of education, to adopt rules necessary to implement provisions with respect to qualified school contractors.

Texas Funeral Service Commission

C.S.H.B. 4123 prohibits the TFSC from considering certain moving violation offenses to determine whether to hire or retain an employee or to contract with a person on whom criminal history record information is obtained.

Applicability of Certain Prohibitions

C.S.H.B. 4123 establishes that its provisions do not prohibit HHSC, the office of inspector general, a local mental health or intellectual and developmental disability authority, a community center, as applicable, or TABC from obtaining and using criminal history record information as provided by other law.

Occupations Code Changes

C.S.H.B. 4123 amends the Occupations Code to revise provisions regarding the Texas Board of Nursing, TREC, and the racing commission with respect to applicable information obtained for the respective entity's purposes.

Texas Board of Nursing

C.S.H.B. 4123 requires an applicant for a vocational or advanced practice registered nurse license to submit to the Texas Board of Nursing, in addition to satisfying other requirements, a complete and legible set of fingerprints, on a form prescribed by the board, for the purpose of obtaining criminal history record information from DPS and the FBI. The bill includes persons accepted for enrollment in a nursing education program for such occupations among the persons for whom the board must develop a system for obtaining criminal history record information. The bill prohibits the board from releasing or disclosing to any person criminal history record information obtained from the FBI regarding applicants for nurse licenses and requires the board to destroy such information after the information is used for its authorized purpose.

Texas Real Estate Commission

C.S.H.B. 4123 prohibits TREC from disclosing to any person criminal history record information obtained from the FBI with respect to applicants for a broker or sales agent license, including for purposes of renewal, and requires TREC to destroy such information after the information is used for its authorized purpose.

C.S.H.B. 4123 defines, for purposes of applicable law governing real estate brokers and sales agents, "easement or right-of-way agent" as a person who sells, buys, leases, or transfers an easement or right-of-way for another, for compensation or with the expectation of receiving compensation, for use in connection with telecommunication, utility, railroad, or pipeline service. The bill specifies that an applicant for an original or renewal certificate of registration

as an easement or right-of-way agent must comply with the same criminal history record review process that is required of applicants for a broker or sales agent license.

Texas Racing Commission

C.S.H.B. 4123 changes a provision providing for the racing commission to categorize by rule the occupations of racetrack employees to determine the occupations that afford an employee an opportunity to influence racing with pari-mutuel wagering and requiring employees determined to have such opportunities or to likely have significant access to the backside of a racetrack or to restricted areas of the frontside of a racetrack to be licensed. The bill makes this requirement applicable only for the racing commission to determine the occupations that afford an opportunity to influence racing with pari-mutuel wagering, including individuals who work in an occupation as an employee, contractor, or volunteer, to afford the individual an opportunity to influence racing with pari-mutuel wagering or to likely have such access to the racetrack.

C.S.H.B. 4123 establishes that all of the following individuals require a criminal background check before an occupational license is issued under the Texas Racing Act: racing commissioners, regulatory employees and contractors hired by the racing commission, racetrack association employees, training facility employees, and employees of either a recognized horseman's organization or licensed racehorse owners.

Repealed Provisions

C.S.H.B. 4123 repeals the following provisions:

- Sections 22.0834(g), (i), (k), (m), and (n), Education Code;
- Section 22.08341, Education Code;
- Sections 1104.403, 1104.407, 1104.408, and 1104.410, Estates Code;
- Section 411.110(d), Government Code;
- Sections 411.1386(a-4), (a-5), (d), (f), and (i), Government Code; and
- Section 411.13861(f), Government Code.

EFFECTIVE DATE

On passage, or, if the bill does not receive the necessary vote, September 1, 2023.

COMPARISON OF INTRODUCED AND SUBSTITUTE

While C.S.H.B. 4123 may differ from the introduced in minor or nonsubstantive ways, the following summarizes the substantial differences between the introduced and committee substitute versions of the bill.

Treatment of Information Obtained from the FBI by Specified Entities

Both the introduced and the substitute restrict the use of information obtained from the FBI by a variety of public entities in the execution of their statutory duties and responsibilities regarding criminal background checks. Whereas the substitute expressly prohibits the following entities from releasing or disclosing such information so obtained to any person, the introduced prohibited the same entities from disseminating such information generally:

- DPS;
- the SBEC;
- TEA;
- TDLR;
- the consumer credit commissioner;
- the racing commission;
- applicable schools and education services;

- the TBVME;
- TSBPA;
- TDI;
- an applicable receiver;
- the lottery commission;
- the comptroller;
- DSHS or HHSC, as applicable;
- HHSC, Medicaid agencies, and the HHSC office of inspector general;
- the Texas Board of Nursing;
- BHEC;
- TBCE;
- the SBDE;
- a qualified school contractor;
- the TCEQ;
- the TFSC;
- TDHCA;
- the state fire marshal;
- the TMB;
- TxDMV;
- the Texas Optometry Board;
- ECPTOTE;
- the TSBPE;
- TREC;
- TALCB;
- the clerk of a county having venue over a proceeding for the appointment of a guardian;
- a state agency, as applicable to information technology personnel;
- the JBCC;
- a court of appeals;
- SOAH; and
- TBAE.

The substitute prohibits DFPS or HHSC, as applicable, from releasing or disclosing information obtained from the FBI under the bill's provisions, whereas the introduced did not prohibit these entities from either disseminating or releasing or disclosing such information.

Entities Specifically Authorized to Obtain Information from the FBI and Other Agencies

Both the introduced and the substitute subject applicable entities to the Government Code provision under which persons and agencies that are authorized to obtain information from DPS are also allowed to obtain information from the FBI or any other state criminal justice agency. However, the substitute specifically adds this authorization with respect to each entity specified in the bill, except for the following entities, which the introduced specifically authorized to obtain such information:

- HHSC;
- the executive commissioner of HHSC;
- DFPS or HHSC, as applicable; and
- the Early Childhood Intervention program.

Applicable Destruction of Information

While the introduced did not require the following entities to destroy the information obtained under the bill's provisions, the substitute does require the entities to destroy such information:

- DPS;
- TDLR;

- the consumer credit commissioner;
- the lottery commission;
- the comptroller;
- the Early Childhood Intervention program;
- the TMB;
- TxDMV; and
- TREC.

Both the introduced and the substitute require certain of the specified entities to destroy information obtained under the bill's provisions. However, while the introduced authorized this destruction to be carried out in different ways with respect to the following entities, the substitute revises current law to require information be destroyed after it is used for its authorized purpose:

- the racing commission;
- applicable schools and education services;
- the TBVME;
- TSBPA;
- TDI;
- an applicable receiver;
- HHSC;
- HHSC, Medicaid agencies, and the HHSC office of inspector general;
- TBCE;
- a qualified school contractor;
- the TCEQ;
- the TFSC;
- TDHCA;
- the state fire marshal;
- the Texas Optometry Board;
- ECPTOTE;
- the TSBPE;
- TALCB;
- a state agency that meets certain requirements;
- a court of appeals;
- SOAH; and
- TBAE.

Entities Specified by Substitute but not by Introduced

The substitute makes applicable to the following entities the substitute's prohibitions on release and disclosure and requirements applicable to destruction, whereas the introduced did not address these entities:

- a local mental health or intellectual and developmental disability authority, or a community center, as applicable;
- the Texas Board of Professional Engineers and Land Surveyors; and
- the TSBP.

Other Differences

The introduced set out provisions establishing that its provisions pertain to the authority for Texas and national criminal history record information to be released to state agencies and those agencies' handling of the information, but the substitute does not include this general statement of pertinence.

The substitute does not include provisions that were in the introduced that did the following:

- specified that the prohibition against the JBCC releasing FBI information to any other person refers to any person other than the person who is the subject of the information;
- specified the deadline by which an applicable school or education service must destroy the FBI information;
- included among the persons for whom the TBVME may obtain information an applicant for employment after that applicant is employed or, for an applicant who is not employed, after the check of the criminal history record information on that applicant is completed or an employee or contractor after the check of the criminal history record information on that employee or contractor is completed; and
- specified the deadline by which a qualified school contractor must destroy the FBI information.

The substitute includes provisions that were not in the introduced that do the following:

- specify that the lottery operator or prospective lottery operator for whom the lottery commission may obtain information is such an operator or perspective operator who has a written proposal to the lottery commission in connection with the procurement of lottery operations and services by the lottery commission;
- establish that the bill's provision regarding HHSC, with respect to Medicaid agencies, Medicaid agencies, and the HHSC office of inspector general do not prohibit HHSC or the office of inspector general from obtaining and using criminal history record information as provided by other law;
- establish that certified public documents obtained from DPS or other state criminal justice agencies not under the bill's provisions may still be used in a criminal or civil proceeding or in a hearing conducted by the manufactured housing division of TDHCA;
- prohibit the Texas Board of Nursing from releasing or disclosing to any person criminal history record information obtained from the FBI regarding applicants for nurse licenses and require the board to destroy such information after the information is used for its authorized purpose;
- prohibit TREC from disclosing to any person criminal history record information obtained from the FBI with respect to applicants for a broker or sales agent license, including for purposes of renewal, and require TREC to destroy such information after the information is used for its authorized purpose;
- include in the individuals who require a criminal history background check before being issued an applicable occupational license regulatory employees and contractors hired by the racing commission and training facility employees; and
- entitle a qualified school contractor to obtain criminal history record information from the FBI or any other state criminal justice agency with respect to applicable persons.

The substitute changes the authorization in the introduced for HHSC to destroy the information obtained under the bill's provisions with respect to HHSC employment into a requirement for HHSC to do so.

The substitute and the introduced both prohibit criminal history record information obtained by a qualified school contractor in the original form or any subsequent form from being released to any person except to the individual who is the subject of the information. However, the substitute adds exceptions not included in the introduced for release by court order or with the consent of the person who is the subject of the information.

The substitute and the introduced set out different effective dates for the bill as follows:

- the introduced provided that the bill, except as otherwise provided by the introduced, takes effect September 1, 2023; but
- the substitute provides that the bill takes effect on passage, or, if the bill does not receive the necessary vote, September 1, 2023.