

BILL ANALYSIS

Senate Research Center
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C.S.H.B. 1303
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Criminal Justice
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Committee Report (Substituted)

AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

In 2005, the legislature enacted legislation requiring notice of a hearing regarding an expunction or an order of nondisclosure to be sent by secure electronic mail if requested in writing by the petitioner. The purpose of the written request was to create a paper record that the notification took place. However, technology now exists that has the capability of generating proof of the receipt of such notifications without the need for paper trails.

Additionally, notification of an order to expunge a criminal record is issued only to criminal justice agencies and other governmental entities and repositories. It is not certain that companies that sell background checks use the most current information available. There is no way for a person who has had a record expunged to know what information is being disseminated by the various private sector businesses that acquire and sell criminal history information. This complication can have serious effects on people who are looking for employment and housing.

C.S.H.B. 1303 requires each official, agency, or other entity named in a petition or order to be given reasonable notice of the hearing or order by certified mail, secure electronic mail, facsimile transmission, or electronic transmission. The bill also eliminates the requirement that the petitioner request such notice in writing in order for it to be sent by a secure electronic mail or facsimile transmission and authorizes the notice to be sent by an electronic transmission.

This bill also requires the Department of Public Safety to notify private entities, at the same time that other repositories of criminal history information are notified, that a criminal history record has been ordered expunged. In addition, this bill compels private background check companies to obtain and use updated criminal history information.

RULEMAKING AUTHORITY

Rulemaking authority is expressly granted to the public safety director in SECTION 6 (Section 411.081, Government Code) and to the Department of Public Safety in SECTION 12 of this bill.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Sections 2(b), (c), and (f), Article 55.02, Code of Criminal Procedure, as follows:

(b) Requires a petition for expunction to be verified and include certain information, including a list of private entities that compile criminal history record information related to records or files that are subject to expunction.

(c) Requires the court to set a hearing on the matter within a certain timeframe and give to each official or agency or other governmental entity named in the petition reasonable notice of the hearing in a certain manner, including by electronic transmission. Deletes existing text authorizing the use of certain means by which the petition may be sent on the condition that the means are requested in writing by the petitioner.

(f) Requires an ex parte petition to be verified and include certain information, including a list of private entities that compile criminal history record information related to records or files that are subject to expunction.

SECTION 2. Amends Section 2a(c), Article 55.02, Code of Criminal Procedure, to require the attorney representing the state, after verifying the allegations in an application, to perform certain duties, including to attach a list of all private entities that compile and disseminate for compensation criminal history record information that are reasonably likely to have records or files containing information that is subject to expunction.

SECTION 3. Amends Section 3, Article 55.02, Code of Criminal Procedure, by amending Subsection (c) and adding Subsections (c-1) and (c-2), as follows:

(c) Makes conforming changes.

(c-1) Creates this subsection from existing text. Makes conforming changes.

(c-2) Requires the Department of Public Safety (DPS) to also provide, by secure electronic mail, electronic transmission, or facsimile transmission, notice of the order to any private entity that is named in the order or that purchases criminal history record information from DPS. Requires the notice to include an explanation of the effect of the order and a request that the entity destroy any information in the possession of the entity that is subject to the order. Authorizes DPS to charge to a private entity that purchases criminal history record information from DPS a fee in an amount sufficient to recover costs incurred by DPS in providing notice under this subsection to the entity.

SECTION 4. Amends Sections 5(a) and (f), Article 55.02, Code of Criminal Procedure, to make conforming changes.

SECTION 5. Amends Section 411.081(e), Government Code, to entitle a person to petition the court only under certain circumstances, including if during the period of the deferred adjudication community supervision for which the order of nondisclosure is requested the person is not convicted of or placed on deferred adjudication community supervision for any offense other than an offense under the Transportation Code punishable by fine only.

SECTION 6. Reenacts and amends Sections 411.081(g) and (g-1), Government Code, as amended by Chapters 177 and 1309, Acts of the 79th Legislature, Regular Session, 2005, as Subsections (g), (g-1), (g-1a), (g-1b), and (g-1c), as follows:

(g) Requires the clerk of the court, not later than the 15th business day after the date an order of nondisclosure is issued under this section, to send all relevant criminal history record information contained in the order or a copy of the order by certified mail, return receipt requested, or secure electronic mail, electronic transmission, or facsimile transmission to the Crime Records Service of DPS.

(g-1) Requires DPS, not later than 10 business days after receipt of relevant criminal history record information contained in an order or a copy of an order under Subsection (g), to seal any criminal history record information maintained by DPS that is the subject of the order. Requires DPS to also send all relevant criminal history record information contained in the order or a copy of the order by certified mail, return receipt requested, or secure electronic mail, electronic transmission, or facsimile transmission to certain entities, including to all private entities that purchase criminal history record information from DPS or that otherwise are likely to have criminal history record information that is subject to the order.

(g-1a) Requires the public safety director to adopt rules regarding minimum standards for the security of secure electronic mail, electronic transmissions, and facsimile transmissions under Subsections (g) and (g-1). Requires the director, in adopting rules under this subsection, to consult with the Office of Court Administration of the Texas Judicial System.

(g-1b) Makes conforming changes. Deletes existing text requiring DPS to send a copy of the order to certain persons and entities.

(g-1c) Authorizes DPS to charge to a private entity that purchases criminal history record information from DPS a fee in an amount sufficient to recover costs incurred by DPS in providing notice under Subsection (g-1) to the entity.

SECTION 7. Amends Subchapter F, Chapter 411, Government Code, by adding Sections 411.0835 and 411.0851, as follows:

Sec. 411.0835. PROHIBITION AGAINST DISSEMINATION TO CERTAIN PRIVATE ENTITIES. Prohibits DPS from releasing any criminal history record information until the first anniversary of the date of the most recent violation if it receives information indicating that a private entity that purchases criminal history record information from DPS has been found by a court to have committed three or more violations of Section 552.1425 by compiling and disseminating information with respect to which an order of expunction or an order of nondisclosure has been issued.

Sec. 411.0851. DUTY OF PRIVATE ENTITY TO UPDATE CRIMINAL HISTORY RECORD INFORMATION; CIVIL LIABILITY. (a) Provides that a private entity that compiles and disseminates for compensation criminal history record information is required to destroy and is prohibited from disseminating any information in the possession of the entity with respect to which the entity has received certain notice.

(b) Authorizes a private entity described in Subsection (a) that purchases criminal history record information from DPS or from another governmental agency or entity in this state to disseminate that information under certain circumstances, and requires such an entity to notify DPS if the entity sells any compilation of the information to another similar entity.

(c) Provides that a private entity that disseminates information in violation of this section is liable for any damages that are sustained as a result of the violation by the person who is the subject of the information. Entitles a person who prevails in an action brought under this section to recover court costs and reasonable attorney's fees.

SECTION 8. Amends Section 411.085(d), Government Code, to make conforming changes.

SECTION 9. Amends the heading to Section 552.1425, Government Code, to read as follows:

Sec. 552.1425. CIVIL PENALTY: DISSEMINATION OF CERTAIN CRIMINAL HISTORY INFORMATION.

SECTION 10. Amends Sections 552.1425(a) and (b), Government Code, as follows:

(a) Makes conforming changes.

(b) Authorizes a district court to issue a warning to a private entity for a first violation of this section. Provides that the private entity is liable to the state for a civil penalty not to exceed \$1,000, rather than \$500, for each subsequent violation after receiving a warning for the first violation.

SECTION 11. Repealer: Section 411.081(j) (requiring DPS to take certain action if an entity has more than five violations of that section), Government Code.

SECTION 12. (a), (b), (f), (g), and (h) Makes application of this Act prospective.

(c) Makes application of Section 411.081(e), Government Code, amended by this Act, retroactive.

(d) Requires DPS, not later than January 1, 2008, to adopt rules concerning the standards for secure electronic mail, electronic transmissions, and facsimile transmissions as required by Section 411.081, Government Code, as amended by this Act.

(e) Requires a court that issues and transmits orders of nondisclosure as described by Section 411.081, Government Code, as amended by this Act, and the Crime Records Service of DPS to comply with the secure electronic mail, electronic transmissions, and facsimile transmissions standards adopted by DPS.

SECTION 13. Effective date: September 1, 2007.