

## **BILL ANALYSIS**

Senate Research Center  
80R6600 PEP-D

S.B. 1737  
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Criminal Justice  
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As Filed

### **AUTHOR'S / SPONSOR'S STATEMENT OF INTENT**

Currently, 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.

As proposed, S.B. 1737 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**

This bill does not expressly grant any additional rulemaking authority to a state officer, institution, or agency.

### **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 contain certain information, including a list of all private entities that compile and disseminate for compensation criminal history record information that the petitioner has reason to believe have information related to records or files that are subject to expunction.

(c) Requires the court to set a hearing on the matter of expunction no sooner than 30 days from the filing of the petition and to give to each official or agency or other governmental entity, rather than entity, named in the petition reasonable notice of the hearing in a certain manner.

(f) Makes conforming changes.

SECTION 2. Amends Section 2a(c), Article 55.02, Code of Criminal Procedure, to make conforming changes.

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 and makes a nonsubstantive change.

(c-2) Requires the Department of Public Safety (DPS) to provide, by secure electronic mail or facsimile transmission, notice of the order of expunction 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 criminal history record 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 the costs incurred by DPS in providing notice under this subsection to the entity.

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

SECTION 5. Reenacts and amends Sections 411.081(g), Government Code, as amended by Chapter 177 and 1309, Acts of the 79th Legislature, Regular Session, 2005, and Section 411.081(g-1) as added by Chapters 177 and 1309, Acts of the 79th Legislature, Regular Session, 2005, as Sections 411.081(g), (g-1), (g-1a), and (g-1b), as follows:

(g) Makes a nonsubstantive change.

(g-1) Requires DPS, within a certain timeframe, to seal any criminal history record information maintained by DPS that is the subject of the order. Requires DPS to send a copy of the order by mail or secure electronic mail or facsimile transmission, to certain entities, including to all private entities that purchase criminal history record information that is subject to the order. Makes conforming changes.

(g-1a) Creates this subsection from existing text.

(g-1b) 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 a copy of an order under Subsection (g-1)(3).

SECTION 6. Amends Subchapter F, Chapter 411, Government Code, by adding Sections 411.0835 and 411.0851, as follows:

Sec. 411.0835. PROHIBITIONS AGAINST DISSEMINATION TO CERTAIN PRIVATE ENTITIES. Prohibits DPS from releasing any criminal history record information to an entity until the first anniversary of the date of the most recent violation if DPS receives information indicating that a private entity that purchases that information from DPS has been found by a court to have committed three or more violations of Section 552.1425 (Civil Penalty: Records of Certain Differed Adjudications) by compiling or 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) Requires a private entity that compiles and disseminates for compensation criminal history record information to destroy, and prohibits it from disseminating, any information in the possession of the entity with respect to which the entity has received notice that an order of expunction or nondisclosure has been issued.

(b) Authorizes a private entity under Subsection (a) that compiles and disseminates certain information for compensation from DPS or another governmental agency or entity in this state to disseminate that information if the entity originally obtains or verifies the information within the 90-day period preceding the date of dissemination. Requires a private entity under Subsection (a) that compiles and disseminates certain information for compensation from another governmental agency or entity in this state 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 subject of that information. Entitles a person who prevails in an action brought under this section to recover court costs and reasonable attorney's fees.

SECTION 7. Amends Section 411.085(d), Government Code, to require DPS to provide a copy of this section to certain persons and to each private entity that purchases criminal history record information from DPS.

SECTION 8. 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 9. Amends Sections 552.1425(a) and (b), Government Code, as follows:

(a) Prohibits a private entity that compiles certain information for compensation from compiling or disseminating information with respect to which the entity has received notice that an order of expunction has been issued.

(b) Authorizes a district court to issue a warning to a private entity for a first violation and 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 10. Repealer: Section 411.081(j) (prohibiting DPS from releasing certain information to certain entities), Government Code.

SECTION 11. (a) Makes application of Article 55.02, Code of Criminal Procedure, as amended by this Act, retroactive.

(b)-(e) Makes application of this Act prospective.

SECTION 12. Effective date: September 1, 2007.