

BILL ANALYSIS

Senate Research Center
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S.B. 990
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Criminal Justice
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AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

Despite changes made in state law beginning in 2005 to update and revise procedures regarding the accuracy of criminal history records made available to the public, problems persist. More and more businesses now perform criminal history background checks as a part of pre-employment screening practices. Accordingly, the number of private sector companies that sell criminal history information has increased dramatically over the last decade.

While the Department of Public Safety of the State of Texas (DPS) is the official repository and custodian of criminal history information for the state, it is not the sole source of all criminal history information made available and disseminated to the public. As a result, there is no guarantee that information obtained through private sector vendors is accurate and current.

The accuracy of this information is critical to jobseekers and to those seeking residency in multifamily housing. It also impacts the work of the courts and criminal defense attorneys when an expunction or order of non-disclosure issued are rendered meaningless when outdated or otherwise inaccurate criminal history information is disseminated to public.

S.B. 990 seeks to ensure that criminal history record information disclosed to the public is accurate and up-to-date, and that companies who sell that information are accountable for the accuracy of the information they disclose.

Under S.B. 990:

- A private background check company may release information only if within the last 60 days, rather than 90 days, the information has been updated by DPS or other governmental source.
- An entity or business that requests criminal history information on an individual for employment, licensing or housing, must disclose to an individual who is adversely impacted, the name of the company that supplied the background check information and provide contact information for that company.
- A company that sells criminal history record information in this state must, upon written request, provide to the person who is the subject of that information, a free copy of the information held and disseminated by that company within 30 days.
- A private background check company must respond to the requestor within 30 days of receiving a written request that disputes the information contained in a criminal history report. The company is required to investigate the complaint and make any corrections required. A company that does not comply is liable for damages and costs.
- All private background check companies that do business in the state must provide their names and contact information to DPS.
- A private background check company must provide to the employer/requestor the sources of the information provided and the date the information was last updated.

As proposed, S.B. 990 amends current law relating to criminal history record information obtained or disseminated by a private entity, provides a civil penalty, and authorizes fees.

RULEMAKING AUTHORITY

Rulemaking authority is expressly granted to the Department of Public Safety of the State of Texas in SECTION 2 (Section 411.0853, Government Code) and SECTION 4 of this bill.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Section 411.0851, Government Code, by amending Subsection (b) and adding Subsection (b-1), as follows:

(b) Provides that a private entity described by Subsection (a) (relating to requiring the destruction and prohibiting the dissemination of criminal history record information by certain private entities under certain conditions) that purchases or otherwise obtains criminal history record information from the Department of Public Safety of the State of Texas (DPS) or from another governmental agency or entity in this state, 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):

(1) is authorized to disseminate that information only if, within the 60-day, rather than 90-day, period preceding the date of dissemination, the entity originally obtains that information or receives that information as updated record information to its database; and

(2) is required to, on a quarterly basis, notify DPS of the name and contact information of each similar entity to which the entity sold any compilation of the information in the previous quarter, rather than to notify DPS if the entity sells any compilation of the information to another similar entity.

(b-1) Provides that a private entity described by Subsection (a) that purchases or otherwise obtains criminal history record information from a similar entity or other private entity, 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):

(1) is authorized to disseminate that information only if the private entity verifies that the information was originally obtained or updated by DPS or other governmental agency or entity within the 60-day period preceding the date of dissemination; and

(2) is required to, on a quarterly basis, notify DPS of the name and contact information of each similar entity or other private entity to which the entity sold any compilation of the information in the previous quarter.

SECTION 2. Amends Subchapter F, Chapter 411, Government Code, by adding Sections 411.0852, 411.0853, 411.0854, and 411.0855, as follows:

Sec. 411.0852. ACCESS TO CRIMINAL HISTORY RECORD INFORMATION MAINTAINED BY PRIVATE ENTITY; DISPUTES OF ACCURACY. (a) Requires a private entity, on written request by a person who is the subject of criminal history record information maintained by the entity that compiles and disseminates for compensation criminal history record information, to provide to the person a copy of all records maintained by the entity not later than the 30th business day after the receipt of the request.

(b) Entitles a person 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. Authorizes an entity described by Subsection (a) to charge a

reasonable fee for subsequent copies requested by the person within a calendar year.

(c) Authorizes a person to submit a written request to the entity for verification if the person disputes the accuracy of any portion of the person's criminal history record information maintained by the private entity described by Subsection (a). Requires the entity, on receipt of a written request under this subsection, to promptly initiate an investigation into the accuracy of the disputed information. Requires the entity, not later than the 30th day after the date the written request is received, to 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) Provides that a private entity that fails to comply with this section is liable for any damages that are sustained as a result of the violation by the person who is the 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.

Sec. 411.0853. PUBLIC DISCLOSURES BY PRIVATE ENTITIES; CIVIL PENALTY.

(a) Requires each private entity that compiles and disseminates for compensation criminal history record information to customers to, 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 DPS in the form and manner prescribed by DPS.

(b) Requires DPS to publish the disclosures required under this section on DPS's Internet website.

(c) Authorizes DPS to adopt rules to implement this section.

(d) Provides that an entity that fails to comply with Subsection (a) is liable to the state for a civil penalty of \$500 for each violation. Provides that each day the violation continues constitutes a separate violation for purposes of this subsection.

(e) Requires the attorney general, at the request of DPS, to bring an action to recover the civil penalty authorized by Subsection (d). Authorizes the attorney general and DPS to recover reasonable expenses incurred in obtaining the civil penalty, including court costs, reasonable attorney's fees, investigation costs, witness fees, and deposition expenses.

(f) Requires that a civil penalty collected under Subsection (d) be deposited in the state treasury to the credit of DPS for the administration of this chapter.

Sec. 411.0854. DISCLOSURES BY PRIVATE ENTITIES TO PURCHASERS OR OTHER RECIPIENTS. Requires a private entity that compiles and disseminates for compensation criminal history record information to customers to disclose to each purchaser or recipient at the time the information is provided:

(1) each source from which the entity compiled the information; and

(2) the date on which the information was last updated or verified.

Sec. 411.0855. DUTIES OF PURCHASER OR RECIPIENT OF CRIMINAL HISTORY RECORD INFORMATION USED FOR BACKGROUND CHECKS. Requires a person who purchases, accesses, or otherwise receives criminal history record information and uses the information for purposes of employment, licensing, housing, or other related background checks of an individual to disclose to the individual who is the subject of the information the name and contact information of the entity from which the person received the information.

SECTION 3. Amends Chapter 20, Business & Commerce Code, by adding Section 20.022, as follows:

Sec. 20.022. FURNISHING OF CONSUMER REPORT FOR EMPLOYMENT OR HOUSING PURPOSES; EXCEPTION FOR NATIONAL SECURITY INVESTIGATION. (a) Provides that 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) Requires 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 to implement and maintain strict procedures designed to ensure that the criminal history record information reported is complete and up-to-date. Provides that for purposes of this subsection, criminal history record information contained in a consumer report is considered:

- (1) complete if the information reflects the notations of arrest and the filing and disposition of any criminal charges, if applicable; and
- (2) up-to-date if information related to an arrest, indictment, or conviction of a crime reflects the most recent public record status of the information at the time the consumer report is furnished.

SECTION 4. (a) Provides that Section 411.0851, Government Code, as amended by this Act, applies only to information disseminated on or after the effective date of this Act. Provides that 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) Requires DPS to adopt rules to implement Section 411.0853, Government Code, as added by this Act, not later than January 1, 2014.

(c) Provides that 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, 2014.

(d) Makes application of Section 411.0854, Government Code, as added by this Act, prospective.

(e) Makes application of Section 411.0855, Government Code, as added by this Act, prospective.

SECTION 5. Requires a private entity that compiles and disseminates for compensation criminal history record information, not later than October 1, 2013, to submit the initial quarterly notification under Section 411.0851, Government Code, as amended by this Act, and file the information required by Section 411.0853, Government Code, as added by this Act.

SECTION 6. Effective date: September 1, 2013.