

April 17, 2013

Texas Senator Royce West introduced [Senate Bill 990](#) in response to constituent complaints that they were being denied employment and housing based upon erroneous criminal history information. In particular, expunged records often continue to be reported by private database companies long after the record has been removed from the court's record.

I have worked with Senator West's office to revise this bill so that it (1) protects individuals against incorrect information while (2) not creating any new responsibilities for the majority of consumer reporting agencies (CRAs) who already provide reports that are accurate and up to date.

I have summarized each section of the bill to make it clear who the section impacts and what the requirements would be.

The only background investigation-related entities with new responsibilities under this bill are database companies and those few CRAs who sell criminal history data to end users without first ensuring that it is accurate and up to date.

The bill also seeks to create a listing of database companies so that notices of expungements can be directed to those who might have outdated information.

The only new obligation on end-users who use the information for employment, housing, or licensing is that they must identify to the individual where they received any criminal history information upon which an adverse action is based if they received it directly from a court or government agency. This will point the individual to the source of any incorrect information. Similar disclosure is already a requirement under federal law when the information was received from a background screening company.

This bill should be supported by all CRA's and investigators concerned about the negative impact on our profession from sloppy database use.

Regards,

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A BILL TO BE ENTITLED

AN ACT

relating to criminal history record information obtained or disseminated by certain private entities; providing a civil penalty; authorizing fees.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Section 411.0851, Government Code, is amended by amending Subsections (a) and (b) and adding Subsections (a-1) and (b-1) to read as follows:

(a) This section applies only to a [A] private entity that:

(1) compiles and disseminates for compensation criminal history record information of individuals; and

(2) makes the information described by Subdivision (1) available to customers in searchable format.

COFFEY: This section would only apply to companies that compile criminal history information in a database and make it available in a searchable format (database companies). Because of paragraph (2), it would not apply to investigators or consumer reporting agencies that go collect information about an individual at the request of a client and then deliver that information in a report to the client.

(a-1) A private entity described by Subsection (a) shall destroy and may not disseminate any information in the possession of the entity with respect to which the entity has received notice that:

(1) an order of expunction has been issued under Article 55.02, Code of Criminal Procedure; or

(2) an order of nondisclosure has been issued under Section 411.081(d).

COFFEY: The database company may not maintain or share

information about expunged records once they have received notice that it has been expunged.

(b) Except as otherwise provided by federal law [~~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)~~], a private entity described by Subsection (a) that purchases or otherwise obtains criminal history record information that originates from the department, a custodian of court records, or [~~from~~] another governmental agency or entity in this state:

(1) may disseminate that information only if, within the 60-day [~~90-day~~] period preceding the date of dissemination, the entity:

(A) originally obtains that information; or

(B) receives that information as updated record information to its database; and

COFFEY: The database company may not report criminal history information older than 60 days.

(2) shall on a quarterly basis notify the department of the name and contact information of each similar entity to which [~~if~~] the entity sold [~~sells~~] any compilation of the information in the previous quarter [~~to another similar entity~~].

COFFEY: The database company must notify DPS of other database companies (not investigators or non-database CRAs) to which they sold the data. The idea is that if there is an expungement, DPS will have a list of the database companies that have the information so that individuals can contact them to have the record removed.

(b-1) Except as otherwise provided by federal law, a private entity described by Subsection (a) that purchases or otherwise obtains criminal history record information from a similar entity

or other private entity:

COFFEY: This applies to database companies who buy criminal history data from other database companies. I'll call these "database resellers."

(1) may disseminate that information only if the private entity verifies that the information was originally obtained or updated by the department, a custodian of court records, or another governmental agency or entity in this state within the 60-day period preceding the date of dissemination; and

COFFEY: Database resellers may not resell data unless the original database company purchased the info in the last 60 days.

(2) shall on a quarterly basis notify the department 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.

COFFEY: The database reseller must notify DPS of other database resellers (not investigators, non-database CRAs, or end-users) to which they sold compilations (all or subsets of) the data. "Any compilation" is intended to reflect the sale of bulk records about more than one individual - not searches of individual names. There is no requirement that the identification information include which records were transferred to the entity, so there is no way that an individual would ever know for certain that their information was transferred to the entity. The idea is that if there is an expungement, DPS will have a list of the database companies that may have the information so that individuals can contact them to have the record removed. (Senator West's office agrees with the removal of "or other private entity," which was left from a previous revision and no longer applicable.)

SECTION 2. Subchapter F, Chapter 411, Government Code, is

amended by adding Sections 411.0852, 411.0853, 411.0854, and 411.0855 to read as follows:

Sec. 411.0852. ACCESS TO CRIMINAL HISTORY RECORD INFORMATION MAINTAINED BY PRIVATE ENTITY; DISPUTES OF ACCURACY. (a) On written request by a person who is the subject of criminal history record information maintained by a private entity described by Section 411.0851(a), the entity shall provide to the person a copy of all records regarding that person maintained by the entity not later than the 30th business day after the receipt of the request.

COFFEY: On request, database companies must provide individuals a copy of their file within 30 days.

(b) A person is entitled 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. An entity described by Section 411.0851(a) may charge a reasonable fee for subsequent copies requested by the person within a calendar year.

COFFEY: The database company may not charge for file disclosures (limited to one free disclosure per year).

(c) If a person disputes the accuracy of any portion of the person's criminal history record information maintained by the private entity described by Section 411.0851(a), the person may submit a written request to the entity for verification. On receipt of a written request under this subsection, the entity shall promptly initiate an investigation into the accuracy of the disputed information. Not later than the 30th day after the date the written request is received, the entity shall 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.

COFFEY: Database companies must investigate disputes and correct any errors within 30 days of receipt.

(d) A private entity described by Section 411.0851(a) 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. A person who prevails in an action brought under this section is also entitled to recover court costs and reasonable attorney's fees.

COFFEY: Database companies that are out of compliance with this law are responsible for actual damages, attorney's fees, and court costs.

Sec. 411.0853. PUBLIC DISCLOSURES BY PRIVATE ENTITIES; CIVIL PENALTY. (a) Each private entity described by Section 411.0851(a) shall, 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 the department in the form and manner prescribed by the department.

COFFEY: Database companies (not investigators or non-database CRAs) must register with DPS.

(b) The department shall publish the disclosures required under this section on the department's Internet website.

COFFEY: DPS will publish a list of databases operating in Texas.

(c) The department may adopt rules to implement this section.

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

COFFEY: Databases that fail to register are liable for a \$500/day fine.

(e) At the request of the department, the attorney general may bring an action to recover the civil penalty authorized by Subsection (d). The attorney general and the department may

recover reasonable expenses incurred in obtaining the civil penalty, including court costs, reasonable attorney's fees, investigation costs, witness fees, and deposition expenses.

(f) A civil penalty collected under Subsection (d) shall be deposited in the state treasury to the credit of the department for the administration of this chapter.

Sec. 411.0854. DISCLOSURES BY PRIVATE ENTITIES TO PURCHASERS OR OTHER RECIPIENTS. A private entity described by Section 411.0851(a) shall disclose to each purchaser or recipient of criminal history record information 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 by the department or custodian of the records.

COFFEY: Database companies must disclosure to each customer where the data they are providing came from and when it was last updated. (e.g., "record received from Texas DPS Crime Records Service on 04/01/2013", "record received from Dallas County District Clerk on 04/0/2013."

Sec. 411.0855. DUTIES OF PURCHASER OR RECIPIENT OF CRIMINAL HISTORY RECORD INFORMATION USED FOR EMPLOYMENT, LICENSING, OR HOUSING. (a) In this section, "adverse decision" means a decision to disqualify an individual or otherwise negatively affect the eligibility of an individual for employment, licensing, or housing.

COFFEY: This section applies to end-users of criminal history information who use it for employment, licensing, or housing.

(b) A person who purchases, accesses, or otherwise receives criminal history record information and uses the information as the basis for an adverse decision regarding the employment, licensing, or housing of the individual who is the subject of the information shall disclose to that individual the name and contact information

of the entity from which the person received the information.

COFFEY: Upon taking adverse action related to housing, employment or licensing, the end-user must tell the individual where the information came from (i.e., the name of the CRA (which is required by the federal Fair Credit Reporting Act already) or, if they end-user conducted the research in-house, the name of the court or agency (Dallas County Clerk or DPS Crime Records Service, for example). This will help the individual identify the source of any erroneous information.

SECTION 3. Chapter 20, Business & Commerce Code, is amended by adding Section 20.022 to read as follows:

Sec. 20.022. FURNISHING OF CONSUMER REPORT FOR EMPLOYMENT OR HOUSING PURPOSES; EXCEPTION FOR NATIONAL SECURITY INVESTIGATION.

(a) 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).

COFFEY: This exemption exists in the FCRA.

(b) 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 shall implement and maintain strict procedures designed to ensure that the criminal history record information reported is complete and up to date. For purposes of this subsection, criminal history record information contained in a consumer report is considered:

(1) complete if the information reflects:

(A) the offense alleged;

(B) the jurisdiction in which the criminal history record information originated;

(C) the date of the arrest or filing of criminal

charges;

(D) the current status of any criminal case proceeding, if charges have been filed; and

(E) the disposition of the case and the date of that disposition, if applicable; and

(2) up to date if the information related to an arrest, filing of criminal charges, or conviction or other disposition of the case reflects the most recent public record status of the information described by Subdivision (1) at the time the consumer report is furnished.

COFFEY: Consumer Reporting Agencies must provide complete and up-to-date information. It also limits the definition of "complete" so that future plaintiff's attorneys cannot try to expand the definition.

SECTION 4. (a) Section 411.0851, Government Code, as amended by this Act, applies only to information disseminated on or after the effective date of this Act. 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) The Department of Public Safety of the State of Texas shall adopt rules to implement Section 411.0853, Government Code, as added by this Act, not later than January 1, 2014.

(c) 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) Section 411.0854, Government Code, as added by this Act, applies only to criminal history record information provided to a purchaser or recipient on or after the effective date of this Act.

Criminal history record information provided to a purchaser or recipient before the effective date of this Act is governed by the law in effect on the date the information was provided, and the

former law is continued in effect for that purpose.

(e) Section 411.0855, Government Code, as added by this Act, applies only to criminal history record information purchased, accessed, received, or otherwise used on or after the effective date of this Act. Criminal history record information purchased, accessed, received, or otherwise used before the effective date of this Act is governed by the law in effect on the date the information was purchased, accessed, received, or otherwise used, and the former law is continued in effect for that purpose.

SECTION 5. Not later than October 1, 2013, a private entity that compiles and disseminates for compensation criminal history record information shall:

(1) submit the initial quarterly notification under Section 411.0851, Government Code, as amended by this Act; and

(2) file the information required by Section 411.0853, Government Code, as added by this Act.

SECTION 6. This Act takes effect September 1, 2013.