

BILL ANALYSIS

Senate Research Center
78R12404 PEP-D

H.B. 2622
By: Allen (Deuell)
Criminal Justice
5/11/2003
Engrossed

DIGEST AND PURPOSE

Subchapter F, Chapter 411 of the Government Code contains sections that authorize the Texas Department of Public Safety (DPS) to disseminate criminal history record information to specific non-criminal justice agencies for employment, licensing, or other specific purposes. Most of these agencies have access to the entire criminal history record, but several agencies have access to conviction records only, or to records relating just to certain charges. Since all convictions records have subsequently become a matter of public record, these agencies in some cases have less access specified in law than does the general public. Further, there are often open arrests in the state criminal history repository for which no disposition has been reported to DPS, but for which a disposition may have occurred. Information on open arrests could prove beneficial for a licensing agency doing a suitability background check on its applicant or licensee, and would allow the agency to do further research on those arrests. Also, there are several agencies which still have access to criminal history records through statutes other than Chapter 411. Because these agency-specific statutes may not include the language in Chapter 411 which regulates the dissemination of criminal history information, the FBI has denied several of these agencies access to federal criminal history records. H.B. 2622 addresses these issues.

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 Section 411.084, Government Code, as follows:

Sec. 411.084. USE OF CRIMINAL HISTORY RECORD INFORMATION. (a) Creates subsection from existing text.

(b) Authorizes, notwithstanding Subsection (a) or any other provision in this subchapter, criminal history record information obtained from the Federal Bureau of Investigation to be released or disclosed only to a governmental entity or as authorized by federal statute, federal rule, or federal executive order.

SECTION 2. Amends Section 411.093, Government Code, as follows:

Sec. 411.093. ACCESS TO CRIMINAL HISTORY RECORD INFORMATION: TEXAS DEPARTMENT OF LICENSING AND REGULATION. Provides that the Texas Department of Licensing and Regulation (TDLR) is entitled to obtain from the Texas Department of Public Safety (DPS) criminal history record information maintained by DPS that relates to a person who meets certain criteria. Deletes Subsections (a) and (b), Subsection (b) relating to TDLR being entitled only to criminal history record information that relates to the arrest or conviction of the person.

SECTION 3. Amends Section 411.094(d), Government Code, as follows:

(d) Prohibits criminal history record information, rather than conviction information, received by an institution of higher education under Subsection (b)

from being released or disclosed to any person except on court order.

SECTION 4. Amends the heading to Section 411.104, Government Code, to read as follows:

Sec. 411.104. ACCESS TO CRIMINAL HISTORY RECORD INFORMATION:
TEXAS WORKFORCE COMMISSION.

SECTION 5. Amends Sections 411.104(a) and (b), Government Code, as follows:

(a) Defines "security sensitive position" in this section to have the meaning assigned by Section 301.042(c), rather than 202.042(h), Labor Code.

(b) Makes a conforming change regarding the name change of the Texas Employment Commission to the Texas Workforce Commission.

SECTION 6. Amends Section 411.105, Government Code, as follows:

Sec. 411.105. ACCESS TO CRIMINAL HISTORY RECORD INFORMATION:
TEXAS STATE BOARD OF PUBLIC ACCOUNTANCY. Provides that the Texas State Board of Public Accountancy is entitled to obtain from DPS criminal history record information maintained by DPS that relates to a person who meets certain criteria.

SECTION 7. Amends Section 411.115(e), Government Code, to make a conforming change.

SECTION 8. Amends Sections 411.1236(a) and (b), Government Code, as follows:

(a) Provides that the Texas Commission on Fire Protection is entitled to obtain from DPS criminal history record information maintained by DPS that relates to a person who meets certain criteria. Deletes existing text relating to this section applying only to a certain circumstance.

(b) Prohibits criminal history record information obtained by the Texas Commission on Fire Protection under Subsection (a) from being released to any person or agency except on court order, unless the information is entered into evidence by the board in an administrative, civil, or criminal hearing under Chapter 419. Deletes existing text regarding a circumstance described by Subsection (a). Deletes existing text regarding the Texas Commission on Fire Protection obtaining criminal history record information from the person who has obtained the required information as described by Subsection (a)(2). Deletes text requiring the person to provide on request from the Texas Commission on Fire Protection under this section, the information to the Texas Commission on Fire Protection.

SECTION 9. Amends Subchapter F, Chapter 411, Government Code, by adding Sections 411.1385, 411.1386, 411.1387, and 411.1388, as follows:

Sec. 411.1385. ACCESS TO CRIMINAL HISTORY RECORD INFORMATION:
SAVINGS AND LOAN COMMISSIONER. (a) Provides that the savings and loan commissioner is entitled to obtain from DPS criminal history record information maintained by DPS that relates to a person who is an applicant for or holder of a mortgage broker or loan officer license issued under Chapter 156, Finance Code.

(b) Authorizes criminal history record information obtained by the savings and loan commissioner under Subsection (a) to be released or disclosed only as provided by Section 156.206, Finance Code.

Sec. 411.1386. ACCESS TO CRIMINAL HISTORY RECORD INFORMATION:
COURT CLERK; GUARDIANSHIPS. (a) Provides that the clerk of the county having venue over a proceeding for the appointment of a guardian under Chapter 13, Probate Code, is entitled to obtain from DPS criminal history record information maintained by

DPS that relates to: a private professional guardian; each person who represents or plans to represent the interests of a ward as a guardian on behalf of the private professional guardian; or each person employed by a private professional guardian who will perform certain functions.

(b) Provides that criminal history record information obtained by a clerk under Subsection (a) is for the exclusive use of the court and authorizes the information be used only in determining whether to appoint, remove, or continue the appointment of a private professional guardian.

(c) Prohibits criminal history record information obtained by a clerk under Subsection (a) from being released or disclosed to any person or agency except on court order or with the consent of the person who is the subject of the information. Authorizes the clerk to destroy the criminal history record information after the information is used for the purposes authorized by this section.

Sec. 411.1387. ACCESS TO CRIMINAL HISTORY RECORD INFORMATION: FACILITY, REGULATORY AGENCY, OR PRIVATE AGENCY. (a) Defines "facility," "regulatory agency," and "private agency" in this section as having the meanings assigned by Section 250.001, Health and Safety Code.

(b) Provides that a facility, regulatory agency, or private agency on behalf of a facility is entitled to obtain from DPS criminal history record information maintained by DPS that relates to a person who meets certain criteria.

(c) Authorizes a facility to: obtain directly from DPS criminal history record information on an applicant or employee described by Subsection (b); or authorize a private agency to obtain that information from DPS.

(d) Requires a private agency obtaining criminal history record information on behalf of a facility under Subsection (c) to forward the information received to the facility requesting the information.

(e) Prohibits criminal history record information obtained by a facility, regulatory agency, or private agency on behalf of a facility under Subsection (b) from being released or disclosed to any person or agency except on court order or with the consent of the person who is the subject of the information.

Sec. 411.1388. ACCESS TO CRIMINAL HISTORY RECORD INFORMATION: INTERAGENCY COUNCIL ON SEX OFFENDER TREATMENT. (a) Provides that the Interagency Council on Sex Offender Treatment is entitled to obtain from DPS criminal history record information maintained by DPS that relates to a person who meets certain criteria.

(b) Prohibits criminal history record information obtained by the Interagency Council on Sex Offender Treatment under Subsection (a) from being released or disclosed to any person or agency except on court order or with the consent of the person who is the subject of the information.

(c) Requires the Interagency Council on Sex Offender Treatment to destroy criminal history record information obtained under Subsection (a) not later than the first anniversary of the date the council makes a decision as to the person's eligibility for registration or the renewal of a registration.

SECTION 10. Amends and reenacts Section 156.206(b), Finance Code, as amended by Chapters 337, 407, and 867, Acts of the 77th Legislature, Regular Session, 2001, as follows:

(b) Requires the savings and loan commissioner to obtain criminal history record information on an applicant that is maintained by DPS and to obtain criminal history

record information from, rather than on an applicant maintained by the Federal Bureau of Investigation on each applicant. Requires each applicant to submit with the application fingerprint and other information necessary to implement this section. Authorizes the commissioner to submit the fingerprint and other information to the Federal Bureau of Investigation, and designates DPS as the recipient of the criminal history record information. Deletes existing text regarding the finance commission by rule requiring applicants to submit information and fingerprints necessary for the commissioner to obtain criminal background information from the Federal Bureau of Investigation.

SECTION 11. Amends Section 156.206, Finance Code, by adding Subsection (d) to authorize criminal history record information obtained from the Federal Bureau of Investigation, notwithstanding Subsection (c), to be released or disclosed only to a governmental entity or as authorized by federal statute, federal rule, or federal executive order.

SECTION 12. Repealers:

The following sections of Chapter 411, Government Code, are repealed:

- (1) Section 411.095(b);
- (2) Section 411.115(c);
- (3) Section 411.118(c);
- (4) Section 411.122(b);
- (5) Section 411.123(b);
- (6) Section 411.1235(b);
- (7) Sections 411.1236(c) and (d);
- (8) Section 411.124(b);
- (9) Section 411.125(b); and
- (10) Section 411.131(c).

SECTION 13. Effective date: September 1, 2003.