

AN ACT

relating to certain governmental agency and private entity access to and use of criminal history record information maintained by the Department of Public Safety.

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

SECTION 1. Section 411.084, Government Code, is amended to read as follows:

Sec. 411.084. USE OF CRIMINAL HISTORY RECORD INFORMATION.

(a) Criminal history record information obtained from the department under this subchapter:

(1) is for the exclusive use of the authorized recipient of the information; and

(2) may be disclosed or used by the recipient only if, and only to the extent that, disclosure or use is authorized or directed by:

(A) this subchapter;

(B) another statute;

(C) a rule adopted under a statute; or

(D) an order of a court of competent jurisdiction.

(b) Notwithstanding Subsection (a) or any other provision in this subchapter, criminal history record information obtained from the Federal Bureau of Investigation may be released or disclosed only to a governmental entity or as authorized by federal

1 statute, federal rule, or federal executive order.

2 SECTION 2. Section 411.093, Government Code, is amended to
3 read as follows:

4 Sec. 411.093. ACCESS TO CRIMINAL HISTORY RECORD
5 INFORMATION: TEXAS DEPARTMENT OF LICENSING AND REGULATION. [~~a~~]

6 The Texas Department of Licensing and Regulation is entitled to
7 obtain from the department criminal history record information
8 maintained by the department that relates to a person who is:

9 (1) an applicant for a license, certificate,
10 registration, title, or permit issued by the department [~~under the~~
11 ~~Texas Boxing and Wrestling Act (Article 8501-1, Vernon's Texas~~
12 ~~Civil Statutes)~~]; or

13 (2) the holder of a license, certificate,
14 registration, title, or permit issued by the department [~~under that~~
15 ~~Act~~].

16 [~~(b) The Texas Department of Licensing and Regulation is~~
17 ~~entitled only to criminal history record information that relates~~
18 ~~to the arrest or conviction of the person.~~]

19 SECTION 3. Section 411.094(d), Government Code, is amended
20 to read as follows:

21 (d) Criminal history record [~~Conviction~~] information
22 received by an institution of higher education under Subsection (b)
23 may not be released or disclosed to any person except on court
24 order.

25 SECTION 4. The heading to Section 411.104, Government Code,
26 is amended to read as follows:

27 Sec. 411.104. ACCESS TO CRIMINAL HISTORY RECORD

1 INFORMATION: TEXAS WORKFORCE [~~EMPLOYMENT~~] COMMISSION.

2 SECTION 5. Sections 411.104(a) and (b), Government Code,
3 are amended to read as follows:

4 (a) In this section, "security sensitive position" has the
5 meaning assigned by Section 301.042(c) [~~202.042(h)~~], Labor Code.

6 (b) The Texas Workforce [~~Employment~~] Commission is entitled
7 to obtain from the department criminal history record information
8 maintained by the department that relates to a person who is an
9 applicant for a security sensitive position.

10 SECTION 6. Section 411.105, Government Code, is amended to
11 read as follows:

12 Sec. 411.105. ACCESS TO CRIMINAL HISTORY RECORD
13 INFORMATION: TEXAS STATE BOARD OF PUBLIC ACCOUNTANCY. The Texas
14 State Board of Public Accountancy is entitled to obtain from the
15 department criminal history record information maintained by the
16 department that relates to a person who is:

17 (1) an applicant for certification as a certified
18 public accountant under Chapter 901, Occupations Code [~~the Public~~
19 ~~Accountancy Act of 1991 (Article 41a-1, Vernon's Texas Civil~~
20 ~~Statutes)];~~

21 (2) an applicant to take the uniform CPA examination
22 under that Act; or

23 (3) an applicant to register under Section 901.412,
24 Occupations Code [~~14 of that Act~~].

25 SECTION 7. Section 411.115(e), Government Code, is amended
26 to read as follows:

27 (e) The Texas Department of Mental Health and Mental

1 Retardation, a local mental health or mental retardation authority,
2 or a community center shall collect and destroy criminal history
3 record [~~conviction~~] information that relates to a person
4 immediately after making an employment decision or taking a
5 personnel action relating to the person who is the subject of the
6 criminal history record information.

7 SECTION 8. Sections 411.1236(a) and (b), Government Code,
8 are amended to read as follows:

9 (a) The [~~This section applies only to a circumstance in~~
10 ~~which:~~

11 [~~(1) the~~] Texas Commission on Fire Protection is
12 entitled to obtain from the department criminal history record
13 information maintained by the department that relates to a person
14 who is:

15 (1) an applicant for or holder of a license issued
16 under Chapter 419; or

17 (2) an applicant for employment by or an employee of
18 the commission [~~(A) issues or renews to an individual a license,~~
19 ~~permit, certificate, or other similar authorization; and~~

20 [~~(B) is authorized or required by law to obtain~~
21 ~~criminal history record information relating to the individual,~~
22 ~~and~~

23 [~~(2) another person, including a state agency or local~~
24 ~~government.~~

25 [~~(A) is authorized or required to obtain the same~~
26 ~~information; and~~

27 [~~(B) did obtain that information not earlier than~~

1 ~~the 90th day before the date on which the individual makes an~~
2 ~~application to the Texas Commission on Fire Protection for issuance~~
3 ~~or renewal of the license, permit, certificate, or other similar~~
4 ~~authorization].~~

5 (b) Criminal history record information obtained by [~~In a~~
6 ~~circumstance described by Subsection (a),~~] the Texas Commission on
7 Fire Protection under Subsection (a) may not be released to any
8 person or agency except on court order, unless the information is
9 entered into evidence by the board in an administrative, civil, or
10 criminal hearing under Chapter 419 [~~shall obtain criminal history~~
11 ~~record information from the person who has obtained the required~~
12 ~~information as described by Subsection (a)(2). On request from the~~
13 ~~Texas Commission on Fire Protection under this section, the person~~
14 ~~shall provide the information to the Texas Commission on Fire~~
15 ~~Protection].~~

16 SECTION 9. Subchapter F, Chapter 411, Government Code, is
17 amended by adding Sections 411.1385, 411.1386, 411.1387, and
18 411.1388 to read as follows:

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

26 (b) Criminal history record information obtained by the
27 savings and loan commissioner under Subsection (a) may be released

1 or disclosed only as provided by Section 156.206, Finance Code.

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

8 (1) a private professional guardian;

9 (2) each person who represents or plans to represent
10 the interests of a ward as a guardian on behalf of the private
11 professional guardian; or

12 (3) each person employed by a private professional
13 guardian who will:

14 (A) have personal contact with a ward or proposed
15 ward;

16 (B) exercise control over and manage a ward's
17 estate; or

18 (C) perform any duties with respect to the
19 management of a ward's estate.

20 (b) Criminal history record information obtained by a clerk
21 under Subsection (a) is for the exclusive use of the court and may
22 be used only in determining whether to appoint, remove, or continue
23 the appointment of a private professional guardian.

24 (c) Criminal history record information obtained by a clerk
25 under Subsection (a) may not be released or disclosed to any person
26 or agency except on court order or with the consent of the person
27 who is the subject of the information. The clerk may destroy the

1 criminal history record information after the information is used
2 for the purposes authorized by this section.

3 Sec. 411.1387. ACCESS TO CRIMINAL HISTORY RECORD
4 INFORMATION: FACILITY, REGULATORY AGENCY, OR PRIVATE AGENCY. (a)
5 In this section, "facility," "regulatory agency," and "private
6 agency" have the meanings assigned by Section 250.001, Health and
7 Safety Code.

8 (b) A facility, regulatory agency, or private agency on
9 behalf of a facility is entitled to obtain from the department
10 criminal history record information maintained by the department
11 that relates to a person who is:

12 (1) an applicant for employment at or an employee of a
13 facility other than a facility licensed under Chapter 142, Health
14 and Safety Code; or

15 (2) an applicant for employment at or an employee of a
16 facility licensed under Chapter 142, Health and Safety Code, if the
17 duties of employment involve direct contact with a consumer in the
18 facility.

19 (c) A facility may:

20 (1) obtain directly from the department criminal
21 history record information on an applicant or employee described by
22 Subsection (b); or

23 (2) authorize a private agency to obtain that
24 information from the department.

25 (d) A private agency obtaining criminal history record
26 information on behalf of a facility under Subsection (c) shall
27 forward the information received to the facility requesting the

1 information.

2 (e) Criminal history record information obtained by a
3 facility, regulatory agency, or private agency on behalf of a
4 facility under Subsection (b) may not be released or disclosed to
5 any person or agency except on court order or with the consent of
6 the person who is the subject of the information.

7 Sec. 411.1388. ACCESS TO CRIMINAL HISTORY RECORD
8 INFORMATION: INTERAGENCY COUNCIL ON SEX OFFENDER TREATMENT. (a)

9 The Interagency Council on Sex Offender Treatment is entitled to
10 obtain from the department criminal history record information
11 maintained by the department that relates to a person who:

12 (1) is registered to provide mental health or medical
13 services for the rehabilitation of sex offenders under Chapter 462,
14 Acts of the 68th Legislature, Regular Session, 1983 (Article
15 4413(51), Vernon's Texas Civil Statutes); or

16 (2) has applied for registration or renewal of a
17 registration to provide mental health or medical services for the
18 rehabilitation of sex offenders under Chapter 462, Acts of the 68th
19 Legislature, Regular Session, 1983 (Article 4413(51), Vernon's
20 Texas Civil Statutes).

21 (b) Criminal history record information obtained by the
22 Interagency Council on Sex Offender Treatment under Subsection (a)
23 may not be released or disclosed to any person or agency except on
24 court order or with the consent of the person who is the subject of
25 the information.

26 (c) The Interagency Council on Sex Offender Treatment shall
27 destroy criminal history record information obtained under

1 Subsection (a) not later than the first anniversary of the date the
2 council makes a decision as to the person's eligibility for
3 registration or the renewal of a registration.

4 SECTION 10. Subchapter F, Chapter 411, Government Code, is
5 amended by adding Section 411.1401 to read as follows:

6 Sec. 411.1401. ACCESS TO CRIMINAL HISTORY RECORD
7 INFORMATION: PROGRAMS PROVIDING ACTIVITIES FOR CHILDREN. (a) In
8 this section, "activity provider" means a nonprofit program that
9 includes as participants or recipients persons who are younger than
10 17 years of age and that regularly provides athletic, civic, or
11 cultural activities.

12 (b) An activity provider is entitled to obtain from the
13 department criminal history record information maintained by the
14 department that relates to a person who is a volunteer or a
15 volunteer applicant of the activity provider.

16 (c) The department may establish rules governing the
17 administration of this section.

18 (d) An activity provider may use criminal history record
19 information obtained under this section only to determine the
20 suitability of a person for a position as a volunteer and may not
21 keep or retain criminal history record information obtained under
22 this section in any file. Criminal history record information must
23 be destroyed promptly after a determination of suitability is made.

24 (e) Criminal history record information obtained under this
25 section may not be released or disclosed to any person except in a
26 criminal proceeding, on court order, or with the consent of the
27 person who is the subject of the criminal history record

1 information.

2 (f) An employee, officer, or volunteer of an activity
3 provider is not liable in a civil action for damages resulting from
4 a failure to comply with this section unless the act or omission of
5 the employee, officer, or volunteer was intentional, wilfully or
6 wantonly negligent, or done with conscious indifference or reckless
7 disregard for the safety of others.

8 SECTION 11. Section 156.206(b), Finance Code, as amended by
9 Chapters 337, 407, and 867, Acts of the 77th Legislature, Regular
10 Session, 2001, is reenacted and amended to read as follows:

11 (b) The commissioner shall obtain criminal history record
12 information on an applicant that is maintained by the Department of
13 Public Safety and shall obtain criminal history record information
14 from [on an applicant maintained by] the Federal Bureau of
15 Investigation on each applicant. Each applicant must submit with
16 the application fingerprint and other information necessary to
17 implement this section. The commissioner may submit the
18 fingerprint and other information to the Federal Bureau of
19 Investigation, and the Department of Public Safety is designated to
20 be the recipient of the criminal history record information. [By
21 rule, the finance commission may require applicants to submit
22 information and fingerprints necessary for the commissioner to
23 obtain criminal background information from the Federal Bureau of
24 Investigation.] The commissioner may also obtain criminal history
25 record information from any court or any local, state, or national
26 governmental agency.

27 SECTION 12. Section 156.206, Finance Code, is amended by

1 adding Subsection (d) to read as follows:

2 (d) Notwithstanding Subsection (c), criminal history record
3 information obtained from the Federal Bureau of Investigation may
4 be released or disclosed only to a governmental entity or as
5 authorized by federal statute, federal rule, or federal executive
6 order.

7 SECTION 13. The following sections of Chapter 411,
8 Government Code, are repealed:

- 9 (1) Section 411.095(b);
- 10 (2) Section 411.115(c);
- 11 (3) Section 411.118(c);
- 12 (4) Section 411.122(b);
- 13 (5) Section 411.123(b);
- 14 (6) Section 411.1235(b);
- 15 (7) Sections 411.1236(c) and (d);
- 16 (8) Section 411.124(b);
- 17 (9) Section 411.125(b); and
- 18 (10) Section 411.131(c).

19 SECTION 14. This Act takes effect September 1, 2003.

Ronald Rusk

President of the Senate

Jim Caddell

Speaker of the House

I certify that H.B. No. 2622 was passed by the House on May 2, 2003, by a non-record vote; and that the House concurred in Senate amendments to H.B. No. 2622 on May 28, 2003, by a non-record vote.

Robert Haney
Chief Clerk of the House

I certify that H.B. No. 2622 was passed by the Senate, with amendments, on May 26, 2003, by a viva-voce vote.

Letsy Saw
Secretary of the Senate

APPROVED: 18 June '03

Date

Rick Perry
Governor

FILED IN THE OFFICE OF THE
SECRETARY OF STATE
8:30pm O'CLOCK

JUN 18 2003
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Secretary of State