

Stricken language would be deleted from and underlined language would be added to the law as it existed prior to this session of the General Assembly.

Act 1573 of the Regular Session

As Engrossed: H3/7/05 S3/29/05

A Bill

1 State of Arkansas
2 85th General Assembly
3 Regular Session, 2005

HOUSE BILL 2116

4
5 By: Representatives Thompson, Mahony
6 By: Senators Broadway, *Salmon*

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9 **For An Act To Be Entitled**

10 AN ACT TO AMEND ARKANSAS LAWS CONCERNING THE
11 DISSEMINATION OF CRIMINAL HISTORY INFORMATION;
12 AND FOR OTHER PURPOSES.

13
14 **Subtitle**

15 AN ACT TO AMEND ARKANSAS LAWS CONCERNING
16 THE DISSEMINATION OF CRIMINAL HISTORY
17 INFORMATION.

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20 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:

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22 SECTION 1. Arkansas Code § 12-12-1012 is amended to read as follows:
23 12-12-1012. Fees for noncriminal justice record searches.

24 (a)(1)(A) A fee may be charged for providing criminal history
25 information for noncriminal justice purposes.

26 (B) However, the fee for providing information may be
27 waived at the request of a:

28 (i) A local school district, for providing
29 information concerning volunteers in public school programs; or

30 (ii) A nonprofit organization whose purpose is to
31 serve juveniles, for providing information concerning volunteers to the
32 nonprofit organization. This exemption shall not be applicable to child care
33 facilities whose owners, operators, or employees are required under § 20-78-
34 601 et seq. to apply to the Identification Bureau of the Department of
35 Arkansas State Police for a criminal records check.



1 (2)(A) The amount of ~~such~~ the fee for electronic Internet
2 submission will be determined jointly by the Identification Bureau of the
3 Department of Arkansas State Police and the central repository and shall not
4 exceed twenty dollars (\$20.00), exclusive of any third-party electronic
5 processing fee charges.

6 (B) Effective July 1, 2005, the amount of the fee for
7 providing information by means other than the Internet shall be determined
8 jointly by the bureau and the central repository and shall not exceed thirty
9 dollars (\$30.00).

10 (b)(1) Except as provided in subdivision (b)(2) of this section, All
11 all fees shall be deposited immediately in the State Treasury as special
12 revenue to the credit of the State Police Equipment Fund, which is created on
13 the books of the Treasurer of State, Auditor of State, and Chief Fiscal
14 Officer of the State, there to be used for the acquisition of an automated
15 fingerprint identification system.

16 (2)(A) ~~Effective July 1, 1997, such fees~~ Fees collected under
17 subdivision (a)(2)(A) of this section shall ~~then~~ be credited fifty percent
18 (50%) to the Crime Information System Fund and fifty percent (50%) to the
19 State Police Equipment Fund, there to be used for the continued operation and
20 expansion of the automated criminal history system and for the operation and
21 expansion of the automated fingerprint ~~identification~~ identification system,
22 subject to legislative appropriations. Any balance in the State Police
23 Equipment Fund on June 30, 1997, may also be used for the operation and
24 expansion of the automated fingerprint identification system.

25 (B) Fees collected under subdivision (a)(2)(B) of this
26 section shall be deposited into the State Treasury as special revenue as
27 follows:

28 (i) Ten dollars (\$10.00) of each fee collected shall
29 be credited to the Crime Information System Fund; and

30 (ii) The portion of a collected fee which exceeds
31 ten dollars (\$10.00) shall be credited to the State Police Equipment Fund.

32 (3) Special revenues deposited in the Crime Information System Fund
33 and the State Police Equipment Fund may be used for personal services and
34 operating expenses as provided by law, for conducting criminal background
35 checks for noncriminal justice purposes, and such special revenues unused at
36 the end of any fiscal year shall be carried forward.

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SECTION 2. Arkansas Code § 12-12-1502 is amended to read as follows:
12-12-1502. Intent.

(a) It is the intent of this subchapter to:

(1) Provide one (1) source for obtaining the most accurate and complete criminal history information; and

(2) Allow dissemination of criminal history information to employers, ~~and~~ professional licensing boards, and any entity mandated by Arkansas law to perform background checks through the Arkansas State Police, pertaining to all felony arrest information and all conviction information.

(b)(1) The Department of Arkansas State Police shall be the agency responsible for the dissemination of criminal history information under this subchapter.

(2) The Arkansas Crime Information Center shall be authorized to disseminate criminal history information as authorized by law.

(c) Felony arrest information that has had a disposition of acquittal, dismissal, or nolle prosequi entered into the central repository shall not be released under this subchapter.

SECTION 3. Arkansas Code § 12-12-1503 is amended to read as follows:
12-12-1503. Definitions.

For purposes of this subchapter:

(1) "Administration of criminal justice" means performing functions of investigation, apprehension, detention, prosecution, adjudication, correctional supervision, or rehabilitation of accused persons or criminal offenders, including criminal identification activities and the collection, maintenance, and dissemination of criminal justice information;

(2)(A) "Arrest records or arrest information" means felony arrest information in which conviction or disposition information has not been entered into the central repository.

(B) "Arrest records or arrest information" does not include misdemeanor arrest information or felony arrest information that has a disposition of acquittal, dismissal, or nolle prosequi entered into the central repository;

(3) "Bureau" means the Identification Bureau of the Department of Arkansas State Police, which may maintain fingerprint card files and other

1 identification information on individuals;

2 (4) "Central repository" means the Arkansas Crime Information
3 Center, which collects, maintains, and disseminates criminal history
4 information;

5 (5)~~(A)~~ "Conviction information" means criminal history
6 information disclosing that a person has pleaded guilty or nolo contendere to
7 or was found guilty of a criminal offense in a court of law, together with
8 sentencing information;

9 (B) Sealed or expunged records are not included in the
10 definition of "conviction information";

11 (6)(A) "Criminal history information" means a record compiled by
12 the central repository or the bureau on an individual consisting of names,
13 identification data, notations of arrests, detentions, indictments,
14 informations, or other formal criminal charges obtained from criminal justice
15 agencies, including any dispositions of the charges, as well as notations on
16 correctional supervision and release.

17 (B) The following are not included in the definition of
18 "criminal history information":

19 (i) Fingerprint records on individuals not involved
20 in the criminal justice system, juvenile records, or driver history records;

21 (ii) Original records of entry maintained by
22 criminal justice agencies, court indices, records of public judicial
23 proceedings, court decisions, opinions, and information disclosed during
24 public judicial proceedings; and

25 (iii) Records when the release is made by the
26 specific court, law enforcement agency, or prosecutor that created the
27 records.

28 (C) Subdivision (5) of this section does not prohibit the
29 release of information by the specific agency that created the record;

30 (7) "Criminal justice agency" means a government agency or any
31 subunit thereof which is authorized by law to perform the administration of
32 criminal justice and which allocates more than one-half (1/2) of its annual
33 budget to the administration of criminal justice;

34 (8)(A) "Disposition" means information describing the outcome of
35 any criminal charges, including notations that law enforcement officials have
36 elected not to refer the matter to a prosecutor, that a prosecutor has

1 elected not to begin criminal proceedings, or that proceedings have been
2 indefinitely postponed.

3 (B) "Disposition" includes acquittals, dismissals,
4 probations, charges pending due to mental disease or defect, guilty pleas,
5 nolle prosequi, nolo contendere pleas, findings of guilt, youthful offender
6 determinations, first offender programs, pardons, commuted sentences,
7 mistrials in which the defendant is discharged, executive clemencies,
8 paroles, releases from correctional supervision, deaths, or a finding that
9 the person must register as a sex offender;

10 (9)(A) "Dissemination" means disclosing criminal history
11 information or disclosing the absence of criminal history information to any
12 ~~agency, professional licensing board, business designated by state or federal~~
13 ~~law, or any other employer legally doing business in and paying taxes to the~~
14 ~~State of Arkansas~~ requestor who has applied and been approved by the
15 Department of Arkansas State Police to receive the information.

16 (B) "Dissemination" does not mean:

17 (i) The furnishing of information by a department to
18 personnel of a participating agency when criminal justice agencies jointly
19 participate in the maintenance of a single recordkeeping system as an
20 alternative to maintaining separate records; and

21 (ii) The furnishing of information by any criminal
22 justice agency to another for the purpose of the administration of criminal
23 justice;

24 (10) "Pending information" means felony criminal history
25 information in some stage of active prosecution or processing; and

26 (11) "Requestor" means the employer, ~~or~~ professional licensing
27 board, or any entity mandated by Arkansas law to perform criminal background
28 checks through the Arkansas State Police, that has submitted an inquiry into
29 a subject's criminal history information under this subchapter, ~~and~~.

30 (12) "Seal" or "expunge" means that the record or records in
31 question shall be sealed, sequestered, and treated as confidential as
32 provided by law, including pardons issued by the Governor.

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34 SECTION 4. Arkansas Code § 12-12-1506 is amended to read as follows:

35 12-12-1506. Unrestricted information - Records - Immunity from civil
36 liability.

1 (a)(1) All conviction information and felony arrest records may be
2 disseminated as provided in this subchapter.

3 (2) Any criminal history information of felony arrest records
4 and all conviction information which pertains to a person currently being
5 processed by the criminal justice system, including the entire period of
6 correctional supervision extending through final discharge from parole, may
7 be disseminated without restriction.

8 (3)(A) The Identification Bureau of the Department of Arkansas
9 State Police, the Arkansas Crime Information Center, or a third party shall
10 be responsible for the maintenance of information pertaining to dissemination
11 of criminal history information.

12 (B) The information pertaining to dissemination required
13 to be maintained shall be retained for a period of not less than three (3)
14 years for security purposes.

15 (4)(A)(i) Each ~~employer or professional licensing board~~
16 requestor that is allowed access to criminal history information under this
17 subchapter shall maintain in its files for at least three (3) years the
18 written consent to obtain the criminal history information given by the
19 applicant or employee.

20 (ii) Any ~~employer or professional licensing board~~
21 requestor that is granted access to criminal history information under this
22 subchapter shall not disseminate the criminal history information.

23 (B) Those files and consent forms shall be subject to
24 inspection by the Department of Arkansas State Police.

25 (b) This section allows the dissemination of information concerning
26 persons who are required to register as sex offenders.

27 (c) Criminal justice agencies and their employees and officials shall
28 be immune from civil liability except in instances of gross negligence or
29 intentional malice for dissemination of criminal history information under
30 this subchapter.

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32 SECTION 5. Arkansas Code § 12-12-1507 is amended to read as follows:
33 12-12-1507. Administration.

34 (a)~~(1)~~ Release of criminal history information under this subchapter
35 shall be made only by the Identification Bureau of the Department of Arkansas
36 State Police and the Arkansas Crime Information Center as authorized by law.

1 (2) The department and the center ~~shall~~ may adopt rules and
2 regulations consistent with the provisions and intent of this subchapter.

3 (b) The department and the center are authorized to contract with the
4 Information Network of Arkansas under the Information Network of Arkansas
5 Act, § 25-27-101 et seq., or any other qualified third-party vendor in the
6 establishment of the gateway or means of electronically processing
7 transactions under this subchapter.

8 (c)(1) The department shall not process a request for a Federal Bureau
9 of Investigation background check unless a corresponding state background
10 check through the department’s identification bureau has also been properly
11 requested pursuant to this subchapter.

12 (2) The requirements of subdivision (c)(1) of this section may
13 be waived upon written authorization of the Director of the Department of
14 Arkansas State Police.

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16 SECTION 6. EMERGENCY CLAUSE. It is found and determined by the
17 General Assembly of the State of Arkansas that the dissemination of complete,
18 accurate, and timely criminal history information is necessary for the
19 protection of the people of the State of Arkansas; and that this act is
20 needed to provide necessary access to criminal history information.
21 Therefore, an emergency is declared to exist and this act being immediately
22 necessary for the preservation of the public peace, health, and safety shall
23 become effective on:

24 (1) The date of its approval by the Governor;

25 (2) If the bill is neither approved nor vetoed by the Governor,
26 the expiration of the period of time during which the Governor may veto the
27 bill; or

28 (3) If the bill is vetoed by the Governor and the veto is
29 overridden, the date the last house overrides the veto.

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31 /s/ Thompson
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34 APPROVED: 4/05/2005
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