



Texas Department of Insurance

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OPINION COMMITTEE

May 8, 2008

FILE # ML-45680-08

I.D. # 45680

The Honorable Greg Abbott
Texas Attorney General
P.O. Box 12548
Austin, Texas 78711-2548

RQ-0713-GA

Re: The applicability of section 441.081(d) of Texas Government Code

Dear Attorney General Abbott:

As Commissioner of Insurance for the Texas Department of Insurance (TDI), I am writing to request your opinion on applicability of section 411.081(d) of the Texas Government Code to TDI.

TDI regulates the business of insurance in the State of Texas. As part of licensing individuals or entities to engage in the business of insurance, TDI obtains criminal history record information. Section 411.083 of the Texas Government Code authorizes the Texas Department of Public Safety to provide criminal history record information to state agencies that have statutory authorization. Section 411.083(b) states that "the department shall grant access to criminal history record information to (1) criminal justice agencies; and (2) noncriminal justice agencies authorized by federal statute or executive order or by state statute to receive criminal history record information."

Section 411.106 of the Government Code permits access by TDI to criminal history records information maintained by the Texas Department of Public Safety that relates to a person:

- (1) an applicant for a license, permit, certificate of authority, certificate of registration, or other authorization issued by the State Board of Insurance to engage in an activity regulated under the Insurance Code; or
- (2) a corporate officer of an insurance company regulated by the Texas Department of Insurance.

Further, section 4005.101 of the Insurance Code sets forth the circumstances for which TDI may deny an application for a license. Section 4005.101(b) provides, in part, as follows:

The department may deny a license application or discipline a license holder under this subchapter if the department determines that the applicant or license holder, individually or through an officer, director, or shareholder:

(5) has engaged in fraudulent or dishonest acts or practices;

(8) has been convicted of a felony;

This language corresponds with federal law requirements regarding crimes of fraud and false statements by persons engaged in the business of insurance. See 18 U.S.C. 1033. The above-referenced statutory provisions clearly provide TDI with access to criminal history record information for regulatory purposes.

The 79th Texas Legislature, Regular Session, enacted House Bill 3093, which amended Subchapter F of the Texas Government Code, specifically section 411.081 regarding disclosure of criminal history record information. Section 411.081(d), as amended, provides that "a criminal justice agency may disclose criminal history record information that is the subject of the order only to other criminal justice agencies, for criminal justice or regulatory licensing purposes, an agency or entity listed in Subsection (i), or the person who is the subject of the order." Tex. Gov't Code §411.081(d). Section 411.081(i) lists certain non-criminal agencies that are permitted to receive criminal history information; the list does not include TDI.

Section 411.081(d), as amended, appears to restrict TDI's access to criminal history record information. Further, section 411.081(g-2) states that "a person whose criminal history record information has been sealed under this section is not required in any application for employment, information, or licensing to state that the person has been the subject of any criminal proceeding related to the information that is the subject of an order issued under this section." Tex. Gov't Code §411.081(g-2). A person whose criminal history has been sealed subject to a nondisclosure order would not be required to indicate in a license application submitted to TDI that they had been the subject of any criminal proceeding related to the order issued.

It appears that sections 411.106 and 411.083 grant TDI, for regulatory purposes, unfettered access to criminal history record information and that section 411.081, as amended, restricts TDI's access to criminal history record information. TDI seeks your assistance in reconciling these statutory provisions and respectfully requests your opinion on whether section 411.106 of the Texas Government Code permits TDI to have access to criminal history record information that is subject to a nondisclosure order under section 411.081(d) of the Texas Government Code.

Thank you for your attention and consideration of this matter. If you have any questions, please contact Gene Jarmon, General Counsel at (512) 475-2001.

Sincerely,



Mike Geeslin

Commissioner of Insurance