

By: Keel

H.B. No. 2796

A BILL TO BE ENTITLED

AN ACT

relating to the exercise of peremptory challenges based on race or gender.

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

SECTION 1. Article 35.261, Code of Criminal Procedure, is amended to read as follows:

Art. 35.261. PEREMPTORY CHALLENGES BASED ON RACE OR GENDER PROHIBITED. (a) After the parties have delivered their lists to the clerk under Article 35.26 of this code and before the court has impanelled the jury, a party [~~the defendant~~] may request the court to dismiss the array and call a new array in the case. The court shall grant the motion of a requesting party [~~defendant~~] for dismissal of the array if the court determines [~~that the defendant is a member of an identifiable racial group,~~] that the attorney representing the opposing party [~~state~~] exercised peremptory challenges for the purpose of excluding persons from the jury on the basis of their race or gender, and that the requesting party [~~defendant~~] has offered evidence of relevant facts that tend to show that challenges made by the attorney representing the opposing party [~~state~~] were made for reasons based on race or gender. If the requesting party [~~defendant~~] establishes a prima facie case, the burden then shifts to the attorney representing the opposing party [~~state~~] to give a racially or gender neutral explanation for the challenges. The burden of persuasion remains with the requesting

1 party [~~defendant~~] to establish purposeful discrimination.

2 (b) If the court determines that a party [~~the attorney~~
3 ~~representing the state~~] challenged prospective jurors on the basis
4 of race or gender, the court shall call a new array in the case.

5 SECTION 2. This Act takes effect September 1, 2003.