

1-1 By: Hinojosa S.B. No. 2075
1-2 (In the Senate - Filed March 12, 2009; March 31, 2009, read
1-3 first time and referred to Committee on Criminal Justice;
1-4 May 4, 2009, reported adversely, with favorable Committee
1-5 Substitute by the following vote: Yeas 5, Nays 1; May 4, 2009, sent
1-6 to printer.)

1-7 COMMITTEE SUBSTITUTE FOR S.B. No. 2075 By: Whitmire

1-8 A BILL TO BE ENTITLED
1-9 AN ACT

1-10 relating to the consequences of successfully completing a term of
1-11 deferred adjudication community supervision with respect to the
1-12 expunction or use of certain criminal history records and files.

1-13 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

1-14 SECTION 1. Article 55.01, Code of Criminal Procedure, is
1-15 amended by amending Subsection (b) and adding Subsection (e) to
1-16 read as follows:

1-17 (b) Except as provided by Subsection (c) [~~of this section~~],
1-18 a district court may expunge all records and files relating to the
1-19 arrest of a person who has been arrested for commission of a felony
1-20 or misdemeanor under the procedure established under Article 55.02
1-21 [~~of this code~~] if the person [~~is~~]:

1-22 (1) is tried for the offense for which the person was
1-23 arrested, [+]

1-24 [~~(2)~~] is convicted of the offense, [+] and

1-25 [~~(3)~~] is acquitted by the court of criminal appeals;

1-26 or

1-27 (2) is placed on deferred adjudication community
1-28 supervision under Section 5, Article 42.12, for the offense for
1-29 which the person was arrested and meets the requirements of
1-30 Subsection (e).

1-31 (e) A person is eligible for an expunction under Subsection
1-32 (b)(2) if the person:

1-33 (1) meets the requirements to be eligible for an order
1-34 of nondisclosure under Section 411.081(d), Government Code, with
1-35 respect to the offense for which the person was arrested and placed
1-36 on deferred adjudication community supervision, regardless of
1-37 whether, with respect to that offense, an order of nondisclosure
1-38 was previously issued to the person or the person previously
1-39 petitioned the court for an order of nondisclosure;

1-40 (2) with respect to the offense for which the person
1-41 was arrested and placed on deferred adjudication community
1-42 supervision, petitions the court for an order of expunction under
1-43 Article 55.02 only on or after:

1-44 (A) the second anniversary of the discharge and
1-45 dismissal, if the offense was a misdemeanor described by Section
1-46 411.081(d)(1), Government Code;

1-47 (B) the fourth anniversary of the discharge and
1-48 dismissal, if the offense was a misdemeanor described by Section
1-49 411.081(d)(2), Government Code;

1-50 (C) the eighth anniversary of the discharge and
1-51 dismissal, if the offense was a state jail felony; or

1-52 (D) the 10th anniversary of the discharge and
1-53 dismissal, if the offense was a felony other than a state jail
1-54 felony; and

1-55 (3) during the period of deferred adjudication
1-56 community supervision for the offense and during the applicable
1-57 period described by Subdivision (2), is not convicted of or placed
1-58 on deferred adjudication community supervision for any offense
1-59 other than an offense under the Transportation Code punishable by
1-60 fine only.

1-61 SECTION 2. Section 53.021, Occupations Code, is amended by
1-62 adding Subsections (c), (d), and (e) to read as follows:

1-63 (c) Except as provided by Subsections (d) and (e),

2-1 notwithstanding any other law, a licensing authority may not
2-2 consider a person to have been convicted of an offense for purposes
2-3 of this section if, regardless of the statutory authorization:

2-4 (1) the person entered a plea of guilty or nolo
2-5 contendere;

2-6 (2) the judge deferred further proceedings without
2-7 entering an adjudication of guilt and placed the person under the
2-8 supervision of the court or an officer under the supervision of the
2-9 court; and

2-10 (3) at the end of the period of supervision, the judge
2-11 dismissed the proceedings and discharged the person.

2-12 (d) A licensing authority may consider a person to have been
2-13 convicted of an offense for purposes of this section regardless of
2-14 whether the proceedings were dismissed and the person was
2-15 discharged as described by Subsection (c) if, after consideration
2-16 of the factors described by Sections 53.022 and 53.023(a), the
2-17 licensing authority determines that:

2-18 (1) the person may pose a continued threat to public
2-19 safety; or

2-20 (2) employment of the person in the licensed
2-21 occupation would create a situation in which the person has an
2-22 opportunity to repeat the prohibited conduct.

2-23 (e) Subsection (c) does not apply if the person is an
2-24 applicant for or the holder of a license that authorizes the person
2-25 to provide law enforcement or public health, education, or safety
2-26 services.

2-27 SECTION 3. The change in law made by this Act to Article
2-28 55.01, Code of Criminal Procedure, applies to a person who, on or
2-29 after the effective date of this Act, seeks expunction of records
2-30 and files relating to an arrest, regardless of whether the arrest
2-31 occurred before, on, or after the effective date of this Act.

2-32 SECTION 4. This Act takes effect immediately if it receives
2-33 a vote of two-thirds of all the members elected to each house, as
2-34 provided by Section 39, Article III, Texas Constitution. If this
2-35 Act does not receive the vote necessary for immediate effect, this
2-36 Act takes effect September 1, 2009.

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