

By: West

S.B. No. 1172

A BILL TO BE ENTITLED

AN ACT

relating to the eligibility of certain criminal defendants for an order of nondisclosure; authorizing a fee.

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

SECTION 1. Section 411.081, Government Code, is amended by adding Subsection (d-1) and amending Subsections (e), (f), (h), and (i) to read as follows:

(d-1)(1) This subsection applies only to a person who:

(A) on conviction is placed on community supervision under Article 42.12, Code of Criminal Procedure, and with respect to whom the conviction is subsequently set aside by the court under Section 20(a) of that article; and

(B) is not convicted of an offense for which the person would be ineligible for deferred adjudication community supervision under Section 5(d), Article 42.12, Code of Criminal Procedure.

(2) Notwithstanding any other provision of this subchapter, if a person to whom this subsection applies satisfies the requirements of Subsection (e), the person may petition the court that placed the person on community supervision for an order of nondisclosure under this subsection. After notice to the state and a hearing on whether the person is entitled to file the petition and issuance of the order is in the best interest of justice, the court shall issue an order prohibiting criminal justice agencies

1 from disclosing to the public criminal history record information
2 related to the offense giving rise to the community supervision. A
3 criminal justice agency may disclose criminal history record
4 information that is the subject of the order only to other criminal
5 justice agencies, for criminal justice purposes, an agency or
6 entity listed in Subsection (i), or the person who is the subject of
7 the order. A person may petition the court that placed the person
8 on community supervision for an order of nondisclosure on payment
9 of a \$28 fee to the clerk of the court in addition to any other fee
10 that generally applies to the filing of a civil petition. The
11 payment may be made only after:

12 (A) the conviction is set aside, if the offense
13 for which the person was placed on community supervision was a
14 misdemeanor; or

15 (B) the fifth anniversary of the date the
16 conviction is set aside, if the offense for which the person was
17 placed on community supervision was a felony.

18 (e) A person is entitled to petition the court under
19 Subsection (d) or (d-1) only if during the period of the community
20 supervision, including deferred adjudication community
21 supervision, for which the order of nondisclosure is requested and
22 during the applicable period described by Subsection (d)(1), (2),
23 or (3) or by Subsection (d-1)(2)(A) or (B), as appropriate, the
24 person is not convicted of or placed on deferred adjudication
25 community supervision under Section 5, Article 42.12, Code of
26 Criminal Procedure, for any offense other than an offense under the
27 Transportation Code punishable by fine only. A person is not

1 entitled to petition the court under Subsection (d) or (d-1) if the
2 person was placed on community supervision, including [the]
3 deferred adjudication community supervision, for, or has been
4 previously convicted of or placed on any other deferred
5 adjudication for:

6 (1) an offense requiring registration as a sex
7 offender under Chapter 62, Code of Criminal Procedure;

8 (2) an offense under Section 20.04, Penal Code,
9 regardless of whether the offense is a reportable conviction or
10 adjudication for purposes of Chapter 62, Code of Criminal
11 Procedure;

12 (3) an offense under Section 19.02, 19.03, 22.04,
13 22.041, 25.07, or 42.072, Penal Code; or

14 (4) any other offense involving family violence, as
15 defined by Section 71.004, Family Code.

16 (f) For purposes of Subsections [~~Subsection~~] (d) and (e), a
17 person is considered to have been placed on deferred adjudication
18 community supervision if, regardless of the statutory
19 authorization:

20 (1) the person entered a plea of guilty or nolo
21 contendere;

22 (2) the judge deferred further proceedings without
23 entering an adjudication of guilt and placed the person under the
24 supervision of the court or an officer under the supervision of the
25 court; and

26 (3) at the end of the period of supervision, the judge
27 dismissed the proceedings and discharged the person.

1 (h) The clerk of a court that collects a fee under
2 Subsection (d) or (d-1) shall remit the fee to the comptroller not
3 later than the last day of the month following the end of the
4 calendar quarter in which the fee is collected, and the comptroller
5 shall deposit the fee in the general revenue fund. The Department
6 of Public Safety shall submit a report to the legislature not later
7 than December 1 of each even-numbered year that includes
8 information on:

9 (1) the number of petitions for nondisclosure and
10 orders of nondisclosure received by the department in each of the
11 previous two years;

12 (2) the actions taken by the department with respect
13 to the petitions and orders received;

14 (3) the costs incurred by the department in taking
15 those actions; and

16 (4) the number of persons who are the subject of an
17 order of nondisclosure and who became the subject of criminal
18 charges for an offense committed after the order was issued.

19 (i) A criminal justice agency may disclose criminal history
20 record information that is the subject of an order of nondisclosure
21 under Subsection (d) or (d-1) to the following noncriminal justice
22 agencies or entities only:

23 (1) the State Board for Educator Certification;

24 (2) a school district, charter school, private school,
25 regional education service center, commercial transportation
26 company, or education shared service arrangement;

27 (3) the Texas Medical Board;

- 1 (4) the Texas School for the Blind and Visually
2 Impaired;
- 3 (5) the Board of Law Examiners;
- 4 (6) the State Bar of Texas;
- 5 (7) a district court regarding a petition for name
6 change under Subchapter B, Chapter 45, Family Code;
- 7 (8) the Texas School for the Deaf;
- 8 (9) the Department of Family and Protective Services;
- 9 (10) the Texas Juvenile Justice Department [~~Youth~~
10 ~~Commission~~];
- 11 (11) the Department of Assistive and Rehabilitative
12 Services;
- 13 (12) the Department of State Health Services, a local
14 mental health service, a local mental retardation authority, or a
15 community center providing services to persons with mental illness
16 or retardation;
- 17 (13) the Texas Private Security Board;
- 18 (14) a municipal or volunteer fire department;
- 19 (15) the Texas Board of Nursing;
- 20 (16) a safe house providing shelter to children in
21 harmful situations;
- 22 (17) a public or nonprofit hospital or hospital
23 district;
- 24 (18) [~~the Texas Juvenile Probation Commission,~~
25 [~~19~~] the securities commissioner, the banking
26 commissioner, the savings and mortgage lending commissioner, the
27 consumer credit commissioner, or the credit union commissioner;

- 1 (19) [~~(20)~~] the Texas State Board of Public
2 Accountancy;
- 3 (20) [~~(21)~~] the Texas Department of Licensing and
4 Regulation;
- 5 (21) [~~(22)~~] the Health and Human Services Commission;
- 6 (22) [~~(23)~~] the Department of Aging and Disability
7 Services;
- 8 (23) [~~(24)~~] the Texas Education Agency;
- 9 (24) [~~(25)~~] the Guardianship Certification Board;
- 10 (25) [~~(26)~~] a county clerk's office in relation to a
11 proceeding for the appointment of a guardian under Chapter XIII,
12 Texas Probate Code;
- 13 (26) [~~(27)~~] the Department of Information Resources
14 but only regarding an employee, applicant for employment,
15 contractor, subcontractor, intern, or volunteer who provides
16 network security services under Chapter 2059 to:
- 17 (A) the Department of Information Resources; or
- 18 (B) a contractor or subcontractor of the
19 Department of Information Resources;
- 20 (27) [~~(28)~~] the Court Reporters Certification Board;
- 21 (28) [~~(29)~~] the Texas Department of Insurance; and
- 22 (29) [~~(30)~~] the Teacher Retirement System of Texas.

23 SECTION 2. Subsection (a), Section 411.0851, Government
24 Code, is amended to read as follows:

25 (a) A private entity that compiles and disseminates for
26 compensation criminal history record information shall destroy and
27 may not disseminate any information in the possession of the entity

1 with respect to which the entity has received notice that:

2 (1) an order of expunction has been issued under
3 Article 55.02, Code of Criminal Procedure; or

4 (2) an order of nondisclosure has been issued under
5 Section 411.081(d) or (d-1).

6 SECTION 3. Section 552.142, Government Code, is amended to
7 read as follows:

8 Sec. 552.142. EXCEPTION: CONFIDENTIALITY OF RECORDS OF
9 CERTAIN CRIMINAL HISTORY INFORMATION [~~DEFERRED ADJUDICATIONS~~].

10 (a) Information is excepted from the requirements of Section
11 552.021 if an order of nondisclosure with respect to the
12 information has been issued under Section 411.081(d) or (d-1).

13 (b) A person who is the subject of information that is
14 excepted from the requirements of Section 552.021 under this
15 section may deny the occurrence of the criminal proceeding [~~arrest~~
16 ~~and prosecution~~] to which the information relates and the exception
17 of the information under this section, unless the information is
18 being used against the person in a subsequent criminal proceeding.

19 SECTION 4. Subsection (a), Section 552.1425, Government
20 Code, is amended to read as follows:

21 (a) A private entity that compiles and disseminates for
22 compensation criminal history record information may not compile or
23 disseminate information with respect to which the entity has
24 received notice that:

25 (1) an order of expunction has been issued under
26 Article 55.02, Code of Criminal Procedure; or

27 (2) an order of nondisclosure has been issued under

1 Section 411.081(d) or (d-1).

2 SECTION 5. Subsection (e), Section 53.021, Occupations
3 Code, is amended to read as follows:

4 (e) Subsection (c) does not apply if the person is an
5 applicant for or the holder of a license that authorizes the person
6 to provide:

7 (1) law enforcement or public health, education, or
8 safety services; or

9 (2) financial services in an industry regulated by a
10 person listed in Section 411.081(i)(18) [~~411.081(i)(19)~~],
11 Government Code.

12 SECTION 6. The change in law made by Subsection (d-1),
13 Section 411.081, Government Code, as added by this Act, applies to a
14 person whose conviction is set aside under Subsection (a), Section
15 20, Article 42.12, Code of Criminal Procedure, on or after the
16 effective date of this Act, regardless of when the person committed
17 the offense for which the person was convicted.

18 SECTION 7. This Act takes effect September 1, 2013.