

1-1 By: West S.B. No. 1172
 1-2 (In the Senate - Filed March 5, 2013; March 12, 2013, read
 1-3 first time and referred to Committee on Criminal Justice;
 1-4 April 18, 2013, rereferred to Committee on Jurisprudence;
 1-5 April 24, 2013, reported favorably by the following vote: Yeas 5,
 1-6 Nays 0; April 24, 2013, sent to printer.)

1-7 COMMITTEE VOTE

	Yea	Nay	Absent	PNV
1-8				
1-9	X			
1-10	X			
1-11	X			
1-12			X	
1-13	X			
1-14	X			
1-15			X	

1-16 A BILL TO BE ENTITLED
 1-17 AN ACT

1-18 relating to the eligibility of certain criminal defendants for an
 1-19 order of nondisclosure; authorizing a fee.

1-20 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

1-21 SECTION 1. Section 411.081, Government Code, is amended by
 1-22 adding Subsection (d-1) and amending Subsections (e), (f), (h), and
 1-23 (i) to read as follows:

1-24 (d-1)(1) This subsection applies only to a person who:

1-25 (A) on conviction is placed on community
 1-26 supervision under Article 42.12, Code of Criminal Procedure, and
 1-27 with respect to whom the conviction is subsequently set aside by the
 1-28 court under Section 20(a) of that article; and

1-29 (B) is not convicted of an offense for which the
 1-30 person would be ineligible for deferred adjudication community
 1-31 supervision under Section 5(d), Article 42.12, Code of Criminal
 1-32 Procedure.

1-33 (2) Notwithstanding any other provision of this
 1-34 subchapter, if a person to whom this subsection applies satisfies
 1-35 the requirements of Subsection (e), the person may petition the
 1-36 court that placed the person on community supervision for an order
 1-37 of nondisclosure under this subsection. After notice to the state
 1-38 and a hearing on whether the person is entitled to file the petition
 1-39 and issuance of the order is in the best interest of justice, the
 1-40 court shall issue an order prohibiting criminal justice agencies
 1-41 from disclosing to the public criminal history record information
 1-42 related to the offense giving rise to the community supervision. A
 1-43 criminal justice agency may disclose criminal history record
 1-44 information that is the subject of the order only to other criminal
 1-45 justice agencies, for criminal justice purposes, an agency or
 1-46 entity listed in Subsection (i), or the person who is the subject of
 1-47 the order. A person may petition the court that placed the person
 1-48 on community supervision for an order of nondisclosure on payment
 1-49 of a \$28 fee to the clerk of the court in addition to any other fee
 1-50 that generally applies to the filing of a civil petition. The
 1-51 payment may be made only after:

1-52 (A) the conviction is set aside, if the offense
 1-53 for which the person was placed on community supervision was a
 1-54 misdemeanor; or

1-55 (B) the fifth anniversary of the date the
 1-56 conviction is set aside, if the offense for which the person was
 1-57 placed on community supervision was a felony.

1-58 (e) A person is entitled to petition the court under
 1-59 Subsection (d) or (d-1) only if during the period of the community
 1-60 supervision, including deferred adjudication community
 1-61 supervision, for which the order of nondisclosure is requested and

2-1 during the applicable period described by Subsection (d)(1), (2),
 2-2 or (3) or by Subsection (d-1)(2)(A) or (B), as appropriate, the
 2-3 person is not convicted of or placed on deferred adjudication
 2-4 community supervision under Section 5, Article 42.12, Code of
 2-5 Criminal Procedure, for any offense other than an offense under the
 2-6 Transportation Code punishable by fine only. A person is not
 2-7 entitled to petition the court under Subsection (d) or (d-1) if the
 2-8 person was placed on community supervision, including ~~the~~
 2-9 deferred adjudication community supervision, for, or has been
 2-10 previously convicted of or placed on any other deferred
 2-11 adjudication for:

2-12 (1) an offense requiring registration as a sex
 2-13 offender under Chapter 62, Code of Criminal Procedure;

2-14 (2) an offense under Section 20.04, Penal Code,
 2-15 regardless of whether the offense is a reportable conviction or
 2-16 adjudication for purposes of Chapter 62, Code of Criminal
 2-17 Procedure;

2-18 (3) an offense under Section 19.02, 19.03, 22.04,
 2-19 22.041, 25.07, or 42.072, Penal Code; or

2-20 (4) any other offense involving family violence, as
 2-21 defined by Section 71.004, Family Code.

2-22 (f) For purposes of Subsections ~~Subsection~~ (d) and (e), a
 2-23 person is considered to have been placed on deferred adjudication
 2-24 community supervision if, regardless of the statutory
 2-25 authorization:

2-26 (1) the person entered a plea of guilty or nolo
 2-27 contendere;

2-28 (2) the judge deferred further proceedings without
 2-29 entering an adjudication of guilt and placed the person under the
 2-30 supervision of the court or an officer under the supervision of the
 2-31 court; and

2-32 (3) at the end of the period of supervision, the judge
 2-33 dismissed the proceedings and discharged the person.

2-34 (h) The clerk of a court that collects a fee under
 2-35 Subsection (d) or (d-1) shall remit the fee to the comptroller not
 2-36 later than the last day of the month following the end of the
 2-37 calendar quarter in which the fee is collected, and the comptroller
 2-38 shall deposit the fee in the general revenue fund. The Department
 2-39 of Public Safety shall submit a report to the legislature not later
 2-40 than December 1 of each even-numbered year that includes
 2-41 information on:

2-42 (1) the number of petitions for nondisclosure and
 2-43 orders of nondisclosure received by the department in each of the
 2-44 previous two years;

2-45 (2) the actions taken by the department with respect
 2-46 to the petitions and orders received;

2-47 (3) the costs incurred by the department in taking
 2-48 those actions; and

2-49 (4) the number of persons who are the subject of an
 2-50 order of nondisclosure and who became the subject of criminal
 2-51 charges for an offense committed after the order was issued.

2-52 (i) A criminal justice agency may disclose criminal history
 2-53 record information that is the subject of an order of nondisclosure
 2-54 under Subsection (d) or (d-1) to the following noncriminal justice
 2-55 agencies or entities only:

2-56 (1) the State Board for Educator Certification;

2-57 (2) a school district, charter school, private school,
 2-58 regional education service center, commercial transportation
 2-59 company, or education shared service arrangement;

2-60 (3) the Texas Medical Board;

2-61 (4) the Texas School for the Blind and Visually
 2-62 Impaired;

2-63 (5) the Board of Law Examiners;

2-64 (6) the State Bar of Texas;

2-65 (7) a district court regarding a petition for name
 2-66 change under Subchapter B, Chapter 45, Family Code;

2-67 (8) the Texas School for the Deaf;

2-68 (9) the Department of Family and Protective Services;

2-69 (10) the Texas Juvenile Justice Department ~~Youth~~

3-1 ~~Commission~~];
3-2 (11) the Department of Assistive and Rehabilitative
3-3 Services;
3-4 (12) the Department of State Health Services, a local
3-5 mental health service, a local mental retardation authority, or a
3-6 community center providing services to persons with mental illness
3-7 or retardation;
3-8 (13) the Texas Private Security Board;
3-9 (14) a municipal or volunteer fire department;
3-10 (15) the Texas Board of Nursing;
3-11 (16) a safe house providing shelter to children in
3-12 harmful situations;
3-13 (17) a public or nonprofit hospital or hospital
3-14 district;
3-15 (18) ~~[the Texas Juvenile Probation Commission,~~
3-16 ~~[(19)]~~ the securities commissioner, the banking
3-17 commissioner, the savings and mortgage lending commissioner, the
3-18 consumer credit commissioner, or the credit union commissioner;
3-19 (19) ~~[(20)]~~ the Texas State Board of Public
3-20 Accountancy;
3-21 (20) ~~[(21)]~~ the Texas Department of Licensing and
3-22 Regulation;
3-23 (21) ~~[(22)]~~ the Health and Human Services Commission;
3-24 (22) ~~[(23)]~~ the Department of Aging and Disability
3-25 Services;
3-26 (23) ~~[(24)]~~ the Texas Education Agency;
3-27 (24) ~~[(25)]~~ the Guardianship Certification Board;
3-28 (25) ~~[(26)]~~ a county clerk's office in relation to a
3-29 proceeding for the appointment of a guardian under Chapter XIII,
3-30 Texas Probate Code;
3-31 (26) ~~[(27)]~~ the Department of Information Resources
3-32 but only regarding an employee, applicant for employment,
3-33 contractor, subcontractor, intern, or volunteer who provides
3-34 network security services under Chapter 2059 to:
3-35 (A) the Department of Information Resources; or
3-36 (B) a contractor or subcontractor of the
3-37 Department of Information Resources;
3-38 (27) ~~[(28)]~~ the Court Reporters Certification Board;
3-39 (28) ~~[(29)]~~ the Texas Department of Insurance; and
3-40 (29) ~~[(30)]~~ the Teacher Retirement System of Texas.
3-41 SECTION 2. Subsection (a), Section 411.0851, Government
3-42 Code, is amended to read as follows:
3-43 (a) A private entity that compiles and disseminates for
3-44 compensation criminal history record information shall destroy and
3-45 may not disseminate any information in the possession of the entity
3-46 with respect to which the entity has received notice that:
3-47 (1) an order of expunction has been issued under
3-48 Article 55.02, Code of Criminal Procedure; or
3-49 (2) an order of nondisclosure has been issued under
3-50 Section 411.081(d) or (d-1).
3-51 SECTION 3. Section 552.142, Government Code, is amended to
3-52 read as follows:
3-53 Sec. 552.142. EXCEPTION: CONFIDENTIALITY OF RECORDS OF
3-54 CERTAIN CRIMINAL HISTORY INFORMATION ~~[DEFERRED ADJUDICATIONS]~~.
3-55 (a) Information is excepted from the requirements of Section
3-56 552.021 if an order of nondisclosure with respect to the
3-57 information has been issued under Section 411.081(d) or (d-1).
3-58 (b) A person who is the subject of information that is
3-59 excepted from the requirements of Section 552.021 under this
3-60 section may deny the occurrence of the criminal proceeding ~~[arrest~~
3-61 ~~and prosecution]~~ to which the information relates and the exception
3-62 of the information under this section, unless the information is
3-63 being used against the person in a subsequent criminal proceeding.
3-64 SECTION 4. Subsection (a), Section 552.1425, Government
3-65 Code, is amended to read as follows:
3-66 (a) A private entity that compiles and disseminates for
3-67 compensation criminal history record information may not compile or
3-68 disseminate information with respect to which the entity has
3-69 received notice that:

4-1 (1) an order of expunction has been issued under
4-2 Article 55.02, Code of Criminal Procedure; or

4-3 (2) an order of nondisclosure has been issued under
4-4 Section 411.081(d) or (d-1).

4-5 SECTION 5. Subsection (e), Section 53.021, Occupations
4-6 Code, is amended to read as follows:

4-7 (e) Subsection (c) does not apply if the person is an
4-8 applicant for or the holder of a license that authorizes the person
4-9 to provide:

4-10 (1) law enforcement or public health, education, or
4-11 safety services; or

4-12 (2) financial services in an industry regulated by a
4-13 person listed in Section 411.081(i)(18) [~~411.081(i)(19)~~],
4-14 Government Code.

4-15 SECTION 6. The change in law made by Subsection (d-1),
4-16 Section 411.081, Government Code, as added by this Act, applies to a
4-17 person whose conviction is set aside under Subsection (a), Section
4-18 20, Article 42.12, Code of Criminal Procedure, on or after the
4-19 effective date of this Act, regardless of when the person committed
4-20 the offense for which the person was convicted.

4-21 SECTION 7. This Act takes effect September 1, 2013.

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