

## **BILL ANALYSIS**

Senate Research Center

S.B. 130  
By: West  
Criminal Justice  
5/28/2015  
Enrolled

### **AUTHOR'S / SPONSOR'S STATEMENT OF INTENT**

S.B. 130 creates eligibility for the records of an offense and conviction that have been set aside by a judge (also called judicial clemency) to be sealed through an order of nondisclosure.

Under a set-aside, a guilty plea is initially entered by the defendant. A set-aside differs from deferred adjudication. Under deferred adjudication, there is no admission of guilt and judgment is withheld in exchange for the promise that all charges will be dismissed following successful completion of the term of community supervision.

The records of an offense where deferred adjudication has been successfully completed can be sealed, and now expunged, if a pardon has been granted. An admission of guilt carries a conviction, but the statutory remedy of a pardon is available for a conviction, enabling the records of the offense to be expunged. But a conviction that has been set aside has no available legal remedies. It can be disclosed in a criminal history record search. By statute, it is not eligible to be sealed because this is only possible for deferred adjudication. Neither can the records be expunged, because the conviction technically no longer exists.

The statutory intent of a set-aside was to provide future relief, but the records of the offense and conviction were intended to always be available to the courts in the instance of a future criminal offense. This closely parallels the intent of an order of nondisclosure.

S.B. 130 prohibits eligibility for certain alcohol-related offenses, sexual assault-related offenses, and crimes of family violence, injury to a child, the elderly or disabled, kidnapping, murder, and other offenses consistent with eligibility for sealing records related to deferred adjudication.

S.B. 130 amends current law relating to the eligibility of criminal defendants for an order of nondisclosure and authorizes a fee.

### **RULEMAKING AUTHORITY**

This bill does not expressly grant any additional rulemaking authority to a state officer, institution, or agency.

### **SECTION BY SECTION ANALYSIS**

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

(d) Makes a nonsubstantive change to this subsection.

(d-1) (1) Provides that this subsection applies only to a person who:

(A) on conviction is placed on community supervision under Article 42.12 (Community Supervision), Code of Criminal Procedure, and with respect to whom the conviction is subsequently set aside by the court under Section 20(a) (relating to the reduction or termination of a community supervision period by a judge) 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) (relating to the cases for which the judge may not grant deferred adjudication), Article 42.12, Code of Criminal Procedure.

(2) Authorizes a person to petition the court that has placed the person on community supervision for an order of nondisclosure if a person to whom this subsection applies satisfies the requirements of Subsection (e) (relating to the requirements for a person to be entitled to petition the court to request an order of nondisclosure), notwithstanding any other provision of this subchapter. Requires the court to issue an order prohibiting criminal justice agencies from disclosing to the public criminal history record information related to the offense giving rise to the community supervision after notice to the state, an opportunity for a hearing, and a determination that the person is entitled to file the petition and that issuance of the order is in the best interest of justice. Authorizes a criminal justice agency to disclose criminal history record information that is the subject of the order only to other criminal justice agencies for criminal justice purposes, an agency or entity listed in Subsection (i), or the person who is the subject of the order. Authorizes a person to petition the court that placed the person on community supervision for an order of nondisclosure only after:

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

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

(e) Provides that a person is entitled to petition the court under Subsection (d) or (d-1), rather than under Subsection (d), only if during the period of the community supervision, including deferred adjudication community supervision, for which the order of nondisclosure is requested and during the application period described by Subsection (d)(1), (2), or (3) or by Subsection (d-1)(2)(A) or (B), as appropriate, the person is not convicted of or placed on deferred adjudication community supervision under Section 5, Article 42.12, Code of Criminal Procedure, for any offense under the Transportation code punishable by fine only. Makes conforming and nonsubstantive changes.

(1)-(4) Makes no change to these subdivisions.

(f) Amends this subsection to refer to Subsections (d) and (e), rather than only Subsection (d).

(f-1) Changes references to Subsection (d) to Subsection (d) or (d-1).

(h) Requires the clerk of a court that collects a fee paid under Subsection (f-1), rather than Subsection (d), to remit the fee to the comptroller of public accounts of the State of Texas (comptroller) not later than the last day of the month following the end of the calendar quarter in which the fee is collected, and requires the comptroller to deposit the fee in the general revenue fund.

SECTION 2. Reenacts Section 411.081(i), Government Code, as amended by Chapters 42 (S.B. 966), 266 (H.B. 729), and 583 (S.B. 869), Acts of the 83rd Legislature, Regular Session, 2013, and amends it, as follows:

(i) Amends this subsection to refer to Subsections (d) or (d-1), rather than only Subsection (d), regarding disclosure of criminal history information to the listed noncriminal justice agencies or entities.

(1)-(24) Makes no change to these subdivisions;

(25) Changes a reference to Chapter XIII (Guardianship), Texas Probate Code, to Title 3 (Guardianship and Related Procedures), Estates Code;

(26)-(28) Makes no change to these subdivisions;

(29) Redesignates Subdivision 30 as Subdivision 29. Makes no further change to this subdivision.

SECTION 3. Amends Section 411.0851(a), Government Code, to require that a private entity that compiles and disseminates for compensation criminal history record information shall destroy and may not disseminate any information in the possession of the entity with respect to which the entity has received notice that an order of expunction has been issued under Article 55.02 (Procedure for Expunction), Code of Criminal Procedure, or an order of nondisclosure has been issued under Section 411.081(d) or (d-1), rather than under Section 411.081 (d).

SECTION 4. Amends Section 552.142, Government Code, as follows:

Sec. 552.142. New heading: EXCEPTION: CONFIDENTIALITY OF RECORDS OF CERTAIN CRIMINAL HISTORY INFORMATION. (a) Makes a conforming change.

(b) Authorizes a person who is the subject of information that is excepted from the requirements of Section 522.021 (Availability of Public Information) under this section to deny the occurrence of the criminal proceeding, rather than the arrest and prosecution, to which the information relates and the exception of the information under this section, unless the information is being used against the person in a subsequent criminal proceeding.

SECTION 5. Amends Section 552.1425(a), Government Code, to prohibit a private entity that compiles and disseminates for compensation criminal history record information from doing so with respect to which the entity has received notice that an order of expunction has been issued under Article 55.02, Code of Criminal Procedure, or an order of nondisclosure has been issued under Section 411.081(d) or (d-1), rather than Section 411.081(d).

SECTION 6. Amends Section 53.021(e), Occupations Code, as follows:

(e) Provides that Subsection (c) (prohibiting a licensing authority from considering a person to have been convicted of an offense for purposes of this section if, regardless of the statutory authorization certain criteria is met) does not apply if the person is an applicant for or the holder of a license that authorizes the person to provide:

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

(2) financial services in an industry regulated by a person listed in Section 411.081(i)(18) (the securities commissioner, banking commissioner, savings and mortgage lending commissioner, consumer credit commissioner, or credit union commissioner), rather than 411.081(i)(19) (the Texas State Board of Public Accountancy), Government Code.

SECTION 7. Provides that the change in law made by Section 411.081(d-1), Government Code, as added by this Act, applies to a person whose conviction is set aside under Subsection (a), Section 20, Article 42.12, Code of Criminal Procedure, on or after the effective date of this Act, regardless of when the person committed the offense for which the person is convicted.

SECTION 8. Effective date: September 1, 2015.