

By: Wu

H.B. No. 329

Substitute the following for H.B. No. 329:

By: Herrero

C.S.H.B. No. 329

A BILL TO BE ENTITLED

AN ACT

relating to orders of nondisclosure issued for records of certain fine-only misdemeanors; authorizing a fee.

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

SECTION 1. Section 109.005(a), Business & Commerce Code, as added by Chapter 1200 (S.B. No. 1289), Acts of the 83rd Legislature, Regular Session, 2013, is amended to read as follows:

(a) A business entity may not publish any criminal record information in the business entity's possession with respect to which the business entity has knowledge or has received notice that:

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

(2) an order of nondisclosure has been issued under Section 411.081 [~~411.081(d)~~], Government Code.

SECTION 2. Section 103.0211, Government Code, is amended to read as follows:

Sec. 103.0211. ADDITIONAL FEES AND COSTS IN CRIMINAL OR CIVIL CASES: GOVERNMENT CODE. An accused or defendant, or a party to a civil suit, as applicable, shall pay the following fees and costs under the Government Code if ordered by the court or otherwise required:

(1) a court reporter fee when testimony is taken:

(A) in a criminal court in Dallas County (Sec.

1 25.0593, Government Code) . . . \$3;

2 (B) in a county criminal court of appeals in
3 Dallas County (Sec. 25.0594, Government Code) . . . \$3;

4 (C) in a county court at law in McLennan County
5 (Sec. 25.1572, Government Code) . . . \$3; and

6 (D) in a county criminal court in Tarrant County
7 (Sec. 25.2223, Government Code) . . . \$3;

8 (2) a court reporter service fee if the courts have
9 official court reporters (Sec. 51.601, Government Code) . . . \$15
10 or, in specified counties, \$30;

11 (3) a speedy trial rights waiver motion filing fee in
12 El Paso County (Sec. 54.745, Government Code) . . . \$100;

13 (4) the costs of a criminal magistrate if the court
14 determines that the nonprevailing party is able to defray the
15 costs:

16 (A) in Bexar County (Sec. 54.913, Government
17 Code) . . . magistrate's fees;

18 (B) in Dallas County (Sec. 54.313, Government
19 Code) . . . magistrate's fees;

20 (C) in Lubbock County (Sec. 54.883, Government
21 Code) . . . magistrate's fees;

22 (D) in Tarrant County (Sec. 54.663, Government
23 Code) . . . magistrate's fees; and

24 (E) in Travis County (Sec. 54.983, Government
25 Code) . . . magistrate's fees;

26 (5) an administrative fee for participation in certain
27 community supervision programs (Sec. 76.015, Government Code)

1 . . . not less than \$25 and not more than \$60 per month; ~~and~~

2 (6) fee paid on filing a petition for an order of
3 nondisclosure of criminal history record information in certain
4 deferred adjudication cases (Sec. 411.081(f-1) [~~411.081~~],
5 Government Code) . . . \$28; and

6 (7) fee paid on filing a petition for an order of
7 nondisclosure of criminal history record information in certain
8 fine-only misdemeanor cases (Sec. 411.081(f-1), Government Code)
9 . . . \$28.

10 SECTION 3. Section 411.081, Government Code, is amended by
11 adding Subsections (d-1), (e-1), (h-1), and (h-2) and amending
12 Subsections (f), (f-1), and (h) to read as follows:

13 (d-1) Notwithstanding any other provision of this chapter,
14 a person who is convicted of and has satisfied the judgment for or
15 who has received a dismissal after deferral of disposition for a
16 fine-only misdemeanor, other than a traffic offense or an offense
17 under a municipal ordinance or county order, may petition the court
18 that convicted or granted a dismissal to the person for an order of
19 nondisclosure under this subsection. Subject to Subsection (e-1),
20 a person may petition the court under this subsection regardless of
21 whether the person has been previously convicted of or granted a
22 dismissal for a fine-only misdemeanor offense. After notice to the
23 state, the court shall hold a hearing on whether the person is
24 entitled to file the petition and whether issuance of the order is
25 in the best interest of justice. In determining whether granting
26 the order is in the best interest of justice, the court may
27 consider, among any other factors the court considers relevant, the

1 person's criminal history record information, including whether
2 the person has been convicted of or granted a deferred disposition
3 for an offense with elements that are the same as or similar to the
4 elements of the offense for which the person is seeking an order of
5 nondisclosure. If the court determines that granting the order is
6 in the best interest of justice, the court shall issue an order
7 prohibiting criminal justice agencies from disclosing to the public
8 criminal history record information related to the fine-only
9 misdemeanor offense that is the subject of the petition. As a
10 condition of granting the petition under this subsection for a
11 person convicted of the offense, a court may require the defendant
12 to perform community service, pay a fee, or both perform the
13 community service and pay the fee as if the defendant had been
14 placed on probation pending deferred disposition under Article
15 45.051, Code of Criminal Procedure. A criminal justice agency may
16 disclose criminal history record information that is the subject of
17 an order of nondisclosure under this subsection only to other
18 criminal justice agencies for criminal justice or regulatory
19 licensing purposes, an agency or entity listed in Subsection (i),
20 or the person who is the subject of the order. A person may petition
21 the court for an order of nondisclosure under this subsection only
22 on or after the first anniversary of the conviction or dismissal, as
23 applicable.

24 (e-1) A person is not entitled to petition the court under
25 Subsection (d-1) if the person has been previously convicted of or
26 placed on deferred adjudication for:

27 (1) an offense requiring registration as a sex

1 offender under Chapter 62, Code of Criminal Procedure;

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

6 (3) an offense under Section 19.02, 19.03, 22.04,
7 22.041, 25.07, 25.072, or 42.072, Penal Code; or

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

10 (f) For purposes of Subsections [~~Subsection~~] (d), (e), and
11 (e-1), a person is considered to have been placed on deferred
12 adjudication community supervision if, regardless of the statutory
13 authorization:

14 (1) the person entered a plea of guilty or nolo
15 contendere;

16 (2) the judge deferred further proceedings without
17 entering an adjudication of guilt and placed the person under the
18 supervision of the court or an officer under the supervision of the
19 court; and

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

22 (f-1) A person who petitions the court for an order of
23 nondisclosure under Subsection (d) or (d-1) may file the petition
24 in person, electronically, or by mail. The petition must be
25 accompanied by payment of a \$28 fee to the clerk of the court in
26 addition to any other fee that generally applies to the filing of a
27 civil petition. The Office of Court Administration of the Texas

1 Judicial System shall prescribe a form for the filing of a petition
2 electronically or by mail. The form must provide for the petition
3 to be accompanied by the required fees and any other supporting
4 material determined necessary by the office of court
5 administration, including evidence that the person is entitled to
6 file the petition. The office of court administration shall make
7 available on its Internet website the electronic application and
8 printable application form. Each county or district clerk's office
9 that maintains an Internet website shall include on that website a
10 link to the electronic application and printable application form
11 available on the office of court administration's Internet website.
12 On receipt of a petition under this subsection, the court shall
13 provide notice to the state and an opportunity for a hearing on
14 whether the person is entitled to file the petition and issuance of
15 the order is in the best interest of justice. The court shall hold a
16 hearing before determining whether to issue an order of
17 nondisclosure, except that a hearing is not required if:

18 (1) the state does not request a hearing on the issue
19 before the 45th day after the date on which the state receives
20 notice under this subsection; and

21 (2) the court determines that:

22 (A) the defendant is entitled to file the
23 petition; and

24 (B) the order is in the best interest of justice.

25 (h) The clerk of a court that collects a fee paid under
26 Subsection (f-1) for a petition filed under Subsection (d) [~~(d)~~]
27 shall remit the fee to the comptroller not later than the last day

1 of the month following the end of the calendar quarter in which the
2 fee is collected, and the comptroller shall deposit the fee in the
3 general revenue fund.

4 (h-1) The clerk of a court that collects a fee paid under
5 Subsection (f-1) for a petition filed under Subsection (d-1) shall
6 deposit the fee to the credit of the general fund of the
7 municipality or county, as applicable.

8 (h-2) The Department of Public Safety shall submit a report
9 to the legislature not later than December 1 of each even-numbered
10 year that includes information on:

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

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

16 (3) the costs incurred by the department in taking
17 those actions; and

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

21 SECTION 4. Section 411.081(i), Government Code, as amended
22 by Chapters 42 (S.B. 966), 266 (H.B. 729), and 583 (S.B. 869), Acts
23 of the 83rd Legislature, Regular Session, 2013, is reenacted and
24 amended to read as follows:

25 (i) A criminal justice agency may disclose criminal history
26 record information that is the subject of an order of nondisclosure
27 under this section [~~Subsection (d)~~] to the following noncriminal

1 justice agencies or entities only:

2 (1) the State Board for Educator Certification;

3 (2) a school district, charter school, private school,
4 regional education service center, commercial transportation
5 company, or education shared service arrangement;

6 (3) the Texas Medical Board;

7 (4) the Texas School for the Blind and Visually
8 Impaired;

9 (5) the Board of Law Examiners;

10 (6) the State Bar of Texas;

11 (7) a district court regarding a petition for name
12 change under Subchapter B, Chapter 45, Family Code;

13 (8) the Texas School for the Deaf;

14 (9) the Department of Family and Protective Services;

15 (10) the Texas Juvenile Justice Department;

16 (11) the Department of Assistive and Rehabilitative
17 Services;

18 (12) the Department of State Health Services, a local
19 mental health service, a local mental retardation authority, or a
20 community center providing services to persons with mental illness
21 or retardation;

22 (13) the Texas Private Security Board;

23 (14) a municipal or volunteer fire department;

24 (15) the Texas Board of Nursing;

25 (16) a safe house providing shelter to children in
26 harmful situations;

27 (17) a public or nonprofit hospital or hospital

1 district, or a facility as defined by Section 250.001, Health and
2 Safety Code;

3 (18) the securities commissioner, the banking
4 commissioner, the savings and mortgage lending commissioner, the
5 consumer credit commissioner, or the credit union commissioner;

6 (19) the Texas State Board of Public Accountancy;

7 (20) the Texas Department of Licensing and Regulation;

8 (21) the Health and Human Services Commission;

9 (22) the Department of Aging and Disability Services;

10 (23) the Texas Education Agency;

11 (24) the Judicial Branch Certification Commission;

12 (25) a county clerk's office in relation to a
13 proceeding for the appointment of a guardian under Title 3, Estates
14 Code [~~Chapter XIII, Texas Probate Code~~];

15 (26) the Department of Information Resources but only
16 regarding an employee, applicant for employment, contractor,
17 subcontractor, intern, or volunteer who provides network security
18 services under Chapter 2059 to:

19 (A) the Department of Information Resources; or

20 (B) a contractor or subcontractor of the
21 Department of Information Resources;

22 (27) the Texas Department of Insurance;

23 (28) the Teacher Retirement System of Texas; and

24 (29) [~~(30)~~] the Texas State Board of Pharmacy.

25 SECTION 5. Section 411.0851(a), Government Code, is amended
26 to read as follows:

27 (a) A private entity that compiles and disseminates for

1 compensation criminal history record information shall destroy and
2 may not disseminate any information in the possession of the entity
3 with respect to which the entity has received notice that:

4 (1) an order of expunction has been issued under
5 Article [55.02](#), Code of Criminal Procedure; or

6 (2) an order of nondisclosure has been issued under
7 Section [411.081](#) [~~411.081(a)~~].

8 SECTION 6. The heading to Section [552.142](#), Government Code,
9 is amended to read as follows:

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

12 SECTION 7. Section [552.142](#)(a), Government Code, is amended
13 to read as follows:

14 (a) Information is excepted from the requirements of
15 Section [552.021](#) if an order of nondisclosure with respect to the
16 information has been issued under Section [411.081](#) [~~411.081(a)~~].

17 SECTION 8. Section [552.1425](#)(a), Government Code, is amended
18 to read as follows:

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

23 (1) an order of expunction has been issued under
24 Article [55.02](#), Code of Criminal Procedure; or

25 (2) an order of nondisclosure has been issued under
26 Section [411.081](#) [~~411.081(a)~~].

27 SECTION 9. Section [53.021](#)(e), Occupations Code, is amended

1 to read as follows:

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

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

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

10 SECTION 10. The change in law made by this Act applies to a
11 petition for an order of nondisclosure that is filed on or after the
12 effective date of this Act, regardless of whether the misdemeanor
13 that is the subject of the petition occurred before, on, or after
14 the effective date of this Act.

15 SECTION 11. This Act takes effect September 1, 2015.