

1-1 By: West S.B. No. 130
 1-2 (In the Senate - Filed November 10, 2014; January 27, 2015,
 1-3 read first time and referred to Committee on Criminal Justice;
 1-4 April 7, 2015, reported favorably by the following vote: Yeas 7,
 1-5 Nays 0; April 7, 2015, sent to printer.)

1-6 COMMITTEE VOTE

	Yea	Nay	Absent	PNV
1-7				
1-8	X			
1-9	X			
1-10	X			
1-11	X			
1-12	X			
1-13	X			
1-14	X			

1-15 A BILL TO BE ENTITLED
 1-16 AN ACT

1-17 relating to the eligibility of criminal defendants for an order of
 1-18 nondisclosure; authorizing a fee.

1-19 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

1-20 SECTION 1. Section 411.081, Government Code, is amended by
 1-21 adding Subsection (d-1) and amending Subsections (d), (e), (f),
 1-22 (f-1), and (h) to read as follows:

1-23 (d) Notwithstanding any other provision of this subchapter,
 1-24 if a person is placed on deferred adjudication community
 1-25 supervision under Section 5, Article 42.12, Code of Criminal
 1-26 Procedure, subsequently receives a discharge and dismissal under
 1-27 Section 5(c), Article 42.12, and satisfies the requirements of
 1-28 Subsection (e), the person may petition the court that placed the
 1-29 defendant on deferred adjudication for an order of nondisclosure
 1-30 under this subsection. Except as provided by Subsection (e), a
 1-31 person may petition the court for an order of nondisclosure
 1-32 regardless of whether the person has been previously placed on
 1-33 deferred adjudication community supervision for another offense.
 1-34 After notice to the state, an opportunity for a hearing, and a
 1-35 determination that the person is entitled to file the petition and
 1-36 issuance of the order is in the best interest of justice, the court
 1-37 shall issue an order prohibiting criminal justice agencies from
 1-38 disclosing to the public criminal history record information
 1-39 related to the offense giving rise to the deferred adjudication. A
 1-40 criminal justice agency may disclose criminal history record
 1-41 information that is the subject of the order only to other criminal
 1-42 justice agencies[~~r~~] for criminal justice or regulatory licensing
 1-43 purposes, an agency or entity listed in Subsection (i), or the
 1-44 person who is the subject of the order. A person may petition the
 1-45 court that placed the person on deferred adjudication for an order
 1-46 of nondisclosure only on or after:

1-47 (1) the discharge and dismissal, if the offense for
 1-48 which the person was placed on deferred adjudication was a
 1-49 misdemeanor other than a misdemeanor described by Subdivision (2);

1-50 (2) the second anniversary of the discharge and
 1-51 dismissal, if the offense for which the person was placed on
 1-52 deferred adjudication was a misdemeanor under Chapter 20, 21, 22,
 1-53 25, 42, or 46, Penal Code; or

1-54 (3) the fifth anniversary of the discharge and
 1-55 dismissal, if the offense for which the person was placed on
 1-56 deferred adjudication was a felony.

1-57 (d-1)(1) This subsection applies only to a person who:

1-58 (A) on conviction is placed on community
 1-59 supervision under Article 42.12, Code of Criminal Procedure, and
 1-60 with respect to whom the conviction is subsequently set aside by the
 1-61 court under Section 20(a) of that article; and

2-1 (B) is not convicted of an offense for which the
 2-2 person would be ineligible for deferred adjudication community
 2-3 supervision under Section 5(d), Article 42.12, Code of Criminal
 2-4 Procedure.

2-5 (2) Notwithstanding any other provision of this
 2-6 subchapter, if a person to whom this subsection applies satisfies
 2-7 the requirements of Subsection (e), the person may petition the
 2-8 court that placed the person on community supervision for an order
 2-9 of nondisclosure. After notice to the state, an opportunity for a
 2-10 hearing, and a determination that the person is entitled to file the
 2-11 petition and that issuance of the order is in the best interest of
 2-12 justice, the court shall issue an order prohibiting criminal
 2-13 justice agencies from disclosing to the public criminal history
 2-14 record information related to the offense giving rise to the
 2-15 community supervision. A criminal justice agency may disclose
 2-16 criminal history record information that is the subject of the
 2-17 order only to other criminal justice agencies for criminal justice
 2-18 purposes, an agency or entity listed in Subsection (i), or the
 2-19 person who is the subject of the order. A person may petition the
 2-20 court that placed the person on community supervision for an order
 2-21 of nondisclosure only after:

2-22 (A) the conviction is set aside, if the offense
 2-23 for which the person was placed on community supervision was a
 2-24 misdemeanor; or

2-25 (B) the fifth anniversary of the date the
 2-26 conviction is set aside, if the offense for which the person was
 2-27 placed on community supervision was a felony.

2-28 (e) A person is entitled to petition the court under
 2-29 Subsection (d) or (d-1) only if during the period of the community
 2-30 supervision, including deferred adjudication community
 2-31 supervision, for which the order of nondisclosure is requested and
 2-32 during the applicable period described by Subsection (d)(1), (2),
 2-33 or (3) or by Subsection (d-1)(2)(A) or (B), as appropriate, the
 2-34 person is not convicted of or placed on deferred adjudication
 2-35 community supervision under Section 5, Article 42.12, Code of
 2-36 Criminal Procedure, for any offense other than an offense under the
 2-37 Transportation Code punishable by fine only. A person is not
 2-38 entitled to petition the court under Subsection (d) or (d-1) if the
 2-39 person was placed on community supervision, including ~~the~~
 2-40 deferred adjudication community supervision, for, or has been
 2-41 previously convicted of or placed on any other deferred
 2-42 adjudication for:

2-43 (1) an offense requiring registration as a sex
 2-44 offender under Chapter 62, Code of Criminal Procedure;

2-45 (2) an offense under Section 20.04, Penal Code,
 2-46 regardless of whether the offense is a reportable conviction or
 2-47 adjudication for purposes of Chapter 62, Code of Criminal
 2-48 Procedure;

2-49 (3) an offense under Section 19.02, 19.03, 22.04,
 2-50 22.041, 25.07, 25.072, or 42.072, Penal Code; or

2-51 (4) any other offense involving family violence, as
 2-52 defined by Section 71.004, Family Code.

2-53 (f) For purposes of Subsections ~~[Subsection]~~ (d) and (e), a
 2-54 person is considered to have been placed on deferred adjudication
 2-55 community supervision if, regardless of the statutory
 2-56 authorization:

2-57 (1) the person entered a plea of guilty or nolo
 2-58 contendere;

2-59 (2) the judge deferred further proceedings without
 2-60 entering an adjudication of guilt and placed the person under the
 2-61 supervision of the court or an officer under the supervision of the
 2-62 court; and

2-63 (3) at the end of the period of supervision, the judge
 2-64 dismissed the proceedings and discharged the person.

2-65 (f-1) A person who petitions the court for an order of
 2-66 nondisclosure under Subsection (d) or (d-1) may file the petition
 2-67 in person, electronically, or by mail. The petition must be
 2-68 accompanied by payment of a \$28 fee to the clerk of the court in
 2-69 addition to any other fee that generally applies to the filing of a

3-1 civil petition. The Office of Court Administration of the Texas
 3-2 Judicial System shall prescribe a form for the filing of a petition
 3-3 electronically or by mail. The form must provide for the petition
 3-4 to be accompanied by the required fees and any other supporting
 3-5 material determined necessary by the office of court
 3-6 administration, including evidence that the person is entitled to
 3-7 file the petition. The office of court administration shall make
 3-8 available on its Internet website the electronic application and
 3-9 printable application form. Each county or district clerk's office
 3-10 that maintains an Internet website shall include on that website a
 3-11 link to the electronic application and printable application form
 3-12 available on the office of court administration's Internet website.
 3-13 On receipt of a petition under this subsection, the court shall
 3-14 provide notice to the state and an opportunity for a hearing on
 3-15 whether the person is entitled to file the petition and issuance of
 3-16 the order is in the best interest of justice. The court shall hold a
 3-17 hearing before determining whether to issue an order of
 3-18 nondisclosure, except that a hearing is not required if:

3-19 (1) the state does not request a hearing on the issue
 3-20 before the 45th day after the date on which the state receives
 3-21 notice under this subsection; and

3-22 (2) the court determines that:

3-23 (A) the defendant is entitled to file the
 3-24 petition; and

3-25 (B) the order is in the best interest of justice.

3-26 (h) The clerk of a court that collects a fee paid under
 3-27 Subsection (f-1) [~~(d)~~] shall remit the fee to the comptroller not
 3-28 later than the last day of the month following the end of the
 3-29 calendar quarter in which the fee is collected, and the comptroller
 3-30 shall deposit the fee in the general revenue fund. The Department
 3-31 of Public Safety shall submit a report to the legislature not later
 3-32 than December 1 of each even-numbered year that includes
 3-33 information on:

3-34 (1) the number of petitions for nondisclosure and
 3-35 orders of nondisclosure received by the department in each of the
 3-36 previous two years;

3-37 (2) the actions taken by the department with respect
 3-38 to the petitions and orders received;

3-39 (3) the costs incurred by the department in taking
 3-40 those actions; and

3-41 (4) the number of persons who are the subject of an
 3-42 order of nondisclosure and who became the subject of criminal
 3-43 charges for an offense committed after the order was issued.

3-44 SECTION 2. Subsection (i), Section 411.081, Government
 3-45 Code, as amended by Chapters 42 (S.B. 966), 266 (H.B. 729), and 583
 3-46 (S.B. 869), Acts of the 83rd Legislature, Regular Session, 2013, is
 3-47 reenacted and amended to read as follows:

3-48 (i) A criminal justice agency may disclose criminal history
 3-49 record information that is the subject of an order of nondisclosure
 3-50 under Subsection (d) or (d-1) to the following noncriminal justice
 3-51 agencies or entities only:

3-52 (1) the State Board for Educator Certification;

3-53 (2) a school district, charter school, private school,
 3-54 regional education service center, commercial transportation
 3-55 company, or education shared service arrangement;

3-56 (3) the Texas Medical Board;

3-57 (4) the Texas School for the Blind and Visually
 3-58 Impaired;

3-59 (5) the Board of Law Examiners;

3-60 (6) the State Bar of Texas;

3-61 (7) a district court regarding a petition for name
 3-62 change under Subchapter B, Chapter 45, Family Code;

3-63 (8) the Texas School for the Deaf;

3-64 (9) the Department of Family and Protective Services;

3-65 (10) the Texas Juvenile Justice Department;

3-66 (11) the Department of Assistive and Rehabilitative
 3-67 Services;

3-68 (12) the Department of State Health Services, a local
 3-69 mental health service, a local mental retardation authority, or a

4-1 community center providing services to persons with mental illness
4-2 or retardation;

4-3 (13) the Texas Private Security Board;

4-4 (14) a municipal or volunteer fire department;

4-5 (15) the Texas Board of Nursing;

4-6 (16) a safe house providing shelter to children in
4-7 harmful situations;

4-8 (17) a public or nonprofit hospital or hospital
4-9 district, or a facility as defined by Section 250.001, Health and
4-10 Safety Code;

4-11 (18) the securities commissioner, the banking
4-12 commissioner, the savings and mortgage lending commissioner, the
4-13 consumer credit commissioner, or the credit union commissioner;

4-14 (19) the Texas State Board of Public Accountancy;

4-15 (20) the Texas Department of Licensing and Regulation;

4-16 (21) the Health and Human Services Commission;

4-17 (22) the Department of Aging and Disability Services;

4-18 (23) the Texas Education Agency;

4-19 (24) the Judicial Branch Certification Commission;

4-20 (25) a county clerk's office in relation to a
4-21 proceeding for the appointment of a guardian under Title 3, Estates
4-22 Code [Chapter XIII, Texas Probate Code];

4-23 (26) the Department of Information Resources but only
4-24 regarding an employee, applicant for employment, contractor,
4-25 subcontractor, intern, or volunteer who provides network security
4-26 services under Chapter 2059 to:

4-27 (A) the Department of Information Resources; or

4-28 (B) a contractor or subcontractor of the
4-29 Department of Information Resources;

4-30 (27) the Texas Department of Insurance;

4-31 (28) the Teacher Retirement System of Texas; and

4-32 (29) ~~(30)~~ the Texas State Board of Pharmacy.

4-33 SECTION 3. Subsection (a), Section 411.0851, Government
4-34 Code, is amended to read as follows:

4-35 (a) A private entity that compiles and disseminates for
4-36 compensation criminal history record information shall destroy and
4-37 may not disseminate any information in the possession of the entity
4-38 with respect to which the entity has received notice that:

4-39 (1) an order of expunction has been issued under
4-40 Article 55.02, Code of Criminal Procedure; or

4-41 (2) an order of nondisclosure has been issued under
4-42 Section 411.081(d) or (d-1).

4-43 SECTION 4. Section 552.142, Government Code, is amended to
4-44 read as follows:

4-45 Sec. 552.142. EXCEPTION: CONFIDENTIALITY OF RECORDS OF
4-46 CERTAIN CRIMINAL HISTORY INFORMATION [~~DEFERRED ADJUDICATIONS~~].

4-47 (a) Information is excepted from the requirements of Section
4-48 552.021 if an order of nondisclosure with respect to the
4-49 information has been issued under Section 411.081(d) or (d-1).

4-50 (b) A person who is the subject of information that is
4-51 excepted from the requirements of Section 552.021 under this
4-52 section may deny the occurrence of the criminal proceeding [~~arrest~~
4-53 ~~and prosecution~~] to which the information relates and the exception
4-54 of the information under this section, unless the information is
4-55 being used against the person in a subsequent criminal proceeding.

4-56 SECTION 5. Subsection (a), Section 552.1425, Government
4-57 Code, is amended to read as follows:

4-58 (a) A private entity that compiles and disseminates for
4-59 compensation criminal history record information may not compile or
4-60 disseminate information with respect to which the entity has
4-61 received notice that:

4-62 (1) an order of expunction has been issued under
4-63 Article 55.02, Code of Criminal Procedure; or

4-64 (2) an order of nondisclosure has been issued under
4-65 Section 411.081(d) or (d-1).

4-66 SECTION 6. Subsection (e), Section 53.021, Occupations
4-67 Code, is amended to read as follows:

4-68 (e) Subsection (c) does not apply if the person is an
4-69 applicant for or the holder of a license that authorizes the person

5-1 to provide:

5-2 (1) law enforcement or public health, education, or
5-3 safety services; or

5-4 (2) financial services in an industry regulated by a
5-5 person listed in Section 411.081(i)(18) [~~411.081(i)(19)~~],
5-6 Government Code.

5-7 SECTION 7. The change in law made by Subsection (d-1),
5-8 Section 411.081, Government Code, as added by this Act, applies to a
5-9 person whose conviction is set aside under Subsection (a), Section
5-10 20, Article 42.12, Code of Criminal Procedure, on or after the
5-11 effective date of this Act, regardless of when the person committed
5-12 the offense for which the person was convicted.

5-13 SECTION 8. This Act takes effect September 1, 2015.

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