

# SENATE AMENDMENTS

**2<sup>nd</sup> Printing**

By: Parker, Meyer, Moody, Fallon

H.B. No. 2286

A BILL TO BE ENTITLED

AN ACT

relating to the eligibility of certain victims of trafficking of persons for an order of nondisclosure; 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(d) or (d-1), Government Code.

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

(d-1)(1) This subsection applies only to a person who on conviction for an offense under Section 43.02, Penal Code, 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.

1           (2) Notwithstanding any other provision of this  
2 subchapter, if a person to whom this subsection applies satisfies  
3 the requirements of Subsection (e), the person may petition the  
4 court that placed the person on community supervision for an order  
5 of nondisclosure on the grounds that the person committed the  
6 offense solely as a victim of trafficking of persons. After notice  
7 to the state, an opportunity for a hearing, and a determination by  
8 the court that the person committed the offense solely as a victim  
9 of trafficking of persons and that issuance of the order is in the  
10 best interest of justice, the court shall issue an order  
11 prohibiting criminal justice agencies from disclosing to the public  
12 criminal history record information related to the offense under  
13 Section 43.02, Penal Code, giving rise to the community  
14 supervision. A criminal justice agency may disclose criminal  
15 history record information that is the subject of the order only to  
16 other criminal justice agencies for criminal justice purposes, an  
17 agency or entity listed in Subsection (i), or the person who is the  
18 subject of the order. A person may petition the court that placed  
19 the person on community supervision for an order of nondisclosure  
20 only after the person's conviction under Section 43.02, Penal Code,  
21 is set aside.

22           (e) A person is entitled to petition the court under  
23 Subsection (d) or (d-1) only if during the period of the community  
24 supervision, including deferred adjudication community  
25 supervision, for which the order of nondisclosure is requested and,  
26 for a petition under Subsection (d), only during the applicable  
27 period described by Subdivision (1) [~~Subsection (d)(1)~~], (2), or

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

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

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

16 (3) an offense under Section 19.02, 19.03, 22.04,  
17 22.041, 25.07, 25.072, or 42.072, Penal Code; or

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

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

24 (1) the person entered a plea of guilty or nolo  
25 contendere;

26 (2) the judge deferred further proceedings without  
27 entering an adjudication of guilt and placed the person under the

1 supervision of the court or an officer under the supervision of the  
2 court; and

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

5 (f-1) A person who petitions the court for an order of  
6 nondisclosure under Subsection (d) or (d-1) may file the petition  
7 in person, electronically, or by mail. The petition must be  
8 accompanied by payment of a \$28 fee to the clerk of the court in  
9 addition to any other fee that generally applies to the filing of a  
10 civil petition. The Office of Court Administration of the Texas  
11 Judicial System shall prescribe a form for the filing of a petition  
12 electronically or by mail. The form must provide for the petition  
13 to be accompanied by the required fees and any other supporting  
14 material determined necessary by the office of court  
15 administration, including evidence that the person is entitled to  
16 file the petition. The office of court administration shall make  
17 available on its Internet website the electronic application and  
18 printable application form. Each county or district clerk's office  
19 that maintains an Internet website shall include on that website a  
20 link to the electronic application and printable application form  
21 available on the office of court administration's Internet website.  
22 On receipt of a petition under this subsection, the court shall  
23 provide notice to the state and an opportunity for a hearing on  
24 whether the person is entitled to file the petition and issuance of  
25 the order is in the best interest of justice. The court shall hold a  
26 hearing before determining whether to issue an order of  
27 nondisclosure, except that a hearing is not required if:

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

4           (2) the court determines that:

5                 (A) the defendant is entitled to file the  
6 petition; and

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

8           (h) The clerk of a court that collects a fee paid under  
9 Subsection (f-1) [~~(d)~~] shall remit the fee to the comptroller not  
10 later than the last day of the month following the end of the  
11 calendar quarter in which the fee is collected, and the comptroller  
12 shall deposit the fee in the general revenue fund. The Department  
13 of Public Safety shall submit a report to the legislature not later  
14 than December 1 of each even-numbered year that includes  
15 information on:

16                 (1) the number of petitions for nondisclosure and  
17 orders of nondisclosure received by the department in each of the  
18 previous two years;

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

21                 (3) the costs incurred by the department in taking  
22 those actions; and

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

26           SECTION 3. Section 411.081(i), Government Code, as amended  
27 by Chapters 42 (S.B. 966), 266 (H.B. 729), and 583 (S.B. 869), Acts

of the 83rd Legislature, Regular Session, 2013, is reenacted and amended to read as follows:

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

(1) the State Board for Educator Certification;

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

(3) the Texas Medical Board;

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

(5) the Board of Law Examiners;

(6) the State Bar of Texas;

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

(8) the Texas School for the Deaf;

(9) the Department of Family and Protective Services;

(10) the Texas Juvenile Justice Department;

(11) the Department of Assistive and Rehabilitative Services;

(12) the Department of State Health Services, a local mental health service, a local mental retardation authority, or a community center providing services to persons with mental illness or an intellectual disability [~~retardation~~];

(13) the Texas Private Security Board;

(14) a municipal or volunteer fire department;

(15) the Texas Board of Nursing;

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

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

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

(19) the Texas State Board of Public Accountancy;

(20) the Texas Department of Licensing and Regulation;

(21) the Health and Human Services Commission;

(22) the Department of Aging and Disability Services;

(23) the Texas Education Agency;

(24) the Judicial Branch Certification Commission;

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

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

(A) the Department of Information Resources; or

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

(27) the Texas Department of Insurance;

(28) the Teacher Retirement System of Texas; and

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

SECTION 4. Section 411.0851(a), Government Code, is amended to read as follows:

(a) 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:

(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(d) or (d-1).

SECTION 5. Section 552.142, Government Code, is amended to read as follows:

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

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

(b) A person who is the subject of information that is excepted from the requirements of Section 552.021 under this section may deny the occurrence of the criminal proceeding ~~[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 6. Section 552.1425(a), Government Code, is amended to read as follows:



1           (a) A private entity that compiles and disseminates for  
2 compensation criminal history record information may not compile or  
3 disseminate information with respect to which the entity has  
4 received notice that:

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

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

9           SECTION 7. Section 53.021(e), Occupations Code, is amended  
10 to read as follows:

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

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

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

19           SECTION 8. The change in law made by Section 411.081(d-1),  
20 Government Code, as added by this Act, applies to a person whose  
21 conviction for an offense under Section 43.02, Penal Code, is set  
22 aside under Section 20(a), Article 42.12, Code of Criminal  
23 Procedure, on or after the effective date of this Act, regardless of  
24 when the person committed the offense for which the person was  
25 convicted.

26           SECTION 9. This Act takes effect September 1, 2015.

ADOPTED

MAY 26 2015

*Lataj Spaw*  
Secretary of the Senate

FLOOR AMENDMENT NO. 1

BY:

*Chris Fenn*

Amend H.B. No. 2286 (senate committee printing) as follows:

(1) Designate SECTIONS 1 through 7 of the bill (page 1, line 20, through page 4, line 47) as ARTICLE 1 of the bill and renumber those SECTIONS appropriately.

(2) After original SECTION 7 of the bill (page 4, between lines 47 and 48), add the following appropriately numbered SECTION to ARTICLE 1 of the bill:

SECTION 1.\_\_\_\_. This article takes effect only if S.B. 1902, Acts of the 84th Legislature, Regular Session, 2015, does not become law. If that bill becomes law, this article has no effect.

(3) After added ARTICLE 1 of the bill and before original SECTION 8 of the bill, add a new ARTICLE 2 of the bill to read as follows:

#### ARTICLE 2

SECTION 2.01. Subchapter E-1, Chapter 411, Government Code, is amended by adding Section 411.0728 to read as follows:

Sec. 411.0728. PROCEDURE FOR CERTAIN VICTIMS OF TRAFFICKING OF PERSONS. (a) This section applies only to a person who on conviction for an offense under Section 43.02, Penal Code, 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.

(b) Notwithstanding any other provision of this subchapter or Subchapter F, a person described by Subsection (a) who satisfies the requirements of Section 411.074 may petition the court that placed the person on community supervision for an order of nondisclosure of criminal history record information under this section on the grounds that the person committed the offense solely

1 as a victim of trafficking of persons.

2       (c) After notice to the state, an opportunity for a hearing,  
3 and a determination by the court that the person committed the  
4 offense solely as a victim of trafficking of persons and that  
5 issuance of the order is in the best interest of justice, the court  
6 shall issue an order prohibiting criminal justice agencies from  
7 disclosing to the public criminal history record information  
8 related to the offense under Section 43.02, Penal Code, giving rise  
9 to the community supervision.

10       (d) A person may petition the court that placed the person  
11 on community supervision for an order of nondisclosure of criminal  
12 history record information under this section only after the  
13 person's conviction under Section 43.02, Penal Code, is set aside.

14       SECTION 2.02. Section 552.142(b), Government Code, is  
15 amended to read as follows:

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

22       SECTION 2.03. This article takes effect only if S.B. 1902,  
23 Acts of the 84th Legislature, Regular Session, 2015, becomes law.  
24 If that bill does not become law, this article has no effect.

25       (4) Designate SECTIONS 8 and 9 of the bill (page 4, lines  
26 48-55) as ARTICLE 3 of the bill and renumber those SECTIONS  
27 appropriately.

28       (5) In original SECTION 8 of the bill (page 4, lines 48-49),  
29 strike "Section 411.081(d-1), Government Code, as added by this  
30 Act," and substitute "this Act".

**LEGISLATIVE BUDGET BOARD**  
**Austin, Texas**

**FISCAL NOTE, 84TH LEGISLATIVE REGULAR SESSION**

**May 28, 2015**

**TO:** Honorable Joe Straus, Speaker of the House, House of Representatives

**FROM:** Ursula Parks, Director, Legislative Budget Board

**IN RE: HB2286** by Parker (Relating to the eligibility of certain victims of trafficking of persons for an order of nondisclosure; authorizing a fee.), **As Passed 2nd House**

|   |
|---|
| <b>No significant fiscal implication to the State is anticipated.</b> |
|---|

The bill would amend the Business and Commerce Code, Occupations Code, and Government Code to authorize a defendant convicted of prostitution and that successfully completes a period of deferred adjudication or community supervision to petition the court for an order of nondisclosure on the grounds that the person committed the offense solely as a victim of trafficking. The bill would authorize the court to issue an order prohibiting criminal justice agencies from disclosing information to the public about the conviction and would amend provisions regarding obtaining and complying with an order of nondisclosure to include convictions within this category. The bill would amend the Government Code, contingent on Senate Bill 1902, 84th Legislature, Regular Session not becoming law, regarding the procedure for a victim of trafficking that is convicted of prostitution to petition the court for an order of nondisclosure and would provide for notice to the state, a hearing and a determination by the court, and would only be available after the conviction was set aside.

Based on the analysis of the Office of Court Administration, the Comptroller of Public Accounts, the Department of Public Safety, and the Department of Criminal Justice, no significant fiscal impact to the state is anticipated.

**Local Government Impact**

No significant fiscal implication to units of local government is anticipated.

**Source Agencies:** 212 Office of Court Administration, Texas Judicial Council, 304  
Comptroller of Public Accounts, 405 Department of Public Safety, 696  
Department of Criminal Justice, 302 Office of the Attorney General

**LBB Staff:** UP, KJo, GDz, JN

**LEGISLATIVE BUDGET BOARD**  
**Austin, Texas**

**FISCAL NOTE, 84TH LEGISLATIVE REGULAR SESSION**

**May 20, 2015**

**TO:** Honorable John Whitmire, Chair, Senate Committee on Criminal Justice

**FROM:** Ursula Parks, Director, Legislative Budget Board

**IN RE: HB2286** by Parker (Relating to the eligibility of certain victims of trafficking of persons for an order of nondisclosure; authorizing a fee.), **As Engrossed**

|   |
|---|
| <b>No significant fiscal implication to the State is anticipated.</b> |
|---|

The bill would amend the Business and Commerce Code, Occupations Code, and Government Code to authorize a defendant convicted of prostitution and that successfully completes a period of deferred adjudication or community supervision to petition the court for an order of nondisclosure on the grounds that the person committed the offense solely as a victim of trafficking. The bill would authorize the court to issue an order prohibiting criminal justice agencies from disclosing information to the public about the conviction and would amend provisions regarding obtaining and complying with an order of nondisclosure to include convictions within this category.

Based on the analysis of the Office of Court Administration, the Comptroller of Public Accounts, the Department of Public Safety, and the Department of Criminal Justice, no significant fiscal impact to the state is anticipated.

**Local Government Impact**

No significant fiscal implication to units of local government is anticipated.

**Source Agencies:** 212 Office of Court Administration, Texas Judicial Council, 304  
Comptroller of Public Accounts, 405 Department of Public Safety, 696  
Department of Criminal Justice, 302 Office of the Attorney General

**LBB Staff:** UP, KJo, GDz, JN

**LEGISLATIVE BUDGET BOARD**  
**Austin, Texas**

**FISCAL NOTE, 84TH LEGISLATIVE REGULAR SESSION**

**May 4, 2015**

**TO:** Honorable Abel Herrero, Chair, House Committee on Criminal Jurisprudence

**FROM:** Ursula Parks, Director, Legislative Budget Board

**IN RE: HB2286** by Parker (relating to the eligibility of certain victims of trafficking of persons for an order of nondisclosure; authorizing a fee.), **Committee Report 1st House, Substituted**

|   |
|---|
| <b>No significant fiscal implication to the State is anticipated.</b> |
|---|

The bill would amend the Business and Commerce Code, Occupations Code, and Government Code to authorize a defendant convicted of prostitution and that successfully completes a period of deferred adjudication or community supervision to petition the court for an order of nondisclosure on the grounds that the person committed the offense solely as a victim of trafficking. The bill would authorize the court to issue an order prohibiting criminal justice agencies from disclosing information to the public about the conviction and would amend provisions regarding obtaining and complying with an order of nondisclosure to include convictions within this category.

Based on the analysis of the Office of Court Administration, the Comptroller of Public Accounts, the Department of Public Safety, and the Department of Criminal Justice, no significant fiscal impact to the state is anticipated.

**Local Government Impact**

No significant fiscal implication to units of local government is anticipated.

**Source Agencies:** 212 Office of Court Administration, Texas Judicial Council, 304  
Comptroller of Public Accounts, 405 Department of Public Safety, 696  
Department of Criminal Justice, 302 Office of the Attorney General

**LBB Staff:** UP, KJo, GDz, JN

**LEGISLATIVE BUDGET BOARD**  
**Austin, Texas**

**FISCAL NOTE, 84TH LEGISLATIVE REGULAR SESSION**

**April 14, 2015**

**TO:** Honorable Abel Herrero, Chair, House Committee on Criminal Jurisprudence

**FROM:** Ursula Parks, Director, Legislative Budget Board

**IN RE: HB2286** by Parker (Relating to judicial proceedings on a petition for a pardon or an order of expunction of criminal history record information for certain victims of trafficking of persons convicted of prostitution.), **As Introduced**

|   |
|---|
| <b>No significant fiscal implication to the State is anticipated.</b> |
|---|

The bill would amend the Code of Criminal Procedure to authorize a defendant convicted of prostitution to petition a court to set aside the conviction based on the defendant's status as a victim of trafficking leading to the prostitution. The bill would also authorize a person convicted of prostitution to request a pardon on similar grounds if the convicting court no longer had jurisdiction. The bill would authorize expunction of records related to an arrest of a person for engaging in prostitution solely as a victim of trafficking. Based on the analysis of the Office of Court Administration, the Department of Public Safety, and the Office of the Attorney General no significant fiscal impact to the state is anticipated.

**Local Government Impact**

No significant fiscal implication to units of local government is anticipated.

**Source Agencies:** 212 Office of Court Administration, Texas Judicial Council, 302 Office of the Attorney General, 405 Department of Public Safety

**LBB Staff:** UP, KJo, GDz