

House Bill 2286
Senate Amendments
Section-by-Section Analysis

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<p>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:</p> <p>(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:</p> <p>(1) an order of expunction has been issued under Article 55.02, Code of Criminal Procedure; or</p> <p>(2) an order of nondisclosure has been issued under Section 411.081(d) <u>or (d-1)</u>, Government Code.</p> <p>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:</p> <p><u>(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.</u></p> <p><u>(2) Notwithstanding any other provision of this subchapter, if a person to whom this subsection applies satisfies the requirements of Subsection (e), the person may petition the court that placed the person on community supervision for an order of nondisclosure on the grounds that the person committed the offense solely as a victim of trafficking of persons. After notice to the state, an opportunity for a hearing, and a determination by the court that the person committed the offense solely as a victim of trafficking of</u></p>	<p>ARTICLE 1. [FA1(1)] SECTION 1.01. Same as House version.</p> <p>SECTION 1.02. [FA1(1)] Same as House version.</p>	

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persons and that issuance of the order is in the best interest of justice, the court shall issue an order prohibiting criminal justice agencies from disclosing to the public criminal history record information related to the offense under Section 43.02, Penal Code, giving rise to the community supervision. A criminal justice agency may 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. A person may petition the court that placed the person on community supervision for an order of nondisclosure only after the person's conviction under Section 43.02, Penal Code, is set aside.

(e) A person is entitled to petition the court under Subsection (d) or (d-1) only if during the period of the community supervision, including deferred adjudication community supervision, for which the order of nondisclosure is requested and, for a petition under Subsection (d), only during the applicable period described by Subdivision (1) [Subsection (d)(1)], (2), or (3) of that subsection, 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 other than an offense under the Transportation Code punishable by fine only. A person is not entitled to petition the court under Subsection (d) or (d-1) if the person was placed on community supervision, including [the] deferred adjudication community supervision, for, or has been previously convicted of or placed on any other deferred adjudication for:

- (1) an offense requiring registration as a sex offender under Chapter 62, Code of Criminal Procedure;
- (2) an offense under Section 20.04, Penal Code, regardless of

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whether the offense is a reportable conviction or adjudication for purposes of Chapter 62, Code of Criminal Procedure;

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

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

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

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

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

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

(f-1) A person who petitions the court for an order of nondisclosure under Subsection (d) or (d-1) may file the petition in person, electronically, or by mail. The petition must be accompanied by payment of a \$28 fee to the clerk of the court in addition to any other fee that generally applies to the filing of a civil petition. The Office of Court Administration of the Texas Judicial System shall prescribe a form for the filing of a petition electronically or by mail. The form must provide for the petition to be accompanied by the required fees and any other supporting material determined necessary by the office of court administration, including evidence that the person is entitled to file the petition. The office of court administration shall make available on its Internet website the electronic application and printable application form. Each county or district clerk's office that

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maintains an Internet website shall include on that website a link to the electronic application and printable application form available on the office of court administration's Internet website. On receipt of a petition under this subsection, the court shall provide notice to the state and an opportunity for a hearing on whether the person is entitled to file the petition and issuance of the order is in the best interest of justice. The court shall hold a hearing before determining whether to issue an order of nondisclosure, except that a hearing is not required if:

- (1) the state does not request a hearing on the issue before the 45th day after the date on which the state receives notice under this subsection; and
- (2) the court determines that:
 - (A) the defendant is entitled to file the petition; and
 - (B) the order is in the best interest of justice.
- (h) The clerk of a court that collects a fee paid under Subsection (f-1) [~~(d)~~] shall remit the fee to the comptroller not later than the last day of the month following the end of the calendar quarter in which the fee is collected, and the comptroller shall deposit the fee in the general revenue fund. The Department of Public Safety shall submit a report to the legislature not later than December 1 of each even-numbered year that includes information on:
 - (1) the number of petitions for nondisclosure and orders of nondisclosure received by the department in each of the previous two years;
 - (2) the actions taken by the department with respect to the petitions and orders received;
 - (3) the costs incurred by the department in taking those actions; and
 - (4) the number of persons who are the subject of an order of

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nondisclosure and who became the subject of criminal charges for an offense committed after the order was issued.

SECTION 3. 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, 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;

SECTION 1.03. [FA1(1)] Same as House version.

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<p>(15) the Texas Board of Nursing;</p> <p>(16) a safe house providing shelter to children in harmful situations;</p> <p>(17) a public or nonprofit hospital or hospital district, or a facility as defined by Section 250.001, Health and Safety Code;</p> <p>(18) the securities commissioner, the banking commissioner, the savings and mortgage lending commissioner, the consumer credit commissioner, or the credit union commissioner;</p> <p>(19) the Texas State Board of Public Accountancy;</p> <p>(20) the Texas Department of Licensing and Regulation;</p> <p>(21) the Health and Human Services Commission;</p> <p>(22) the Department of Aging and Disability Services;</p> <p>(23) the Texas Education Agency;</p> <p>(24) the Judicial Branch Certification Commission;</p> <p>(25) a county clerk's office in relation to a proceeding for the appointment of a guardian under <u>Title 3, Estates Code</u> [Chapter XIII, Texas Probate Code];</p> <p>(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:</p> <p>(A) the Department of Information Resources; or</p> <p>(B) a contractor or subcontractor of the Department of Information Resources;</p> <p>(27) the Texas Department of Insurance;</p> <p>(28) the Teacher Retirement System of Texas; and</p> <p><u>(29)</u> [(30)] the Texas State Board of Pharmacy.</p>		

SECTION 4. Section 411.0851(a), Government Code, is

SECTION 1.04. [FA1(1)] Same as House version.

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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 1.05. [FA1(1)] Same as House version.

SECTION 6. Section 552.1425(a), Government Code, is amended to read as follows:

SECTION 1.06. [FA1(1)] Same as House version.

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<p>(a) A private entity that compiles and disseminates for compensation criminal history record information may not compile or disseminate information with respect to which the entity has received notice that:</p> <p>(1) an order of expunction has been issued under Article 55.02, Code of Criminal Procedure; or</p> <p>(2) an order of nondisclosure has been issued under Section 411.081(d) <u>or (d-1)</u>.</p> <p>SECTION 7. Section 53.021(e), Occupations Code, is amended to read as follows:</p> <p>(e) Subsection (c) does not apply if the person is an applicant for or the holder of a license that authorizes the person to provide:</p> <p>(1) law enforcement or public health, education, or safety services; or</p> <p>(2) financial services in an industry regulated by a person listed in Section <u>411.081(i)(18)</u> [411.081(i)(19)], Government Code.</p> <p>No equivalent provision.</p> <p>No equivalent provision.</p>	<p>SECTION 1.07. [FA1(1)] Same as House version.</p> <p>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. [FA1(2)]</p> <p>ARTICLE 2. [FA1(3)] SECTION 2.01. Subchapter E-1, Chapter 411, Government Code, is amended by adding Section 411.0728 to read as follows: <u>Sec. 411.0728. PROCEDURE FOR CERTAIN VICTIMS OF TRAFFICKING OF PERSONS. (a) This section applies only</u></p>	

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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 as a victim of trafficking of persons.
(c) After notice to the state, an opportunity for a hearing, and a determination by the court that the person committed the offense solely as a victim of trafficking of persons and that issuance of the order is in the best interest of justice, the court shall issue an order prohibiting criminal justice agencies from disclosing to the public criminal history record information related to the offense under Section 43.02, Penal Code, giving rise to the community supervision.
(d) A person may petition the court that placed the person on community supervision for an order of nondisclosure of criminal history record information under this section only after the person's conviction under Section 43.02, Penal Code, is set aside. [FA1(3)]

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

No equivalent provision.

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	[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. [FA1(3)]	
No equivalent provision.	SECTION 2.03. This article takes effect only if S.B. 1902, Acts of the 84th Legislature, Regular Session, 2015, becomes law. If that bill does not become law, this article has no effect. [FA1(3)]	
SECTION 8. The change in law made by Section 411.081(d-1), Government Code, as added by this Act, applies to a person whose conviction for an offense under Section 43.02, Penal Code, is set aside under Section 20(a), 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 was convicted.	ARTICLE 3. [FA1(4)] SECTION 3.01. The change in law made by this Act applies to a person whose conviction for an offense under Section 43.02, Penal Code, is set aside under Section 20(a), 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 was convicted. [FA1(4)-(5)]	
SECTION 9. This Act takes effect September 1, 2015.	SECTION 3.02. [FA1(4)] Same as House version.	