By: Collier, Sherman, Sr., Moody, et al.   H.B. No. 859

A BILL TO BE ENTITLED

1   AN ACT

2 relating to the expunction of all records and files related to

3 arrests for certain decriminalized misdemeanor offenses.

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

5   SECTION 1. Chapter 55, Code of Criminal Procedure, is

6 amended by adding Article 55.012 to read as follows:

7   Art. 55.012. EXPUNCTION   OF   CERTAIN   DECRIMINALIZED

8 MISDEMEANOR OFFENSES. (a) A person who has been placed under a

9 custodial or noncustodial arrest for an offense is entitled to the

10 expunction of all records and files related to the arrest,

11 including, as applicable, any records and files related to a

12 conviction of the offense, if:

13   (1) the person is convicted of or placed on deferred

14 adjudication community supervision under Subchapter C, Chapter

15 42A, for the offense for which the person was arrested;

16   (2) the offense for which the person was arrested was a

17 misdemeanor offense and the conduct that was the subject of the

18 offense as applied to the person has been statutorily

19 decriminalized subsequent to the date of the commission of the

20 offense; and

21   (3) as applicable:

22   (A) the person's sentence, including any term of

23 confinement or period of community supervision imposed and payment

24 of all fines and costs imposed, is finally discharged; or

1   (B) the person received a discharge and dismissal

2 under Article 42A.111, Code of Criminal Procedure, for the offense.

3   (b) The person must submit an ex parte petition for

4 expunction to the court that convicted the person or placed the

5 person on deferred adjudication community supervision. The

6 petition must be verified and must contain the information

7 described by Section 2(b), Article 55.02.

8   (c) At a hearing held on a petition for expunction under

9 this article, the court may require the petitioner to demonstrate

10 that the offense that is the subject of the petition qualifies as a

11 statutorily decriminalized offense under current law. The

12 demonstration may include an affidavit signed by the petitioner

13 attesting to the fact that the offense that is the subject of the

14 petition qualifies as a statutorily decriminalized offense under

15 current law.

16   (d) If the court finds that the petitioner is entitled to

17 expunction of the records and files that are the subject of the

18 petition, the court shall enter an order directing expunction in a

19 manner consistent with the procedures described by Section 1a,

20 Article 55.02.

21   (e) Notwithstanding any other law, the law enforcement

22 agency, the prosecuting attorney responsible for investigating the

23 offense, and the clerk of the applicable court may retain the

24 records and files relating to the arrest for the offense, including

25 any records and files related to a conviction of the offense, to be

26 used only:

27   (1) for the investigation or prosecution of another

1   offense arising out of the same transaction for which the person was

2   arrested; or

3   (2)   by   the   office   of   the   governor   in   determining

4   whether to issue a pardon or commute a sentence.

5   (f)   The records and files for which an order of expunction

6   has been issued under this article are not open for inspection by

7   anyone, except that the records and files are open for inspection by

8   the person who is the subject of the order or for the purposes

9   described by Subsection (e).

10   SECTION 2.   Section 109.005(a), Business & Commerce Code, is

11   amended to read as follows:

12   (a)   A business entity may not publish any criminal record

13   information in the business entity's possession with respect to

14   which the business entity has knowledge or has received notice

15   that:

16   (1)   an   order   of   expunction   has   been   issued   under

17   Chapter 55 [Article 55.02], Code of Criminal Procedure; or

18   (2)   an   order   of   nondisclosure   of   criminal   history

19   record information has been issued under Subchapter E-1, Chapter

20   411, Government Code.

21   SECTION 3.   Article 55.011(b), Code of Criminal Procedure,

22   is amended to read as follows:

23   (b)   A close relative of a deceased person who, if not

24   deceased, would be entitled to expunction of records and files

25   under this chapter [Article 55.01] may file on behalf of the

26   deceased person an ex parte petition for expunction under Section 2

27   or 2a, Article 55.02, or Article 55.012, as applicable.   If the

1 court finds that the deceased person would be entitled to
2 expunction of any record or file that is the subject of the
3 petition, the court shall enter an order directing expunction.

4   SECTION 4. Article 102.006(b), Code of Criminal Procedure,
5 is amended to read as follows:

6   (b) The fees under Subsection (a) or the fee under
7 Subsection (a-1), as applicable, shall be waived if:

8   (1) the petitioner seeks expunction of a criminal
9 record that relates to an arrest for an offense of which the person
10 was acquitted, other than an acquittal for an offense described by
11 Article 55.01(c), and the petition for expunction is filed not
12 later than the 30th day after the date of the acquittal; or

13   (2) the petitioner is entitled to expunction under
14 Article 55.012.

15   SECTION 5. Section 411.0835, Government Code, is amended to
16 read as follows:

17   Sec. 411.0835. PROHIBITION   AGAINST   DISSEMINATION   TO
18 CERTAIN PRIVATE ENTITIES. If the department receives information
19 indicating that a private entity that purchases criminal history
20 record information from the department has been found by a court to
21 have committed three or more violations of Section 552.1425 by
22 compiling or disseminating information with respect to which an
23 order of expunction has been issued under Chapter 55 [Article
24 55.02], Code of Criminal Procedure, or an order of nondisclosure of
25 criminal history record information has been issued under
26 Subchapter E-1, the department may not release any criminal history
27 record information to that entity until the first anniversary of

1 the date of the most recent violation.

2 SECTION 6. Section 411.0851(a), Government Code, is amended

3 to read as follows:

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

5 compensation criminal history record information shall destroy and

6 may not disseminate any information in the possession of the entity

7 with respect to which the entity has received notice that:

8 (1) an order of expunction has been issued under

9 Chapter 55 [Article 55.02], Code of Criminal Procedure; or

10 (2) an order of nondisclosure of criminal history

11 record information has been issued under Subchapter E-1.

12 SECTION 7. Section 411.151(b), Government Code, is amended

13 to read as follows:

14 (b) A person may petition for the expunction of a DNA record

15 under the procedures established under Article 55.02, Code of

16 Criminal Procedure, if the person is entitled to the expunction of

17 records relating to the offense to which the DNA record is related

18 under Chapter 55 [Article 55.01], Code of Criminal Procedure.

19 SECTION 8. Section 552.1425(a), Government Code, is amended

20 to read as follows:

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

22 compensation criminal history record information may not compile or

23 disseminate information with respect to which the entity has

24 received notice that:

25 (1) an order of expunction has been issued under

26 Chapter 55 [Article 55.02], Code of Criminal Procedure; or

27 (2) an order of nondisclosure of criminal history

1   record information has been issued under Subchapter E-1, Chapter

2   411.

3   SECTION 9. This Act applies to an expunction of arrest

4   records and files relating to any misdemeanor offense that was

5   committed before, on, or after the effective date of this Act.

6   SECTION 10. This Act takes effect September 1, 2021.