

By: Collier

H.B. No. 401

A BILL TO BE ENTITLED

AN ACT

relating to automatic orders of nondisclosure of criminal history record information for certain misdemeanor defendants who successfully complete a period of community supervision following conviction; authorizing a fee.

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

SECTION 1. Article 42.01, Code of Criminal Procedure, is amended by adding Section 17 to read as follows:

Sec. 17. In addition to the information described by Section 1, the judgment must reflect affirmative findings entered pursuant to Article 42A.059.

SECTION 2. Subchapter B, Chapter 42A, Code of Criminal Procedure, is amended by adding Article 42A.059 to read as follows:

Art. 42A.059. AFFIRMATIVE FINDING REGARDING AUTOMATIC ORDER OF NONDISCLOSURE. If a judge places on community supervision a defendant charged with a misdemeanor other than a misdemeanor under Section 106.041, Alcoholic Beverage Code, Section 49.04, 49.05, 49.06, or 49.065, Penal Code, or Chapter 20, 21, 22, 25, 42, 43, 46, or 71, Penal Code, the judge shall make an affirmative finding of fact and file a statement of that affirmative finding in the judgment in the case if the judge determines that it is not in the best interest of justice that the defendant receive an automatic order of nondisclosure under Section 411.07299, Government Code.

SECTION 3. Section 411.0716, Government Code, is amended by amending Subsection (a) and adding Subsection (c) to read as follows:

(a) Except as otherwise provided by this section [~~Subsection (b)~~], this subchapter applies to the issuance of an order of nondisclosure of criminal history record information for an offense committed before, on, or after September 1, 2017.

(c) Section 411.07299 applies only to the issuance of an order of nondisclosure of criminal history record information for an offense committed on or after September 1, 2023.

SECTION 4. The heading to Section 411.072, Government Code, is amended to read as follows:

Sec. 411.072. AUTOMATIC ORDER OF NONDISCLOSURE FOLLOWING COMPLETION OF [~~PROCEDURE FOR~~] DEFERRED ADJUDICATION COMMUNITY SUPERVISION; CERTAIN NONVIOLENT MISDEMEANORS.

SECTION 5. Subchapter E-1, Chapter 411, Government Code, is amended by adding Section 411.07299 to read as follows:

Sec. 411.07299. AUTOMATIC ORDER OF NONDISCLOSURE FOLLOWING CONVICTION AND COMPLETION OF COMMUNITY SUPERVISION; CERTAIN NONVIOLENT MISDEMEANORS. (a) This section applies only to a person who:

(1) was placed on community supervision under Chapter 42A, Code of Criminal Procedure:

(A) following a conviction of a misdemeanor other than a misdemeanor:

(i) under Section 106.041, Alcoholic Beverage Code, Section 49.04, 49.05, 49.06, or 49.065, Penal Code,

1 or Chapter 20, 21, 22, 25, 42, 43, 46, or 71, Penal Code; or

2 (ii) with respect to which an affirmative
3 finding under Article 42A.059, Code of Criminal Procedure, was
4 filed in the judgment in the case; and

5 (B) under a provision of Chapter 42A, Code of
6 Criminal Procedure, other than Subchapter C, including:

7 (i) a provision that requires the person to
8 serve a term of confinement as a condition of community
9 supervision; or

10 (ii) another provision that authorizes
11 placing a person on community supervision after the person has
12 served part of a term of confinement imposed for the offense; and

13 (2) has never been previously convicted of or placed
14 on deferred adjudication community supervision for another offense
15 other than a traffic offense that is punishable by fine only.

16 (b) Notwithstanding any other provision of this subchapter
17 or Subchapter F, if a person described by Subsection (a) completes
18 the period of community supervision, including any term of
19 confinement imposed and payment of all fines, costs, and
20 restitution imposed, and satisfies the requirements of Section
21 411.074 and if the person's community supervision is not revoked,
22 the court that placed the person on community supervision shall
23 issue an order of nondisclosure of criminal history record
24 information under this subchapter prohibiting criminal justice
25 agencies from disclosing to the public criminal history record
26 information related to the offense giving rise to the community
27 supervision. The court shall determine whether the person

1 satisfies the requirements of Section 411.074, and if the court
2 makes a finding that the requirements of that section are
3 satisfied, the court shall issue the order of nondisclosure of
4 criminal history record information:

5 (1) on the successful completion of the community
6 supervision, if the person completes the period of community
7 supervision on or after the 180th day after the date the court
8 placed the person on community supervision; or

9 (2) as soon as practicable on or after the 180th day
10 after the date the court placed the person on community
11 supervision, if the person completed the period of community
12 supervision before that date.

13 (c) The person shall present to the court any evidence
14 necessary to establish that the person is eligible to receive an
15 order of nondisclosure of criminal history record information under
16 this section. The person must pay a \$28 fee to the clerk of the
17 court before the court issues the order.

18 (d) A person who is not eligible to receive an order of
19 nondisclosure of criminal history record information under this
20 section solely because an affirmative finding under Article
21 42A.059, Code of Criminal Procedure, was filed in the judgment in
22 the case may file a petition for an order of nondisclosure of
23 criminal history record information under Section 411.073 if the
24 person otherwise satisfies the requirements of that section.

25 SECTION 6. Section 411.073(a), Government Code, is amended
26 to read as follows:

27 (a) This section applies only to a person who:

1 (1) was placed on community supervision under Chapter
2 42A, Code of Criminal Procedure:

3 (A) [~~(1)~~] following a conviction of a
4 misdemeanor other than a misdemeanor under Section 106.041,
5 Alcoholic Beverage Code, Section 49.04, 49.05, 49.06, or 49.065,
6 Penal Code, or Chapter 71, Penal Code; and

7 (B) [~~(2)~~] under a provision of Chapter 42A, Code
8 of Criminal Procedure, other than Subchapter C, including:

9 (i) [~~(A)~~] a provision that requires the
10 person to serve a term of confinement as a condition of community
11 supervision; or

12 (ii) [~~(B)~~] another provision that
13 authorizes placing a person on community supervision after the
14 person has served part of a term of confinement imposed for the
15 offense; and

16 (2) is not eligible to receive an order of
17 nondisclosure of criminal history record information under Section
18 411.07299.

19 SECTION 7. Section 411.0735(a), Government Code, is amended
20 to read as follows:

21 (a) This section applies only to a person who:

22 (1) is convicted of a misdemeanor other than a
23 misdemeanor under Section 106.041, Alcoholic Beverage Code,
24 Section 49.04, 49.05, 49.06, or 49.065, Penal Code, or Chapter 71,
25 Penal Code; and

26 (2) is not eligible for an order of nondisclosure of
27 criminal history record information under Section 411.07299 or

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1 411.073.

2 SECTION 8. This Act takes effect September 1, 2023.