

By: West

S.B. No. 130

A BILL TO BE ENTITLED

1 AN ACT
2 relating to the eligibility of criminal defendants for an order of
3 nondisclosure; authorizing a fee.

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

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

8 (d) Notwithstanding any other provision of this subchapter,
9 if a person is placed on deferred adjudication community
10 supervision under Section 5, Article 42.12, Code of Criminal
11 Procedure, subsequently receives a discharge and dismissal under
12 Section 5(c), Article 42.12, and satisfies the requirements of
13 Subsection (e), the person may petition the court that placed the
14 defendant on deferred adjudication for an order of nondisclosure
15 under this subsection. Except as provided by Subsection (e), a
16 person may petition the court for an order of nondisclosure
17 regardless of whether the person has been previously placed on
18 deferred adjudication community supervision for another
19 offense. After notice to the state, an opportunity for a hearing,
20 and a determination that the person is entitled to file the petition
21 and issuance of the order is in the best interest of justice, the
22 court shall issue an order prohibiting criminal justice agencies
23 from disclosing to the public criminal history record information
24 related to the offense giving rise to the deferred adjudication. A

1 criminal justice agency may disclose criminal history record
2 information that is the subject of the order only to other criminal
3 justice agencies[7] for criminal justice or regulatory licensing
4 purposes, an agency or entity listed in Subsection (i), or the
5 person who is the subject of the order. A person may petition the
6 court that placed the person on deferred adjudication for an order
7 of nondisclosure only on or after:

8 (1) the discharge and dismissal, if the offense for
9 which the person was placed on deferred adjudication was a
10 misdemeanor other than a misdemeanor described by Subdivision (2);

11 (2) the second anniversary of the discharge and
12 dismissal, if the offense for which the person was placed on
13 deferred adjudication was a misdemeanor under Chapter 20, 21, 22,
14 25, 42, or 46, Penal Code; or

15 (3) the fifth anniversary of the discharge and
16 dismissal, if the offense for which the person was placed on
17 deferred adjudication was a felony.

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

19 (A) on conviction is placed on community
20 supervision under Article 42.12, Code of Criminal Procedure, and
21 with respect to whom the conviction is subsequently set aside by the
22 court under Section 20(a) of that article; and

23 (B) is not convicted of an offense for which the
24 person would be ineligible for deferred adjudication community
25 supervision under Section 5(d), Article 42.12, Code of Criminal
26 Procedure.

27 (2) Notwithstanding any other provision of this

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

17 (A) the conviction is set aside, if the offense
18 for which the person was placed on community supervision was a
19 misdemeanor; or

20 (B) the fifth anniversary of the date the
21 conviction is set aside, if the offense for which the person was
22 placed on community supervision was a felony.

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

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

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

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

17 (3) an offense under Section 19.02, 19.03, 22.04,
18 22.041, 25.07, 25.072, or 42.072, Penal Code; or

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

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

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

27 (2) the judge deferred further proceedings without

1 entering an adjudication of guilt and placed the person under the
2 supervision of the court or an officer under the supervision of the
3 court; and

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

6 (f-1) A person who petitions the court for an order of
7 nondisclosure under Subsection (d) or (d-1) may file the petition
8 in person, electronically, or by mail. The petition must be
9 accompanied by payment of a \$28 fee to the clerk of the court in
10 addition to any other fee that generally applies to the filing of a
11 civil petition. The Office of Court Administration of the Texas
12 Judicial System shall prescribe a form for the filing of a petition
13 electronically or by mail. The form must provide for the petition
14 to be accompanied by the required fees and any other supporting
15 material determined necessary by the office of court
16 administration, including evidence that the person is entitled to
17 file the petition. The office of court administration shall make
18 available on its Internet website the electronic application and
19 printable application form. Each county or district clerk's office
20 that maintains an Internet website shall include on that website a
21 link to the electronic application and printable application form
22 available on the office of court administration's Internet website.
23 On receipt of a petition under this subsection, the court shall
24 provide notice to the state and an opportunity for a hearing on
25 whether the person is entitled to file the petition and issuance of
26 the order is in the best interest of justice. The court shall hold a
27 hearing before determining whether to issue an order of

1 nondisclosure, except that a hearing is not required if:

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

5 (2) the court determines that:

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

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

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

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

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

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

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

27 SECTION 2. Subsection (i), Section [411.081](#), Government

1 Code, as amended by Chapters 42 (S.B. 966), 266 (H.B. 729), and 583
2 (S.B. 869), Acts of the 83rd Legislature, Regular Session, 2013, is
3 reenacted and amended to read as follows:

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

8 (1) the State Board for Educator Certification;

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

12 (3) the Texas Medical Board;

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

15 (5) the Board of Law Examiners;

16 (6) the State Bar of Texas;

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

19 (8) the Texas School for the Deaf;

20 (9) the Department of Family and Protective Services;

21 (10) the Texas Juvenile Justice Department;

22 (11) the Department of Assistive and Rehabilitative
23 Services;

24 (12) the Department of State Health Services, a local
25 mental health service, a local mental retardation authority, or a
26 community center providing services to persons with mental illness
27 or retardation;

- 1 (13) the Texas Private Security Board;
- 2 (14) a municipal or volunteer fire department;
- 3 (15) the Texas Board of Nursing;
- 4 (16) a safe house providing shelter to children in
5 harmful situations;
- 6 (17) a public or nonprofit hospital or hospital
7 district, or a facility as defined by Section 250.001, Health and
8 Safety Code;
- 9 (18) the securities commissioner, the banking
10 commissioner, the savings and mortgage lending commissioner, the
11 consumer credit commissioner, or the credit union commissioner;
- 12 (19) the Texas State Board of Public Accountancy;
- 13 (20) the Texas Department of Licensing and Regulation;
- 14 (21) the Health and Human Services Commission;
- 15 (22) the Department of Aging and Disability Services;
- 16 (23) the Texas Education Agency;
- 17 (24) the Judicial Branch Certification Commission;
- 18 (25) a county clerk's office in relation to a
19 proceeding for the appointment of a guardian under Title 3, Estates
20 Code [~~Chapter XIII, Texas Probate Code~~];
- 21 (26) the Department of Information Resources but only
22 regarding an employee, applicant for employment, contractor,
23 subcontractor, intern, or volunteer who provides network security
24 services under Chapter 2059 to:
 - 25 (A) the Department of Information Resources; or
 - 26 (B) a contractor or subcontractor of the
27 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 3. Subsection (a), Section 411.0851, 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 4. 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 5. Subsection (a), Section 552.1425, Government

1 Code, is amended to read as follows:

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

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

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

10 SECTION 6. Subsection (e), Section 53.021, Occupations
11 Code, is amended to read as follows:

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

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

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

20 SECTION 7. The change in law made by Subsection (d-1),
21 Section 411.081, Government Code, as added by this Act, applies to a
22 person whose conviction is set aside under Subsection (a), Section
23 20, Article 42.12, Code of Criminal Procedure, on or after the
24 effective date of this Act, regardless of when the person committed
25 the offense for which the person was convicted.

26 SECTION 8. This Act takes effect September 1, 2015.