

BILL ANALYSIS

C.S.H.B. 1426
By: Allen
Corrections
Committee Report (Substituted)

BACKGROUND AND PURPOSE

Interested parties note that previously incarcerated individuals who are employed are significantly less likely to re-offend than those unemployed and that a criminal conviction can create a barrier to licensing and employment. This barrier remains even when a person makes great strides toward rehabilitation and leaving behind a criminal past. C.S.H.B. 1426 seeks to address this issue by allowing persons who have successfully completed deferred adjudication community supervision or a term of community supervision for certain offenses and met certain other conditions to apply for a certificate of relief from collateral consequences.

CRIMINAL JUSTICE IMPACT

It is the committee's opinion that this bill does not expressly create a criminal offense, increase the punishment for an existing criminal offense or category of offenses, or change the eligibility of a person for community supervision, parole, or mandatory supervision.

RULEMAKING AUTHORITY

It is the committee's opinion that this bill does not expressly grant any additional rulemaking authority to a state officer, department, agency, or institution.

ANALYSIS

C.S.H.B. 1426 amends the Code of Criminal Procedure to make a person eligible for a certificate of relief from collateral consequences issued under the bill's provisions if the person successfully completed a term of deferred adjudication community supervision and the judge has dismissed the proceedings and discharged the person or a term of community supervision and the person's conviction is set aside. The bill defines "collateral consequence" as the revocation, suspension, or denial of occupational licensure as an indirect consequence of a person's criminal history record information. The bill requires the court to provide a certificate to an eligible individual not later than the 30th day after the date the person becomes eligible for the certificate, as provided by the bill's provisions, and sets out the required contents of the certificate.

C.S.H.B. 1426 prohibits the use of the criminal history record information of a person who has met the eligibility requirements for the certificate under the bill's provisions as grounds for denying a professional license to the person, provided that the person is otherwise qualified for the license, unless a licensing authority is prohibited by law from granting a specific occupational license to a person who has been convicted of or placed on deferred adjudication community supervision for a specific offense, in which case the certificate does not overcome that prohibition. The bill exempts from this prohibition a professional license issued under the Public Accountancy Act or Occupations Code provisions governing occupations related to law enforcement and security. The bill requires an agency that issues licenses under that act or those provisions to comply with provisions of that code relating to factors in determining whether a conviction relates to an occupation and relating to additional factors for a licensing authority to consider. The bill establishes that such a prohibition does not prohibit a licensing agency from

restricting a person to a provisional or probationary license. The bill nullifies the effect of a person's certificate if the appropriate licensing authority finds that the person, after receiving the certificate, has committed an offense that is a Class A misdemeanor or higher category of offense. The bill makes its provisions applicable to a person eligible for a certificate under the bill's provisions regardless of whether the person completed a term of community supervision before, on, or after the bill's effective date.

EFFECTIVE DATE

On passage, or, if the bill does not receive the necessary vote, September 1, 2017.

COMPARISON OF ORIGINAL AND SUBSTITUTE

While C.S.H.B. 1426 may differ from the original in minor or nonsubstantive ways, the following comparison is organized and formatted in a manner that indicates the substantial differences between the introduced and committee substitute versions of the bill.

INTRODUCED

SECTION 1. Title 1, Code of Criminal Procedure, is amended by adding Chapter 68 to read as follows:

CHAPTER 68. CERTIFICATE OF RELIEF FROM COLLATERAL CONSEQUENCES

Art. 68.001. DEFINITIONS. In this chapter:

(1) "Certificate" means a certificate of relief from collateral consequences issued under this chapter.

(2) "Criminal history record information" has the meaning assigned by Section 411.082, Government Code.

Art. 68.002. ELIGIBILITY. (a) Except as otherwise provided by this article, a person who was convicted of or placed on deferred adjudication community supervision for an offense is eligible to petition for a certificate:

(1) immediately after a discharge and dismissal, if the person is placed on deferred adjudication community supervision for a misdemeanor offense;

(2) on or after the second anniversary of the date the person discharged the person's sentence, if the person is convicted of a misdemeanor offense;

(3) on or after the third anniversary of the date of the discharge and dismissal, if the person is placed on deferred adjudication

HOUSE COMMITTEE SUBSTITUTE

SECTION 1. Title 1, Code of Criminal Procedure, is amended by adding Chapter 68 to read as follows:

CHAPTER 68. CERTIFICATE OF RELIEF FROM COLLATERAL CONSEQUENCES

Art. 68.001. DEFINITIONS. In this chapter:

(1) "Certificate" means a certificate of relief from collateral consequences issued under this chapter.

(2) "Collateral consequence" means, as an indirect consequence of a person's criminal history record information, the revocation, suspension, or denial of licensure under Section 53.021, Occupations Code.

(3) "Criminal history record information" has the meaning assigned by Section 411.082, Government Code.

Art. 68.002. ELIGIBILITY. Except as otherwise provided by this article, a person is eligible for a certificate if the person successfully completed:

(1) a term of deferred adjudication community supervision and the judge has dismissed the proceedings and discharged the person under Article 42A.111; or

(2) a term of community supervision and the person's conviction is set aside under Article 42A.701.

community supervision for a felony offense;
and

(4) on or after the fifth anniversary of the date the person discharged the person's sentence, if the person is convicted of a felony offense.

(b) A person convicted of or placed on deferred adjudication community supervision for an offense listed under Article 42A.054(a) or described by Article 42A.054(b) is not eligible to petition for a certificate.

(c) A person is not eligible to petition for a certificate if, after being convicted of or placed on deferred adjudication community supervision for an offense, the person committed a separate offense of which the person was convicted or for which the person was placed on deferred adjudication community supervision.

Art. 68.003. PETITION. (a) A person who is eligible to petition for a certificate must submit the petition to the court that convicted the person or placed the person on deferred adjudication community supervision.

(b) The petition must provide evidence that the person has been rehabilitated, which may include:

(1) letters of recommendation from persons who can credibly speak from personal experience regarding the moral character of the person;

(2) written confirmation that the person has been rehabilitated, including statements from a court, supervision officer, parole officer, counselor, psychologist, therapist, or instructor;

(3) letters from community organizations, including a faith-based organization, attesting to positive community involvement and volunteerism;

(4) proof of completion of rehabilitative courses or programs, including substance abuse programs and anger management classes;

(5) proof that the person is obtaining an education or is employed, is diligently attempting to obtain an education or seek employment, or is unable to obtain an education or seek employment or hold an employment position; and

(6) any recommendations from the Board of Pardons and Paroles.

Art. 68.004. ISSUANCE OF

Art. 68.003. PROVISION OF

CERTIFICATE OR DENIAL OF PETITION. (a) The court shall investigate each person who petitions under this chapter.

(b) The court may issue a certificate to an eligible person if the court determines that:

(1) the person demonstrated that the person has been rehabilitated; and

(2) the issuance of the certificate is in the best interest of justice and consistent with the public interest.

(c) The court shall issue the certificate or deny the petition within a reasonable amount of time after the petition is filed.

Art. 68.005. EFFECT OF CERTIFICATE.

(a) If a person holds a certificate, the person's criminal history record information for the offense that is the subject of the certificate may not be used as grounds for denying a professional license to the person, provided that the person is otherwise qualified for the license.

(b) Subsection (a) does not apply if federal law prohibits the person from obtaining the license.

Art. 68.006. ELIGIBILITY FOR ORDER OF NONDISCLOSURE. Regardless of whether the person meets the eligibility criteria under Subchapter E-1, Chapter 411, Government Code, a person who is granted

CERTIFICATE. The court shall provide a certificate to an eligible individual not later than the 30th day after the date the person becomes eligible for the certificate, as provided by Article 68.002.

Art. 68.004. CONTENT OF CERTIFICATE. A certificate must state that the recipient has completed a term of community supervision and all requirements imposed by the court related to the offense and is relieved of all penalties, disqualifications, and disabilities resulting from the offense.

Art. 68.005. EFFECT OF CERTIFICATE.

(a) If a person has met the eligibility requirements under Article 68.002, the person's criminal history record information for the offense that is the subject of the certificate may not be used as grounds for denying a professional license to the person, provided that the person is otherwise qualified for the license.

(b) If a licensing authority is prohibited by law from granting a specific occupational license to a person who has been convicted of or placed on deferred adjudication community supervision for a specific offense, a certificate does not overcome that prohibition.

(c) Subsection (a) does not apply to a professional license issued under Subtitle A, Title 5, or Title 10, Occupations Code. An agency that issues licenses under those provisions shall comply with Sections 53.022 and 53.023 of that code in determining whether a person qualifies for a license.

(d) Subsection (a) does not prohibit a licensing agency from restricting a person to a provisional or probationary license.

a certificate may immediately petition the granting court for an order of nondisclosure of criminal history record information with respect to the offense that is the subject of the certificate in the manner provided under Section 411.0745, Government Code.

Art. 68.006. NULLIFICATION OF CERTIFICATE. The effect of a person's certificate is nullified if the appropriate licensing authority finds that the person, after receiving the certificate, has committed an offense that is a Class A misdemeanor or higher category of offense.

SECTION 2. (a) A petition may be filed under Chapter 68, Code of Criminal Procedure, as added by this Act, relating to any offense committed before, on, or after the effective date of this Act.

(b) A court is not required to accept a petition filed under Chapter 68, Code of Criminal Procedure, as added by this Act, before January 1, 2018.

SECTION 2. The change in law made by this Act applies to a person eligible for a certificate under Article 68.002, Code of Criminal Procedure, as added by this Act, regardless of whether the person completed a term of community supervision before, on, or after that date.

SECTION 3. This Act takes effect immediately if it receives a vote of two-thirds of all the members elected to each house, as provided by Section 39, Article III, Texas Constitution. If this Act does not receive the vote necessary for immediate effect, this Act takes effect September 1, 2017.

SECTION 3. Same as introduced version.