

BILL ANALYSIS

Senate Research Center
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C.S.H.B. 1491
By: McClendon (Menéndez)
Criminal Justice
5/22/2015
Committee Report (Substituted)

AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

In recent years, certain for-profit websites have been actively collecting arrest photos and criminal records in bulk and then posting the photos and records online. These photos and records may include personally identifiable information or pre-disposition arrest information and may never be updated for accuracy or completeness. Depending on the website, photos or records may be displayed along with fallacious or defamatory statements.

In addition to posting misleading or inaccurate information, these websites can exploit the most vulnerable among us—children. Interested parties contend that children deserve a higher level of protection with regard to these sites than Texas law currently affords. It is often difficult for an affected person to remove personal information from the site, and some websites charge high fees for removal. A child is unlikely to be able to afford such fees or to have the capacity to pursue court remedies. C.S.H.B. 1491 seeks to minimize or eliminate the potential impact of this practice on children.

C.S.H.B. 1491 amends current law relating to the publication of confidential criminal and juvenile justice records of certain juveniles and provides civil penalties.

RULEMAKING AUTHORITY

This bill does not expressly grant any additional rulemaking authority to a state officer, institution, or agency.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends the heading to Chapter 109, Business & Commerce Code, as added by Chapter 1200 (S.B. 1289), Acts of the 83rd Legislature, Regular Session, 2013, to read as follows:

CHAPTER 109. BUSINESS ENTITIES ENGAGED IN PUBLICATION OF CERTAIN CRIMINAL RECORD OR JUVENILE RECORD INFORMATION

SECTION 2. Amends Section 109.001, Business & Commerce Code, as added by Chapter 1200 (S.B. 1289), Acts of the 83rd Legislature, Regular Session, 2013, by adding Subdivisions (5), (6), (7), and (8), to define “confidential criminal record information of a child,” “confidential juvenile record information,” “information service,” “interactive computer service,” and “telecommunications provider.”

SECTION 3. Amends Section 109.002, Business & Commerce Code, as added by Chapter 1200 (S.B. 1289), Acts of the 83rd Legislature, Regular Session, 2013, as follows:

Sec. 109.002. **APPLICABILITY OF CHAPTER.** (a) Provides that, except as provided by Subsection (b), this chapter applies to:

(1) a business entity that:

(A) and (B) Makes nonsubstantive changes; or

(2) a business entity that publishes confidential juvenile record information or confidential criminal record information of a child in a manner not permitted by Chapter 58 (Records; Juvenile Justice Information System), Family Code, Chapter 45 (Justice and Municipal Courts), Code of Criminal Procedure, or other law, regardless of:

(A) the source of the information; or

(B) whether the business entity charges a fee for access to or removal or correction of the information.

(b) Provides that this chapter does not apply to:

(1) a statewide juvenile information and case management system authorized by Subchapter E (Statewide Juvenile Information and Case Management System), Chapter 58, Family Code;

(2) a publication of general circulation or an Internet website related to such a publication that contains news or other information, including a magazine, periodical newsletter, newspaper, pamphlet, or report; or

(3) a radio or television station that holds a license issued by the Federal Communications Commission.

(4) an entity that provides an information service or that is an interactive computer service; or

(5) a telecommunications provider.

SECTION 4. Amends Chapter 109, Business & Commerce Code, as added by Chapter 1200 (S.B. 1289), Acts of the 83rd Legislature, Regular Session, 2013, by adding Section 109.0045, as follows:

Sec. 109.0045. PUBLICATION OF CONFIDENTIAL JUVENILE RECORD INFORMATION OR CONFIDENTIAL CRIMINAL RECORD INFORMATION OF A CHILD PROHIBITED. (a) Prohibits a business entity from publishing confidential juvenile record information or confidential criminal record information of a child.

(b) Requires the business entity, if a business entity receives a written notice by any person that the business entity is publishing information in violation of this section, to immediately remove the information from the website or publication.

(c) Authorizes the business entity, if the business entity confirms that the information is not confidential juvenile record information or confidential criminal record information of a child and is not otherwise prohibited from publication, to republish the information.

(d) Provides that this section does not entitle a business entity to access confidential juvenile record information or confidential criminal record information of a child.

(e) Provides that a business entity does not violate this chapter if the business entity published confidential juvenile record information or confidential criminal record information of a child and:

(1) the child who is the subject of the records gives written consent to the publication on or after the 18th birthday of the child;

(2) the publication of the information is authorized or required by other law; or

(3) the business entity is an interactive computer service, as defined by 47 U.S.C. Section 230, and published material provided by another person.

SECTION 5. Amends Section 109.005, Business & Commerce Code, as added by Chapter 1200 (S.B. 1289), Acts of the 83rd Legislature, Regular Session, 2013, by adding Subsection (a-1) and amending Subsection (b), as follows:

(a-1) Prohibits a business entity, except as provided by Section 109.0045(e), from publishing any information with respect to which the business entity has knowledge or has received notice that the information is confidential juvenile record information or confidential criminal record information of a child.

(b) Provides that a business entity that publishes information in violation of this section, rather than in violation of Subsection (a), is liable to the individual who is the subject of the information in an amount not to exceed \$500 for each separate violation and, in the case of a continuing violation, an amount not to exceed \$500 for each subsequent day on which the violation occurs.

SECTION 6. Amends Section 109.006(a), Business & Commerce Code, as added by Chapter 1200 (S.B. 1289), Acts of the 83rd Legislature, Regular Session, 2013, as follows:

(a) Provides that a business entity that publishes criminal record information, confidential juvenile record information, or confidential criminal record information of a child in violation of this chapter is liable to the state for a civil penalty in an amount not to exceed \$500 for each separate violation and, in the case of a continuing violation, an amount not to exceed \$500 for each subsequent day on which the violation occurs. Provides that each record, rather than each criminal record, published in violation of this chapter, for purposes of this subsection, constitutes a separate violation.

SECTION 7. Amends Section 109.007, Business & Commerce Code, as added by Chapter 1200 (S.B. 1289), Acts of the 83rd Legislature, Regular Session, 2013, as follows:

Sec. 109.007. VENUE. Requires that an action under this chapter be brought in a district court:

(1) in Travis County if the action is brought by the attorney general;

(2) in the county in which the person who is the subject of the criminal record information, confidential juvenile record information, or confidential criminal record information of a child resides; or

(3) in the county in which the business entity is located.

SECTION 8. Provides that Chapter 109, Business & Commerce Code, as added by Chapter 1200 (S.B. 1289), Acts of the 83rd Legislature, Regular Session, 2013, as amended by this Act, applies to any publication of criminal record information, confidential juvenile record information, or confidential criminal record information of a child that occurs on or after the effective date of this Act, regardless of whether:

(1) the information relates to events or activities that occurred before, on, or after that date; or

(2) the information was initially published before that date.

SECTION 9. Effective date: September 1, 2015.