

BILL ANALYSIS

C.S.H.B. 1491
By: McClendon
Juvenile Justice & Family Issues
Committee Report (Substituted)

BACKGROUND AND PURPOSE

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.

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. 1491 amends the Business & Commerce Code to prohibit a business entity from publishing confidential juvenile record information or confidential criminal record information of a child. The bill defines "confidential criminal record information of a child" as information about a person's involvement in the criminal justice system resulting from conduct that occurred or was alleged to occur when the person was younger than 17 years of age that is confidential under state law other than criminal record information of a person certified to stand trial as an adult for that conduct or information relating to a traffic offense. The bill defines "confidential juvenile record information" as information about a person's involvement in the juvenile justice system that is confidential, sealed, under restricted access, or required to be destroyed under state law. The bill requires a business entity that receives a written notice by any person that the business entity is publishing information in violation of the bill's provisions to immediately remove the information from the website or publication. The bill authorizes a business entity to republish the information 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. The bill establishes that its provisions do not entitle a business entity to access confidential juvenile record information or confidential criminal record

information of a child. The bill establishes that a business entity does not violate statutory provisions relating to business entities engaged in the publication of criminal record information if the business entity published confidential juvenile record information or confidential criminal record information of a child and the child who is the subject of the records gives written consent to the publication on or after the 18th birthday of the child, the publication of the information is authorized or required by other law, or the business entity is an interactive computer service, as defined by federal law, and published material provided by another person.

C.S.H.B. 1491 expands applicability of statutory provisions relating to business entities engaged in the publication of criminal record information to include a business entity that publishes confidential juvenile record information or confidential criminal record information of a child in a prohibited manner, regardless of the source of the information or whether the business entity charges a fee for access to or removal or correction of the information. The bill establishes that those statutory provisions do not apply to a statewide juvenile information and case management system; a publication of general circulation or a website related to such a publication that contains news or other information, including a magazine, periodical newsletter, newspaper, pamphlet, or report; or a radio or television station that holds a license issued by the Federal Communications Commission. The bill establishes civil liability and venue for an action involving a violation of the bill's provisions. The bill 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 bill's effective date, regardless of whether the information relates to events or activities that occurred before, on, or after that date or the information was initially published before that date.

EFFECTIVE DATE

September 1, 2015.

COMPARISON OF ORIGINAL AND SUBSTITUTE

While C.S.H.B. 1491 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. The heading to Chapter 109, Business & Commerce Code, as added by Chapter 1200 (S.B. 1289), Acts of the 83rd Legislature, Regular Session, 2013, is amended.

SECTION 2. Section 109.001, Business & Commerce Code, as added by Chapter 1200 (S.B. 1289), Acts of the 83rd Legislature, Regular Session, 2013, is amended.

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

Sec. 109.002. **APPLICABILITY OF CHAPTER.** This chapter applies to:
(1) a business entity that:

HOUSE COMMITTEE SUBSTITUTE

SECTION 1. Same as introduced version.

SECTION 2. Same as introduced version.

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

Sec. 109.002. **APPLICABILITY OF CHAPTER.** (a) This chapter applies to:
(1) a business entity that:

(A) ~~(4)~~ publishes criminal record information, including information:
(i) ~~(A)~~ originally obtained pursuant to a request for public information under Chapter 552, Government Code; or
(ii) ~~(B)~~ purchased or otherwise obtained by the entity or an affiliated business entity from the Department of Public Safety under Subchapter F, Chapter 411, Government Code; and
(B) ~~(2)~~ requires the payment:
(i) ~~(A)~~ of a fee in an amount of \$150 or more or other consideration of comparable value to remove criminal record information; or
(ii) ~~(B)~~ of a fee or other consideration to correct or modify criminal record information; 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, Family Code, Chapter 45, 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.

SECTION 4. Chapter 109, Business & Commerce Code, as added by Chapter 1200 (S.B. 1289), Acts of the 83rd Legislature, Regular Session, 2013, is amended.

SECTION 5. Section 109.005, Business & Commerce Code, as added by Chapter 1200 (S.B. 1289), Acts of the 83rd Legislature, Regular Session, 2013, is amended.

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(A) ~~(4)~~ publishes criminal record information, including information:
(i) ~~(A)~~ originally obtained pursuant to a request for public information under Chapter 552, Government Code; or
(ii) ~~(B)~~ purchased or otherwise obtained by the entity or an affiliated business entity from the Department of Public Safety under Subchapter F, Chapter 411, Government Code; and
(B) ~~(2)~~ requires the payment:
(i) ~~(A)~~ of a fee in an amount of \$150 or more or other consideration of comparable value to remove criminal record information; or
(ii) ~~(B)~~ of a fee or other consideration to correct or modify criminal record information; 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, Family Code, Chapter 45, 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) This chapter does not apply to:
(1) a statewide juvenile information and case management system authorized by Subchapter E, 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.

SECTION 4. Same as introduced version.

SECTION 5. Same as introduced version.

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

SECTION 6. Same as introduced version.

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

SECTION 7. Same as introduced version.

SECTION 8. Chapter 109, Business & Commerce Code, as added by Chapter 1200 (S.B. 1289), Acts of the 83rd Legislature, Regular Session, 2013, as amended.

SECTION 8. Same as introduced version.

SECTION 9. This Act takes effect September 1, 2015.

SECTION 9. Same as introduced version.