

By: McClendon

H.B. No. 1491

A BILL TO BE ENTITLED

AN ACT

relating to the publication of confidential criminal and juvenile justice records of certain juveniles; providing civil penalties.

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

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 to read as follows:

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

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 by adding Subdivisions (5), (6), (7), and (8) to read as follows:

(5) "Confidential criminal record information of a child" means 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 Chapter 45, Code of Criminal Procedure, or other law. The term does not include:

(A) criminal record information of a person certified to stand trial as an adult for that conduct, as provided by Section 54.02, Family Code; or

(B) information relating to a traffic offense.

(6) "Confidential juvenile record information" means

1 information about a person's involvement in the juvenile justice
2 system that is confidential, sealed, under restricted access, or
3 required to be destroyed under Chapter 58, Family Code, or other
4 law, including:

5 (A) a description or notation of any referral to
6 a juvenile probation department or court with jurisdiction under
7 Title 3, Family Code, including any instances of being taken into
8 custody, any informal disposition of a custodial or referral event,
9 or any formal charges and the disposition of those charges;

10 (B) a photograph of the person taken pursuant to
11 a custodial event or other involvement in the juvenile justice
12 system under Title 3, Family Code; and

13 (C) personal identifying information of the
14 person contained in any other records of the person's involvement
15 in the juvenile justice system.

16 (7) "Information service" has the meaning assigned by
17 47 U.S.C. Section 153.

18 (8) "Interactive computer service" has the meaning
19 assigned by 47 U.S.C. Section 230(f).

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

23 Sec. 109.002. APPLICABILITY OF CHAPTER. (a) Subject to
24 Subsection (a-1) and except as provided by Subsection (b), this
25 [This] chapter applies to:

26 (1) a business entity that:

27 (A) [~~1~~] publishes criminal record information,

1 including information:

2 (i) [~~(A)~~] originally obtained pursuant to a
3 request for public information under Chapter 552, Government Code;
4 or

5 (ii) [~~(B)~~] purchased or otherwise obtained
6 by the entity or an affiliated business entity from the Department
7 of Public Safety under Subchapter F, Chapter 411, Government Code;
8 and

9 (B) [~~(2)~~] requires the payment:

10 (i) [~~(A)~~] of a fee in an amount of \$150 or
11 more or other consideration of comparable value to remove criminal
12 record information; or

13 (ii) [~~(B)~~] of a fee or other consideration
14 to correct or modify criminal record information; or

15 (2) a business entity that publishes confidential
16 juvenile record information or confidential criminal record
17 information of a child in a manner not permitted by Chapter 58,
18 Family Code, Chapter 45, Code of Criminal Procedure, or other law,
19 regardless of:

20 (A) the source of the information; or

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

23 (a-1) To the extent allowed under federal law, a business
24 entity that is a provider of information services or interactive
25 computer services is subject to this chapter.

26 (b) This chapter does not apply to:

27 (1) a statewide juvenile information and case

1 management system authorized by Subchapter E, Chapter 58, Family
2 Code;

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

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

9 SECTION 4. Chapter 109, Business & Commerce Code, as added
10 by Chapter 1200 (S.B. 1289), Acts of the 83rd Legislature, Regular
11 Session, 2013, is amended by adding Section 109.0045 to read as
12 follows:

13 Sec. 109.0045. PUBLICATION OF CONFIDENTIAL JUVENILE RECORD
14 INFORMATION OR CONFIDENTIAL CRIMINAL RECORD INFORMATION OF A CHILD
15 PROHIBITED. (a) A business entity may not publish confidential
16 juvenile record information or confidential criminal record
17 information of a child.

18 (b) If a business entity receives a written notice by any
19 person that the business entity is publishing information in
20 violation of this section, the business entity must immediately
21 remove the information from the website or publication.

22 (c) If the business entity confirms that the information is
23 not confidential juvenile record information or confidential
24 criminal record information of a child and is not otherwise
25 prohibited from publication, the business entity may republish the
26 information.

27 (d) This section does not entitle a business entity to

1 access confidential juvenile record information or confidential
2 criminal record information of a child.

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

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

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

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

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

18 (a-1) Except as provided by Section 109.0045(e), a business
19 entity may not publish any information with respect to which the
20 business entity has knowledge or has received notice that the
21 information is confidential juvenile record information or
22 confidential criminal record information of a child.

23 (b) A business entity that publishes information in
24 violation of this section [~~Subsection (a)~~] is liable to the
25 individual who is the subject of the information in an amount not to
26 exceed \$500 for each separate violation and, in the case of a
27 continuing violation, an amount not to exceed \$500 for each

1 subsequent day on which the violation occurs.

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

5 (a) A business entity that publishes criminal record
6 information, confidential juvenile record information, or
7 confidential criminal record information of a child in violation of
8 this chapter is liable to the state for a civil penalty in an amount
9 not to exceed \$500 for each separate violation and, in the case of a
10 continuing violation, an amount not to exceed \$500 for each
11 subsequent day on which the violation occurs. For purposes of this
12 subsection, each [~~criminal~~] record published in violation of this
13 chapter constitutes a separate violation.

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

17 Sec. 109.007. VENUE. An action under this chapter must be
18 brought in a district court:

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

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

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

27 SECTION 8. Chapter 109, Business & Commerce Code, as added

1 by Chapter 1200 (S.B. 1289), Acts of the 83rd Legislature, Regular
2 Session, 2013, as amended by this Act, applies to any publication of
3 criminal record information, confidential juvenile record
4 information, or confidential criminal record information of a child
5 that occurs on or after the effective date of this Act, regardless
6 of whether:

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

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

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