

By: McClendon

H.B. No. 1491

Substitute the following for H.B. No. 1491:

By: Dutton

C.S.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) and (6) 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 SECTION 3. Section 109.002, Business & Commerce Code, as
17 added by Chapter 1200 (S.B. 1289), Acts of the 83rd Legislature,
18 Regular Session, 2013, is amended to read as follows:

19 Sec. 109.002. APPLICABILITY OF CHAPTER. (a) This chapter
20 applies to:

21 (1) a business entity that:

22 (A) [~~(1)~~] publishes criminal record information,
23 including information:

24 (i) [~~(A)~~] originally obtained pursuant to a
25 request for public information under Chapter 552, Government Code;

26 or

27 (ii) [~~(B)~~] purchased or otherwise obtained

1 by the entity or an affiliated business entity from the Department
2 of Public Safety under Subchapter F, Chapter 411, Government Code;
3 and

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

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

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

10 (2) a business entity that publishes confidential
11 juvenile record information or confidential criminal record
12 information of a child in a manner not permitted by Chapter 58,
13 Family Code, Chapter 45, Code of Criminal Procedure, or other law,
14 regardless of:

15 (A) the source of the information; or

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

18 (b) This chapter does not apply to:

19 (1) a statewide juvenile information and case
20 management system authorized by Subchapter E, Chapter 58, Family
21 Code;

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

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

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

5 Sec. 109.0045. PUBLICATION OF CONFIDENTIAL JUVENILE RECORD
6 INFORMATION OR CONFIDENTIAL CRIMINAL RECORD INFORMATION OF A CHILD
7 PROHIBITED. (a) A business entity may not publish confidential
8 juvenile record information or confidential criminal record
9 information of a child.

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

14 (c) If the business entity confirms that the information is
15 not confidential juvenile record information or confidential
16 criminal record information of a child and is not otherwise
17 prohibited from publication, the business entity may republish the
18 information.

19 (d) This section does not entitle a business entity to
20 access confidential juvenile record information or confidential
21 criminal record information of a child.

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

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

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

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

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

10 (a-1) Except as provided by Section 109.0045(e), a business
11 entity may not publish any information with respect to which the
12 business entity has knowledge or has received notice that the
13 information is confidential juvenile record information or
14 confidential criminal record information of a child.

15 (b) A business entity that publishes information in
16 violation of this section [~~Subsection (a)~~] is liable to the
17 individual who is the subject of the information in an amount not to
18 exceed \$500 for each separate violation and, in the case of a
19 continuing violation, an amount not to exceed \$500 for each
20 subsequent day on which the violation occurs.

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

24 (a) A business entity that publishes criminal record
25 information, confidential juvenile record information, or
26 confidential criminal record information of a child in violation of
27 this chapter is liable to the state for a civil penalty in an amount

1 not to exceed \$500 for each separate violation and, in the case of a
2 continuing violation, an amount not to exceed \$500 for each
3 subsequent day on which the violation occurs. For purposes of this
4 subsection, each [~~criminal~~] record published in violation of this
5 chapter constitutes a separate violation.

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

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

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

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

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

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

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

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

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