

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

22 Sec. 109.0045. PUBLICATION OF CONFIDENTIAL JUVENILE RECORD
23 INFORMATION OR CONFIDENTIAL CRIMINAL RECORD INFORMATION OF A CHILD
24 PROHIBITED. (a) A business entity may not publish confidential
25 juvenile record information or confidential criminal record
26 information of a child.

27 (b) If a business entity receives a written notice by any

1 person that the business entity is publishing information in
2 violation of this section, the business entity must immediately
3 remove the information from the website or publication.

4 (c) If the business entity confirms that the information is
5 not confidential juvenile record information or confidential
6 criminal record information of a child and is not otherwise
7 prohibited from publication, the business entity may republish the
8 information.

9 (d) This section does not entitle a business entity to
10 access confidential juvenile record information or confidential
11 criminal record information of a child.

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

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

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

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

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

27 (a-1) Except as provided by Section 109.0045(e), a business

1 entity may not publish any information with respect to which the
2 business entity has knowledge or has received notice that the
3 information is confidential juvenile record information or
4 confidential criminal record information of a child.

5 (b) A business entity that publishes information in
6 violation of this section [~~Subsection (a)~~] is liable to the
7 individual who is the subject of the information in an amount not to
8 exceed \$500 for each separate violation and, in the case of a
9 continuing violation, an amount not to exceed \$500 for each
10 subsequent day on which the violation occurs.

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

14 (a) A business entity that publishes criminal record
15 information, confidential juvenile record information, or
16 confidential criminal record information of a child in violation of
17 this chapter is liable to the state for a civil penalty in an amount
18 not to 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. For purposes of this
21 subsection, each [~~criminal~~] record published in violation of this
22 chapter constitutes a separate violation.

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

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

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

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

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

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

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

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

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