

1-1 By: McClendon (Senate Sponsor - Menéndez) H.B. No. 1491
1-2 (In the Senate - Received from the House May 18, 2015;
1-3 May 18, 2015, read first time and referred to Committee on Criminal
1-4 Justice; May 24, 2015, reported adversely, with favorable
1-5 Committee Substitute by the following vote: Yeas 7, Nays 0;
1-6 May 24, 2015, sent to printer.)

1-7 COMMITTEE VOTE

	Yea	Nay	Absent	PNV
1-8				
1-9	Whitmire	X		
1-10	Huffman	X		
1-11	Burton	X		
1-12	Creighton	X		
1-13	Hinojosa	X		
1-14	Menéndez	X		
1-15	Perry	X		

1-16 COMMITTEE SUBSTITUTE FOR H.B. No. 1491 By: Menéndez

1-17 A BILL TO BE ENTITLED
1-18 AN ACT

1-19 relating to the publication of confidential criminal and juvenile
1-20 justice records of certain juveniles; providing civil penalties.

1-21 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

1-22 SECTION 1. The heading to Chapter 109, Business & Commerce
1-23 Code, as added by Chapter 1200 (S.B. 1289), Acts of the 83rd
1-24 Legislature, Regular Session, 2013, is amended to read as follows:

1-25 CHAPTER 109. BUSINESS ENTITIES ENGAGED IN PUBLICATION OF CERTAIN
1-26 CRIMINAL RECORD OR JUVENILE RECORD INFORMATION

1-27 SECTION 2. Section 109.001, Business & Commerce Code, as
1-28 added by Chapter 1200 (S.B. 1289), Acts of the 83rd Legislature,
1-29 Regular Session, 2013, is amended by adding Subdivisions (5), (6),
1-30 (7), (8), and (9) to read as follows:

1-31 (5) "Confidential criminal record information of a
1-32 child" means information about a person's involvement in the
1-33 criminal justice system resulting from conduct that occurred or was
1-34 alleged to occur when the person was younger than 17 years of age
1-35 that is confidential under Chapter 45, Code of Criminal Procedure,
1-36 or other law. The term does not include:

1-37 (A) criminal record information of a person
1-38 certified to stand trial as an adult for that conduct, as provided
1-39 by Section 54.02, Family Code; or

1-40 (B) information relating to a traffic offense.

1-41 (6) "Confidential juvenile record information" means
1-42 information about a person's involvement in the juvenile justice
1-43 system that is confidential, sealed, under restricted access, or
1-44 required to be destroyed under Chapter 58, Family Code, or other
1-45 law, including:

1-46 (A) a description or notation of any referral to
1-47 a juvenile probation department or court with jurisdiction under
1-48 Title 3, Family Code, including any instances of being taken into
1-49 custody, any informal disposition of a custodial or referral event,
1-50 or any formal charges and the disposition of those charges;

1-51 (B) a photograph of the person taken pursuant to
1-52 a custodial event or other involvement in the juvenile justice
1-53 system under Title 3, Family Code; and

1-54 (C) personal identifying information of the
1-55 person contained in any other records of the person's involvement
1-56 in the juvenile justice system.

1-57 (7) "Information service" has the meaning assigned by
1-58 47 U.S.C. Section 153.

1-59 (8) "Interactive computer service" has the meaning
1-60 assigned by 47 U.S.C. Section 230(f).

2-1 (9) "Telecommunications provider" has the meaning
2-2 assigned by Section 51.002, Utilities Code.

2-3 SECTION 3. Section 109.002, Business & Commerce Code, as
2-4 added by Chapter 1200 (S.B. 1289), Acts of the 83rd Legislature,
2-5 Regular Session, 2013, is amended to read as follows:

2-6 Sec. 109.002. APPLICABILITY OF CHAPTER. (a) Except as
2-7 provided by Subsection (b), this [This] chapter applies to:

2-8 (1) a business entity that:

2-9 (A) [~~1~~] publishes criminal record information,
2-10 including information:

2-11 (i) [~~A~~] originally obtained pursuant to a
2-12 request for public information under Chapter 552, Government Code;
2-13 or

2-14 (ii) [~~B~~] purchased or otherwise obtained
2-15 by the entity or an affiliated business entity from the Department
2-16 of Public Safety under Subchapter F, Chapter 411, Government Code;
2-17 and

2-18 (B) [~~2~~] requires the payment:

2-19 (i) [~~A~~] of a fee in an amount of \$150 or
2-20 more or other consideration of comparable value to remove criminal
2-21 record information; or

2-22 (ii) [~~B~~] of a fee or other consideration
2-23 to correct or modify criminal record information; or

2-24 (2) a business entity that publishes confidential
2-25 juvenile record information or confidential criminal record
2-26 information of a child in a manner not permitted by Chapter 58,
2-27 Family Code, Chapter 45, Code of Criminal Procedure, or other law,
2-28 regardless of:

2-29 (A) the source of the information; or

2-30 (B) whether the business entity charges a fee for
2-31 access to or removal or correction of the information.

2-32 (b) This chapter does not apply to:

2-33 (1) a statewide juvenile information and case
2-34 management system authorized by Subchapter E, Chapter 58, Family
2-35 Code;

2-36 (2) a publication of general circulation or an
2-37 Internet website related to such a publication that contains news
2-38 or other information, including a magazine, periodical newsletter,
2-39 newspaper, pamphlet, or report;

2-40 (3) a radio or television station that holds a license
2-41 issued by the Federal Communications Commission;

2-42 (4) an entity that provides an information service or
2-43 that is an interactive computer service; or

2-44 (5) a telecommunications provider.

2-45 SECTION 4. Chapter 109, Business & Commerce Code, as added
2-46 by Chapter 1200 (S.B. 1289), Acts of the 83rd Legislature, Regular
2-47 Session, 2013, is amended by adding Section 109.0045 to read as
2-48 follows:

2-49 Sec. 109.0045. PUBLICATION OF CONFIDENTIAL JUVENILE RECORD
2-50 INFORMATION OR CONFIDENTIAL CRIMINAL RECORD INFORMATION OF A CHILD
2-51 PROHIBITED. (a) A business entity may not publish confidential
2-52 juvenile record information or confidential criminal record
2-53 information of a child.

2-54 (b) If a business entity receives a written notice by any
2-55 person that the business entity is publishing information in
2-56 violation of this section, the business entity must immediately
2-57 remove the information from the website or publication.

2-58 (c) If the business entity confirms that the information is
2-59 not confidential juvenile record information or confidential
2-60 criminal record information of a child and is not otherwise
2-61 prohibited from publication, the business entity may republish the
2-62 information.

2-63 (d) This section does not entitle a business entity to
2-64 access confidential juvenile record information or confidential
2-65 criminal record information of a child.

2-66 (e) A business entity does not violate this chapter if the
2-67 business entity published confidential juvenile record information
2-68 or confidential criminal record information of a child and:

2-69 (1) the child who is the subject of the records gives

3-1 written consent to the publication on or after the 18th birthday of
3-2 the child;

3-3 (2) the publication of the information is authorized
3-4 or required by other law; or

3-5 (3) the business entity is an interactive computer
3-6 service, as defined by 47 U.S.C. Section 230, and published
3-7 material provided by another person.

3-8 SECTION 5. Section 109.005, Business & Commerce Code, as
3-9 added by Chapter 1200 (S.B. 1289), Acts of the 83rd Legislature,
3-10 Regular Session, 2013, is amended by adding Subsection (a-1) and
3-11 amending Subsection (b) to read as follows:

3-12 (a-1) Except as provided by Section 109.0045(e), a business
3-13 entity may not publish any information with respect to which the
3-14 business entity has knowledge or has received notice that the
3-15 information is confidential juvenile record information or
3-16 confidential criminal record information of a child.

3-17 (b) A business entity that publishes information in
3-18 violation of this section [~~Subsection (a)~~] is liable to the
3-19 individual who is the subject of the information in an amount not to
3-20 exceed \$500 for each separate violation and, in the case of a
3-21 continuing violation, an amount not to exceed \$500 for each
3-22 subsequent day on which the violation occurs.

3-23 SECTION 6. Section 109.006(a), Business & Commerce Code, as
3-24 added by Chapter 1200 (S.B. 1289), Acts of the 83rd Legislature,
3-25 Regular Session, 2013, is amended to read as follows:

3-26 (a) A business entity that publishes criminal record
3-27 information, confidential juvenile record information, or
3-28 confidential criminal record information of a child in violation of
3-29 this chapter is liable to the state for a civil penalty in an amount
3-30 not to exceed \$500 for each separate violation and, in the case of a
3-31 continuing violation, an amount not to exceed \$500 for each
3-32 subsequent day on which the violation occurs. For purposes of this
3-33 subsection, each [~~criminal~~] record published in violation of this
3-34 chapter constitutes a separate violation.

3-35 SECTION 7. Section 109.007, Business & Commerce Code, as
3-36 added by Chapter 1200 (S.B. 1289), Acts of the 83rd Legislature,
3-37 Regular Session, 2013, is amended to read as follows:

3-38 Sec. 109.007. VENUE. An action under this chapter must be
3-39 brought in a district court:

3-40 (1) in Travis County if the action is brought by the
3-41 attorney general;

3-42 (2) in the county in which the person who is the
3-43 subject of the criminal record information, confidential juvenile
3-44 record information, or confidential criminal record information of
3-45 a child resides; or

3-46 (3) in the county in which the business entity is
3-47 located.

3-48 SECTION 8. Chapter 109, Business & Commerce Code, as added
3-49 by Chapter 1200 (S.B. 1289), Acts of the 83rd Legislature, Regular
3-50 Session, 2013, as amended by this Act, applies to any publication of
3-51 criminal record information, confidential juvenile record
3-52 information, or confidential criminal record information of a child
3-53 that occurs on or after the effective date of this Act, regardless
3-54 of whether:

3-55 (1) the information relates to events or activities
3-56 that occurred before, on, or after that date; or

3-57 (2) the information was initially published before
3-58 that date.

3-59 SECTION 9. This Act takes effect September 1, 2015.

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