

House Bill 1491
Senate Amendments
Section-by-Section Analysis

HOUSE VERSION

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

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

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SECTION 1. Same as House version.

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), (8), and (9) 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 information about a person's involvement in the juvenile justice system that is confidential, sealed, under restricted access, or required to be destroyed under Chapter 58, Family Code, or other law, including:

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

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charges:

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

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

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

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

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) Subject to Subsection (a-1) and except as provided by Subsection (b), this [This] chapter applies to:

(1) a business entity that:

(A) [(+)] 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

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charges:

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

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

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

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

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

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) Except as provided by Subsection (b), this [This] chapter applies to:

(1) a business entity that:

(A) [(+)] 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

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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.

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

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

Sec. 109.0045. PUBLICATION OF CONFIDENTIAL

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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;

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

(4) an entity that provides an information service or that is an interactive computer service; or

(5) a telecommunications provider.

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JUVENILE RECORD INFORMATION OR CONFIDENTIAL CRIMINAL RECORD INFORMATION OF A CHILD PROHIBITED. (a) A business entity may not publish confidential juvenile record information or confidential criminal record information of a child.
(b) If a business entity receives a written notice by any person that the business entity is publishing information in violation of this section, the business entity must immediately remove the information from the website or publication.
(c) 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 business entity may republish the information.
(d) This section does not entitle a business entity to access confidential juvenile record information or confidential criminal record information of a child.
(e) A business entity does not violate this chapter if the business entity published confidential juvenile record information or confidential criminal record information of a child and:
(1) the child who is the subject of the records gives written consent to the publication on or after the 18th birthday of the child;
(2) the publication of the information is authorized or required by other law; or
(3) the business entity is an interactive computer service, as defined by 47 U.S.C. Section 230, and published material provided by another person.

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

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Legislature, Regular Session, 2013, is amended by adding Subsection (a-1) and amending Subsection (b) to read as follows:

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

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

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 to read as follows:

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

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

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Legislature, Regular Session, 2013, is amended to read as follows:

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

- (1) in Travis County if the action is brought by the attorney general;
- (2) in the county in which the person who is the subject of the criminal record information, confidential juvenile record information, or confidential criminal record information of a child resides; or
- (3) in the county in which the business entity is located.

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 by this Act, 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 effective date of this Act, regardless of whether:

- (1) the information relates to events or activities that occurred before, on, or after that date; or
- (2) the information was initially published before that date.

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

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SECTION 8. Same as House version.

SECTION 9. Same as House version.

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