

By: Capriglione

H.B. No. 2191

Substitute the following for H.B. No. 2191:

By: Hernandez

C.S.H.B. No. 2191

A BILL TO BE ENTITLED

AN ACT

relating to the public information law.

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

SECTION 1. Section 552.002, Government Code, is amended by adding Subsection (d) to read as follows:

(d) "Protected health information" as defined by Section 181.006, Health and Safety Code, is not public information and is not subject to disclosure under this chapter.

SECTION 2. Section 552.003, Government Code, is amended by adding Subdivision (7) to read as follows:

(7) "Temporary custodian" means an officer or employee of a governmental body who, in the transaction of official business, creates or receives public information that the officer or employee has not provided to the officer for public information of the governmental body or the officer's agent. The term includes a former officer or employee of a governmental body who created or received public information in the officer's or employee's official capacity that has not been provided to the officer for public information of the governmental body or the officer's agent.

SECTION 3. Section 552.004, Government Code, is amended to read as follows:

Sec. 552.004. PRESERVATION OF INFORMATION. (a) A governmental body or, for information of an elective county office, the elected county officer, may determine a time for which

1 information that is not currently in use will be preserved, subject  
2 to Subsection (b) and to any applicable rule or law governing the  
3 destruction and other disposition of state and local government  
4 records or public information.

5 (b) A current or former officer or employee of a  
6 governmental body who maintains public information on a privately  
7 owned device shall:

8 (1) forward or transfer the public information to the  
9 governmental body or a governmental body server to be preserved as  
10 provided by Subsection (a); or

11 (2) preserve the public information in its original  
12 form in a backup or archive and on the privately owned device for  
13 the time described under Subsection (a).

14 (c) The provisions of Chapter 441 of this code and Title 6,  
15 Local Government Code, governing the preservation, destruction, or  
16 other disposition of records or public information apply to records  
17 and public information held by a temporary custodian.

18 SECTION 4. Section 552.203, Government Code, is amended to  
19 read as follows:

20 Sec. 552.203. GENERAL DUTIES OF OFFICER FOR PUBLIC  
21 INFORMATION. Each officer for public information, subject to  
22 penalties provided in this chapter, shall:

23 (1) make public information available for public  
24 inspection and copying;

25 (2) carefully protect public information from  
26 deterioration, alteration, mutilation, loss, or unlawful removal;

27 [~~and~~]

1 (3) repair, renovate, or rebind public information as  
2 necessary to maintain it properly; and

3 (4) make reasonable efforts to obtain public  
4 information from a temporary custodian if:

5 (A) the information has been requested from the  
6 governmental body;

7 (B) the officer for public information is aware  
8 of facts sufficient to warrant a reasonable belief that the  
9 temporary custodian has possession, custody, or control of the  
10 information;

11 (C) the officer for public information is unable  
12 to comply with the duties imposed by this chapter without obtaining  
13 the information from the temporary custodian; and

14 (D) the temporary custodian has not provided the  
15 information to the officer for public information or the officer's  
16 agent.

17 SECTION 5. Subchapter E, Chapter 552, Government Code, is  
18 amended by adding Sections 552.233, 552.234, and 552.235 to read as  
19 follows:

20 Sec. 552.233. OWNERSHIP OF PUBLIC INFORMATION. (a) A  
21 current or former officer or employee of a governmental body does  
22 not have, by virtue of the officer's or employee's position or  
23 former position, a personal or property right to public information  
24 the officer or employee created or received while acting in an  
25 official capacity.

26 (b) A temporary custodian with possession, custody, or  
27 control of public information shall surrender or return the

1 information to the governmental body not later than the 10th day  
2 after the date the officer for public information of the  
3 governmental body or the officer's agent requests the temporary  
4 custodian to surrender or return the information.

5 (c) A temporary custodian's failure to surrender or return  
6 public information as required by Subsection (b) is grounds for  
7 disciplinary action by the governmental body that employs the  
8 temporary custodian or any other applicable penalties provided by  
9 this chapter or other law.

10 (d) For purposes of the application of Subchapter G to  
11 information surrendered or returned to a governmental body by a  
12 temporary custodian under Subsection (b), the governmental body is  
13 considered to receive the request for that information on the date  
14 the information is surrendered or returned to the governmental  
15 body.

16 Sec. 552.234. METHOD OF MAKING WRITTEN REQUEST FOR PUBLIC  
17 INFORMATION. (a) A person may make a written request for public  
18 information under this chapter only by delivering the request by  
19 one of the following methods to the applicable officer for public  
20 information or a person designated by that officer:

21 (1) United States mail;  
22 (2) electronic mail;  
23 (3) hand delivery; or  
24 (4) any other appropriate method approved by the  
25 governmental body, including:

26 (A) facsimile transmission; and  
27 (B) electronic submission through the

1 governmental body's Internet website.

2 (b) For the purpose of Subsection (a)(4), a governmental  
3 body is considered to have approved a method described by that  
4 subdivision only if the governmental body includes a statement that  
5 a request for public information may be made by that method on:

6 (1) the sign required to be displayed by the  
7 governmental body under Section 552.205; or

8 (2) the governmental body's Internet website.

9 (c) A governmental body may designate one mailing address  
10 and one electronic mail address for receiving written requests for  
11 public information. The governmental body shall provide the  
12 designated mailing address and electronic mailing address to any  
13 person on request.

14 (d) A governmental body that posts the mailing address and  
15 electronic mail address designated by the governmental body under  
16 Subsection (c) on the governmental body's Internet website or that  
17 prints those addresses on the sign required to be displayed by the  
18 governmental body under Section 552.205 is not required to respond  
19 to a written request for public information unless the request is  
20 received:

21 (1) at one of those addresses;

22 (2) by hand delivery; or

23 (3) by a method described by Subsection (a)(4) that  
24 has been approved by the governmental body.

25 Sec. 552.235. PUBLIC INFORMATION REQUEST FORM. (a) The  
26 attorney general shall create a public information request form  
27 that provides a requestor the option of excluding from a request

1 information that the governmental body determines is:

2 (1) confidential; or

3 (2) subject to an exception to disclosure that the  
4 governmental body would assert if the information were subject to  
5 the request.

6 (b) A governmental body that allows requestors to use the  
7 form described by Subsection (a) and maintains an Internet website  
8 shall post the form on its website.

9 SECTION 6. Section 552.301(c), Government Code, is  
10 repealed.

11 SECTION 7. The changes in law made by this Act apply only to  
12 a request for public information received on or after the effective  
13 date of this Act. A request for public information received before  
14 the effective date of this Act is governed by the law in effect when  
15 the request was received, and the former law is continued in effect  
16 for that purpose.

17 SECTION 8. The attorney general shall create a public  
18 information request form under Section 552.235(a), Government  
19 Code, as added by this Act, not later than October 1, 2019.

20 SECTION 9. This Act takes effect September 1, 2019.