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S.B. No. 944

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. Subchapter C, Chapter 552, Government Code, is
19 amended by adding Section 552.159 to read as follows:

20 Sec. 552.159. EXCEPTION: CONFIDENTIALITY OF CERTAIN
21 INFORMATION PROVIDED BY OUT-OF-STATE HEALTH CARE PROVIDER.
22 Information obtained by a governmental body that was provided by an
23 out-of-state health care provider in connection with a quality
24 management, peer review, or best practices program that the
25 out-of-state health care provider pays for is confidential and
26 excepted from the requirements of Section 552.021.

27 SECTION 5. Section 552.203, Government Code, is amended to

1 read as follows:

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

5 (1) make public information available for public
6 inspection and copying;

7 (2) carefully protect public information from
8 deterioration, alteration, mutilation, loss, or unlawful removal;
9 ~~and~~

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

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

14 (A) the information has been requested from the
15 governmental body;

16 (B) the officer for public information is aware
17 of facts sufficient to warrant a reasonable belief that the
18 temporary custodian has possession, custody, or control of the
19 information;

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

23 (D) the temporary custodian has not provided the
24 information to the officer for public information or the officer's
25 agent.

26 SECTION 6. Subchapter E, Chapter 552, Government Code, is
27 amended by adding Sections 552.233, 552.234, and 552.235 to read as

1 follows:

2 Sec. 552.233. OWNERSHIP OF PUBLIC INFORMATION. (a) A
3 current or former officer or employee of a governmental body does
4 not have, by virtue of the officer's or employee's position or
5 former position, a personal or property right to public information
6 the officer or employee created or received while acting in an
7 official capacity.

8 (b) A temporary custodian with possession, custody, or
9 control of public information shall surrender or return the
10 information to the governmental body not later than the 10th day
11 after the date the officer for public information of the
12 governmental body or the officer's agent requests the temporary
13 custodian to surrender or return the information.

14 (c) A temporary custodian's failure to surrender or return
15 public information as required by Subsection (b) is grounds for
16 disciplinary action by the governmental body that employs the
17 temporary custodian or any other applicable penalties provided by
18 this chapter or other law.

19 (d) For purposes of the application of Subchapter G to
20 information surrendered or returned to a governmental body by a
21 temporary custodian under Subsection (b), the governmental body is
22 considered to receive the request for that information on the date
23 the information is surrendered or returned to the governmental
24 body.

25 Sec. 552.234. METHOD OF MAKING WRITTEN REQUEST FOR PUBLIC
26 INFORMATION. (a) A person may make a written request for public
27 information under this chapter only by delivering the request by

1 one of the following methods to the applicable officer for public
2 information or a person designated by that officer:

- 3 (1) United States mail;
- 4 (2) electronic mail;
- 5 (3) hand delivery; or
- 6 (4) any other appropriate method approved by the
7 governmental body, including:

- 8 (A) facsimile transmission; and
- 9 (B) electronic submission through the
10 governmental body's Internet website.

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

- 15 (1) the sign required to be displayed by the
16 governmental body under Section 552.205; or
- 17 (2) the governmental body's Internet website.

18 (c) A governmental body may designate one mailing address
19 and one electronic mail address for receiving written requests for
20 public information. The governmental body shall provide the
21 designated mailing address and electronic mailing address to any
22 person on request.

23 (d) A governmental body that posts the mailing address and
24 electronic mail address designated by the governmental body under
25 Subsection (c) on the governmental body's Internet website or that
26 prints those addresses on the sign required to be displayed by the
27 governmental body under Section 552.205 is not required to respond

1 to a written request for public information unless the request is
2 received:

- 3 (1) at one of those addresses;
- 4 (2) by hand delivery; or
- 5 (3) by a method described by Subsection (a)(4) that
6 has been approved by the governmental body.

7 Sec. 552.235. PUBLIC INFORMATION REQUEST FORM. (a) The
8 attorney general shall create a public information request form
9 that provides a requestor the option of excluding from a request
10 information that the governmental body determines is:

- 11 (1) confidential; or
- 12 (2) subject to an exception to disclosure that the
13 governmental body would assert if the information were subject to
14 the request.

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

18 SECTION 7. Section 552.301(c), Government Code, is
19 repealed.

20 SECTION 8. The changes in law made by this Act apply only to
21 a request for public information received on or after the effective
22 date of this Act. A request for public information received before
23 the effective date of this Act is governed by the law in effect when
24 the request was received, and the former law is continued in effect
25 for that purpose.

26 SECTION 9. The attorney general shall create a public
27 information request form under Section 552.235(a), Government

1 Code, as added by this Act, not later than October 1, 2019.

2 SECTION 10. This Act takes effect September 1, 2019.