

By: Capriglione

H.B. No. 3744

A BILL TO BE ENTITLED

AN ACT

relating to the prohibited use or dissemination of certain private or false information; providing a civil penalty; creating a criminal offense; increasing a criminal penalty.

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

SECTION 1. Section 109.002(a), Business & Commerce Code, is amended to read as follows:

(a) Except as provided by Subsection (b), this chapter applies to:

(1) a business entity that:

(A) publishes criminal record information, including information:

(i) originally obtained pursuant to a request for public information under Chapter 552, Government Code; or

(ii) 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) requires the payment:

(i) of a fee in an amount of \$150 or more or other consideration of comparable value to remove criminal record information other than a photograph; or

(ii) of a fee or other consideration to correct or modify criminal record information; or

1           (2) a business entity that publishes confidential  
2 juvenile record information or confidential criminal record  
3 information of a child in a manner not permitted by Chapter 58,  
4 Family Code, Chapter 45, Code of Criminal Procedure, or other law,  
5 regardless of:

6                   (A) the source of the information; or

7                   (B) whether the business entity charges a fee for  
8 access to or removal or correction of the information.

9           SECTION 2. Section 109.003(b), Business & Commerce Code, is  
10 amended to read as follows:

11           (b) For purposes of this chapter, criminal record  
12 information published by a business entity is considered:

13                   (1) complete if the information reflects the notations  
14 of arrest and the filing and disposition of criminal charges, as  
15 applicable, regardless of whether the information includes a  
16 photograph; and

17                   (2) accurate if the information:

18                           (A) reflects the most recent information  
19 received by the entity from the Department of Public Safety in  
20 accordance with Section 411.0851(b)(1)(B), Government Code; or

21                           (B) was obtained by the entity from a law  
22 enforcement agency or criminal justice agency, including the  
23 Department of Public Safety, or any other governmental agency or  
24 entity within the 60-day period preceding the date of publication.

25           SECTION 3. Section 109.0045, Business & Commerce Code, is  
26 amended by adding Subsection (f) to read as follows:

27                   (f) A person who gives consent to a business entity to

1 publish confidential juvenile record information or confidential  
2 criminal record information of a child under Subsection (e)(1) may,  
3 at any time, withdraw consent to publish the information or request  
4 removal of a photograph under Section 109.0055.

5 SECTION 4. Chapter 109, Business & Commerce Code, is  
6 amended by adding Section 109.0055 to read as follows:

7 Sec. 109.0055. REMOVAL OF PHOTOGRAPH ON REQUEST; DECEPTIVE  
8 TRADE PRACTICE. (a) If the criminal record information,  
9 confidential juvenile record information, or confidential criminal  
10 record information of a child published by a business entity  
11 includes a photograph, the person whose photograph has been  
12 published, or that person's legal representative, may make a  
13 written request for the removal of the photograph from the website  
14 or other publication.

15 (b) A written request under this section must be sent by  
16 registered mail and must include:

17 (1) specific information identifying the photograph  
18 of the person the request is seeking to remove; and

19 (2) sufficient evidence that the person making the  
20 request is the person whose photograph has been published.

21 (c) Not later than the 10th day after the date a business  
22 entity receives a written request under this section, the business  
23 entity shall remove the person's photograph from the website or  
24 otherwise cease publication of the photograph.

25 (d) A business entity may not:

26 (1) charge a fee to remove or cease publication of a  
27 photograph under Subsection (c); or

1           (2) republish the photograph.

2           (e) A violation of this section is a deceptive trade  
3 practice under Subchapter E, Chapter 17, and is actionable under  
4 that subchapter.

5           SECTION 5. Section 109.006(a), Business & Commerce Code, is  
6 amended to read as follows:

7           (a) A business entity that publishes criminal record  
8 information, confidential juvenile record information, or  
9 confidential criminal record information of a child in violation of  
10 this chapter, including a photograph in violation of Section  
11 109.0055, is liable to the state for a civil penalty in an amount  
12 not to exceed \$500 for each separate violation and, in the case of a  
13 continuing violation, an amount not to exceed \$500 for each  
14 subsequent day on which the violation occurs. For purposes of this  
15 subsection, each record published in violation of this chapter  
16 constitutes a separate violation.

17           SECTION 6. Title 4, Civil Practice and Remedies Code, is  
18 amended by adding Chapter 98C to read as follows:

19           CHAPTER 98C. LIABILITY FOR ONLINE IMPERSONATION

20           Sec. 98C.001. DEFINITIONS. In this chapter:

21           (1) "Online impersonation" means a person's use of an  
22 individual's name, voice, signature, photograph, or likeness  
23 through social media without that individual's consent or if the  
24 individual is a minor, the consent of that individual's parent,  
25 legal guardian, or managing conservator.

26           (2) "Photograph" includes any photograph or  
27 photographic reproduction, still or moving, or any videotape or

1 live television transmission of any individual in which the  
2 individual is readily identifiable.

3 (3) "Readily identifiable" means identifiable using  
4 only the naked eye to reasonably determine the identity of an  
5 individual in a photograph.

6 (4) "Social media" means a form of electronic  
7 communication through which users create online communities to  
8 share information, ideas, personal messages, and other content.

9 Sec. 98C.002. APPLICABILITY OF CHAPTER. This chapter does  
10 not apply to a law enforcement agency or a law enforcement agency  
11 employee acting within the scope of employment in investigating  
12 Internet crimes.

13 Sec. 98C.003. CONSTRUCTION OF CHAPTER. This chapter may  
14 not be construed to impose liability on an interactive computer  
15 service as defined by 47 U.S.C. Section 230(f) for content provided  
16 by another person.

17 Sec. 98C.004. LIABILITY FOR ONLINE IMPERSONATION;  
18 EXCEPTION. (a) Except as provided by Subsection (b), a person is  
19 liable to another person injured by the person's online  
20 impersonation if the person knowingly and with the intent to harm,  
21 defraud, intimidate, or threaten the injured person used the online  
22 impersonation to create a false identity.

23 (b) A person is not liable for an online impersonation of  
24 which the sole purpose is satire or parody.

25 Sec. 98C.005. DAMAGES. (a) A claimant who prevails in an  
26 action under this chapter shall be awarded actual damages,  
27 including expenditures made by the claimant related to counseling,

1 identity theft, or libel. The defendant's profits attributable to  
2 the defendant's online impersonation of the claimant may be  
3 considered in the computation of actual damages.

4 (b) In addition to an award under Subsection (a), a claimant  
5 who prevails in an action under this chapter may recover exemplary  
6 damages of not less than \$500.

7 (c) The court shall award costs and reasonable attorney's  
8 fees to the prevailing party in any action under this chapter.

9 Sec. 98C.006. INJUNCTIVE RELIEF. A court in which an action  
10 is brought under this chapter, on the motion of a claimant depicted  
11 in the defendant's online impersonation, may issue a temporary  
12 restraining order or a temporary or permanent injunction to  
13 restrain and prevent the online impersonation of the claimant.

14 Sec. 98C.007. CAUSE OF ACTION CUMULATIVE. The cause of  
15 action created by this chapter is cumulative of any other remedy  
16 provided by common law or statute.

17 SECTION 7. Section 42.06(b), Penal Code, is amended to read  
18 as follows:

19 (b) An offense under this section is a Class A misdemeanor,  
20 except that the offense is:

21 (1) subject to Subdivision (2), a state jail felony if  
22 [unless] the false report is of an emergency involving a public or  
23 private institution of higher education or involving a public  
24 primary or secondary school, public communications, public  
25 transportation, public water, gas, or power supply or other public  
26 service; and

27 (2) for an offense committed under Subsection (a)(1)

1 for the purpose of causing action by a law enforcement agency  
2 against another person:

3 (A) a felony of the third degree if an action  
4 taken by any law enforcement agency in response to the false report  
5 results in serious bodily injury to any person; or

6 (B) a felony of the second degree if an action  
7 taken by any law enforcement agency in response to the false report  
8 results in the death of any person~~[, in which event the offense is a~~  
9 ~~state jail felony].~~

10 SECTION 8. Chapter 42, Penal Code, is amended by adding  
11 Section 42.074 to read as follows:

12 Sec. 42.074. UNLAWFUL DISCLOSURE OF RESIDENCE ADDRESS OR  
13 TELEPHONE NUMBER. (a) A person commits an offense if the person  
14 posts on a publicly accessible website the residence address or  
15 telephone number of an individual with the intent to cause harm or a  
16 threat of harm to the individual or a member of the individual's  
17 family or household.

18 (b) An offense under this section is a Class B misdemeanor,  
19 except that the offense is a Class A misdemeanor if the offense  
20 results in the bodily injury of:

21 (1) the individual whose residence address or  
22 telephone number was posted on a publicly accessible website; or

23 (2) a member of the individual's family or household.

24 (c) For purposes of Subsection (a), it is prima facie  
25 evidence of the intent to cause harm or a threat of harm to an  
26 individual whose residence address or telephone number was posted  
27 on a publicly accessible website or to a member of the individual's

1 family or household if the actor:

2 (1) receives a written demand from the individual to  
3 not disclose the address or telephone number for reasons of safety;  
4 and

5 (2) either:

6 (A) fails to remove the address or telephone  
7 number from the publicly accessible website within a period of 48  
8 hours after receiving the demand; or

9 (B) reposts the address or telephone number on  
10 the same or a different publicly accessible website, or makes the  
11 information publicly available through another medium, within a  
12 period of four years after receiving the demand.

13 (d) If conduct that constitutes an offense under this  
14 section also constitutes an offense under Section 36.06(a-1), the  
15 actor may be prosecuted under either section, but not both.

16 SECTION 9. (a) Chapter 98C, Civil Practice and Remedies  
17 Code, as added by this Act, applies only to a cause of action that  
18 accrues on or after the effective date of this Act.

19 (b) Section 42.06, Penal Code, as amended by this Act,  
20 applies only to an offense committed on or after the effective date  
21 of this Act. An offense committed before the effective date of this  
22 Act is governed by the law in effect on the date the offense was  
23 committed, and the former law is continued in effect for that  
24 purpose. For purposes of this subsection, an offense was committed  
25 before the effective date of this Act if any element of the offense  
26 occurred before that date.

27 SECTION 10. This Act takes effect September 1, 2021.