

BILL ANALYSIS

C.S.S.B. 958
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State Affairs
Committee Report (Substituted)

BACKGROUND AND PURPOSE

The right for nonprofit organizations to keep their donor lists private was settled in *National Association of Advancement of Colored People (NAACP) v. Alabama* in 1958, when the NAACP sued the State of Alabama over examples of "intimidation" that their members faced during the Civil Rights Era. This same issue was brought before the U.S. Supreme Court again in 2021 in the case *Americans for Prosperity Foundation v. Bonta*. The court ruled in favor of Americans for Prosperity, thus allowing them to keep their donor's list confidential. Legislation is needed to clear up confusion regarding state disclosure laws as they apply to nonprofit organizations. C.S.S.B. 958 seeks to secure Texans' fundamental right to privately associate with causes of their choice by prohibiting the release by a public agency of personal affiliation information regarding the members, supporters, or volunteers of or donors to certain nonprofit organizations.

CRIMINAL JUSTICE IMPACT

It is the committee's opinion that this bill expressly does one or more of the following: creates a criminal offense, increases the punishment for an existing criminal offense or category of offenses, or changes the eligibility of a person for community supervision, parole, or mandatory supervision.

RULEMAKING AUTHORITY

It is the committee's opinion that this bill does not expressly grant any additional rulemaking authority to a state officer, department, agency, or institution.

ANALYSIS

C.S.S.B. 958 amends the Government Code to except personal affiliation information from release under state public information law and to prohibit a public agency or an officer or employee of a public agency from doing any of the following:

- requiring an individual or a nonprofit organization to provide personal affiliation information to the agency or otherwise compelling the release of personal affiliation information;
- releasing, publicizing, or otherwise publicly disclosing personal affiliation information in the agency's possession; or
- requesting or requiring a current or prospective contractor with or grantee of the agency to provide to the agency a list of nonprofit organizations to which the contractor or grantee has provided financial or nonfinancial support.

The bill creates a Class B misdemeanor offense for a person who knowingly violates these provisions.

C.S.S.B. 958 makes those protections for personal affiliation information inapplicable to the following:

- personal affiliation information included in a report required to be filed under state law by a candidate for public office, a public official, or a person required by state law to register as a lobbyist;
- a warrant for personal affiliation information issued by a court in Texas;
- a request for discovery of personal affiliation information in an action brought in a state court, if the requestor demonstrates by clear and convincing evidence a compelling need for the information and obtains a protective order barring release of the information to any person not directly involved in the action;
- personal affiliation information admitted as relevant evidence in an action before a court, provided the court does not publicly release the information unless the court specifically finds good cause for the release;
- personal affiliation information voluntarily released to the public by a person or nonprofit organization;
- personal affiliation information disclosing the identity of a director, officer, registered agent, or incorporator of a nonprofit organization in any report, including a report required under state law to be filed with the secretary of state, provided that information directly identifying an individual as a donor of financial support to a nonprofit organization is not collected or disclosed;
- personal affiliation information that is derived from an individual's donation to a nonprofit organization affiliated with a public agency and is required by state law, unless the individual submitted a request for the nonprofit organization to maintain the individual's anonymity;
- personal affiliation information obtained by a national securities association registered under the federal Securities Exchange Act of 1934, obtained under regulations adopted under that act, or provided by a national securities association to a state agency in accordance with that act and state law;
- personal affiliation information included in materials submitted to the governor's office by an applicant who is seeking consideration for a gubernatorial appointment, provided:
 - the office does not require the applicant to submit a list of nonprofit organizations to which the individual has provided financial support; and
 - the applicant is not prohibited from voluntarily providing the list;
- personal affiliation information the Texas Department of Criminal Justice (TDCJ) requests for a criminal history record information check or other security purposes in connection with the provision of any program or service, including volunteer and legal services, to an inmate, releasee, or person on community supervision, provided the information is used only for the record information check or security purposes;
- personal affiliation information the attorney general obtains in certain investigations conducted under the Business Organizations Code, provided the collected personal affiliation information:
 - is used only in connection with the specific investigation related to the request and any related proceeding; and
 - is not released, publicized, or otherwise publicly disclosed, unless the information's disclosure is expressly required by other law; and
- the attorney general's disclosure of personal affiliation information in court pleadings, submissions of evidence, or public communications related to a criminal proceeding or a civil enforcement action, provided the public communications include personal affiliation information only if the accused party is found guilty in the criminal proceeding or liable in the civil enforcement action.

C.S.S.B. 958 authorizes a person who alleges a violation of the bill's protections for personal affiliation information to bring a civil action to obtain the following:

- appropriate injunctive relief;
- appropriate damages incurred by the person in an amount equal to not less than \$2,500 as compensatory damages for injury or loss caused by each violation or a sum capped at three times that amount for each intentional violation; and

- appropriate court costs, including reasonable attorney's and witness fees.

The bill authorizes the person to sue the applicable public agency for that relief and waives and abolishes sovereign or governmental immunity, as applicable, to the extent of liability for that relief.

C.S.S.B. 958 defines the following terms for purposes of the bill's provisions:

- "nonprofit organization" means an entity that is exempt from federal income tax under the federal Internal Revenue Code of 1986 by being listed as an exempt entity under Section 501(c) of that code, has submitted an application with the IRS for recognition of an exemption under Section 501(c) of that code, or is a nonprofit corporation or association organized or formed under the laws of the State of Texas or another state;
- "personal affiliation information" means a list, record, registry, roster, or other compilation of any data that directly or indirectly identifies a person as a member, supporter, or volunteer of, or a donor of financial or nonfinancial support to, a nonprofit organization; and
- "public agency" means a state or local governmental unit, including:
 - the state or an entity in the executive branch of state government;
 - any state or local court or other judicial or quasi-judicial body in the judicial branch of state government; or
 - a political subdivision of the state, including a county, municipality, public school district, community college district, or any other local governmental unit, agency, authority, council, board, or commission.

C.S.S.B. 958 applies only to personal affiliation information released or disclosed on or after the bill's effective date.

EFFECTIVE DATE

September 1, 2023.

COMPARISON OF SENATE ENGROSSED AND SUBSTITUTE

While C.S.S.B. 958 may differ from the engrossed in minor or nonsubstantive ways, the following summarizes the substantial differences between the engrossed and committee substitute versions of the bill.

The substitute expands the list of exceptions to the applicability of the protections for personal affiliation information set out by the engrossed to include the following:

- personal affiliation information included in materials submitted to the governor's office by an applicant who is seeking consideration for a gubernatorial appointment, provided certain conditions are met;
- personal affiliation information the TDCJ requests for a criminal history record information check or other security purposes in connection with the provision of any program or service, provided certain conditions are met;
- personal affiliation information the attorney general obtains in certain investigations conducted under the Business Organizations Code, provided certain conditions are met; and
- the attorney general's disclosure of personal affiliation information in court pleadings, submissions of evidence, or public communications related to a criminal proceeding or a civil enforcement action, provided certain conditions are met.

The engrossed and the substitute each create a criminal offense for violating the provisions of the bill establishing protections for personal affiliation information. However, the substitute revises the provisions shared with the engrossed to establish that knowingly committing a violation is the requisite state of mind for the offense to apply.

The substitute revises the definition of "public agency" it shares with the engrossed by omitting the language specifically classifying a university system or public institution of higher education as a public agency for purposes of the bill's provisions.