

BILL ANALYSIS

Senate Research Center
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S.B. 958
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AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

The freedom to associate with others for the purpose of advancing ideas is a fundamental right. This right is violated when a person's privacy is invaded merely due to the support of a group advocating a particular point of view.

The right for charities to keep their donor lists private has been settled ever since members of the National Association for the Advancement of Colored People (NAACP) sued Alabama over examples of "intimidation" that their members faced during the Civil Rights Era (*NAACP v. Alabama* (1958)). Across the political spectrum, people have endured, and continue to endure, intimidation and potential violence, all because of their membership in, or support of, a particular cause.

Several decades after the NAACP won their case against Alabama, the State of California inadvertently challenged the Civil Rights Era case by requiring donor lists be disclosed to the state's attorney general. Americans for Prosperity Foundation (Americans for Prosperity) sued the State of California with the argument that the California law would scare away donors who otherwise wished to remain anonymous. The district court ruled in favor of Americans for Prosperity, but the decision was later reversed by the Ninth Court of Appeals. So, this same issue that went before the United States Supreme Court (U.S. supreme court) in 1958 was brought before court again in 2021 with the *Americans for Prosperity v. Bonta* case. The U.S. supreme court ruled in favor of Americans for Prosperity, which made it clear that the California Office of the Attorney General did not have the right to obtain donor records.

Although the case was widely cited in the media as a conservative victory, the American Civil Liberties Union and the NAACP Legal Defense and Educational Fund were among the nonprofits filing or signing on to amicus briefs in support of Americans for Prosperity.

S.B. 958 codifies the *Americans for Prosperity v. Bonta* decision to clear up confusion regarding disclosure laws with nonprofits thus securing Texans' fundamental right to privately associate with causes of their choice.

The bill:

- S.B. 958 prohibits any state or local government actor from requesting information relating to a person's membership in, or donations to, charitable organizations that are exempt from the federal income tax under Section 501(a), Internal Revenue Code of 1986.
- Permits a person who alleges a violation of Section 301.002 to bring civil action to obtain appropriate injunctive relief. S.B. 958 also exposes state or local governmental actors who violate this law to criminal penalties, classifying the release of donor information as a Class B misdemeanor.
- S.B. 958 does not apply in any way apply to individuals or groups who engage in political activity. It does not apply to Political Action Committees. It also does not apply to individuals giving to political candidates, campaign expenditures, or groups that exist to influence elections.
- The Act would not change existing Texas requirements regarding nonprofit reporting, accountability, and transparency.

As proposed, S.B. 958 amends current law relating to the prohibited release by a public agency of personal affiliation information regarding the members, supporters, or volunteers of or donors to certain nonprofit organizations and creates a criminal offense.

RULEMAKING AUTHORITY

This bill does not expressly grant any additional rulemaking authority to a state officer, institution, or agency.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Subtitle Z, Title 10, Government Code, by adding Chapter 3001, as follows:

CHAPTER 3001. GOVERNMENTAL ACTION RELATED TO PERSONAL AFFILIATION INFORMATION

Sec. 3001.001. DEFINITIONS. Defines "nonprofit organization," "personal affiliation information," and "public agency."

Sec. 3001.002. PROTECTED PERSONAL AFFILIATION INFORMATION. (a) Prohibits a public agency or an officer or employee of a public agency, notwithstanding any other law except Section 3001.003, from:

- (1) requiring an individual to provide personal affiliation information to the agency or otherwise compelling the release of personal affiliation information;
- (2) requiring a nonprofit organization to provide personal affiliation information to the agency or otherwise compelling the release of personal affiliation information;
- (3) releasing, publicizing, or otherwise publicly disclosing personal affiliation information in the agency's possession; or
- (4) 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.

(b) Provides that personal affiliation information is excepted from release under Chapter 552 (Public Information).

Sec. 3001.003. EXCEPTIONS. Provides that Section 3001.002 does not apply to:

- (1) 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 to register as a lobbyist under Chapter 305 (Registration of Lobbyists);
- (2) a warrant for personal affiliation information issued by a court in this state;
- (3) a request for discovery of personal affiliation information in an action brought in a court in this state 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;
- (4) 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;

(5) personal affiliation information voluntarily released to the public by a person or nonprofit organization;

(6) personal affiliation information disclosing the identity of a director, officer, resident 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;

(7) 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; and

(8) personal affiliation information obtained by a national securities association registered under Section 15A of the Securities Exchange Act of 1934 (15 U.S.C. Section 78o-3), 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.

Sec. 3001.004. CIVIL ACTION. Authorizes a person who alleges a violation of Section 3001.002 to bring a civil action to obtain appropriate:

(1) injunctive relief;

(2) damages incurred by the person in an amount equal to:

(A) not less than \$2,500 as compensatory damages for injury or loss caused by each violation; or

(B) a sum not to exceed three times the amount described in Paragraph (A) for each intentional violation; and

(3) court costs, including reasonable attorney's and witness fees.

Sec. 3001.005. IMMUNITY WAIVED. Authorizes a person who alleges a violation of Section 3001.002 to sue the public agency for the relief provided under Section 3001.004. Provides that sovereign or governmental immunity, as applicable, is waived and abolished to the extent of liability for that relief.

Sec. 3001.006. CRIMINAL PENALTY. Provides that a person commits an offense if the person violates Section 3001.002. Provides that an offense under this section is a Class B misdemeanor.

SECTION 2. Makes application of Chapter 3001, Government Code, as added by this Act, prospective.

SECTION 3. Effective date: September 1, 2023.