

BILL ANALYSIS

C.S.H.B. 2892
By: Hernandez
State Affairs
Committee Report (Substituted)

BACKGROUND AND PURPOSE

The U.S. Supreme Court has repeatedly ruled that all Americans have a First Amendment right to support the nonprofit causes of their choice privately. However, the author has informed the committee that this protection currently only exists as judicial precedent and not under state statute. C.S.H.B. 2892 seeks to codify this protection into state law by prohibiting state agencies from releasing or requiring a nonprofit organization to release sensitive information about individuals who are members of or donors to the organization, with certain exceptions to the prohibition.

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.H.B. 2892 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 current or prospective 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 and defines "personal affiliation information" as 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.

C.S.H.B. 2892 makes those protections for personal affiliation information inapplicable to the following:

- personal affiliation information a public agency releases that was voluntarily released to the public by the person or nonprofit organization to which the information relates;

- personal affiliation information included in a report required to be filed under Election Code provisions regarding political funds and campaigns, under a rule of the Texas Ethics Commission, or by a person required by state law to register as a lobbyist;
- a warrant or subpoena for personal affiliation information issued by a court of competent jurisdiction in Texas;
- a request for discovery of personal affiliation information in an action brought in a state court of competent jurisdiction, 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 named in the action;
- personal affiliation information admitted as relevant evidence in an action before a state court of competent jurisdiction, provided the court does not publicly release the information unless the court specifically finds good cause for the release;
- personal affiliation information the attorney general obtains in certain investigations conducted under the Business & Commerce Code regarding deceptive trade practices or under the Business Organizations Code regarding the authority of the attorney general to examine books and records, 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;
- personal affiliation information the attorney general discloses 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;
- personal affiliation information disclosing the identity of the members of the governing board or a director, officer, registered agent, incorporator, or managerial official of a nonprofit organization in any report or other document required under state law to be filed with the secretary of state or the Texas Alcoholic Beverage Commission (TABC), provided that information directly identifying an individual as a donor of financial support to a nonprofit organization may not be collected or disclosed;
- 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 the Texas Department of Criminal Justice 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 criminal history record information check or security purposes;
- 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; and
- 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.

C.S.H.B. 2892 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.H.B. 2892 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; and
- "public agency" means a state or local governmental unit that is not an institution of higher education, including:
 - the state or a state 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; and
 - 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.H.B. 2892 applies only to personal affiliation information released or disclosed on or after the bill's effective date.

EFFECTIVE DATE

September 1, 2025.

COMPARISON OF INTRODUCED AND SUBSTITUTE

While C.S.H.B. 2892 may differ from the introduced in minor or nonsubstantive ways, the following summarizes the substantial differences between the introduced and committee substitute versions of the bill.

Both the introduced and substitute provide an exception to the bill's provisions for personal affiliation information disclosing the identity of the members of the governing board or a director, officer, registered agent, incorporator, or managerial official of a nonprofit organization in any report required under state law to be filed with the secretary of state, provided that such information directly identifying an individual as a donor of financial support to nonprofit organization may not be collected or disclosed, but the substitute expands that exception to include the following information, subject to the same condition prohibiting direct identification of the individual:

- any other document required under state law to be filed with the secretary of state; and
- any report or other document required under state law to be filed with the TABC.