

By: Hunter

H.B. No. 1764

Substitute the following for H.B. No. 1764:

By: Elkins

C.S.H.B. No. 1764

A BILL TO BE ENTITLED

AN ACT

relating to public information in the possession, custody, or control of a current or former officer or employee of a governmental body; creating a criminal offense.

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

SECTION 1. 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 2. Section 552.203, Government Code, is amended to read as follows:

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

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

(2) carefully protect public information from

deterioration, alteration, mutilation, loss, or unlawful removal;

~~[and]~~

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

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

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

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

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

(D) the temporary custodian has not provided the information to the officer for public information of the governmental body or the officer's agent.

SECTION 3. Subchapter E, Chapter 552, Government Code, is amended by adding Section 552.234 to read as follows:

Sec. 552.234. OWNERSHIP OF PUBLIC INFORMATION. (a) A current or former officer or employee of a governmental body does not have, by virtue of the officer's or employee's position or former position, a personal or property right to public information the officer or employee created or received while acting in an official capacity.

(b) A temporary custodian with possession, custody, or

1 control of public information shall surrender or return the  
2 information to the governmental body not later than the 10th day  
3 after the date the officer for public information of the  
4 governmental body or the officer's agent requests the temporary  
5 custodian to surrender or return the information.

6 (c) If a temporary custodian fails to surrender or return  
7 public information to a governmental body as required by Subsection  
8 (b), the officer for public information of the governmental body  
9 shall, not later than the 10th business day after the deadline to  
10 surrender or return information under Subsection (b), notify the  
11 attorney general in writing of the facts related to the failure and  
12 send a copy of the written notice to the requestor. On receipt of  
13 written notice from an officer for public information as provided  
14 by this subsection, the attorney general may sue for an injunction  
15 or writ of mandamus to compel a temporary custodian with  
16 possession, custody, or control of public information to surrender  
17 or return the information as required by Subsection (b). A suit  
18 filed under this subsection:

19 (1) must be filed in a district court for the county in  
20 which the main offices of the governmental body are located;

21 (2) may not proceed, and process may not be issued,  
22 until the court enters a written finding that the petition sets  
23 forth facts sufficient to warrant probable cause that the current  
24 or former officer or employee against whom the action is filed is in  
25 possession, custody, or control of public information that has not  
26 been made available to the governmental body that owns the  
27 information; and

1           (3) shall be dismissed, with prejudice except as  
2 provided by Subsection (e), if the current or former officer or  
3 employee files an answer containing a general denial supported by a  
4 sworn affidavit stating the current or former officer or employee  
5 is not in possession, custody, or control of public information  
6 responsive to the request at issue.

7           (d) The attorney general shall send a copy of a petition  
8 filed under Subsection (c) to the requestor.

9           (e) A suit dismissed under Subsection (c)(3) is dismissed  
10 without prejudice and may be refiled by the attorney general if the  
11 current or former officer or employee, in providing the affidavit  
12 authorized under Subsection (c)(3), engaged in conduct that is an  
13 offense under Section 37.02 or 37.03, Penal Code, and is arrested,  
14 charged, or indicted for that offense. Subsection (c)(3) does not  
15 apply to a suit refiled under this subsection.

16           (f) For purposes of the application of Subchapter G to  
17 information surrendered or returned to a governmental body by a  
18 temporary custodian under Subsection (b) or as a result of a suit  
19 under Subsection (c), the governmental body is considered to  
20 receive the request for that information on the date the  
21 information is surrendered or returned to the governmental body.

22           SECTION 4. The heading to Section 552.353, Government Code,  
23 is amended to read as follows:

24           Sec. 552.353. FAILURE OR REFUSAL OF OFFICER FOR PUBLIC  
25 INFORMATION OR TEMPORARY CUSTODIAN TO PROVIDE ACCESS TO OR COPYING  
26 OF PUBLIC INFORMATION.

27           SECTION 5. Section 552.353, Government Code, is amended by

1 adding Subsection (a-1) to read as follows:

2       (a-1) A temporary custodian who has possession, custody, or  
3 control of public information responsive to a request commits an  
4 offense if, with criminal negligence, the temporary custodian fails  
5 to surrender or return the information to the governmental body on  
6 request of the officer for public information or the officer's  
7 agent, as required by Section 552.234(b).

8       SECTION 6. This Act takes effect September 1, 2015.