

BILL ANALYSIS

H.B. 3744
By: Capriglione
Business & Industry
Committee Report (Unamended)

BACKGROUND AND PURPOSE

Concerns have been raised regarding increasing reports of crimes that have resulted in severe damage, such as catfishing, doxing, swatting, and mugshot extortion. Catfishing consists of the impersonation of another person with the intent to harm, defraud, or threaten a victim. Doxing involves gathering an individual's personal information and posting it publicly without permission to incite an unfavorable response. Swatting refers to a prank in which the actor reports a fake emergency at the victim's address to incite a response from law enforcement. Mugshot extortion involves companies that will remove criminal record information from websites for a fee, only to republish the information after the fee has been collected. There have been calls to impose stricter penalties on these types of crimes, given their exploitative nature. H.B. 3744 seeks to address this issue by providing increased penalties and clearer guidance regarding these offenses.

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

H.B. 3744 amends the Business & Commerce Code to authorize a person whose photograph has been published by a business entity with the person's criminal record information, confidential juvenile record information, or confidential criminal record information of a child, or the person's legal representative, to make a written request for the removal of the photograph from the website or other publication. The bill requires the written request to be sent by registered mail and to include specific information identifying the photograph and sufficient evidence that the requestor is the person whose photograph has been published.

H.B. 3744 requires a business entity to remove the person's photograph from the website or otherwise cease publication of the photograph not later than the 10th day after the date it receives a written request and prohibits the entity from republishing the photograph or charging a fee for the removal or cessation of publication. A violation of these provisions is a deceptive trade practice that is actionable under the Deceptive Trade Practices-Consumer Protection Act. The bill makes a business entity that publishes a photograph in violation of these provisions liable to the state for a civil penalty capped at \$500 for each separate violation and, in the case of a continuing violation, \$500 for each subsequent day on which the violation occurs. The bill authorizes a person who gives consent to a business entity to publish confidential juvenile record

information or confidential criminal record information of a child to withdraw consent to publish the information or request removal of a photograph at any time.

H.B. 3744 amends the Civil Practice and Remedies Code to make a person liable to another injured by the person's online impersonation if the person knowingly and with the intent to harm, defraud, intimidate, or threaten the injured person used the online impersonation to create a false identity. The liability does not apply to a law enforcement agency or a law enforcement agency employee acting within the scope of employment in investigating Internet crimes or to an online impersonation of which the sole purpose is satire or parody. The bill does the following with regard to a claimant who prevails in an action against a person for an online impersonation:

- requires the awarding of actual damages to the claimant, including the client's expenditures related to counseling, identity theft, or libel;
- provides for the consideration of the defendant's profits attributable to the defendant's online impersonation of the claimant in the computation of actual damages; and
- authorizes the claimant to recover additional exemplary damages of not less than \$500.

The bill requires the court to award costs and reasonable attorney's fees to the prevailing party and authorizes the court, on the motion of the claimant, to issue a temporary restraining order or a temporary or permanent injunction to restrain and prevent the online impersonation of the claimant. The bill establishes that the cause of action is cumulative of any other remedy provided by common law or statute and that the bill's provisions relating to liability for online impersonation may not be construed to impose liability on an interactive computer service, as defined by federal law, for content provided by another person.

H.B. 3744 amends the Penal Code to provide the following penalty enhancements for the offense of making a false report of an emergency for the purpose of causing action by a law enforcement agency against another person:

- from a Class A misdemeanor to a third degree felony if an action taken by any law enforcement agency in response to the false report results in serious bodily injury to any person; and
- from a Class A misdemeanor to a second degree felony if such an agency action results in a person's death.

H.B. 3744 creates a Class B misdemeanor offense for a person who posts on a publicly accessible website the residence address or telephone number of an individual with the intent to cause harm or a threat of harm to the individual or a member of the individual's family or household. The bill enhances the penalty to a Class A misdemeanor if the offense results in the bodily injury of that individual or a member of their family or household. The bill sets out the circumstances that are prima facie evidence of the actor's intent to cause harm or a threat of harm for purposes of the offense. If conduct constituting the offense also constitutes a retaliation offense against public administration, the actor may be prosecuted for either offense, but not both offenses.

EFFECTIVE DATE

September 1, 2021.