

## **BILL ANALYSIS**

Senate Research Center

S.B. 1289  
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Criminal Justice  
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Enrolled

### **AUTHOR'S / SPONSOR'S STATEMENT OF INTENT**

Currently, there are several businesses that post public criminal record information, including mug shots, and then charge a fee to either remove, correct, or modify the publically posted criminal record.

In an effort to ensure that all public criminal record information that is reposted by a business entity is correct and fair, S.B. 1289 will guarantee that a person has a clear and free avenue to dispute the posted record by placing requirements on those businesses.

S.B. 1289 will only apply to business entities that require a payment to either remove, correct, or modify criminal record information.

S.B. 1289 amends current law relating to certain business entities engaged in the publication of mug shots and other information regarding the involvement of an individual in the criminal justice system, and provides a civil penalty.

### **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 C, Title 5, Business & Commerce Code, by adding Chapter 109, as follows:

#### **CHAPTER 109. BUSINESS ENTITIES ENGAGED IN PUBLICATION OF CRIMINAL RECORD INFORMATION**

Sec. 109.001. DEFINITIONS. Defines "criminal justice agency," "criminal record information," "personal identifying information," and "publish" in this chapter.

Sec. 109.002. APPLICABILITY OF CHAPTER. Provides that this chapter applies to a business entity that:

(1) publishes criminal record information, including information originally obtained pursuant to a request for public information under Chapter 552 (Public Information), Government Code, or purchased or otherwise obtained by the entity or an affiliated business entity from the Department of Public Safety of the State of Texas (DPS) under Subchapter F (Criminal History Record Information), Chapter 411 (Department of Public Safety of the State of Texas), Government Code; and

(2) requires the payment of a fee in an amount of \$150 or more or other consideration of comparable value to remove criminal record information or of a fee or other consideration to correct or modify criminal record information.

Sec. 109.003. DUTY TO PUBLISH COMPLETE AND ACCURATE CRIMINAL RECORD INFORMATION. (a) Requires a business entity to ensure that criminal record information the entity publishes is complete and accurate.

(b) Provides that for purposes of this chapter, criminal record information published by a business entity is considered:

(1) complete if the information reflects the notations of arrest and the filing and disposition of criminal charges, as applicable; and

(2) accurate if the information reflects the most recent information received by the entity from DPS in accordance with Section 411.0851(b)(1)(B) (relating to authorizing certain private entities to disseminate criminal history record information only if the entity receives that information as updated record information to its database within a certain period), Government Code, or was obtained by the entity from a law enforcement agency or criminal justice agency, including DPS, or any other governmental agency or entity within the 60-day period preceding the date of publication.

Sec. 109.004. DISPUTING COMPLETENESS OR ACCURACY OF INFORMATION.

(a) Requires a business entity to clearly and conspicuously publish an e-mail address, fax number, or mailing address to enable a person who is the subject of criminal record information published by the entity to dispute the completeness or accuracy of the information.

(b) Requires a business entity, if it receives a dispute regarding the completeness or accuracy of criminal record information from a person who is the subject of the information, to:

(1) verify with the appropriate law enforcement agency or criminal justice agency, including DPS, or any other governmental agency or entity, free of charge the disputed information; and

(2) complete the investigation described by Subdivision (1) not later than the 45th business day after the date the entity receives notice of the dispute.

(c) Requires a business entity to promptly remove the inaccurate information from the website or other publication or to promptly correct the information, as applicable, if the entity finds incomplete or inaccurate criminal record information after conducting an investigation prescribed by this section. Prohibits the entity from charging a fee to remove, correct, or modify incomplete or inaccurate information or continuing to publish incomplete or inaccurate information.

(d) Requires a business entity to provide written notice to the person who disputed the completeness or accuracy of information of the results of an investigation conducted under this section not later than the fifth business day after the date on which the investigation is completed.

Sec. 109.005. PUBLICATION OF CERTAIN CRIMINAL RECORD INFORMATION PROHIBITED; CIVIL LIABILITY. (a) Prohibits a business entity from publishing any criminal record information in the business entity's possession with respect to which the business entity has knowledge or has received notice that an order of expunction has been issued under Article 55.02 (Procedure for Expunction), Code of Criminal Procedure, or an order of nondisclosure has been issued under Section 411.081(d) (relating to authorizing a person to petition the court that placed the defendant on deferred adjudication for an order of nondisclosure under this section if certain conditions are met), Government Code.

(b) Provides that a business entity that publishes information in violation of Subsection (a) is liable to the individual who is the subject of the information in an amount not to exceed \$500 for each separate violation and, in the case of a continuing violation, an amount not to exceed \$500 for each subsequent day on which the violation occurs.

(c) Authorizes the court to grant injunctive relief to prevent or restrain a violation of this section in an action brought under this section.

(d) Entitles an individual who prevails in an action brought under this section to also recover court costs and reasonable attorney's fees.

Sec. 109.006. CIVIL PENALTY; INJUNCTION. (a) Provides that a business entity that publishes criminal record information in violation of this chapter is liable to the state for a civil penalty in an amount not to exceed \$500 for each separate violation and, in the case of a continuing violation, an amount not to exceed \$500 for each subsequent day on which the violation occurs. Provides that for purposes of this subsection, each criminal record published in violation of this chapter constitutes a separate violation.

(b) Authorizes the attorney general or an appropriate prosecuting attorney to sue to collect a civil penalty under this section.

(c) Requires that a civil penalty collected under this section be deposited in the state treasury to the credit of the general revenue fund.

(d) Authorizes the attorney general to bring an action in the name of the state to restrain or enjoin a violation or threatened violation of this chapter.

(e) Entitles the attorney general or an appropriate prosecuting attorney to recover reasonable expenses incurred in obtaining injunctive relief or a civil penalty, or both, under this chapter, including court costs and reasonable attorney's fees.

Sec. 109.007. VENUE. Requires that an action under this chapter be brought in a district court in Travis County if the action is brought by the attorney general, in the county in which the person who is the subject of the criminal record information resides, or in the county in which the business entity is located.

Sec. 109.008. CUMULATIVE REMEDIES. Provides that the actions and remedies provided by this chapter are not exclusive and are in addition to any other action or remedy provided by law.

SECTION 2. Provides that Chapter 109, Business & Commerce Code, as added by this Act, applies to any publication of criminal record information that occurs on or after the effective date of this Act, regardless of whether:

(1) the information relates to events or activities that occurred before, on, or after that date; or

(2) the information was initially published before that date.

SECTION 3. Effective date: September 1, 2013.