

BILL ANALYSIS

C.S.S.B. 1289
By: Williams
Business & Industry
Committee Report (Substituted)

BACKGROUND AND PURPOSE

Currently, there are several businesses that post public criminal record information, including mug shots, and then charge a fee to remove, correct, or modify the publicly 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, C.S.S.B. 1289 seeks to guarantee that a person has a clear and free avenue to dispute the accuracy or completeness of publicly posted criminal record information by placing requirements and restrictions on certain business entities that publish such information.

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.S.B. 1289 amends the Business & Commerce Code to set out provisions governing business entities that publish criminal record information, including information originally obtained pursuant to a request for public information or purchased or otherwise obtained by the entity or an affiliated business entity from the Department of Public Safety, and that require the payment of a fee in an amount of \$150 or more or other consideration of comparable value to remove criminal record information or payment of a fee or other consideration to correct or modify criminal record information. The bill requires a business entity to ensure that criminal record information the entity publishes is complete and accurate and establishes criteria for criminal record information published by a business entity to be considered complete and accurate.

C.S.S.B. 1289 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. The bill requires a business entity, if the business entity receives a dispute regarding the completeness or accuracy of criminal record information from a person who is the subject of the information and the person provides a noncertified copy of a court order or other document that supports the dispute, to verify the disputed information with the appropriate law enforcement agency or criminal justice agency, or any other governmental agency or entity, free of charge and to complete the investigation not later than the 45th business day after the later of the date the entity receives notice of the dispute or the documentation supporting the dispute. The bill requires a business entity that finds incomplete or inaccurate criminal record information after conducting such an investigation to promptly remove the inaccurate information from the website or other publication or promptly correct the information, as applicable. The bill prohibits the business entity from charging a fee to remove, correct, or modify incomplete or inaccurate information and prohibits the business entity from continuing to publish incomplete or inaccurate information. The bill 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 not later than the fifth business day after the date on which the investigation is completed.

C.S.S.B. 1289 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 or an order of nondisclosure has been issued. The bill makes a business entity that publishes information in violation of that prohibition 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. The bill authorizes the court in such an action to grant injunctive relief to prevent or restrain a violation of the prohibition. The bill entitles an individual who prevails in such an action to recover court costs and reasonable attorney's fees.

C.S.S.B. 1289 makes a business entity that publishes criminal record information in violation of the bill's provisions 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. The bill specifies that each criminal record published in violation of the bill's provisions constitutes a separate violation. The bill authorizes the attorney general or an appropriate prosecuting attorney to sue to collect such a civil penalty; requires such a civil penalty to be deposited in the state treasury to the credit of the general revenue fund; and authorizes the attorney general to bring an action in the name of the state to restrain or enjoin a violation or threatened violation of the bill's provisions. The bill 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 the bill's provisions, including court costs and reasonable attorney's fees.

C.S.S.B. 1289 requires an action under the bill's provisions to be brought in a district court in Travis County if the action is brought by the attorney general; a district court in the county in which the person who is the subject of the criminal record information resides; or a district court in the county in which the business entity is located. The bill establishes that the actions and remedies provided by the bill's provisions are not exclusive and are in addition to any other action or remedy provided by law.

EFFECTIVE DATE

September 1, 2013.

COMPARISON OF ORIGINAL AND SUBSTITUTE

While C.S.S.B. 1289 may differ from the engrossed version in minor or nonsubstantive ways, the following comparison is organized and highlighted in a manner that indicates the substantial differences between the engrossed and committee substitute versions of the bill.

SENATE ENGROSSED

SECTION 1. Subtitle C, Title 5, Business & Commerce Code, is amended by adding Chapter 109 to read as follows:

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

Sec. 109.001. DEFINITIONS.

Sec. 109.002. APPLICABILITY OF CHAPTER. This chapter applies to a

HOUSE COMMITTEE SUBSTITUTE

SECTION 1. Subtitle C, Title 5, Business & Commerce Code, is amended by adding Chapter 109 to read as follows:

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

Sec. 109.001. DEFINITIONS.

Sec. 109.002. APPLICABILITY OF CHAPTER. This chapter applies to a

business entity that:

(1) publishes criminal record information, including information:

(A) originally obtained pursuant to a request for public information under Chapter 552, Government Code; or

(B) purchased or otherwise obtained by the entity or an affiliated business entity from the Department of Public Safety under Subchapter F, Chapter 411, Government Code; and

(2) requires the payment of a fee or other consideration to remove, correct, or modify criminal record information.

Sec. 109.003. DUTY TO PUBLISH COMPLETE AND ACCURATE CRIMINAL RECORD INFORMATION.

(a) A business entity must ensure that criminal record information the entity publishes is complete and accurate.

(b) 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, if applicable; and

(2) accurate if the information:

(A) reflects the most recent information received by the entity from the Department of Public Safety in accordance with Section 411.0851(b)(1)(B), Government Code; or

(B) was obtained by the entity from a law enforcement agency or criminal justice agency, including the Department of Public Safety, 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) A business entity shall 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) If a business entity receives a dispute regarding the completeness or accuracy of

business entity that:

(1) publishes criminal record information, including information:

(A) originally obtained pursuant to a request for public information under Chapter 552, Government Code; or

(B) purchased or otherwise obtained by the entity or an affiliated business entity from the Department of Public Safety under Subchapter F, Chapter 411, Government Code; and

(2) requires the payment:

(A) of a fee in an amount of \$150 or more or other consideration of comparable value to remove criminal record information; or

(B) 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) A business entity must ensure that criminal record information the entity publishes is complete and accurate.

(b) 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 or the filing or disposition of criminal charges, as applicable; and

(2) accurate if the information:

(A) reflects the most recent information received by the entity from the Department of Public Safety in accordance with Section 411.0851(b)(1)(B), Government Code; or

(B) was obtained by the entity from a law enforcement agency or criminal justice agency, including the Department of Public Safety, 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) A business entity shall 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) If a business entity receives a dispute regarding the completeness or accuracy of

criminal record information from a person who is the subject of the information, the business entity shall:

- (1) verify with the appropriate law enforcement agency or criminal justice agency, including the Department of Public Safety, 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 on which the entity receives notice of the dispute.

(c) If a business entity finds incomplete or inaccurate criminal record information after conducting an investigation prescribed by this section, the entity shall promptly remove the inaccurate information from the website or other publication or shall promptly correct the information, as applicable. The entity may not:

- (1) charge a fee to remove, correct, or modify incomplete or inaccurate information; or
- (2) continue to publish incomplete or inaccurate information.

(d) A business entity shall 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) A person may not publish any criminal record information in the person's possession with respect to which the person has knowledge or has received notice that:

- (1) an order of expunction has been issued under Article 55.02, Code of Criminal Procedure; or
- (2) an order of nondisclosure has been issued under Section 411.081(d), Government Code.

(b) A person who 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

criminal record information from a person who is the subject of the information and the person provides a noncertified copy of a court order or other document that supports the dispute, the business entity shall:

- (1) verify with the appropriate law enforcement agency or criminal justice agency, including the Department of Public Safety, 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 later of the date the entity receives notice of the dispute or the documentation supporting the dispute.

(c) If a business entity finds incomplete or inaccurate criminal record information after conducting an investigation prescribed by this section, the entity shall promptly remove the inaccurate information from the website or other publication or shall promptly correct the information, as applicable. The entity may not:

- (1) charge a fee to remove, correct, or modify incomplete or inaccurate information; or
- (2) continue to publish incomplete or inaccurate information.

(d) A business entity shall 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) A business entity may not publish any criminal record information in the business entity's possession with respect to which the business entity has knowledge or has received notice that:

- (1) an order of expunction has been issued under Article 55.02, Code of Criminal Procedure; or
- (2) an order of nondisclosure has been issued under Section 411.081(d), Government Code.

(b) 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, \$500 for each subsequent day on which the violation occurs.

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

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

Sec. 109.006. CIVIL PENALTY; INJUNCTION. (a) 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, \$500 for each subsequent day on which the violation occurs. For purposes of this subsection, each criminal record published in violation of this chapter constitutes a separate violation.

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

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

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

(e) The attorney general or an appropriate prosecuting attorney is entitled 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. An action under this chapter must be brought in a district court:

(1) in Travis County;

(2) in the county in which the person who is the subject of the criminal record information resides; or

(3) in the county in which the business entity is located.

Sec. 109.008. CUMULATIVE

\$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) In an action brought under this section, the court may grant injunctive relief to prevent or restrain a violation of this section.

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

Sec. 109.006. CIVIL PENALTY; INJUNCTION. (a) 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. For purposes of this subsection, each criminal record published in violation of this chapter constitutes a separate violation.

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

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

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

(e) The attorney general or an appropriate prosecuting attorney is entitled 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. An action under this chapter must be brought in a district court:

(1) in Travis County if the action is brought by the attorney general;

(2) in the county in which the person who is the subject of the criminal record information resides; or

(3) in the county in which the business entity is located.

Sec. 109.008. CUMULATIVE

REMEDIES.

SECTION 2. 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. This Act takes effect September 1, 2013.

REMEDIES.

SECTION 2. Same as engrossed version.

SECTION 3. Same as engrossed version.