

By: McClendon

H.B. No. 2861

A BILL TO BE ENTITLED

AN ACT

relating to certain business entities engaged in the publication, republication, or other dissemination of mug shots and other information regarding the involvement of an individual in the criminal justice system; providing a civil penalty.

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

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, REPUBLICATION, OR OTHER DISSEMINATION OF CRIMINAL RECORD

INFORMATION

Sec. 109.001. DEFINITIONS. In this chapter:

(1) "Criminal justice agency" has the meaning assigned by Section 411.082, Government Code.

(2) "Criminal record information" means information about a person's involvement in the criminal justice system. The term includes:

(A) a description or notation of any arrests, any formal criminal charges, and the disposition of any charges;

(B) a photograph of the person taken pursuant to an arrest or other involvement in the criminal justice system; and

(C) personal identifying information of a person displayed in conjunction with any other record of the person's involvement in the criminal justice system.

1           (3) "Personal identifying information" means  
2 information that alone or in conjunction with other information  
3 identifies a person, including a person's name, address, date of  
4 birth, photograph, and social security number or other  
5 government-issued identification number.

6           Sec. 109.002. APPLICABILITY OF CHAPTER. (a) This chapter  
7 applies to a business entity that:

8           (1) publishes, republishes, or otherwise  
9 disseminates, through any print, electronic, or other medium,  
10 criminal record information, including information obtained  
11 pursuant to a request for public information under Chapter 552,  
12 Government Code; and

13           (2) receives advertising revenue for, or  
14 consideration for access to, a website or other publication  
15 containing criminal record information, or solicits or requires the  
16 payment of a fee or other consideration to:

17                   (A) remove, correct, or modify criminal record  
18 information; or

19                   (B) access criminal record information or  
20 portions of the information.

21           (b) This chapter does not apply to a publication of general  
22 circulation or an Internet website related to such a publication  
23 that contains news or other information, including a magazine,  
24 periodical newsletter, newspaper, pamphlet, or report.

25           Sec. 109.003. DUTY TO DISSEMINATE COMPLETE AND ACCURATE  
26 CRIMINAL RECORD INFORMATION. (a) A business entity must ensure  
27 that criminal record information the entity publishes,

1 republishes, or otherwise disseminates is complete and accurate.

2 (b) For purposes of this chapter, criminal record  
3 information published, republished, or otherwise disseminated by a  
4 business entity is considered:

5 (1) complete if the information correctly reflects the  
6 notations of arrest and the filing and disposition of criminal  
7 charges, if applicable; and

8 (2) accurate if the information reflects the most  
9 recent information:

10 (A) received by the entity as an update in  
11 accordance with Section 411.0851(b)(1)(B), Government Code; or

12 (B) obtained by the entity from a law enforcement  
13 agency or criminal justice agency, including the Department of  
14 Public Safety, or any other governmental agency or entity within  
15 the 90-day period preceding the date of publication, republication,  
16 or other dissemination.

17 (c) A business entity shall state in a clear and conspicuous  
18 manner on the front page of the publication or Internet website:

19 (1) that the information provided is true and correct;

20 (2) that any photographs have not been modified; and

21 (3) a disclaimer on each record for which a final  
22 conviction has not been entered that the:

23 (A) "case is pending";

24 (B) individual is "not convicted"; or

25 (C) individual is "innocent until proven  
26 guilty".

27 (d) A business entity shall notify by mail or telephone each

1 individual whose criminal record information is being published,  
2 republished, or otherwise disseminated of that fact. If the  
3 business entity is unable to contact the individual who is the  
4 subject of the information, the entity shall notify the agency or  
5 entity from which the business entity obtained the information.

6 Sec. 109.004. COPYRIGHT. A criminal justice agency owns a  
7 copyright of all photographs created by the agency.

8 Sec. 109.005. PUBLICATION PERIOD OF PHOTOGRAPHS. (a) A  
9 business entity may publish, republish, or otherwise disseminate a  
10 copyrighted photograph created by a criminal justice agency for 30  
11 calendar days after the date the photograph was created.

12 (b) A business entity shall cease publishing, republishing,  
13 or otherwise disseminating a copyrighted photograph if during the  
14 30-day period the business entity receives notice that:

15 (1) an order of expunction has been issued for the  
16 offense in connection with which the photograph was taken under  
17 Article 55.02, Code of Criminal Procedure;

18 (2) an order of nondisclosure for the offense in  
19 connection with which the photograph was taken has been issued  
20 under Section 411.081(d), Government Code;

21 (3) the prosecution for the offense in connection with  
22 which the photograph was taken has been dismissed;

23 (4) the individual has been acquitted of the offense  
24 in connection with which the photograph was taken; or

25 (5) the individual has successfully completed a term  
26 of deferred adjudication community supervision for the offense in  
27 connection with which the photograph was taken.

1       (c) After the expiration of the 30-day period, on request of  
2 the person who is the subject of the photograph or the copyright  
3 holder, a business entity shall cease publishing, republishing, or  
4 otherwise disseminating the copyrighted photograph.

5       (d) A business entity may not charge a fee for ceasing  
6 publication, republication, or dissemination of a copyrighted  
7 photograph under Subsection (b) or (c).

8       Sec. 109.006. DISPUTING COMPLETENESS OR ACCURACY OF  
9 INFORMATION OR UNAUTHORIZED PUBLICATION OF PHOTOGRAPH. (a) A  
10 business entity shall clearly and conspicuously publish an e-mail  
11 address, fax number, and telephone number and a physical address or  
12 mailing address to enable a person who is the subject of criminal  
13 record information or a photograph, or who is the copyright holder  
14 of a photograph, published, republished, or otherwise disseminated  
15 by the entity to contact the entity to dispute the completeness or  
16 accuracy of the information or the continued publication of a  
17 photograph required to be removed under Section 109.005.

18       (b) If the business entity receives a dispute under  
19 Subsection (a), the entity shall promptly investigate the disputed  
20 information or photograph free of charge and complete the  
21 investigation not later than the 10th business day after the date on  
22 which the entity receives notice of the dispute.

23       (c) If after an investigation as prescribed by this section  
24 it is found that the disputed information is incomplete or  
25 inaccurate or that the photograph was published after removal was  
26 required under Section 109.005, the business entity shall promptly  
27 remove the disputed information or photograph from the Internet

1 website, publication, or other media used for dissemination or  
2 shall promptly correct the information, as applicable. The entity  
3 may not:

4 (1) charge a fee to remove, correct, or modify  
5 disputed information or remove a copyrighted photograph; or

6 (2) continue to publish, republish, or otherwise  
7 disseminate incomplete or inaccurate information or a copyrighted  
8 photograph.

9 (d) A business entity shall provide written notice to the  
10 person who disputed the information or the publication of the  
11 photograph of the results of the investigation conducted under this  
12 section not later than the fifth business day after the date on  
13 which the investigation is completed. The notice must include:

14 (1) a statement that the investigation is complete;

15 (2) a statement of the determination made by the  
16 entity on the completeness or accuracy of the disputed information  
17 or on the continued publication of the photograph;

18 (3) a copy of the criminal record information or  
19 photograph to be published, republished, or otherwise disseminated  
20 after the investigation and a description of the results of the  
21 investigation; and

22 (4) a statement that the entity shall provide, on  
23 request, a description of the procedure used to determine the  
24 completeness and accuracy of the information or the right of the  
25 entity to continue to publish the photograph, including the name,  
26 the business address, and, if available, the telephone number of  
27 each law enforcement agency, other governmental entity, or other

1 person contacted in connection with the investigation or  
2 verification.

3 Sec. 109.007. PUBLICATION, REPUBLICATION, OR OTHER  
4 DISSEMINATION OF CERTAIN CRIMINAL RECORD INFORMATION PROHIBITED;  
5 CIVIL LIABILITY. (a) A person may not publish, republish, or  
6 otherwise disseminate any criminal record information in the  
7 person's possession if the person has knowledge or has received  
8 notice that:

9 (1) an order of expunction has been issued with  
10 respect to that information under Article 55.02, Code of Criminal  
11 Procedure;

12 (2) an order of nondisclosure has been issued with  
13 respect to that information under Section 411.081(d), Government  
14 Code;

15 (3) the prosecution for the offense that is the  
16 subject of the information has been dismissed;

17 (4) the individual has been acquitted of the offense  
18 that is the subject of the information; or

19 (5) the individual has successfully completed a term  
20 of deferred adjudication community supervision for the offense that  
21 is the subject of the information.

22 (b) A person who disseminates information in violation of  
23 Subsection (a) or a photograph in violation of Section 109.005(b)  
24 is liable to the individual who is the subject of the information or  
25 photograph in the amount of \$100 for each violation. For purposes  
26 of this subsection, each day the violation continues constitutes a  
27 separate violation.

1       (c) In an action brought by or on behalf of an individual who  
2 is the subject of the information or photograph under this section,  
3 the court may grant injunctive relief to prevent or restrain a  
4 violation of this section.

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

8       Sec. 109.008. CIVIL PENALTY; INJUNCTION. (a) A business  
9 entity that publishes, republishes, or otherwise disseminates  
10 criminal record information, including a photograph, in violation  
11 of this chapter is liable to the state for a civil penalty in an  
12 amount not to exceed \$1,000 for each violation. For purposes of  
13 this subsection, each day the violation continues constitutes a  
14 separate violation.

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

17       (c) A civil penalty collected under this section shall be  
18 deposited in the general revenue fund to be used only to support the  
19 Texas Correctional Office on Offenders with Medical or Mental  
20 Impairments under Chapter 614, Health and Safety Code.

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

24       SECTION 2. Chapter 109, Business & Commerce Code, as added  
25 by this Act, applies to any publication, republication, or other  
26 dissemination of criminal record information, including a  
27 photograph, that occurs on or after the effective date of this Act,



1 regardless of whether:

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

4           (2) the information was initially published,  
5 republished, or otherwise disseminated before that date.

6           SECTION 3. This Act takes effect immediately if it receives  
7 a vote of two-thirds of all the members elected to each house, as  
8 provided by Section 39, Article III, Texas Constitution. If this  
9 Act does not receive the vote necessary for immediate effect, this  
10 Act takes effect September 1, 2013.