

By: Williams

S.B. No. 1289

A BILL TO BE ENTITLED

AN ACT

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; 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 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 dispositions of those criminal 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           (4) "Publish" means to communicate or make information  
7 available to another person in writing or by means of  
8 telecommunications and includes communicating information on a  
9 computer bulletin board or similar system.

10           Sec. 109.002. APPLICABILITY OF CHAPTER. This chapter  
11 applies to a business entity that:

12           (1) publishes criminal record information, including  
13 information:

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

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

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

22           Sec. 109.003. DUTY TO PUBLISH COMPLETE AND ACCURATE  
23 CRIMINAL RECORD INFORMATION. (a) A business entity must ensure  
24 that criminal record information the entity publishes is complete  
25 and accurate.

26           (b) For purposes of this chapter, criminal record  
27 information published by a business entity is considered:

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

4           (2) accurate if the information:

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

8           (B) was obtained by the entity from a law  
9 enforcement agency or criminal justice agency, including the  
10 Department of Public Safety, or any other governmental agency or  
11 entity within the 60-day period preceding the date of publication.

12           Sec. 109.004. DISPUTING COMPLETENESS OR ACCURACY OF  
13 INFORMATION. (a) A business entity shall clearly and  
14 conspicuously publish an e-mail address, fax number, or mailing  
15 address to enable a person who is the subject of criminal record  
16 information published by the entity to dispute the completeness or  
17 accuracy of the information.

18           (b) If a business entity receives a dispute regarding the  
19 completeness or accuracy of criminal record information from a  
20 person who is the subject of the information, the business entity  
21 shall:

22           (1) verify with the appropriate law enforcement agency  
23 or criminal justice agency, including the Department of Public  
24 Safety, or any other governmental agency or entity, free of charge  
25 the disputed information; and

26           (2) complete the investigation described by  
27 Subdivision (1) not later than the 45th business day after the date

1 on which the entity receives notice of the dispute.

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

8 (1) charge a fee to remove, correct, or modify  
9 incomplete or inaccurate information; or

10 (2) continue to publish incomplete or inaccurate  
11 information.

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

17 Sec. 109.005. PUBLICATION OF CERTAIN CRIMINAL RECORD  
18 INFORMATION PROHIBITED; CIVIL LIABILITY. (a) A person may not  
19 publish any criminal record information in the person's possession  
20 with respect to which the person has knowledge or has received  
21 notice that:

22 (1) an order of expunction has been issued under  
23 Article 55.02, Code of Criminal Procedure; or

24 (2) an order of nondisclosure has been issued under  
25 Section 411.081(d), Government Code.

26 (b) A person who publishes information in violation of  
27 Subsection (a) is liable to the individual who is the subject of the

1 information in an amount not to exceed \$500 for each separate  
2 violation and, in the case of a continuing violation, \$500 for each  
3 subsequent day on which the violation occurs.

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

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

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

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

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

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

26 (e) The attorney general or an appropriate prosecuting  
27 attorney is entitled to recover reasonable expenses incurred in

1 obtaining injunctive relief or a civil penalty, or both, under this  
2 chapter, including court costs and reasonable attorney's fees.

3 Sec. 109.007. VENUE. An action under this chapter must be  
4 brought in a district court:

5 (1) in Travis County;

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

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

10 Sec. 109.008. CUMULATIVE REMEDIES. The actions and  
11 remedies provided by this chapter are not exclusive and are in  
12 addition to any other action or remedy provided by law.

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

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

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

21 SECTION 3. This Act takes effect September 1, 2013.