

By: Williams
(Bohac)

S.B. No. 1289

Substitute the following for S.B. No. 1289:

By: Workman

C.S.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:

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

23 (B) of a fee or other consideration to correct or
24 modify criminal record information.

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

1 and accurate.

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

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

7 (2) accurate if the information:

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

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

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

21 (b) If a business entity receives a dispute regarding the
22 completeness or accuracy of criminal record information from a
23 person who is the subject of the information and the person provides
24 a noncertified copy of a court order or other document that supports
25 the dispute, the business entity shall:

26 (1) verify with the appropriate law enforcement agency
27 or criminal justice agency, including the Department of Public

1 Safety, or any other governmental agency or entity, free of charge
2 the disputed information; and

3 (2) complete the investigation described by
4 Subdivision (1) not later than the 45th business day after the later
5 of the date the entity receives notice of the dispute or the
6 documentation supporting the dispute.

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

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

15 (2) continue to publish incomplete or inaccurate
16 information.

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

22 Sec. 109.005. PUBLICATION OF CERTAIN CRIMINAL RECORD
23 INFORMATION PROHIBITED; CIVIL LIABILITY. (a) A business entity
24 may not publish any criminal record information in the business
25 entity's possession with respect to which the business entity has
26 knowledge or has received notice that:

27 (1) an order of expunction has been issued under

1 Article 55.02, Code of Criminal Procedure; or

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

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

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

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

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

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

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

1 fund.

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

5 (e) The attorney general or an appropriate prosecuting
6 attorney is entitled to recover reasonable expenses incurred in
7 obtaining injunctive relief or a civil penalty, or both, under this
8 chapter, including court costs and reasonable attorney's fees.

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

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

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

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

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

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

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

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

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