

1-1 By: Williams S.B. No. 1289
 1-2 (In the Senate - Filed March 7, 2013; March 13, 2013, read
 1-3 first time and referred to Committee on Criminal Justice;
 1-4 March 28, 2013, reported adversely, with favorable Committee
 1-5 Substitute by the following vote: Yeas 6, Nays 0; March 28, 2013,
 1-6 sent to printer.)

1-7 COMMITTEE VOTE

	Yea	Nay	Absent	PNV
1-8				
1-9	X			
1-10	X			
1-11			X	
1-12	X			
1-13	X			
1-14	X			
1-15	X			

1-16 COMMITTEE SUBSTITUTE FOR S.B. No. 1289 By: Schwertner

1-17 A BILL TO BE ENTITLED
 1-18 AN ACT

1-19 relating to certain business entities engaged in the publication of
 1-20 mug shots and other information regarding the involvement of an
 1-21 individual in the criminal justice system; providing a civil
 1-22 penalty.

1-23 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

1-24 SECTION 1. Subtitle C, Title 5, Business & Commerce Code, is
 1-25 amended by adding Chapter 109 to read as follows:

1-26 CHAPTER 109. BUSINESS ENTITIES ENGAGED IN PUBLICATION OF CRIMINAL
 1-27 RECORD INFORMATION

1-28 Sec. 109.001. DEFINITIONS. In this chapter:

1-29 (1) "Criminal justice agency" has the meaning assigned
 1-30 by Section 411.082, Government Code.

1-31 (2) "Criminal record information" means information
 1-32 about a person's involvement in the criminal justice system. The
 1-33 term includes:

1-34 (A) a description or notation of any arrests, any
 1-35 formal criminal charges, and the dispositions of those criminal
 1-36 charges;

1-37 (B) a photograph of the person taken pursuant to
 1-38 an arrest or other involvement in the criminal justice system; and

1-39 (C) personal identifying information of a person
 1-40 displayed in conjunction with any other record of the person's
 1-41 involvement in the criminal justice system.

1-42 (3) "Personal identifying information" means
 1-43 information that alone or in conjunction with other information
 1-44 identifies a person, including a person's name, address, date of
 1-45 birth, photograph, and social security number or other
 1-46 government-issued identification number.

1-47 (4) "Publish" means to communicate or make information
 1-48 available to another person in writing or by means of
 1-49 telecommunications and includes communicating information on a
 1-50 computer bulletin board or similar system.

1-51 Sec. 109.002. APPLICABILITY OF CHAPTER. This chapter
 1-52 applies to a business entity that:

1-53 (1) publishes criminal record information, including
 1-54 information:

1-55 (A) originally obtained pursuant to a request for
 1-56 public information under Chapter 552, Government Code; or

1-57 (B) purchased or otherwise obtained by the entity
 1-58 or an affiliated business entity from the Department of Public
 1-59 Safety under Subchapter F, Chapter 411, Government Code; and

1-60 (2) requires the payment of a fee or other

2-1 consideration to remove, correct, or modify criminal record
 2-2 information.

2-3 Sec. 109.003. DUTY TO PUBLISH COMPLETE AND ACCURATE
 2-4 CRIMINAL RECORD INFORMATION. (a) A business entity must ensure
 2-5 that criminal record information the entity publishes is complete
 2-6 and accurate.

2-7 (b) For purposes of this chapter, criminal record
 2-8 information published by a business entity is considered:

2-9 (1) complete if the information reflects the notations
 2-10 of arrest and the filing and disposition of criminal charges, if
 2-11 applicable; and

2-12 (2) accurate if the information:

2-13 (A) reflects the most recent information
 2-14 received by the entity from the Department of Public Safety in
 2-15 accordance with Section 411.0851(b)(1)(B), Government Code; or

2-16 (B) was obtained by the entity from a law
 2-17 enforcement agency or criminal justice agency, including the
 2-18 Department of Public Safety, or any other governmental agency or
 2-19 entity within the 60-day period preceding the date of publication.

2-20 Sec. 109.004. DISPUTING COMPLETENESS OR ACCURACY OF
 2-21 INFORMATION. (a) A business entity shall clearly and
 2-22 conspicuously publish an e-mail address, fax number, or mailing
 2-23 address to enable a person who is the subject of criminal record
 2-24 information published by the entity to dispute the completeness or
 2-25 accuracy of the information.

2-26 (b) If a business entity receives a dispute regarding the
 2-27 completeness or accuracy of criminal record information from a
 2-28 person who is the subject of the information, the business entity
 2-29 shall:

2-30 (1) verify with the appropriate law enforcement agency
 2-31 or criminal justice agency, including the Department of Public
 2-32 Safety, or any other governmental agency or entity, free of charge
 2-33 the disputed information; and

2-34 (2) complete the investigation described by
 2-35 Subdivision (1) not later than the 45th business day after the date
 2-36 on which the entity receives notice of the dispute.

2-37 (c) If a business entity finds incomplete or inaccurate
 2-38 criminal record information after conducting an investigation
 2-39 prescribed by this section, the entity shall promptly remove the
 2-40 inaccurate information from the website or other publication or
 2-41 shall promptly correct the information, as applicable. The entity
 2-42 may not:

2-43 (1) charge a fee to remove, correct, or modify
 2-44 incomplete or inaccurate information; or

2-45 (2) continue to publish incomplete or inaccurate
 2-46 information.

2-47 (d) A business entity shall provide written notice to the
 2-48 person who disputed the completeness or accuracy of information of
 2-49 the results of an investigation conducted under this section not
 2-50 later than the fifth business day after the date on which the
 2-51 investigation is completed.

2-52 Sec. 109.005. PUBLICATION OF CERTAIN CRIMINAL RECORD
 2-53 INFORMATION PROHIBITED; CIVIL LIABILITY. (a) A person may not
 2-54 publish any criminal record information in the person's possession
 2-55 with respect to which the person has knowledge or has received
 2-56 notice that:

2-57 (1) an order of expunction has been issued under
 2-58 Article 55.02, Code of Criminal Procedure; or

2-59 (2) an order of nondisclosure has been issued under
 2-60 Section 411.081(d), Government Code.

2-61 (b) A person who publishes information in violation of
 2-62 Subsection (a) is liable to the individual who is the subject of the
 2-63 information in an amount not to exceed \$500 for each separate
 2-64 violation and, in the case of a continuing violation, \$500 for each
 2-65 subsequent day on which the violation occurs.

2-66 (c) In an action brought under this section, the court may
 2-67 grant injunctive relief to prevent or restrain a violation of this
 2-68 section.

2-69 (d) An individual who prevails in an action brought under

3-1 this section is also entitled to recover court costs and reasonable
3-2 attorney's fees.

3-3 Sec. 109.006. CIVIL PENALTY; INJUNCTION. (a) A business
3-4 entity that publishes criminal record information in violation of
3-5 this chapter is liable to the state for a civil penalty in an amount
3-6 not to exceed \$500 for each separate violation and, in the case of a
3-7 continuing violation, \$500 for each subsequent day on which the
3-8 violation occurs. For purposes of this subsection, each criminal
3-9 record published in violation of this chapter constitutes a
3-10 separate violation.

3-11 (b) The attorney general or an appropriate prosecuting
3-12 attorney may sue to collect a civil penalty under this section.

3-13 (c) A civil penalty collected under this section shall be
3-14 deposited in the state treasury to the credit of the general revenue
3-15 fund.

3-16 (d) The attorney general may bring an action in the name of
3-17 the state to restrain or enjoin a violation or threatened violation
3-18 of this chapter.

3-19 (e) The attorney general or an appropriate prosecuting
3-20 attorney is entitled to recover reasonable expenses incurred in
3-21 obtaining injunctive relief or a civil penalty, or both, under this
3-22 chapter, including court costs and reasonable attorney's fees.

3-23 Sec. 109.007. VENUE. An action under this chapter must be
3-24 brought in a district court:

- 3-25 (1) in Travis County;
- 3-26 (2) in the county in which the person who is the
3-27 subject of the criminal record information resides; or
- 3-28 (3) in the county in which the business entity is
3-29 located.

3-30 Sec. 109.008. CUMULATIVE REMEDIES. The actions and
3-31 remedies provided by this chapter are not exclusive and are in
3-32 addition to any other action or remedy provided by law.

3-33 SECTION 2. Chapter 109, Business & Commerce Code, as added
3-34 by this Act, applies to any publication of criminal record
3-35 information that occurs on or after the effective date of this Act,
3-36 regardless of whether:

- 3-37 (1) the information relates to events or activities
3-38 that occurred before, on, or after that date; or
- 3-39 (2) the information was initially published before
3-40 that date.

3-41 SECTION 3. This Act takes effect September 1, 2013.

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