

BILL ANALYSIS

C.S.H.B. 4114
By: McClendon
Business & Industry
Committee Report (Substituted)

BACKGROUND AND PURPOSE

Interested parties note that certain businesses actively collect arrest photos and criminal records in bulk, often through public information requests or contracts with law enforcement entities, for posting on revenue-producing websites. These photos or criminal records may include predisposition arrest information and are not necessarily updated for accuracy or completeness. The parties contend that, in addition to being a source of misleading or inaccurate information, these business practices often exploit and potentially harm members of our society who have been acquitted or against whom charges were never filed. Persons who have had an encounter with the criminal justice system may seek to have inaccurate or misleading information removed from these websites only to be met with a demand to pay an administrative fee to have their arrest photo or information removed from the website. Current state guidelines cap these fees but, if the information is displayed on more than one website, the cost multiplies, which the parties claim has essentially created a for-profit industry based solely on the exploitation of others. Recently enacted legislation placed some restrictions on this practice, but the parties assert that the industry still has thrived and people continue to be exploited. C.S.H.B. 4114 seeks to further minimize or eliminate the potential impact of this practice by amending the applicable law.

CRIMINAL JUSTICE IMPACT

It is the committee's opinion that this bill does not expressly create a criminal offense, increase the punishment for an existing criminal offense or category of offenses, or change the eligibility of a person for community supervision, parole, or mandatory supervision.

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.H.B. 4114 amends Chapter 109, Business & Commerce Code, as added by Chapter 1200 (S.B. 1289), Acts of the 83rd Legislature, Regular Session, 2013, to revise the applicability of statutory provisions regarding business entities engaged in publication of criminal record information to make those provisions applicable to a business entity that publishes, republishes, or otherwise disseminates, through any print, electronic, or other medium, criminal record information and that receives advertising revenue for, or consideration for access to, a website or other publication containing criminal record information or that solicits or requires the payment of a fee or other consideration to remove, correct, or modify criminal record information or to access criminal record information or portions of the information. The bill exempts from these statutory provisions: a business entity that requests criminal record information about a specific individual whose personal identifying information is included in the request or that purchases or acquires only alphanumeric criminal record information in complete record sets at regular

intervals as the record sets are made available contemporaneously from a criminal justice agency, custodian of court records, or other state governmental agency; a publication of general circulation or a website related to such a publication that contains news or other information, including a magazine, periodical newsletter, newspaper, pamphlet, or report; or a radio or television station that holds a license issued by the Federal Communications Commission.

C.S.H.B. 4114 requires a business entity to state in a clear and conspicuous manner on the front page of the publication, website, or other medium that the information provided is true and correct and that any photographs have not been modified and to provide a disclaimer on each record for which a final conviction has not been entered that the "case is pending," the individual is "not convicted," or the individual is "innocent until proven guilty." The bill requires the entity to notify by mail or telephone each individual whose criminal record information is being published, republished, or otherwise disseminated of that fact and requires the entity, if it is unable to contact the individual who is the subject of the information, to notify the agency or entity from which the business entity obtained the information.

C.S.H.B. 4114 establishes that a criminal justice agency owns a copyright of all photographs created by the agency and that a criminal justice agency is under no obligation and is not otherwise required to enter into a contract or other agreement with any individual or business entity to provide criminal record information, including photographs, in bulk to a requestor on a periodic or regularly recurring basis.

C.S.H.B. 4114 authorizes a business entity to publish, republish, or otherwise disseminate a copyrighted photograph created by a criminal justice agency for 30 calendar days after the date the photograph was created but requires the entity to cease publishing, republishing, or otherwise disseminating a copyrighted photograph if during the 30-day period the business entity receives notice that, with respect to the offense in connection with which the photograph was taken, an order of expunction has been issued for the offense, an order of nondisclosure has been issued for certain criminal history record information for the offense, the prosecution for the offense has been dismissed, the individual has been acquitted of the offense, or the individual has successfully completed a term of deferred adjudication community supervision for the offense. The bill requires a business entity, after the expiration of the 30-day period, on request of the person who is the subject of the photograph or the copyright holder, to cease publishing, republishing, or otherwise disseminating the copyrighted photograph and prohibits a business entity from charging a fee for ceasing publication, republication, or dissemination of a copyrighted photograph when the cessation is required during the 30-day period or when the subject of the photograph or the copyright holder requests cessation after the 30-day period.

C.S.H.B. 4114 revises statutory provisions establishing procedures for disputing the completeness or accuracy of published criminal record information to make those provisions applicable to a dispute regarding the unauthorized publication of a photograph, allowing the copyright holder of a photograph, as well as the subject of criminal record information, to dispute, in addition to the completeness or accuracy of information, the continued publication of a photograph whose removal is required by law. The bill changes from the 45th business day to the 10th business day after the date a business entity receives notice of a dispute the deadline by which a business entity that receives such notice is required to complete an investigation into the disputed information and sets out content requirements for the written notice regarding the results of such an investigation that the business entity is required to provide to the person who disputed the information or the publication of the photograph. The bill includes a telephone number and a physical address among the contact information that a business entity is required to publish in a clear and conspicuous manner to enable a person to dispute the completeness or accuracy of information or the continued publication of a photograph whose removal is otherwise required.

C.S.H.B. 4114 adds to the conditions under which a business entity is prohibited from publishing, republishing, or otherwise disseminating any criminal record information in the

business entity's possession the business entity having certain knowledge or having received certain notice, with respect to the offense that is the subject of that information, that the prosecution for the offense has been dismissed, the individual has been acquitted of the offense, or the individual has successfully completed a term of deferred adjudication community supervision for the offense. The bill removes the \$500 cap on the amount for which a business entity that publishes information in violation of that prohibition is liable to the individual who is the subject of the information for each separate violation and, in the case of a continuing violation, for each subsequent day on which the violation occurs and instead makes a business entity that disseminates information or a photograph in violation of the applicable prohibitions, in addition to any liability to a copyright owner for any violation under federal copyright law, liable to the individual who is the subject of the information or photograph in an amount of \$100 for each separate violation and, in the case of a continuing violation, for each subsequent day on which the violation occurs.

C.S.H.B. 4114 increases from \$500 to \$1,000 the cap on the amount of civil penalty a business entity that publishes, republishes, or otherwise disseminates criminal record information in violation of statutory provisions relating to such dissemination is liable to the state for each separate violation and, in the case of a continuing violation, for each subsequent day on which the violation occurs. The bill specifies that such a civil penalty, which is required to be deposited in the general revenue fund, is to be used only to support the Texas Correctional Office on Offenders with Medical or Mental Impairments.

C.S.H.B. 4114 amends the Government Code to prohibit a law enforcement agency from publishing on the agency's website any photograph taken pursuant to an arrest, lawful detention, or other involvement in the criminal justice system, unless the person depicted in the photograph has been finally convicted for the offense in connection with which the photograph was taken.

C.S.H.B. 4114 applies to any publication, republication, or other dissemination of criminal record information, including a photograph, by a business entity subject to the bill's provisions that occurs on or after the bill's effective date, regardless of whether the information relates to events or activities that occurred before, on, or after that date or the information was initially published, republished, or otherwise disseminated before that date.

EFFECTIVE DATE

On passage, or, if the bill does not receive the necessary vote, September 1, 2015.

COMPARISON OF ORIGINAL AND SUBSTITUTE

While C.S.H.B. 4114 may differ from the original in minor or nonsubstantive ways, the following comparison is organized and formatted in a manner that indicates the substantial differences between the introduced and committee substitute versions of the bill.

INTRODUCED

SECTION 1. The heading to Chapter 109, Business & Commerce Code, as added by Chapter 1200 (S.B. 1289), Acts of the 83rd Legislature, Regular Session, 2013, is amended.

SECTION 2. Section 109.002, Business & Commerce Code, as added by Chapter 1200 (S.B. 1289), Acts of the 83rd Legislature,

HOUSE COMMITTEE SUBSTITUTE

SECTION 1. Same as introduced version.

SECTION 2. Section 109.002, Business & Commerce Code, as added by Chapter 1200 (S.B. 1289), Acts of the 83rd Legislature,

Regular Session, 2013, is amended to read as follows:

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

(1) publishes, republishes, or otherwise disseminates, through any print, electronic, or other medium, criminal record information, including arrest photographs or information[~~:-~~

~~[(A)] originally obtained pursuant to a request for public information about a specific identifiable individual under Chapter 552, Government Code; or originally obtained pursuant to a bulk request for public information about random or non-specifically identified individuals under Chapter 552, Government Code; and~~
~~[ø]~~

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

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

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

~~(b) This chapter does not apply to requests for information specifically about identifiable particular individuals by a publication of general circulation or an Internet website related to such a publication that contains news or other information, including a magazine, periodical newsletter, newspaper, pamphlet, or report~~

(See subsection (b) above.)

~~[(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:~~

Regular Session, 2013, is amended to read as follows:

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

(1) publishes, republishes, or otherwise disseminates, through any print, electronic, or other medium, criminal record information, including a photograph taken pursuant to an arrest or other information[~~:-~~

~~[(A)] originally obtained pursuant to a request for public information under Chapter 552, Government Code; and~~ ~~[ø]~~

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

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

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

~~(b) This chapter does not apply to:~~

~~(1) a business entity that:~~

~~(A) requests criminal record information about a specific individual whose personal identifying information is included in the request; or~~

~~(B) purchases or acquires only alphanumeric criminal record information in complete record sets at regular intervals as the record sets are made available contemporaneously from a criminal justice agency, custodian of court records, or other state governmental agency;~~

~~(2) a publication of general circulation or an Internet website related to such a publication that contains news or other information, including a magazine, periodical newsletter, newspaper, pamphlet, or report; or~~

~~(3) a radio or television station that holds a license issued by the Federal Communications Commission~~

~~[(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].~~

SECTION 3. Section 109.003, Business & Commerce Code, as added by Chapter 1200 (S.B. 1289), Acts of the 83rd Legislature, Regular Session, 2013, is amended.

SECTION 4. Chapter 109, Business & Commerce Code, as added by Chapter 1200 (S.B. 1289), Acts of the 83rd Legislature, Regular Session, 2013, is amended by adding Sections 109.0031 and 109.0032 to read as follows:

Sec. 109.0031. COPYRIGHT; CONTRACTS. (a) A criminal justice agency owns a copyright of all photographs created by the agency.

(b) A criminal justice agency is under no duty and is not required to enter into a contract or other agreement with any individual or business entity to provide information or photographs in bulk quantity to a requestor on a periodic or regularly recurring basis.

Sec. 109.0032. PUBLICATION PERIOD OF PHOTOGRAPHS.

SECTION 5. Section 109.004, Business & Commerce Code, as added by Chapter 1200 (S.B. 1289), Acts of the 83rd Legislature, Regular Session, 2013, is amended to read as follows:

Sec. 109.004. DISPUTING COMPLETENESS OR ACCURACY OF INFORMATION OR UNAUTHORIZED PUBLICATION OF PHOTOGRAPH. (a) A business entity shall clearly and conspicuously publish an e-mail address, fax number, telephone number, and a physical address or mailing address to enable a person who is the subject of criminal record information, or is the copyright holder of a photograph, published, republished, or otherwise disseminated by the entity to

~~[(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].~~

SECTION 3. Same as introduced version.

SECTION 4. Chapter 109, Business & Commerce Code, as added by Chapter 1200 (S.B. 1289), Acts of the 83rd Legislature, Regular Session, 2013, is amended by adding Sections 109.0031, 109.0032, and 109.0033 to read as follows:

Sec. 109.0031. COPYRIGHT. A criminal justice agency owns a copyright of all photographs created by the agency.

Sec. 109.0032. CONTRACTS. A criminal justice agency is under no obligation and is not otherwise required to enter into a contract or other agreement with any individual or business entity to provide criminal record information, including photographs, in bulk to a requestor on a periodic or regularly recurring basis.

Sec. 109.0033. PUBLICATION PERIOD OF PHOTOGRAPHS.

SECTION 5. Section 109.004, Business & Commerce Code, as added by Chapter 1200 (S.B. 1289), Acts of the 83rd Legislature, Regular Session, 2013, is amended to read as follows:

Sec. 109.004. DISPUTING COMPLETENESS OR ACCURACY OF INFORMATION OR UNAUTHORIZED PUBLICATION OF PHOTOGRAPH. (a) A business entity shall clearly and conspicuously publish an e-mail address, fax number, telephone number, and physical address or mailing address to enable a person who is the subject of criminal record information, or is the copyright holder of a photograph, published, republished, or otherwise disseminated by the entity to

dispute the completeness or accuracy of the information or the continued publication of a photograph required to be removed under Section 109.0032.

(b) If a business entity receives a dispute under Subsection (a) [regarding the completeness or accuracy of criminal record information from a person who is the subject of the information], the business entity shall promptly:

(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, including any photograph; and

(2) complete the investigation described by Subdivision (1) not later than the 10th [45th] business day after the date the entity receives notice of the dispute.

(c) If, after conducting an investigation prescribed by Subsection (b), a business entity finds incomplete or inaccurate criminal record information or that a photograph was published after removal was required under Section 109.0032 [after conducting an investigation prescribed by this section], the entity shall promptly remove the inaccurate information or photograph from the website or other publication, or other medium used for dissemination, or shall promptly correct the information, as applicable. The entity may not:

(1) charge a fee to remove, correct, or modify disputed [incomplete or inaccurate] information or remove a copyrighted photograph; or

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

(d) A business entity shall provide written notice to the person who disputed the [completeness or accuracy of] information or the publication of a photograph 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. The notice must include:

(1) a statement that the investigation is complete;

(2) a statement of the determination made by the entity on the completeness or accuracy of the disputed information or on

dispute the completeness or accuracy of the information or the continued publication of a photograph required to be removed under Section 109.0033.

(b) If a business entity receives a dispute under Subsection (a) [regarding the completeness or accuracy of criminal record information from a person who is the subject of the information], the business entity shall promptly:

(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, including any photograph; and

(2) complete the investigation described by Subdivision (1) not later than the 10th [45th] business day after the date the entity receives notice of the dispute.

(c) If, after conducting an investigation prescribed by Subsection (b), a business entity finds incomplete or inaccurate criminal record information or that a photograph was published after removal was required under Section 109.0033 [after conducting an investigation prescribed by this section], the entity shall promptly remove the inaccurate information or photograph from the website or other publication, or other medium used for dissemination, or shall promptly correct the information, as applicable. The entity may not:

(1) charge a fee to remove, correct, or modify disputed [incomplete or inaccurate] information or remove a copyrighted photograph; or

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

(d) A business entity shall provide written notice to the person who disputed the [completeness or accuracy of] information or the publication of a photograph 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. The notice must include:

(1) a statement that the investigation is complete;

(2) a statement of the determination made by the entity on the completeness or accuracy of the disputed information or on

the continued publication of the photograph;
(3) a copy of the criminal record information or photograph to be published, republished, or otherwise disseminated after the investigation and a description of the results of the investigation; and
(4) a statement that the entity shall provide, on request, a description of the procedure used to determine the completeness and accuracy of the information or the right of the entity to continue to publish the photograph, including the name, the business address, and, if available, the telephone number of each law enforcement agency, other governmental entity, or other person contacted in connection with the investigation or verification.

SECTION 6. The heading to Section 109.005, Business & Commerce Code, as added by Chapter 1200 (S.B. 1289), Acts of the 83rd Legislature, Regular Session, 2013, is amended.

SECTION 7. Sections 109.005(a) and (b), Business & Commerce Code, as added by Chapter 1200 (S.B. 1289), Acts of the 83rd Legislature, Regular Session, 2013, are amended to read as follows:

(a) A business entity may not publish, republish, or otherwise disseminate 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 with respect to that information under Article 55.02, Code of Criminal Procedure;
[ø]

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

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

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

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

the continued publication of the photograph;
(3) a copy of the criminal record information or photograph to be published, republished, or otherwise disseminated after the investigation and a description of the results of the investigation; and
(4) a statement that the entity shall provide, on request, a description of the procedure used to determine the completeness and accuracy of the information or the right of the entity to continue to publish the photograph, including the name, the business address, and, if available, the telephone number of each law enforcement agency, other governmental entity, or other person contacted in connection with the investigation or verification.

SECTION 6. Same as introduced version.

SECTION 7. Sections 109.005(a) and (b), Business & Commerce Code, as added by Chapter 1200 (S.B. 1289), Acts of the 83rd Legislature, Regular Session, 2013, are amended to read as follows:

(a) A business entity may not publish, republish, or otherwise disseminate 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 with respect to that information under Article 55.02, Code of Criminal Procedure;
[ø]

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

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

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

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

(b) A business entity that disseminates ~~[publishes]~~ information in violation of Subsection (a) or a photograph in violation of Section 109.0032(b) is liable to the individual who is the subject or copyright owner, as applicable, of the information or photograph in an amount of \$100 ~~[not to exceed \$500]~~ for each separate violation and, in the case of a continuing violation, an amount of \$100 ~~[not to exceed \$500]~~ for each subsequent day on which the violation occurs.

SECTION 8. Sections 109.006(a) and (c), Business & Commerce Code, as added by Chapter 1200 (S.B. 1289), Acts of the 83rd Legislature, Regular Session, 2013, are amended.

SECTION 9. Subtitle B, Title 4, Government Code, is amended by adding Chapter 412 to read as follows:

CHAPTER 412. PHOTOGRAPHS RELATED TO CRIMINAL RECORD INFORMATION

Sec. 412.001. DEFINITION.

Sec. 412.002. INTERNET PUBLICATION OF CERTAIN PHOTOGRAPHS ON LAW ENFORCEMENT AGENCY WEBSITES PROHIBITED. A law enforcement agency may not publish on the agency's Internet website any photograph taken pursuant to an arrest, lawful detention, or other involvement in the criminal justice system, unless the person depicted in the photograph has received a final conviction or grant of deferred adjudication received a final conviction or grant of deferred adjudication for the offense in connection with which the photograph was taken.

SECTION 10. Chapter 109, Business & Commerce Code, as amended by this Act, applies to any publication, republication, or other dissemination of criminal record information, including a photograph, that occurs on or after the effective date of this Act, regardless of whether:

(b) In addition to any liability to a copyright owner for any violation under federal copyright law, a [A] business entity that disseminates ~~[publishes]~~ information in violation of Subsection (a) or a photograph in violation of Section 109.0033(b) is liable to the individual who is the subject of the information or photograph in an amount of \$100 ~~[not to exceed \$500]~~ for each separate violation and, in the case of a continuing violation, an amount of \$100 ~~[not to exceed \$500]~~ for each subsequent day on which the violation occurs.

SECTION 8. Same as introduced version.

SECTION 9. Subtitle B, Title 4, Government Code, is amended by adding Chapter 412 to read as follows:

CHAPTER 412. PHOTOGRAPHS RELATED TO CRIMINAL RECORD INFORMATION

Sec. 412.001. DEFINITION.

Sec. 412.002. PUBLICATION OF CERTAIN PHOTOGRAPHS ON LAW ENFORCEMENT AGENCY INTERNET WEBSITES PROHIBITED. A law enforcement agency may not publish on the agency's Internet website any photograph taken pursuant to an arrest, lawful detention, or other involvement in the criminal justice system unless the person depicted in the photograph has been finally convicted for the offense in connection with which the photograph was taken.

SECTION 10. Chapter 109, Business & Commerce Code, as amended by this Act, applies to any publication, republication, or other dissemination of criminal record information, including a photograph, by a business entity subject to this Act 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, republished, or otherwise disseminated before that date.

SECTION 11. EFFECTIVE DATE. This Act takes effect immediately if it receives a vote of two-thirds of all the members elected to each house, as provided by Section 39, Article III, Texas Constitution. If this Act does not receive the vote necessary for immediate effect, this Act takes effect September 1, 2015.

- (1) the information relates to events or activities that occurred before, on, or after that date; or
- (2) the information was initially published, republished, or otherwise disseminated before that date.

SECTION 11. This Act takes effect immediately if it receives a vote of two-thirds of all the members elected to each house, as provided by Section 39, Article III, Texas Constitution. If this Act does not receive the vote necessary for immediate effect, this Act takes effect September 1, 2015.