

By: McClendon

H.B. No. 4114

Substitute the following for H.B. No. 4114:

By: Villalba

C.S.H.B. No. 4114

A BILL TO BE ENTITLED

1 AN ACT

2 relating to the publication, republication, or other dissemination  
3 of mug shots and other information regarding the involvement of an  
4 individual in the criminal justice system; increasing a civil  
5 penalty.

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

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

10 CHAPTER 109. BUSINESS ENTITIES ENGAGED IN PUBLICATION,  
11 REPUBLICATION, OR OTHER DISSEMINATION OF CRIMINAL RECORD

12 INFORMATION

13 SECTION 2. Section 109.002, Business & Commerce Code, as  
14 added by Chapter 1200 (S.B. 1289), Acts of the 83rd Legislature,  
15 Regular Session, 2013, is amended to read as follows:

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

18 (1) publishes, republishes, or otherwise  
19 disseminates, through any print, electronic, or other medium,  
20 criminal record information, including a photograph taken pursuant  
21 to an arrest or other information[+]

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

24 (2) receives advertising revenue for, or

1 consideration for access to, a website or other publication  
2 containing criminal record information, or solicits or requires the  
3 payment of a fee or other consideration to:

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

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

8 (b) This chapter does not apply to:

9 (1) a business entity that:

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

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

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

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

24 ~~[(B) purchased or otherwise obtained by the~~  
25 ~~entity or an affiliated business entity from the Department of~~  
26 ~~Public Safety under Subchapter F, Chapter 411, Government Code; and~~

27 ~~[(2) requires the payment:~~

1                   ~~[(A) of a fee in an amount of \$150 or more or~~  
2 ~~other consideration of comparable value to remove criminal record~~  
3 ~~information; or~~

4                   ~~[(B) of a fee or other consideration to correct~~  
5 ~~or modify criminal record information].~~

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

9           Sec. 109.003. DUTY TO DISSEMINATE ~~[PUBLISH]~~ COMPLETE AND  
10 ACCURATE CRIMINAL RECORD INFORMATION. (a) A business entity must  
11 ensure that criminal record information the entity publishes,  
12 republishes, or otherwise disseminates is complete and accurate.

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

16                   (1) complete if the information correctly reflects the  
17 notations of arrest and the filing and disposition of criminal  
18 charges, as applicable; and

19                   (2) accurate if the information:

20                           (A) reflects the most recent updated information  
21 received by the entity ~~[from the Department of Public Safety]~~ in  
22 accordance with Section 411.0851(b)(1)(B), Government Code; or

23                           (B) was obtained by the entity from a law  
24 enforcement agency or criminal justice agency, including the  
25 Department of Public Safety, or any other governmental agency or  
26 entity within the 60-day period preceding the date of publication,  
27 republication, or other dissemination.

1       (c) A business entity shall state in a clear and conspicuous  
2 manner on the front page of the publication, Internet website, or  
3 other medium:

4               (1) that the information provided is true and correct;  
5               (2) that any photographs have not been modified; and  
6               (3) a disclaimer on each record for which a final  
7 conviction has not been entered that the:

8                       (A) "case is pending";  
9                       (B) individual is "not convicted"; or  
10                      (C) individual is "innocent until proven  
11 guilty".

12       (d) A business entity shall notify by mail or telephone each  
13 individual whose criminal record information is being published,  
14 republished, or otherwise disseminated of that fact. If the  
15 business entity is unable to contact the individual who is the  
16 subject of the information, the entity shall notify the agency or  
17 entity from which the business entity obtained the information.

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

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

24       Sec. 109.0032. CONTRACTS. A criminal justice agency is  
25 under no obligation and is not otherwise required to enter into a  
26 contract or other agreement with any individual or business entity  
27 to provide criminal record information, including photographs, in

1 bulk to a requestor on a periodic or regularly recurring basis.

2 Sec. 109.0033. PUBLICATION PERIOD OF PHOTOGRAPHS. (a) A  
3 business entity may publish, republish, or otherwise disseminate a  
4 copyrighted photograph created by a criminal justice agency for 30  
5 calendar days after the date the photograph was created.

6 (b) A business entity shall cease publishing, republishing,  
7 or otherwise disseminating a copyrighted photograph if during the  
8 30-day period the business entity receives notice that:

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

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

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

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

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

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

26 (d) A business entity may not charge a fee for ceasing  
27 publication, republication, or dissemination of a copyrighted

1 photograph under Subsection (b) or (c).

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

5 Sec. 109.004. DISPUTING COMPLETENESS OR ACCURACY OF  
6 INFORMATION OR UNAUTHORIZED PUBLICATION OF PHOTOGRAPH. (a) A  
7 business entity shall clearly and conspicuously publish an e-mail  
8 address, fax number, telephone number, and physical address or  
9 mailing address to enable a person who is the subject of criminal  
10 record information, or is the copyright holder of a photograph,  
11 published, republished, or otherwise disseminated by the entity to  
12 dispute the completeness or accuracy of the information or the  
13 continued publication of a photograph required to be removed under  
14 Section 109.0033.

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

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

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

26 (c) If, after conducting an investigation prescribed by  
27 Subsection (b), a business entity finds incomplete or inaccurate

1 criminal record information or that a photograph was published  
2 after removal was required under Section 109.0033 [~~after conducting~~  
3 ~~an investigation prescribed by this section~~], the entity shall  
4 promptly remove the inaccurate information or photograph from the  
5 website or other publication, or other medium used for  
6 dissemination, or shall promptly correct the information, as  
7 applicable. The entity may not:

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

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

14 (d) A business entity shall provide written notice to the  
15 person who disputed the [~~completeness or accuracy of~~] information  
16 or the publication of a photograph of the results of an  
17 investigation conducted under this section not later than the fifth  
18 business day after the date on which the investigation is  
19 completed. The notice must include:

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

21 (2) a statement of the determination made by the  
22 entity on the completeness or accuracy of the disputed information  
23 or on the continued publication of the photograph;

24 (3) a copy of the criminal record information or  
25 photograph to be published, republished, or otherwise disseminated  
26 after the investigation and a description of the results of the  
27 investigation; and

1           (4) a statement that the entity shall provide, on  
2 request, a description of the procedure used to determine the  
3 completeness and accuracy of the information or the right of the  
4 entity to continue to publish the photograph, including the name,  
5 the business address, and, if available, the telephone number of  
6 each law enforcement agency, other governmental entity, or other  
7 person contacted in connection with the investigation or  
8 verification.

9           SECTION 6. The heading to Section 109.005, Business &  
10 Commerce Code, as added by Chapter 1200 (S.B. 1289), Acts of the  
11 83rd Legislature, Regular Session, 2013, is amended to read as  
12 follows:

13           Sec. 109.005. PUBLICATION, REPUBLICATION, OR OTHER  
14 DISSEMINATION OF CERTAIN CRIMINAL RECORD INFORMATION PROHIBITED;  
15 CIVIL LIABILITY.

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

19           (a) A business entity may not publish, republish, or  
20 otherwise disseminate any criminal record information in the  
21 business entity's possession with respect to which the business  
22 entity has knowledge or has received notice that:

23           (1) an order of expunction has been issued with  
24 respect to that information under Article 55.02, Code of Criminal  
25 Procedure; [~~or~~]

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



1 Code;

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

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

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

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

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

21 (a) A business entity that publishes, republishes, or  
22 otherwise disseminates criminal record information, including a  
23 photograph, in violation of this chapter is liable to the state for  
24 a civil penalty in an amount not to exceed \$1,000 [~~\$500~~] for each  
25 separate violation and, in the case of a continuing violation, an  
26 amount not to exceed \$1,000 [~~\$500~~] for each subsequent day on which  
27 the violation occurs. For purposes of this subsection, each

1 criminal record published, republished, or otherwise disseminated  
2 in violation of this chapter constitutes a separate violation.

3 (c) A civil penalty collected under this section shall be  
4 deposited in the [~~state treasury to the credit of the~~] general  
5 revenue fund to be used only to support the Texas Correctional  
6 Office on Offenders with Medical or Mental Impairments under  
7 Chapter 614, Health and Safety Code.

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

10 CHAPTER 412. PHOTOGRAPHS RELATED TO CRIMINAL RECORD INFORMATION

11 Sec. 412.001. DEFINITION. In this chapter, "law  
12 enforcement agency" means an agency of the state, or of a county,  
13 municipality, or other political subdivision of the state, that is  
14 engaged in the administration or enforcement of criminal justice  
15 and that allocates a substantial portion of its annual budget to the  
16 administration or enforcement of criminal justice.

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

24 SECTION 10. Chapter 109, Business & Commerce Code, as  
25 amended by this Act, applies to any publication, republication, or  
26 other dissemination of criminal record information, including a  
27 photograph, by a business entity subject to this Act that occurs on

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