

By: McClendon

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. 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 arrest photographs or
21 information[+]

22 [~~A~~] originally obtained pursuant to a request
23 for public information about a specific identifiable individual
24 under Chapter 552, Government Code; or originally obtained pursuant

1 to a bulk request for public information about random or
2 non-specifically identified individuals under Chapter 552,
3 Government Code; and ~~[or]~~

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

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

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

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

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

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

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

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

27 SECTION 3. Section 109.003, Business & Commerce Code, as

1 added by Chapter 1200 (S.B. 1289), Acts of the 83rd Legislature,
2 Regular Session, 2013, is amended to read as follows:

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

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

10 (1) complete if the information correctly reflects the
11 notations of arrest and the filing and disposition of criminal
12 charges, as applicable; and

13 (2) accurate if the information:

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

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

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

25 (1) that the information provided is true and correct;

26 (2) that any photographs have not been modified; and

27 (3) a disclaimer on each record for which a final

1 conviction has not been entered that the:

2 (A) "case is pending";

3 (B) individual is "not convicted"; or

4 (C) individual is "innocent until proven
5 guilty".

6 (d) A business entity shall notify by mail or telephone each
7 individual whose criminal record information is being published,
8 republished, or otherwise disseminated of that fact. If the
9 business entity is unable to contact the individual who is the
10 subject of the information, the entity shall notify the agency or
11 entity from which the business entity obtained the information.

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

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

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

23 Sec. 109.0032. PUBLICATION PERIOD OF PHOTOGRAPHS. (a) A
24 business entity may publish, republish, or otherwise disseminate a
25 copyrighted photograph created by a criminal justice agency for 30
26 calendar days after the date the photograph was created.

27 (b) A business entity shall cease publishing, republishing,

1 or otherwise disseminating a copyrighted photograph if during the
2 30-day period the business entity receives notice that:

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

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

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

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

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

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

20 (d) A business entity may not charge a fee for ceasing
21 publication, republication, or dissemination of a copyrighted
22 photograph under Subsection (b) or (c).

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

26 Sec. 109.004. DISPUTING COMPLETENESS OR ACCURACY OF
27 INFORMATION OR UNAUTHORIZED PUBLICATION OF PHOTOGRAPH. (a) A

1 business entity shall clearly and conspicuously publish an e-mail
2 address, fax number, telephone number, and a physical address or
3 mailing address to enable a person who is the subject of criminal
4 record information, or is the copyright holder of a photograph,
5 published, republished, or otherwise disseminated by the entity to
6 dispute the completeness or accuracy of the information or the
7 continued publication of a photograph required to be removed under
8 Section 109.0032.

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

13 (1) verify with the appropriate law enforcement agency
14 or criminal justice agency, including the Department of Public
15 Safety, or any other governmental agency or entity, free of charge
16 the disputed information, including any photograph; and

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

20 (c) If, after conducting an investigation prescribed by
21 Subsection (b), a business entity finds incomplete or inaccurate
22 criminal record information or that a photograph was published
23 after removal was required under Section 109.0032 [~~after conducting~~
24 ~~an investigation prescribed by this section~~], the entity shall
25 promptly remove the inaccurate information or photograph from the
26 website or other publication, or other medium used for
27 dissemination, or shall promptly correct the information, as

1 applicable. The entity may not:

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

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

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

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

15 (2) a statement of the determination made by the
16 entity on the completeness or accuracy of the disputed information
17 or on the continued publication of the photograph;

18 (3) a copy of the criminal record information or
19 photograph to be published, republished, or otherwise disseminated
20 after the investigation and a description of the results of the
21 investigation; and

22 (4) a statement that the entity shall provide, on
23 request, a description of the procedure used to determine the
24 completeness and accuracy of the information or the right of the
25 entity to continue to publish the photograph, including the name,
26 the business address, and, if available, the telephone number of
27 each law enforcement agency, other governmental entity, or other

1 person contacted in connection with the investigation or
2 verification.

3 SECTION 6. The heading to Section 109.005, Business &
4 Commerce Code, as added by Chapter 1200 (S.B. 1289), Acts of the
5 83rd Legislature, Regular Session, 2013, is amended to read as
6 follows:

7 Sec. 109.005. PUBLICATION, REPUBLICATION, OR OTHER
8 DISSEMINATION OF CERTAIN CRIMINAL RECORD INFORMATION PROHIBITED;
9 CIVIL LIABILITY.

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

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

17 (1) an order of expunction has been issued with
18 respect to that information under Article 55.02, Code of Criminal
19 Procedure; ~~or~~

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

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

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

27 (5) the individual has successfully completed a term

1 of deferred adjudication community supervision for the offense that
2 is the subject of the information.

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

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

14 (a) A business entity that publishes, republishes, or
15 otherwise disseminates criminal record information, including a
16 photograph, in violation of this chapter is liable to the state for
17 a civil penalty in an amount not to exceed \$1,000 [~~\$500~~] for each
18 separate violation and, in the case of a continuing violation, an
19 amount not to exceed \$1,000 [~~\$500~~] for each subsequent day on which
20 the violation occurs. For purposes of this subsection, each
21 criminal record published, republished, or otherwise disseminated
22 in violation of this chapter constitutes a separate violation.

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

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

3 CHAPTER 412. PHOTOGRAPHS RELATED TO CRIMINAL RECORD INFORMATION

4 Sec. 412.001. DEFINITION. In this chapter, "law enforcement
5 agency" means an agency of the state, or of a county, municipality,
6 or other political subdivision of the state, that is engaged in the
7 administration or enforcement of criminal justice and that
8 allocates a substantial portion of its annual budget to the
9 administration or enforcement of criminal justice.

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

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

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