

By: Perez

H.B. No. 4201

A BILL TO BE ENTITLED

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

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

7 SECTION 1. Section 109.002, Business & Commerce Code, is  
8 amended to read as follows:

9 Sec. 109.002. APPLICABILITY OF CHAPTER. (a) Except as  
10 provided by Subsections (b) and (c) [~~Subsection (b)~~], this chapter  
11 applies to:

12 (1) a business entity that:

13 (A) publishes, republishes, or otherwise  
14 disseminates criminal record information, including information:

15 (i) originally obtained pursuant to a  
16 request for public information under Chapter 552, Government Code;  
17 or

18 (ii) 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 (B) requires the payment:

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

1 (ii) of a fee or other consideration to  
2 correct or modify criminal record information; or

3 (2) a business entity that publishes, republishes, or  
4 otherwise disseminates confidential juvenile record information or  
5 confidential criminal record information of a child in a manner not  
6 permitted by Chapter 58, Family Code, Chapter 45, Code of Criminal  
7 Procedure, or other law, regardless of:

8 (A) the source of the information; or

9 (B) whether the business entity charges a fee for  
10 access to or removal or correction of the information.

11 (b) This chapter does not apply to [+

12 [~~1~~] a statewide juvenile information and case  
13 management system authorized by Subchapter E, Chapter 58, Family  
14 Code.

15 (c) Sections 109.0045 and 109.005 do not apply to:

16 (1) [~~2~~] a publication of general circulation or an  
17 Internet website related to such a publication that contains news  
18 or other information, including a magazine, periodical newsletter,  
19 newspaper, pamphlet, or report;

20 (2) [~~3~~] a radio or television station that holds a  
21 license issued by the Federal Communications Commission;

22 (3) [~~4~~] an entity that provides an information  
23 service or that is an interactive computer service; or

24 (4) [~~5~~] a telecommunications provider.

25 SECTION 2. Section 109.003, Business & Commerce Code, is  
26 amended to read as follows:

27 Sec. 109.003. DUTY TO PUBLISH AND DISSEMINATE COMPLETE AND

1 ACCURATE CRIMINAL RECORD INFORMATION. (a) A business entity must  
2 ensure that criminal record information the entity publishes,  
3 republishes, or otherwise disseminates is complete and accurate.

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

7 (1) complete if the information reflects the notations  
8 of arrest and the filing and disposition of criminal charges, as  
9 applicable; and

10 (2) accurate if the information:

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

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

19 SECTION 3. Sections [109.004](#)(a), (b), and (c), Business &  
20 Commerce Code, are amended to read as follows:

21 (a) A business entity shall clearly and conspicuously  
22 publish or republish an e-mail address, fax number, or mailing  
23 address to enable a person who is the subject of criminal record  
24 information published, republished, or otherwise disseminated by  
25 the entity to dispute the completeness or accuracy of the  
26 information.

27 (b) If a business entity receives a dispute regarding the

1 completeness or accuracy of criminal record information from a  
2 person who is the subject of the information, the business entity  
3 shall:

4 (1) verify with the appropriate law enforcement agency  
5 or criminal justice agency, including the Department of Public  
6 Safety, or any other governmental agency or entity, free of charge  
7 the disputed information; and

8 (2) complete the investigation described by  
9 Subdivision (1) not later than the 30th [~~45th~~] business day after  
10 the date the entity receives notice of the dispute.

11 (c) If a business entity finds incomplete or inaccurate  
12 criminal record information after conducting an investigation  
13 prescribed by this section, the entity shall promptly remove the  
14 inaccurate information from the website or other publication, or  
15 other medium used for dissemination, or shall promptly correct the  
16 information, as applicable. The entity may not:

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

19 (2) continue to publish, republish, or otherwise  
20 disseminate incomplete or inaccurate information.

21 SECTION 4. The heading to Section 109.005, Business &  
22 Commerce Code, is amended to read as follows:

23 Sec. 109.005. PUBLICATION OR OTHER DISSEMINATION OF CERTAIN  
24 CRIMINAL RECORD INFORMATION PROHIBITED; CIVIL LIABILITY.

25 SECTION 5. Sections 109.005(a) and (b), Business & Commerce  
26 Code, are amended to read as follows:

27 (a) A business entity may not publish, republish, or

1 otherwise disseminate any criminal record information in the  
2 business entity's possession with respect to which the business  
3 entity has knowledge or has received notice that:

4 (1) an order of expunction has been issued under  
5 Article 55.02, Code of Criminal Procedure; or

6 (2) an order of nondisclosure of criminal history  
7 record information has been issued under Subchapter E-1, Chapter  
8 411, Government Code.

9 (b) A business entity that publishes, republishes, or  
10 otherwise disseminates information in violation of this section is  
11 liable to the individual who is the subject of the information in an  
12 amount of \$100 [~~not to exceed \$500~~] for each separate violation and,  
13 in the case of a continuing violation, an amount of \$100 [~~not to~~  
14 ~~exceed \$500~~] for each subsequent day on which the violation occurs.

15 SECTION 6. Section 109.006(a), Business & Commerce Code, is  
16 amended to read as follows:

17 (a) A business entity that publishes, republishes, or  
18 otherwise disseminates criminal record information, confidential  
19 juvenile record information, or confidential criminal record  
20 information of a child in violation of this chapter is liable to the  
21 state for a civil penalty in an amount not to exceed \$1000 [~~\$500~~]  
22 for each separate violation and, in the case of a continuing  
23 violation, an amount not to exceed \$1000 [~~\$500~~] for each subsequent  
24 day on which the violation occurs. For purposes of this subsection,  
25 each record published, republished, or otherwise disseminated in  
26 violation of this chapter constitutes a separate violation.

27 SECTION 7. Subtitle B, Title 4, Government Code, is amended

1 by adding Chapter 412 to read as follows:

2 CHAPTER 412. PHOTOGRAPHS RELATED TO CRIMINAL RECORD INFORMATION

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

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

16 Sec. 412.003. RELEASE OF CERTAIN PHOTOGRAPHS BY LAW  
17 ENFORCEMENT AGENCIES PROHIBITED. (a) Subject to Subsection (b), a  
18 law enforcement agency may not release a photograph of an  
19 individual taken pursuant to an arrest, lawful detention, or other  
20 involvement in the criminal justice system unless the person  
21 requesting the photograph includes in the request:

22 (1) the name of the individual who is the subject of  
23 the photograph; and

24 (2) the approximate date the photograph was taken or  
25 date on which the incident giving rise to the photograph occurred.

26 (b) Subsection (a) does not apply to a law enforcement  
27 agency for the release of a photograph to another law enforcement

1 agency.

2 SECTION 8. Chapter 109, Business & Commerce Code, as  
3 amended by this Act, applies to:

4 (1) any publication of criminal record information,  
5 confidential juvenile record information, or confidential criminal  
6 record information of a child that occurs on or after the effective  
7 date of this Act, regardless of whether:

8 (A) the information relates to events or  
9 activities that occurred before, on, or after that date; or

10 (B) the information was initially published  
11 before that date; and

12 (2) any publication, republication, or other  
13 dissemination of criminal record information, including a  
14 photograph, by a business entity subject to this Act that occurs on  
15 or after the effective date of this Act, regardless of whether:

16 (A) the information relates to events or  
17 activities that occurred before, on, or after that date; or

18 (B) the information was initially published,  
19 republished, or otherwise disseminated before that date.

20 SECTION 9. This Act takes effect September 1, 2017.