

BUSINESS AND COMMERCE CODE

TITLE 5. REGULATION OF BUSINESSES AND SERVICES

SUBTITLE C. BUSINESS OPERATIONS

CHAPTER 109. BUSINESS ENTITIES ENGAGED IN PUBLICATION OF CERTAIN
CRIMINAL RECORD OR JUVENILE RECORD INFORMATION

Sec. 109.001. DEFINITIONS. In this chapter:

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

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

(A) a description or notation of any arrests, any formal criminal charges, and the dispositions of those criminal charges;

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

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

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

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

(5) "Confidential criminal record information of a child" means information about a person's involvement in the criminal justice system resulting from conduct that occurred or was alleged to occur when the person was younger than 17 years of age that is confidential under Chapter 45, Code of Criminal Procedure, or other law. The term does not include:

(A) criminal record information of a person certified to stand trial as an adult for that conduct, as provided

by Section [54.02](#), Family Code; or

(B) information relating to a traffic offense.

(6) "Confidential juvenile record information" means information about a person's involvement in the juvenile justice system that is confidential, sealed, under restricted access, or required to be destroyed under Chapter [58](#), Family Code, or other law, including:

(A) a description or notation of any referral to a juvenile probation department or court with jurisdiction under Title 3, Family Code, including any instances of being taken into custody, any informal disposition of a custodial or referral event, or any formal charges and the disposition of those charges;

(B) a photograph of the person taken pursuant to a custodial event or other involvement in the juvenile justice system under Title 3, Family Code; and

(C) personal identifying information of the person contained in any other records of the person's involvement in the juvenile justice system.

(7) "Information service" has the meaning assigned by 47 U.S.C. Section 153.

(8) "Interactive computer service" has the meaning assigned by 47 U.S.C. Section 230(f).

(9) "Telecommunications provider" has the meaning assigned by Section [51.002](#), Utilities Code.

Added by Acts 2013, 83rd Leg., R.S., Ch. 1200 (S.B. [1289](#)), Sec. 1, eff. September 1, 2013.

Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1034 (H.B. [1491](#)), Sec. 2, eff. September 1, 2015.

Sec. 109.002. APPLICABILITY OF CHAPTER. (a) Except as provided by Subsection (b), this chapter applies to:

(1) a business entity that:

(A) publishes criminal record information, including information:

(i) originally obtained pursuant to a request for public information under Chapter [552](#), Government Code;

or

(ii) 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

(B) requires the payment:

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

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

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

(A) the source of the information; or

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

(b) This chapter does not apply to:

(1) a statewide juvenile information and case management system authorized by Subchapter E, Chapter 58, Family Code;

(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;

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

(4) an entity that provides an information service or that is an interactive computer service; or

(5) a telecommunications provider.

Added by Acts 2013, 83rd Leg., R.S., Ch. 1200 (S.B. 1289), Sec. 1, eff. September 1, 2013.

Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1034 (H.B. 1491), Sec. 3, eff. September 1, 2015.

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

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

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

(2) accurate if the information:

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

(B) was obtained by the entity from a law enforcement agency or criminal justice agency, including the Department of Public Safety, or any other governmental agency or entity within the 60-day period preceding the date of publication. Added by Acts 2013, 83rd Leg., R.S., Ch. 1200 (S.B. [1289](#)), Sec. 1, eff. September 1, 2013.

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

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

(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; and

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

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

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

(2) continue to publish incomplete or inaccurate information.

(d) A business entity shall provide written notice to the person who disputed the completeness or accuracy of information 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.

Added by Acts 2013, 83rd Leg., R.S., Ch. 1200 (S.B. 1289), Sec. 1, eff. September 1, 2013.

Sec. 109.0045. PUBLICATION OF CONFIDENTIAL JUVENILE RECORD INFORMATION OR CONFIDENTIAL CRIMINAL RECORD INFORMATION OF A CHILD PROHIBITED. (a) A business entity may not publish confidential juvenile record information or confidential criminal record information of a child.

(b) If a business entity receives a written notice by any person that the business entity is publishing information in violation of this section, the business entity must immediately remove the information from the website or publication.

(c) If the business entity confirms that the information is not confidential juvenile record information or confidential criminal record information of a child and is not otherwise prohibited from publication, the business entity may republish the information.

(d) This section does not entitle a business entity to access confidential juvenile record information or confidential criminal record information of a child.

(e) A business entity does not violate this chapter if the business entity published confidential juvenile record information

or confidential criminal record information of a child and:

(1) the child who is the subject of the records gives written consent to the publication on or after the 18th birthday of the child;

(2) the publication of the information is authorized or required by other law; or

(3) the business entity is an interactive computer service, as defined by 47 U.S.C. Section 230, and published material provided by another person.

Added by Acts 2015, 84th Leg., R.S., Ch. 1034 (H.B. 1491), Sec. 4, eff. September 1, 2015.

Sec. 109.005. PUBLICATION OF CERTAIN CRIMINAL RECORD INFORMATION PROHIBITED; CIVIL LIABILITY. (a) A business entity may not publish 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 under Article 55.02, Code of Criminal Procedure; or

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

(a-1) Except as provided by Section 109.0045(e), a business entity may not publish any information with respect to which the business entity has knowledge or has received notice that the information is confidential juvenile record information or confidential criminal record information of a child.

(b) A business entity that publishes information in violation of this section is liable to the individual who is the subject of the information in an amount not to exceed \$500 for each separate violation and, in the case of a continuing violation, an amount not to exceed \$500 for each subsequent day on which the violation occurs.

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

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

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

Added by Acts 2013, 83rd Leg., R.S., Ch. 1200 (S.B. 1289), Sec. 1, eff. September 1, 2013.

Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1034 (H.B. 1491), Sec. 5, eff. September 1, 2015.

Acts 2015, 84th Leg., R.S., Ch. 1279 (S.B. 1902), Sec. 14, eff. September 1, 2015.

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

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

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

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

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

Added by Acts 2013, 83rd Leg., R.S., Ch. 1200 (S.B. 1289), Sec. 1, eff. September 1, 2013.

Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1034 (H.B. 1491), Sec. 6, eff. September 1, 2015.

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

(1) in Travis County if the action is brought by the attorney general;

(2) in the county in which the person who is the subject of the criminal record information, confidential juvenile record information, or confidential criminal record information of a child resides; or

(3) in the county in which the business entity is located.

Added by Acts 2013, 83rd Leg., R.S., Ch. 1200 (S.B. 1289), Sec. 1, eff. September 1, 2013.

Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1034 (H.B. 1491), Sec. 7, eff. September 1, 2015.

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

Added by Acts 2013, 83rd Leg., R.S., Ch. 1200 (S.B. 1289), Sec. 1, eff. September 1, 2013.