

2018 Regular Session

SENATE BILL NO. 388

BY SENATOR CLAITOR

GOVERNMENTAL REGULATIONS. Provides relative to the commercial use of certain criminal records. (8/1/18)

1 AN ACT

2 To enact Chapter 10 of Title 10 of the Louisiana Revised Statutes of 1950, to be comprised
3 of R.S. 10:10-101 through 10-108, relative to the commercial use of certain criminal
4 records; to provide for definitions; to provide for applicability; to provide for
5 requirements of accuracy; to prohibit the publication of certain information; to
6 provide for venue and penalties; and to provide for related matters.

7 Be it enacted by the Legislature of Louisiana:

8 Section 1. Chapter 10 of Title 10 of the Louisiana Revised Statutes of 1950,
9 comprised of R.S. 10:10-101 through 10-108, is hereby enacted to read as follows:

10 **CHAPTER 10. BUSINESS ENTITIES ENGAGED IN PUBLICATION OF**
11 **CERTAIN CRIMINAL RECORD OR JUVENILE RECORD INFORMATION**

12 **§10-101. Definitions**

13 **As used in this Chapter:**

14 **(1) "Confidential criminal record information of a child" means**
15 **information relative to a person's involvement in the criminal justice system**
16 **resulting from conduct that occurred or was alleged to occur when the person**
17 **was younger than eighteen years of age and that is confidential pursuant to**

1 Children's Code Article 412 or any other provision of law. This term does not
2 include:

3 (a) Criminal record information of a person who is to stand trial as an
4 adult for that conduct, as provided by Children's Code Article 305 or any other
5 provision of law.

6 (b) Information relating to a traffic offense.

7 (2) "Confidential juvenile record information" means information about
8 a person's involvement in the juvenile justice system that is confidential, sealed,
9 under restricted access, or required to be destroyed under any provision of law,
10 including:

11 (a) A description or notation of any referral to a juvenile probation
12 department or court with jurisdiction over the juvenile, including any instances
13 of being taken into custody, any informal disposition of a custodial or referral
14 event, or any formal charges and the disposition of those charges.

15 (b) A photograph or photographs of the person taken pursuant to a
16 custodial event or other involvement in the juvenile justice system.

17 (c) Personal identifying information of the person contained in any other
18 records of the person's involvement in the juvenile justice system.

19 (3) "Criminal justice agency" means any government agency or subunit
20 thereof, or private agency that, through statutory authorization or a legal
21 formal agreement with a governmental unit or agency, has the power of
22 investigation, arrest, detention, prosecution, adjudication, treatment,
23 supervision, rehabilitation or release of persons suspected, charged, or
24 convicted of a crime, or that collects, stores, processes, transmits, or
25 disseminates criminal history record or crime information.

26 (4) "Criminal history record" or "criminal history record information"
27 means information collected by criminal justice agencies on individuals
28 consisting of identifiable descriptions and notations of arrests, detentions,
29 indictments, bills of information, or any formal criminal charges, and any

1 disposition arising therefrom, including sentencing, correctional supervision,
2 and release. These terms do not include intelligence or investigatory purposes,
3 nor does it include any identification information that does not indicate
4 involvement of the individual in the criminal justice system. These terms do not
5 include records of juvenile criminal conduct. The term includes but is not
6 limited to the following:

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

9 (b) A photograph or photographs of the person taken pursuant to an
10 arrest or other involvement in the criminal justice system.

11 (c) Personal identifying information of a person displayed in conjunction
12 with any other record of the person's involvement in the criminal justice system.

13 (5) "Information service" has the meaning as defined in 47 U.S.C. 153.

14 (6) "Interactive computer service" has the meaning as defined in 47
15 U.S.C. 230(f).

16 (7) "Juvenile justice system" means the system of public and private
17 services in Louisiana that includes prevention, early identification, early
18 intervention, child protection, law enforcement, prosecution, defense,
19 adjudication, diversion and informal processing, probation, corrections,
20 aftercare, transitional living, and other services provided to children and
21 families who either are or are likely to be brought into a court with juvenile
22 jurisdiction because of problems such as abuse, neglect or abandonment, mental
23 illness, substance abuse, aspects of a divorce and breakup of families, pre-
24 delinquency, social irresponsibility or delinquent behavior, or domestic abuse
25 involving children.

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

1 **(9) "Publish" means to communicate or make information available to**
2 **another person by any means, including but not limited to an internet website.**

3 **§10-102. Applicability of Chapter**

4 **A. Except as provided in Subsection B of this Section, this Chapter shall**
5 **apply to:**

6 **(1) A business entity that publishes criminal record information,**
7 **including information originally obtained pursuant to a public records request,**
8 **or purchased or otherwise obtained by the entity or an affiliated business entity**
9 **from a law enforcement agency or criminal justice agency, including the**
10 **Department of Public Safety and Corrections, or any other governmental**
11 **agency or entity, and that requires the payment of a fee or other consideration**
12 **to remove, correct, or otherwise modify the criminal record information.**

13 **(2) A business entity that publishes confidential juvenile record**
14 **information or confidential criminal record information of a child in a manner**
15 **not permitted by Children's Code Article 412 or other provision of law,**
16 **regardless of the source of the information or whether the business entity**
17 **charges a fee or other consideration for access to, or removal or correction of,**
18 **the information.**

19 **B. This Chapter does not apply to:**

20 **(1) Any statewide juvenile information sharing system authorized by**
21 **Children's Code Article 541 et seq. or other provision of law.**

22 **(2) A publication of general circulation or an internet website related to**
23 **such a publication that contains news or other information, including a**
24 **magazine, periodical newsletter, newspaper, pamphlet, or report.**

25 **(3) A radio or television station that holds a license issued by the Federal**
26 **Communications Commission.**

27 **(4) An entity that provides an information service or that is an**
28 **interactive computer service.**

29 **(5) A telecommunications provider.**

1 **§10-103. Duty to publish complete and accurate criminal record information**

2 **A. A business entity must ensure that criminal record information that**
3 **the entity publishes is complete and accurate.**

4 **B. For purposes of this Chapter, criminal record information published**
5 **by a business entity is considered:**

6 **(1) "Complete" if the information reflects the notations of arrest and the**
7 **filing and disposition of criminal charges, as applicable.**

8 **(2) "Accurate" if the information reflects the most recent information**
9 **received by the entity from a law enforcement agency or criminal justice**
10 **agency, including the Department of Public Safety and Corrections, or any**
11 **other governmental agency or entity within sixty days preceding the date of**
12 **publication.**

13 **§10-104. Disputing completeness or accuracy of information**

14 **A. A business entity shall clearly and conspicuously publish an email**
15 **address, facsimile transmission number, or mailing address to enable a person**
16 **who is the subject of criminal record information published by the entity to**
17 **dispute the completeness or accuracy of the information.**

18 **B. If a business entity receives a dispute regarding the completeness or**
19 **accuracy of criminal record information from a person who is the subject of the**
20 **information, the business entity shall, within thirty business days of receiving**
21 **notice of the dispute, verify with the appropriate law enforcement agency or**
22 **criminal justice agency, including the Department of Public Safety and**
23 **Corrections, or any other governmental agency or entity, without cost to the**
24 **person, the disputed information.**

25 **C. If a business entity finds incomplete or inaccurate criminal record**
26 **information after conducting an investigation prescribed by this Section, the**
27 **entity shall promptly remove the inaccurate information from the website or**
28 **other publication or shall promptly correct the information, as applicable. The**
29 **entity shall not:**

1 **(1) Charge a fee to remove, correct, or modify incomplete or inaccurate**
2 **information.**

3 **(2) Continue to publish incomplete or inaccurate information.**

4 **D. A business entity shall provide written notice to the person who**
5 **disputed the completeness or accuracy of information of the results of an**
6 **investigation conducted under this Section not later than the fifth business day**
7 **after the date on which the investigation is completed.**

8 **§10-105. Publication of confidential juvenile record information or confidential**
9 **criminal record information of a child prohibited**

10 **A. A business entity shall not publish confidential juvenile record**
11 **information or confidential criminal record information of a child.**

12 **B. If a business entity receives a written notice by any person that the**
13 **business entity is publishing information in violation of this Section, the business**
14 **entity shall immediately remove the information from the website or**
15 **publication.**

16 **C. If the business entity confirms that the information is not confidential**
17 **juvenile record information or confidential criminal record information of a**
18 **child and is not otherwise prohibited from publication, the business entity may**
19 **republish the information.**

20 **D. This Section does not authorize a business entity to access confidential**
21 **juvenile record information or confidential criminal record information of a**
22 **child.**

23 **E. A business entity does not violate this Chapter if the business entity**
24 **published confidential juvenile record information or confidential criminal**
25 **record information of a child and:**

26 **(1) The child who is the subject of the records gives written consent to**
27 **the publication on or after the child reaches the age of eighteen years.**

28 **(2) The publication of the information is authorized or required by any**
29 **other provision of law.**

1 **(3) The business entity is an interactive computer service, as defined by**
2 **47 U.S.C. Section 230, and published material provided by another person.**

3 **§10-106. Publication of certain criminal record information prohibited; civil**
4 **liability**

5 **A. A business entity shall not publish any criminal record information**
6 **in the business entity's possession with respect to which the business entity has**
7 **knowledge or has received notice that either:**

8 **(1) An order of expungement has been issued pursuant to Code of**
9 **Criminal Procedure Article 971 et seq.**

10 **(2) An order of nondisclosure of criminal history record information has**
11 **been issued by a court of competent jurisdiction.**

12 **B. Except as provided by R.S. 10:10-105, a business entity shall not**
13 **publish any information with respect to which the business entity has knowledge**
14 **or has received notice that the information is confidential juvenile record**
15 **information or confidential criminal record information of a child.**

16 **C. A business entity that publishes information in violation of this**
17 **Section shall be liable to the individual who is the subject of the information in**
18 **an amount not to exceed five hundred dollars for each separate violation and,**
19 **in the case of a continuing violation, an amount not to exceed five hundred**
20 **dollars for each subsequent day on which the violation occurs.**

21 **D. In an action brought under this Section, the court may grant**
22 **injunctive relief to prevent or restrain a violation of this Section.**

23 **E. An individual who prevails in an action brought under this Section**
24 **shall also be entitled to recover court costs and reasonable attorney fees.**

25 **§10-107. Civil penalty; injunction**

26 **A. A business entity that publishes criminal record information,**
27 **confidential juvenile record information, or confidential criminal record**
28 **information of a child in violation of this Chapter shall be liable to the state for**
29 **a civil penalty in an amount not to exceed five hundred dollars for each separate**

1 violation and, in the case of a continuing violation, an amount not to exceed five
 2 hundred dollars for each subsequent day on which the violation occurs. For
 3 purposes of this Subsection, each record published in violation of this Chapter
 4 constitutes a separate violation.

5 B. The attorney general or an appropriate prosecuting attorney is
 6 authorized to file an action to collect a civil penalty under this Section.

7 C. A civil penalty collected under this Section shall be deposited in the
 8 state treasury to the credit of the general fund.

9 D. The attorney general may bring an action to restrain or enjoin a
 10 violation or threatened violation of this Chapter.

11 E. The attorney general or an appropriate prosecuting attorney is
 12 authorized to recover reasonable expenses incurred in obtaining injunctive
 13 relief or a civil penalty, or both, pursuant to this Chapter, including court costs
 14 and reasonable attorney fees.

15 §10-108. Venue

16 An action pursuant to this Chapter may be brought in any of the
 17 following parishes:

18 (1) If brought by the attorney general, in the Nineteenth Judicial District
 19 Court.

20 (2) In the parish in which the person who is the subject of the criminal
 21 record information, confidential juvenile record information, or confidential
 22 criminal record information of a child resides.

23 (3) In the parish in which the business entity is located.

The original instrument and the following digest, which constitutes no part
of the legislative instrument, were prepared by Thomas F. Wade.

Proposed law provides relative to business entities that are engaged in the business of publishing certain criminal record or juvenile record information.

Proposed law applies to a business entity that publishes criminal record information,

including information originally obtained pursuant to a public records request, or purchased or otherwise obtained by the entity or an affiliated business entity from a law enforcement agency or criminal justice agency, and that requires the payment of a fee or other consideration to remove, correct, or otherwise modify the criminal record information. Proposed law also applies to a business entity that publishes confidential juvenile record information or confidential criminal record information of a child in a manner not permitted by Children's Code Article 412 or other provision of law, regardless of the source of the information or whether the business entity charges a fee or other consideration for access to, or removal or correction of, the information.

Proposed law does not apply to any of the following:

- (1) Any statewide juvenile information sharing system authorized by Children's Code Article 541 et seq. or other provision of law.
- (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.
- (5) A telecommunications provider.

Proposed law imposes a duty on those applicable business entities to publish complete and accurate criminal record information. The information is considered complete if the information reflects the notations of arrest and the filing and disposition of criminal charges, as applicable. The information is considered accurate if the information reflects the most recent information received by the entity from a law enforcement agency or criminal justice agency, including the Department of Public Safety and Corrections, or any other governmental agency or entity within sixty days preceding the date of publication.

Proposed law provides a process to follow in disputing the completeness or accuracy of the information.

Proposed law prohibits publication of confidential juvenile record information or confidential criminal record information of a child. Further provides that if a business entity receives a written notice by any person that the business entity is publishing information in violation of proposed law, the business entity shall immediately remove the information from the website or publication.

Proposed law does not authorize a business entity to access confidential juvenile record information or confidential criminal record information of a child.

Proposed law provides that a business entity does not violate proposed law 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 child reaches the age of eighteen years.
- (2) The publication of the information is authorized or required by any other provision of law.
- (3) The business entity is an interactive computer service, as defined by federal law, and

published material provided by another person.

Proposed law provides that a business entity shall 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 either:

- (1) An order of expungement has been issued pursuant to C.C.P. Art. 971 et seq.
- (2) An order of nondisclosure of criminal history record information has been issued by a court of competent jurisdiction.

Proposed law further provides that except as provided in proposed law, a business entity shall 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. Further provides for civil liability for violating proposed law.

Proposed law provides for an action pursuant to proposed law may be brought in any of the following parishes:

- (1) If brought by the attorney general, in the Nineteenth Judicial District Court.
- (2) In the parish 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.
- (3) In the parish in which the business entity is located.

Effective August 1, 2018.

(Adds R.S. 10:10-101 through 10-108)