



# Ohio Legislative Service Commission

## Bill Analysis

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### H.B. 172

131st General Assembly  
(As Introduced)

Rep. Barnes

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## BILL SUMMARY

- Requires that certain business entities that publish criminal record information about individuals ensure that the information is complete, accurate, and current.
- Establishes a procedure by which an individual may dispute the completeness and accuracy of published criminal record information and requires a business entity to correct information that is incomplete, inaccurate, or outdated.
- Prohibits a business entity from publishing any criminal records information that the entity has knowledge or has received notice that a court has issued an order sealing or expunging the record.
- Creates a civil cause of action through which an individual may seek damages and injunctive relief against a business entity that violates the bill's prohibition.
- Creates a civil cause of action through which the Attorney General or a prosecuting attorney may seek civil penalties and injunctive relief against a business entity that fails to meet its obligations under the bill or violates the bill's prohibition.
- Requires every business entity to have an agent in Ohio upon whom any process or notice permitted under the bill may be served.

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## CONTENT AND OPERATION

### Overview

The bill proposes to enact the Fair and Accurate Publishing of Criminal Records Law. It requires business entities that publish criminal record information to ensure that the information is complete, accurate, and current and it provides a procedure by which a subject of published criminal record information may have incomplete or inaccurate information corrected or removed from the publication. A "business entity" is a person

that publishes criminal record information and requires either (1) the payment of a fee in an amount of \$150 or more or other consideration of comparable value to remove criminal record information or (2) a fee or other consideration to correct or modify criminal record information. "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. "Criminal record information" means information about a person's involvement in the criminal justice system, including descriptions or notes of arrests or criminal charges, photographs of the person taken pursuant to an arrest or other involvement in the criminal justice system, and personal identifying information, such as a name, address, or Social Security number that is displayed in conjunction with any other record of the person's involvement in the criminal justice system.<sup>1</sup>

## **Obligations of a business entity**

### **Completeness and accuracy of criminal record information**

Under the bill, a business entity must ensure that criminal record information it publishes is complete, accurate, and current. Criminal record information is complete if the information reflects the notations of arrest and the filing and disposition of criminal charges, as applicable. If the entity received the criminal record information from the Bureau of Criminal Identification and Investigation (BCII) or another governmental agency, the information is current if it reflects the most recent information received by the entity or was received by the entity from the BCII within 60 days before publication and if the publication indicates the date of receipt.<sup>2</sup>

### **Contact information**

A business entity must clearly and conspicuously publish an email 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.<sup>3</sup>

### **Disputing the correctness of criminal record information**

Within 45 days after receiving notice of a dispute regarding the completeness or accuracy of criminal record information from a person who is the subject of the information, a business entity must investigate the complaint and verify the disputed

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<sup>1</sup> R.C. 1349.71.

<sup>2</sup> R.C. 1349.72(A).

<sup>3</sup> R.C. 1349.72(B).



information with the appropriate governmental agency, without charge to the complainant. The business entity must give the complainant written notice of the results of the investigation within five business days after the investigation is completed. If the business entity finds incomplete, inaccurate, or outdated criminal record information, it must promptly remove the inaccurate information from its website or other publication or promptly correct or update the information. The entity may not charge a fee for the investigation or removal or correction of information and may not continue to publish incomplete, inaccurate, or outdated information.<sup>4</sup>

### **Individual's civil cause of action**

The bill prohibits a business entity from publishing any criminal record information in the business entity's possession if the business entity has knowledge or has received notice that a court has issued an order sealing or expunging the record. The bill creates a civil cause of action against a business entity that violates the prohibition. The subject of the criminal record information may recover up to \$500 for each separate violation. In the case of a continuing violation, the individual may recover up to \$500 for each day on which the violation occurs. The court may also grant injunctive relief to prevent or restrain publication of the information. The court must award court costs and reasonable attorney fees to an individual who prevails in a civil action under the bill.

The civil actions and remedies provided for by the bill are not exclusive and are in addition to any other actions or remedies provided by law.<sup>5</sup>

### **State's civil cause of action**

The Attorney General or a prosecuting attorney may bring a civil action against a business entity that publishes incomplete, inaccurate, or outdated criminal record information or information about cases that have been sealed or expunged (see **COMMENT**). If the court finds against the business entity, it may impose a civil penalty of up to \$500 for each separate violation and, for a continuing violation, up to \$500 for each day on which the violation occurs. Each criminal record published in violation of the bill constitutes a separate violation. The Attorney General may also seek injunctive relief. The Attorney General or prosecuting attorney is entitled to reasonable expenses, including court costs and attorney fees, incurred in obtaining a civil penalty or injunctive relief. These actions and remedies are not exclusive.

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<sup>4</sup> R.C. 1349.72(C), (D), and (E).

<sup>5</sup> R.C. 1349.73.

Any civil penalties collected under the bill must be deposited in the state treasury to the credit of the General Revenue Fund.

An action brought by a prosecuting attorney under the bill must be brought in the court of common pleas of the county in which the subject of the criminal record resides or the county in which the business entity is located. An action brought by the Attorney General must be commenced in the Franklin County Court of Common Pleas.<sup>6</sup>

### **Business entity agent**

The bill requires every business entity to have an agent in Ohio upon whom any process or notice permitted under the bill may be served. The Secretary of State must adopt rules for the implementation of this requirement for business entities that are not required to have an agent under another provision of law.<sup>7</sup>

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## **COMMENT**

In an apparent drafting error, the bill refers to a violation of "this section" (the section regarding the state's civil cause of action) in two instances where it should probably reference the sections that contain the bill's obligations and prohibition regarding the publishing of criminal record information by a business entity.<sup>8</sup>

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## **HISTORY**

<b>ACTION</b>	<b>DATE</b>
Introduced	04-28-15

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<sup>6</sup> R.C. 1349.74.

<sup>7</sup> R.C. 1349.75.

<sup>8</sup> R.C. 1349.74(A) and (D).

