

1 State of Arkansas
2 93rd General Assembly
3 Regular Session, 2021
4

As Engrossed: H4/15/21

A Bill

SENATE BILL 381

5 By: Senator Elliott
6 By: Representatives Clowney, *Lundstrum*
7

For An Act To Be Entitled

9 AN ACT CREATING A CAUSE OF ACTION AGAINST A
10 COMMERCIAL WEBSITE OPERATOR THAT POSTS INCORRECT OR
11 INACCURATE BACKGROUND INFORMATION ABOUT A PERSON; AND
12 FOR OTHER PURPOSES.
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Subtitle

15 CREATING A CAUSE OF ACTION AGAINST A
16 COMMERCIAL WEBSITE OPERATOR THAT POSTS
17 INCORRECT OR INACCURATE BACKGROUND
18 INFORMATION ABOUT A PERSON.
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22 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:
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24 SECTION 1. Arkansas Code Title 4, Chapter 75, Subchapter 1, is amended
25 to add an additional section to read as follows:

26 4-75-102. Posting incorrect background information about person.

27 (a) As used in this section:

28 (1) "Background and criminal history information" means a record
29 for an individual consisting of names, identification data, notations of
30 arrests, detentions, any indictments, any filed criminal informations, or
31 other formal criminal charges obtained from criminal justice agencies,
32 including any dispositions of the charges, as well as notations on
33 correctional supervision and release; and

34 (2)(A) "Commercial website" means a for-profit website that as
35 part of its operations posts background information of a person.

36 (B) "Commercial website" does not include a:



1 (i) Legitimate news-gathering organization,
2 publication, or aggregator; or

3 (ii) Consumer reporting agency as defined under § 4-
4 93-102.

5 (b)(1) A person may request the removal of his or her background and
6 criminal history information from a commercial website by submitting to the
7 owner or operator of the commercial website a written request to remove his
8 or her background and criminal history information from the commercial
9 website.

10 (2) The written request submitted under subdivision (b)(1) of
11 this section shall include the full name, date of birth, and state of
12 residence of the person submitting the request for the removal of his or her
13 background and criminal history information from the commercial website.

14 (c)(1) A commercial website that is publicly accessible within this
15 state is subject to this section.

16 (2)(A) A commercial website that displays a person's background
17 and criminal history information shall have displayed prominently on the home
18 page of the commercial website the name, mailing address, email address, and
19 any other contact information for the owner or operator of the commercial
20 website.

21 (B) The owner or operator of the commercial website shall
22 also, at no cost, provide for a readily accessible means by which a person
23 may have verified by the owner or operator of the commercial website receipt
24 of his or her request submitted under subdivision (b)(1) of this section.

25 (3) The person responsible for removing the background and
26 criminal history information of the person from the commercial website shall:

27 (A) Remove the background and criminal history information
28 of the arrested or convicted individual from the commercial website within
29 five (5) business days of receipt of a request submitted under subdivision
30 (b)(1) of this section; and

31 (B) Not require payment of a fee or other consideration
32 for removing the background or criminal history information from the
33 commercial website.

34 (d)(1) A person who is adversely affected, is denied employment, or is
35 terminated from employment by an entity due in whole or in part to
36 information provided by a commercial website that posts or posted the

1 person's background and criminal history information may request in writing
2 from the entity that took adverse action against, denied employment to, or
3 terminated employment with the person the name and contact information of the
4 commercial website that provided the person's background and criminal history
5 information to the entity.

6 (2) The written request submitted under subdivision (d)(1) of
7 this section shall be complied with no later than five (5) business days
8 after receipt of the written request.

9 (e)(1) An owner or operator of a commercial website that knowingly
10 fails or refuses to remove the background and criminal history information
11 upon the person's request is liable to the person if the person shows by a
12 preponderance of the evidence that the owner or operator of the commercial
13 website knew or should have known that the background and criminal history
14 information about the person was either incorrect or inaccurate.

15 (2) A civil action under this section is separate and distinct
16 from a defamation or common law false light claim.

17 (3) Remedies available to the person bringing a civil action
18 under this section include compensatory damages, attorney's fees, costs of
19 litigation, and punitive damages.

20 (4) Punitive damages under this subsection shall be set at a
21 minimum of one thousand dollars (\$1,000) per day for each day that the owner
22 or operator of a commercial website fails to remove the background or
23 criminal history information after the five-day period described in
24 subdivision (c)(3)(A) of this section.

25 (f) The owner or operator of a commercial website that displays a
26 person's background and criminal history information may disclose only that
27 background and criminal history information subject to disclosure under
28 Arkansas law.

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30 */s/Elliott*

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33 **APPROVED: 4/29/21**