

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

# A Bill

SENATE BILL 381

4  
5 By: Senator Elliott  
6 By: Representative Clowney

## 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.

## Subtitle

16 CREATING A CAUSE OF ACTION AGAINST A  
17 COMMERCIAL WEBSITE OPERATOR THAT POSTS  
18 INCORRECT OR INACCURATE BACKGROUND  
19 INFORMATION ABOUT A PERSON.

20  
21  
22 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:

23  
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 legitimate



1 news-gathering organization, publication, or aggregator.

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

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

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

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

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

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

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

28 (B) Not require payment of a fee or other consideration  
29 for removing the background or criminal history information from the  
30 commercial website.

31 (d)(1) A person who is adversely affected, is denied employment, or is  
32 terminated from employment by an entity due in whole or in part to  
33 information provided by a commercial website that posts or posted the  
34 person's background and criminal history information may request in writing  
35 from the entity that took adverse action against, denied employment to, or  
36 terminated employment with the person the name and contact information of the

1 commercial website that provided the person's background and criminal history  
2 information to the entity.

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

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

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

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

17 (4) Punitive damages under this subsection shall be set at a  
18 minimum of ten thousand dollars (\$10,000) per day for each day that the owner  
19 or operator of a commercial website fails to remove the background or  
20 criminal history information after the five-day period described in  
21 subdivision (c)(3)(A) of this section.

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

26  
27  
28  
29  
30  
31  
32  
33  
34  
35  
36