

2 State of Arkansas
3 88th General Assembly
4 Regular Session, 2011

As Engrossed: H2/28/11
A Bill

HOUSE BILL 1494

5
6 By: Representatives Nickels, Powers, T. Rogers, Steel, Walker, H. Wilkins, Williams, Wright
7 By: Senators S. Flowers, S. Harrelson, R. Thompson

8 Filed with: Interim House Committee on Judiciary
9 pursuant to A.C.A. §10-3-217.

10 **For An Act To Be Entitled**

11 AN ACT TO ESTABLISH A CAUSE OF ACTION AGAINST THIRD
12 PARTIES WHO CONDUCT BACKGROUND CHECKS AND RELEASE
13 ERRONEOUS INFORMATION; AND FOR OTHER PURPOSES.

14
15 **Subtitle**

16 AN ACT TO ESTABLISH A CAUSE OF ACTION
17 AGAINST THIRD PARTIES WHO CONDUCT
18 BACKGROUND CHECKS AND RELEASE ERRONEOUS
19 INFORMATION.

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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 16, Subtitle 7, Chapter 118 is amended
25 to add a new section to read as follows:

26 16-118-109. Distribution of erroneous background information by
27 certain entities – Civil liability.

28 (a)(1) A private business entity or private person engaged in
29 conducting criminal background checks shall be subject to civil liability by
30 the person about whom the criminal background check was conducted or other
31 aggrieved party if the person or aggrieved party can show by a preponderance
32 of the evidence that:

33 (A) The information disclosed was erroneous; and

34 (B) The disclosure of the erroneous information:

35 (i) Was a proximate cause of an injury to the
36 person's:

- 1 (a) Reputation;
2 (b) Current employment status; or
3 (c) Potential employment status; or
4 (ii) Led to the deprivation of the person’s civil
5 liberties.

6 (2) A person who prevails in a cause of action under this
7 section shall be entitled to:

- 8 (i) Compensatory damages;
9 (ii) Punitive damages;
10 (iii) Court costs; and
11 (iv) Reasonable attorney’s fees.

12 (3) The action may be maintained by the person who was injured
13 or damaged or, after the person’s death, the executor, administrator, or
14 representative of his or her estate.

15 (b) It is an affirmative defense to a cause of action under this
16 section if the private business entity or person conducting the background
17 check demonstrated heightened due diligence in procuring the most accurate
18 information available at the time the background check was conducted.

19 (c) The remedy provided in this section shall be in addition to any
20 other remedies in law or equity.

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22 */s/Nickels*

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33 Referred by the Arkansas House of Representatives
34 Prepared by: BPG/VJF

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