

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

# A Bill

HOUSE BILL 1494

4  
5 By: Representatives Nickels, Powers, T. Rogers, Steel, Walker, H. Wilkins, Williams, Wright  
6 By: Senators S. Flowers, S. Harrelson, R. Thompson

## For An Act To Be Entitled

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

## Subtitle

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

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

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22 SECTION 1. Arkansas Code Title 16, Subtitle 7, Chapter 118 is amended  
23 to add a new section to read as follows:

24 16-118-109. Distribution of erroneous background information by  
25 certain entities – Civil liability.

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

31 (A) The information disclosed was erroneous; and

32 (B) The disclosure of the erroneous information:

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

35 (a) Reputation;

36 (b) Current employment status; or



1                                   (c) Potential employment status; or  
2                                   (ii) Led to the deprivation of the person's civil  
3 liberties.

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

- 6                                   (i) Compensatory damages;
- 7                                   (ii) Punitive damages;
- 8                                   (iii) Court costs; and
- 9                                   (iv) Reasonable attorney's fees.

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

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

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

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