

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

As Engrossed: H2/28/11

A Bill

HOUSE BILL 1494

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

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.
12

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 private person engaged in
27 conducting criminal background checks shall be subject to civil liability by
28 the person about whom the criminal background check was conducted or other
29 aggrieved party if the person or aggrieved party can show by a preponderance
30 of the 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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20 */s/Nickels*
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