

State of Arkansas
93rd General Assembly
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As Engrossed: H4/15/21

A Bill

SENATE BILL 381

By: Senator Elliott

By: Representatives Clowney, *Lundstrum*

For An Act To Be Entitled

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

Subtitle

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

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

SECTION 1. Arkansas Code Title 4, Chapter 75, Subchapter 1, is amended to add an additional section to read as follows:

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

(a) As used in this section:

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

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

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



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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

/s/Elliott

APPROVED: 4/29/21