

1 State of Arkansas  
2 89th General Assembly  
3 Regular Session, 2013  
4

*As Engrossed: H4/4/13*

# A Bill

HOUSE BILL 1763

5 By: Representative Nickels  
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## For An Act To Be Entitled

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

## Subtitle

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13 TO ESTABLISH A CAUSE OF ACTION AGAINST  
14 THIRD PARTIES WHO CONDUCT BACKGROUND  
15 CHECKS AND RELEASE ERRONEOUS INFORMATION.  
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19 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:  
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21 *SECTION 1. Arkansas Code Title 16, Subtitle 7, Chapter 118, is amended*  
22 *to add a new section to read as follows:*

23 *16-118-109. Distribution of erroneous background information by*  
24 *certain entities – Civil liability.*

25 *(a)(1) A private entity or person engaged in conducting criminal*  
26 *background checks that conducts a criminal background check on a person is*  
27 *subject to civil liability to the person or other aggrieved party if the*  
28 *person subject to the background check or aggrieved party shows by a*  
29 *preponderance of the evidence that:*

30 *(A) The private business entity or person engaged in*  
31 *conducting criminal background checks disclosed information concerning the*  
32 *person and the information disclosed was erroneous; and*

33 *(B) The disclosure of the erroneous information:*  
34 *(i) Was a proximate cause of an injury to the*  
35 *person's:*

36 *(a) Reputation;*



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

5 (2) A person who prevails in a cause of action under this  
6 section is entitled to:

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

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

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

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

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/s/Nickels