



February 1, 2021

The Honorable Dereck Davis, Chairperson
House Economic Matters Committee
State Capitol
Annapolis, MD 21401

RE: PBSA OPPOSITION TO HB 642

Dear Chairperson Davis,

On behalf of the Professional Background Screening Association (PBSA), whose members include Maryland residents and businesses, we write to you with concerns regarding HB 642, and must respectfully oppose its advancement.

As a nonprofit organization consisting of over 850 small and large companies primarily engaged in the background screening profession, PBSA has been dedicated to providing the public with safe places to live and work since 2003. The PBSA member companies conduct millions of employment and tenancy-related background checks each year, helping employers, staffing agencies, and nonprofit organizations make more informed decisions regarding the suitability of potential employees, contractors, tenants and volunteers.

We believe HB 642 would have a significant, unintended adverse impact on the work of our members, Maryland businesses and communities, and Maryland courts.

Our members are hired to verify the education, employment, financial, and potential criminal histories of applicants. There are a number of important reasons for conducting these searches, including:

- (i) ensuring a safe working environment by reducing the likelihood of workplace violence;
- (ii) ensuring property managers have the ability to provide safe living environments for tenants, including where housing is provided for vulnerable populations;

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- (iii) reducing employee theft that otherwise results in higher prices in higher-crime neighborhoods;
- (iv) reducing the hiring based on fraudulent credentials of individuals who are not qualified to provide the services that their employers offer to the public;
- (v) avoiding injuries arising from (and the legal exposure for) negligent hiring; and
- (vi) meeting state law requirements designed to protect vulnerable populations like the elderly, disabled, and children.

IMPACT ON PBSA MEMBERS:

Consumer protection is at the core of our members' work. Background screening companies follow numerous guidelines – originating from both statutory requirements and standard industry practices -- for record accuracy, identity theft prevention, fraud alerts, unauthorized dissemination of information, disposal of records, as well as a host of additional security practices.

Our membership is made up of consumer reporting agencies (CRAs) and data furnishers that must comply with many existing laws, chief among them being the Federal Fair Credit Reporting Act (FCRA) which regulates how consumer reporting agencies use consumer information. The FCRA is a consumer protection-based regulation that requires disclosure and authorization before a report is prepared for background screening purposes and provides the consumer with the right to dispute the completeness or accuracy of a report. In the event of a dispute, a CRA is required to reinvestigate at no charge to the consumer and with strict guidelines while doing so. At all times, CRAs and data furnishers must have "reasonable procedures to ensure maximum possible accuracy" as required by the FCRA. (Please see the attached enclosure describing the many consumer protections provided within the FCRA when consumer reports are prepared for employment and tenant-related background screening).

In addition to the FCRA, background screening, when conducted by a CRA, is subject to enforcement by the Federal Trade Commission (FTC) and the Consumer Financial Protection Bureau (CFPB), and is subject to a patchwork of federal, state, and local rules pertaining to consumer protection, data security, and privacy. This includes not only the Maryland Fair Credit Reporting Act, but the registration and financial accountability regulations promulgated by the Commissioner of Financial Regulation under HB 848 (2018). These regulations were put in place with the specific intent of promoting accuracy in consumer reports and to ensure that inaccurate information can be identified and properly dealt with.

IMPACT ON MARYLAND RESIDENTS AND BUSINESSES:

In addition to HB 642 amounting to an unnecessary regulatory addition to an already highly regulated industry, the bill would hamstring, if not entirely prevent, the execution of a responsible background check. Most notable is the requirement for a complete social security number (SSN) which in 2021, is virtually impossible to acquire in public records. Over the past several years, efforts have been made to redact, or even remove, identifiers from public records due to concerns over identity theft. It is rare for a CRA to have access to even the last four digits of an SSN – and even now many federal, state, and local public agencies and courts are actively considering whether to remove or redact full dates of birth (DOB)

from public records and documents. While we understand the redactions are well-intentioned, it does come with unintended consequences. As a concrete example of the unintended effect of the bill, its requirement that the background screener must match either SSN or DOB will make it impossible to report any federal offenses, because the federal database (known as PACER) provides only name and address with any regularity. This means, for example, that pharmacies would be unable screen out people convicted of federal drug-dealing offenses and financial institutions would be unable to screen out people convicted of federal bank fraud.

PBSA and its allies like the Consumer Data Industry Association (CDIA) have long fought, and continue to fight, to maintain access for CRA's to full DOB and a minimum of last four digits of SSN. This fight has included pushes for greater uniform standards at the federal, state, and local level to ensure accuracy and accessibility not just for our industry, but for greater collaboration between government agencies. In addition to SSN and DOB matching, CRA's have developed advanced systems to use a myriad of additional data points to accurately match public records with their corresponding consumer. Still, the mixed redaction standards across jurisdictions in concert with the requirements of HB 642 could result in significant delays in completing a background check forcing an applicant to wait on acquiring their eagerly anticipated housing or employment. Further, the exclusion of a record vital to a background check due to a lack of a fully matched SSN or DOB under this legislation could result in harm to employers, employees, customers, and tenants by failing to identify the very information a background check is designed to uncover.

IMPACT ON MARYLAND COURTS:

We are further concerned that, in implementing the requirements of HB 642, the courts also stand to be harmed with the implementation of the record standardization practices this bill will necessitate. The timeline of this bill would not allow courts to adequately study, and implement the information sharing standards necessary to fulfill its intent without incurring massive costs and potential functional shortfalls from executing such a massive overhaul so rapidly.

PBSA actively encourages courts of all jurisdictions and their administrative offices to work cooperatively to create uniform standards resulting in a more accurate and reliable public records system for both government and public use. In fact, PBSA has worked in cooperation with CDIA to create [the Public Access Software Specification \("PASS"\)](#) standards for court records that can help court administrators' improve the quality of public records, providing complete and accurate information concerning the individual about whom the report relates, and would include standard options for what information must be included in search requests, what information will be provided in results, and how search request information will be matched to records, as well as standard options for what information will be included in bulk files, and what types of files are provided. While we would hope to see the Maryland General Assembly and Administrative Office of the Courts adopt the PASS Standards in the future, and would be happy to assist in that adoption and implementation, the sheer capital it would take in terms of time and money would not fit the parameters of HB 642.

Our final concern lies with the requirement that DOB be coupled with *"...another characteristic such as gender, race, ethnicity, or physical description of the consumer..."* For years, accelerating in the last

decade, greater efforts have been made in the business community to remove bias and discrimination from the hiring and leasing processes. While this remains an ongoing process across the nation, PBSA and our members are committed to this progress as individual companies and in serving our clients. For background screeners to comply with this section of the bill, they would have to compel their customers to collect information about gender, race, ethnicity, or physical description in their hiring and housing applications. This seems to us to be a step backwards in addressing discrimination, since it could induce decisions on the basis of subconscious stereotyping. As such, we feel requiring this sort of information is contradictory to the advancement of unbiased interactions when hiring or renting and must respectfully and vigorously oppose this provision.

We understand HB 642 is brought with the best of intentions but given the countless existing federal and state regulations and the legislation's unintended consequences to Maryland residents and businesses we must politely oppose the passage of this bill.

Thank you for taking the time to hear our concerns and consider our position on this legislation and hope to work with you on future efforts to promote record accuracy and uniform standards within the public record system. PBSA and its members are prepared to discuss any questions you may have and look forward to working with you further. Please feel free to contact me directly with any questions at 402-957-1179 or brent.smoyer@thepbsa.org.

Sincerely,

A handwritten signature in black ink, appearing to read "Brent Smoyer". The signature is fluid and cursive, with the first name "Brent" and last name "Smoyer" clearly distinguishable.

Brent Smoyer, JD
PBSA State Government Relations &
Grassroots Director

