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January 24, 2022

The Honorable C.T. Wilson, Chair
House Economic Matters Committee
Annapolis, MD 21401

Re: Oppose H.B. 251, further regulation of consumer reporting agencies

Dear Chair Wilson,

I write on behalf of the Consumer Data Industry Association ("CDIA")¹ to respectfully request an unfavorable report of [H.B. 251](#). This bill should be opposed for several reasons. First, public records, when used by private companies like consumer reporting agencies, are accurate and reliable. Second, standards already exist governing the accuracy of consumer reports, including substantial new rules from the state. Third, the bill could make communities less safe by making it harder to conduct criminal background checks. Fourth, the bill could violate privacy and promote discrimination by requiring that certain personal characteristics be added to credit reports. Fifth, the bill is preempted by federal law. Sixth, if the sponsor and others are concerned about accurate public records, we stand ready with ideas on improving accuracy at the source: the state, county, and local records themselves.

1. The bill

The bill has two components. One part (Md. Comm L. Sec. 14-1226(f)(2), pg. 5) would require the Commissioner of Financial Regulation ("Commissioner") to write rules for consumer reporting agencies ("CRAs") to achieve maximum possible accuracy in matching personal identifying information ("PII") in a consumer's file "or otherwise obtained from a consumer" from any public record. The bill would require a match "be based on the full name of the consumer and either" a full Social Security Number ("SSN"), or a full date of birth ("DOB"). The bill would also require a match on a consumer's "characteristic...such as gender, race, ethnicity, or a physical description of the consumer." The bill would also require the Commissioner to develop a system for excluding duplicate, outdated, sealed, or expunged public records and to track consumer complaints regarding inaccuracies in consumer reports.

A second component (Md. Comm L. Sec. 14-1216(f), pg. 4), would provide substantial oversight by the Commissioner of Financial Regulation ("OCFR" or "Commissioner") over consumer reporting agencies ("CRAs"). Much of what is in this portion of the bill was adopted, conceptually, by the General Assembly three years ago. In 2018, the General Assembly approved substantial new authority over CRAs by the Commissioner when it passed [H.B. 848](#) (Ch. 480, Laws 2018).

¹ CDIA is the voice of the consumer reporting industry, representing consumer reporting agencies, including the nationwide credit bureaus, regional and specialized credit bureaus, background check and residential screening companies, and others. Founded in 1906, CDIA promotes the responsible use of consumer data to help consumers achieve their financial goals and to help businesses, governments, and volunteer organizations avoid fraud and manage risk. Through data and analytics, CDIA members empower economic opportunity all over the world, helping ensure fair and safe transactions for consumers, facilitating competition, and expanding consumers' access to financial and other products suited to their unique needs.

2. Public Records

The bill has two components. One part (Md. Comm L. Sec. 14-1226(f)(2), pg. 5) would require the Commissioner of Financial Regulation (“Commissioner”) to write rules for consumer reporting agencies (“CRAs”) to achieve maximum possible accuracy in matching personal identifying information (“PII”) in a consumer’s file “or otherwise obtained from a consumer” from any public record

A. Public records, when used by private companies, like consumer reporting agencies, are accurate and reliable

First enacted in 1970 and updated many times since, the federal Fair Credit Reporting Act (“FCRA”)² and the Maryland FCRA³ stand as critical laws to guide businesses, consumers, federal and state regulators, and law enforcement as they move through the consumer reporting ecosystem. Federal Trade Commission (“FTC”) Chairman Tim Muris said that “the FCRA is an intricate statute that strikes a fine-tuned balance between privacy and the use of consumer information.”⁴

Accuracy is the lifeblood of the consumer reporting system and CRAs already have a high degree of accuracy. Consumer reporting agencies strive to be as accurate as possible, and lenders rely on accurate consumer reports to support effective decision-making. Our members’ hard work is proven by several reports and studies. The FTC said that there is a “market incentive[] to maintain and improve the accuracy and completeness of...reports.”⁵

Several leading federal cases have discussed the accuracy of public record information in consumer reports. In a case involving a criminal background check company, LexisNexis, the U.S. Court of Appeals for the 6th Circuit said that “Lexis’s data shows that 99.8% of its reports are never disputed, which means that the dispute rate is only 0.2%. This “remarkably low” 0.2% rate includes database searches like the one Lexis conducted on Smith for Great Lakes.”⁶ Another federal court said that “First Advantage prepared 3,554,163 background reports between 2010 and 2013 containing public record information on a nationwide basis. Of those approximately 3.5 million reports”, just 17,431 were disputed for a dispute rate of 0.49%, or one-half of one percent. Of those reports that were disputed, 14,346 reports resulted in a correction. This is an error rate of 0.40%, or two-fifths of one percent.”⁷

In 2018, a federal court in Ohio looked at the accuracy of background checks in a case before it and found that from 2013 to 2016, the dispute rate at background check company, General Information Solutions (“GIS”), “ranged from 0.159% (2015) to 0.216% (2016), with an average of 0.175%.” (Note that this is the rate of dispute, which includes both successful disputes and disputes where the report was found not be accurate.) That low error rate is close to the low error rate shown by GIS’ external vendor, Wholesale Screening Solutions (“WSS”), for the type of criminal search at issue in that case, WSS’ 2015 error rate was 0.022%. The court may have conflated the dispute rate and the error rate.

² 15 U.S.C. § 1681 *et seq.*

³ Md. Comm. L. § 14-1201 *et seq.*

⁴ FTC Chairman Tim Muris, October 4, 2001 before the Privacy 2001 conference in Cleveland (“Muris”).

⁵ Federal Trade Commission, *Report to Congress Under Sections 318 and 319 of the Fair and Accurate Credit Transactions Act of 2003*, Dec. 2004, 7, <http://www.ftc.gov/reports/facta/041209factarpt.pdf>.

⁶ *Smith v. LexisNexis Screening Solutions*, 15-2329/2330 (U.S.C.A. 6th Cir., Sept. 13, 2016), 3.

⁷ *Williams v. First Advantage*, U.S. Dist. Ct. (N.D. Fla.) No. 1:13cv222-MW/GRJ (March 2, 2017) (Order, 6-7).

Not all disputes are errors resulting in a correction so the error rate may be even lower. The federal court noted that the “Plaintiff’s [own] expert testified that [the procedures GIS had in place] were reasonable...and... [that] she would follow the same steps [herself].” The court also found that “GIS has procedures in place aimed at ensuring that its reports are accurate.”⁸

In 2018, WSS delivered an accuracy rate of 99.98% on 18 million searches. That accuracy rate equates to a 5.0 sigma level.⁹

B. Standards already exist governing the accuracy of consumer reports, including substantial new rules from the state

There is a substantial body of caselaw and rulemaking going back decades that have guided businesses and regulators into what constitutes “maximum possible accuracy” by CRAs, data users, and data furnishers. Unlike most other states, Maryland is the only state that has delegated rulemaking to a state agency on CRA accuracy. The Commissioner, recently concluded an extensive, two-year rulemaking for CRAs and implemented a number of new, significant rules, including provisions designed “to promote accuracy in consumer reports.”¹⁰ The new and unprecedented state rules require CRAs to “devise procedures to identify inaccurate information in consumer credit information submitted to it by a person who furnishes information to a consumer reporting agency.”¹¹ In addition, the new rules adopted extensive bonding and registration requirements for CRAs, well beyond that required by any other state. The new rules provide the Commissioner with additional investigative tools and a system for receiving complaints about CRAs.

C. The bill could make communities less safe by making it harder to conduct criminal background checks

Public records rarely contain SSNs and only occasionally do they contain full DOBs. For example, the Prince George’s County Circuit Court does not provide any DOB information in the search results it returns on its index system, and it does not provide SSNs. The lack of identifiers makes compliance with the proposed bill an impossibility. Even with the limits on identifiers in court records, the matching logic of CRAs is sophisticated enough to accurately match from public records, where there is less PII to use, with rich data from a variety of other sources. As noted above, this matching logic is proved out by the accuracy found by a number of federal courts and other studies. The results speak for themselves. While removing SSNs and full DOBs from court records was well-intentioned to prevent identity theft, the unintended consequence of the removal of such PII means that businesses must work harder and spend more to get the right match. The matching is done because it protects public safety.

Employers and landlords use criminal records to keep their businesses, workers, customers, and workplaces safe. Often, a workplace is someone’s home. The public demands and laws often require criminal background checks. If a full match was required on an SSN or a DOB, daycare centers may not be able to weed out pedophiles and landlords may not be able to weed out sexual predators.

⁸ *Black v. General Info. Sols. LLC*, U.S. Dist. Ct. (N.D. Ohio No. 1:15 CV 1731).

⁹ Press release, [Wholesale Screening Solutions Ends the Year with 5 Sigma Level Quality on Nearly 18 Million Searches](#), Dec. 7, 2018.

¹⁰ COMAR § 09.03.07.01.

¹¹ *Id.*, § 09.03.07.01.

The Federal Trade Commission (“FTC”) concluded that full matching is harmful for consumers. In a report to Congress, the FTC said that “because the data provided by [data] furnishers is imperfect and unlikely to allow precise matching, the proposal [of requiring an exact match of all nine digits] also would likely lead to more ‘fragmented files.’ If this occurred, credit reports would be less informative and the cost of credit could increase substantially.”¹²

D. The bill could violate privacy and promote discrimination by requiring that certain personal characteristics be added to credit reports

Fair lending laws, like the Equal Credit Opportunity Act (“ECOA”) were enacted to remove bias in lending and credit extensions.¹³ By requiring matches in credit applications on race or ethnicity, businesses may violate ECOA and they may inject more discrimination into the lending process. Employers, contractors, and landlords rarely require applicant race, ethnicity, or gender identity information in their background screening procedures, so this user data is generally unavailable to consumer reporting agencies to match on. Businesses are working, some say not hard enough or not fast enough, to remove racial and ethnic bias in lending. Requiring racial or ethnic information to accompany credit reports, or job applications, or apartment applications is a significant step backward.

The bill also requires physical descriptions of consumers to accompany a consumer report. There are few depictions that are more subjective than a “physical description” of a consumer. A consumer described as “short,” or “tall,” is not just subjective, it does nothing to promote accuracy. If a physical description is “overweight,” or “unkempt,” it’s offensive and discriminatory. Again, such requirements return us to a time when credit, or a job, or an apartment was denied by the way someone looked.

E. The bill is preempted by federal law

The federal FCRA requires that consumer reporting agencies “follow reasonable procedures to assure maximum possible accuracy of the information concerning the individual about whom the report relates.” Maryland law currently is consistent with this standard. This bill would put Maryland law in direct conflict with the federal standard by dictating particular matching procedures, without regard to whether those procedures “assure maximum possible accuracy.” State laws that are inconsistent with the FCRA, like this Bill, are preempted.¹⁴

Further, CDIA believes that to the extent that the bill would require an employer, creditor, or landlord to obtain information on gender, race, or other prohibited characteristics, in order to provide that information to CRAs for matching, the bill similarly may be inconsistent with federal anti-discrimination laws.

¹² Fed. Trade Comm’n, [Report to Congress Under Sections 318 and 319 of the Fair and Accurate Credit Transactions Act of 2003](#), Dec. 2004, iv.

¹³ [15 U.S. Code § 1691](#), et seq.

¹⁴ [15 U.S. Code § 1681t](#).

F. Accuracy in public records can be improved at the sources: the state, county, and local level

CDIA and our members strongly support efforts to improve the accuracy of public records at the source, where the records are first created. Improvements in remote public records access at the court source is a key step needed to advance CRA accuracy levels above the high levels identified above. To further that goal, CDIA was a member of a Uniform Law Commission (“ULC”) committee that promulgated the [Uniform Criminal Records Accuracy Act](#) (“UCRAA”) in 2018, that is intended to create uniformity and consistency in criminal records across the United States.

CDIA joined forces with the Professional Background Screeners Association (“PBSA”) to develop the [Public Access Software Specification](#) (“PASS”) 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 the following: (a) a set of standard options for what information must be included in search requests, what information will be provided in results, and how search request information will (transparently) be matched to records; and (b) a set of standard options for what information will be included in bulk files, and what types of files are provided (full file refreshes, adds, changes, deletes).

We know that standardization and uniformity are the building blocks of accurate court records. The blocks help complete a solid foundation of accurate public records. There should also be specialized remote, electronic access to court records by qualified entities, like CRAs, and specialized access by those qualified entities to full SSNs and DOBs.

The General Assembly, the Maryland Department of Public Safety and Correctional Services (“DPSCS”), the Administrative Office of the Courts (“AOC”), and county clerks, should work on their own or in a cooperative environment to create uniform, standardized public records that are remotely and electronically accessible to CRAs, and which include full SSNs and DOBs. Together, we can help consumers and businesses create an even more reliable public record system.

3. Regulation by the Commissioner

A second component of the bill (Md. Comm. L. Sec. 14-1216(f), pg. 4), would provide substantial oversight by the Commissioner of Financial Regulation over consumer reporting agencies (“CRAs”).

A. Much of what is in this portion of the bill was adopted, conceptually, by the General Assembly three years ago

In 2018, following extensive deliberation and subcommittee meetings, the General Assembly passed [H.B. 848](#) (Ch. 480, Laws 2018). This law expanded regulation of consumer reporting agencies under the Maryland Credit Reporting Agencies Act. The law also requires licensing, investigation, and examination fees of CRAs.

The 2018 law codifies the requirement that CRAs must register with OCFR. In addition, the law requires CRAs to post a bond or bond alternative to cover injuries to consumers from violations of the bill’s provisions and actual damages to consumers (e.g., a cybersecurity breach or identity fraud).

By law, any consumer who has reason to believe that a violation of a law regulating consumer credit reporting has occurred may file a complaint with OCFR. Upon receipt of the complaint, the commissioner may hold a hearing on the complaint, issue an order for compliance, and, if after a hearing the commissioner finds a pattern and practice of violation, issue cease and desist orders. If a CRA ignores a cease-and-desist order or other order for compliance, the commissioner may impose a civil penalty for each violation. Additionally, the commissioner may petition the circuit court of any county to aid in the enforcement of any of the enforcement powers of the commissioner.

The 2018 law authorized the OCFR to investigate a written complaint and to inspect the books, records, letters, and contracts of a CRA as well as of each person who has furnished information to the CRA regarding a specific written complaint. The 2018 law increased the maximum civil monetary penalty to \$1,000 for the first violation and \$2,500 for each subsequent violation. The 2018 law also requires a CRA that is the subject of an investigation to pay any fees that OCFR assesses to recover the costs of any investigation that the commissioner considers necessary.

The 2018 law also authorized the OCFR to enter into information-sharing agreements with other government agencies.

B. There is no need for further regulation, and further regulation would have a harsh impact on consumers, government agencies, nonprofits, and businesses

The new and elevated system of regulation and oversight given to the OCFR is substantial. Under the bill, OCFR could kick out a CRA out of the state for even the most minor and technical violations of law. The consequences of this debarment would be felt by the consumers, government agencies, nonprofits, and businesses that rely on the information provided by CRAs. CRAs provide information to help consumers, government agencies, nonprofits, and businesses. If a CRA was prohibited from doing business in the state, the pain would be felt mostly by those consumers, governments, and others that rely on the information. This includes the inability of consumers to obtain their federally required credit reports, to dispute information on those reports, to obtain their scores, and more.

C. The bill is preempted by federal law

To ensure uniformity, the FCRA preempts any state law that is “inconsistent with any provision” of the FCRA. And goes further to preempt any state restrictions with respect to certain identified subject areas, requirements relating to certain disclosures made to consumers, and certain conduct requirements.

Any state law that prohibits the operation of a CRA impairs the efficiency of the nationwide credit system in the state and harms consumers in the state by prohibiting the CRA from furnishing consumer reports on those consumers in connection with credit, employment, housing, and similar uses. For those reasons, the bill is preempted because of its inconsistency.

Any state law that prohibits the operation of a CRA is preempted by violating the subject matter provisions of the FCRA because, among other things, consumers would not be able to obtain their federally required credit reports, to dispute information on those reports, to obtain their scores, and more.

4. Conclusion

CDIA respectfully requests an unfavorable report of [H.B. 251](#) for several reasons. First, public records, when used by private companies, like consumer reporting agencies, are accurate and reliable. Second, standards already exist governing the accuracy of consumer reports, including substantial new rules from the state. Third, the bill could make communities less safe by making it harder to conduct criminal background checks. Fourth, the bill could violate privacy and promote discrimination by requiring that certain personal characteristics be added to credit reports. Fifth, the bill is preempted by federal law. Sixth, if the sponsor and others are concerned about accurate public records, we stand ready with some ideas on how to improve accuracy at the source, the state, county, and local records themselves. Seventh, much of what is in this portion of the bill was adopted, conceptually, by the General Assembly three years ago. Eighth, there is no need for further regulation, and further regulation would have a harsh impact on consumers, government agencies, nonprofits, and businesses

Sincerely,



Eric J. Ellman
Senior Vice President, Public Policy & Legal Affairs