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The Honorable CT Wilson
Chair, House Economic Matters Committee
Annapolis, MD 21401

Re: Unfavorable HB 994 Consumer Reporting Agencies - Records of Criminal Proceedings - Prohibition

Dear Chairman Wilson,

This bill, HB994, will prohibit consumer reporting agencies from including in a consumer report criminal records involving a consumer; prohibiting consumer reporting agencies from relying on that criminal record information concerning the consumer to make a determination of the creditworthiness of a consumer. I write on behalf of the Consumer Data Industry Association ("CDIA") to respectfully request an unfavorable report due to the bill being largely preempted by existing Federal law.

For over 110 years, CDIA and its members have stood to help protect the American economy and the American public. Since 1970, the federal Fair Credit Reporting Act ("FCRA") has stood as a strong legal floor for background checks in the U.S. Maryland has its own version of the FCRA in the Commercial Law article since 1976. Among other things, these laws demand accuracy in background check processes and afford legal rights to consumers.

It is critically important for a state consumer reporting law to recognize consumer protections that currently exist under federal consumer reporting law. Any state consumer reporting law should include clear and concise language exempting consumer data already regulated under the federal Fair Credit Reporting Act (FCRA).

Records of criminal proceedings are public record and can be included in consumer reports per the FCRA (15 U.S. Code § 1681c). The records described in section (A) subsection (1) fall under this category. However, the expunged criminal records under subsection (2) do not get reported by consumer reporting agencies (CRAs) as they are no longer publicly available.

Additionally, the FCRA has strict accuracy guidelines for the information contained in consumer reports that CRAs must adhere to per 15 U.S. Code § 1681e.

Section (A) would conflict with and is preempted by the FCRA, as it would impose requirements related to the information contained in consumer reports. Congress, in enacting the FCRA, expressly reserved this subject matter to itself. Section (A) is preempted by the FCRA under 15 U.S.C. § 1681t(b)(1)(E), which provides that state laws (including MD, per § 1681a(n)) that impose requirements or prohibitions with respect to the subject matter of FCRA section 605 (15 U.S.C. § 1681c), relating to information contained in consumer reports.

Section (B) is unnecessary as CRAs do not make determinations regarding the creditworthiness of a consumer. That decision is made by the party interacting with the consumer, whether they obtained a consumer report or not.

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.

For these reasons above, CDIA opposes the bill as currently drafted as it would have unintended impacts to consumers, citizens, employers, and businesses.

Thank you for your consideration of our comments and I would be happy to answer any questions you may have.

Sincerely,

Mike Carone

Mike Carone
Manager of Government Relations
Consumer Data Industry Association (CDIA)