

## **HB5368 Testimony of Bon Idziak**

### **OPENING:**

Chair Filler and Members of the Judiciary Committee. Thank you for the opportunity to testify today and for holding this important hearing. My name is Bon Idziak, and I am a former Chair of the Professional Background Screening Association. I am also the Chief Compliance Officer for Accurate Background, a member of PBSA.

PBSA represents over 700 member companies in the background screening profession and our mission is to advance excellence in the screening profession. The background reports prepared by PBSA's background screening members are used by employers, volunteer organizations, and housing providers every day to help make communities safe for all to use, work, or reside in them.

PBSA's members, as with all consumer reporting agencies, operate in a highly regulated environment. CRAs are subject to strict regulations under the FCRA as well as several other federal and state laws relating to background screening, protection of personally identifiable information, information security, data transfer, and more. Additionally, under the Obama Administration, both the EEOC in 2012 and HUD in 2016 issued regulatory guidance regarding the use of background checks.

HB5368 is a vital piece of legislation to ensure we can continue to provide timely and accurate background checks to Michigan employers.

## **WHAT HB5368 WOULD DO:**

HB5368 Would ensure public access to date of birth (DOB) in court records to ensure proper identification of individuals. This legislation counteracts a troubling rule by the Michigan State Court Administrators Office (SCAO) prohibiting court clerks from:

- providing search features in their publicly accessible systems that would allow the public to limit their search for court records by using a criminal defendant's date of birth or other protected identifiers; or
- confirming whether a specific date of birth or other protected identifier matches that in the court records for a criminal defendant.

HB5368 would allow background screeners to continue supplying employers, non-profits and property owners with reliable, accurate background checks in Michigan.

## **WHY HB5368 IS NECESSARY:**

Employers make job offers to applicants contingent on a successful background check and depend on timely and accurate criminal history information from Michigan courts because that criminal history is necessary to:

- ensures a safe environment for workers;
- ensures a safe environment for our customers;
- reduces incidences of employee theft, which customers ultimately pay for;
- allows employers to comply with legally imposed requirements to protect customers or vulnerable populations like the elderly, disabled, and children.

Background screeners use date of birth in court records of criminal defendants to ensure that the record is actually about the applicant, because it is quite possible that the applicant has the same name as someone else. Screeners can further verify identity with the clerk, using social security number or driver's license number, if necessary. This is all information that the applicant has already provided and authorized the background screener to use. Without confirming a match on some identifier beyond name, background screeners will be unable to report criminal court records, because federal regulators require more accuracy in their reporting than just a match on a name.

This bill would allow background screeners to efficiently confirm whether date of birth and other protected identifiers match those that the background screener provide to the clerk. It would not require publication of that protected information to the general public. All it requires is a Yes or No.

#### **WHY DOB REDACTION BY SCAO IS UNNECESSARY:**

DOB redaction by SCAO is unnecessary because Background screeners ALREADY HAVE the applicant's DOB information and are only seeking VERIFICATION by the court. In preparing a background check, a background screener obtains key identifying information either from the applicant or from the employer who obtains it from the applicant. In this process, the applicant consents to a background check. Federal law mandates the employer get that consent BEFORE a background screener performs a check. The Fair Credit Reporting Act governs our background checks and the law does not require an applicant to give a specific consent for the courts to release their records. It only requires that the applicant authorizes a consumer reporting agency to prepare a consumer report.

The law already allows for this making any additional consent unnecessary and burdensome for employers, not to mention confusing for the applicant.

Further, there are no additional protection for citizens by preventing the matching of records using DOB in court records. Researchers come with the DOB of the applicant “in-hand”. Background screeners are simply “matching” it to a criminal history record in a Michigan court. Access to DOB is not a doorway to identity theft. DOB is used every day from items like software registration to restaurant “birthday clubs” with no recorded negative impact on consumers. In fact, in the 48 states with data breach laws, 47 of them do not even contemplate DOB as an element of breach.

#### **WHY THE SCAO’S PREVIOUSLY PROPOSED “SOLUTIONS” ARE UNWORKABLE:**

##### *INDIVIDUAL CONSENT FORM:*

The previously proposed solutions by SCAO are unworkable. As stated, the Fair Credit Reporting Act governs background checks. The FCRA law does not require an applicant to give a specific consent for the courts to release their records. It only requires that the applicant authorizes a consumer reporting agency to prepare a consumer report and there is no way of providing a specific consent form for a specific court without hindering the screening process resulting in extended delays when hiring individuals.

- Screeners don’t know ahead of time which counties need to be searched – that is something that the consumer reporting agency determines based on their research into the applicant’s residence, work and education history.

- Employers outside of Michigan conduct background checks and rely on Michigan court records too. For example, if an applicant previously lived or attended school in Michigan.
- This results in multiple “back and forth” that can delay finalizing a background screen by days or weeks.

Even if all counties used a uniform Michigan-specific form – the systems that employers and consumer reporting agencies use in all 50 states don’t support sending that consent form from the applicant to the employer to the consumer reporting agency to the local research firm.

- No other jurisdiction requires such forms, so no systems have been built that accommodate them.

Even if those systems existed for multi-state form review, presenting a separate consent form for each applicant to the clerks would require the clerks to review hundreds, if not thousands of additional documents daily.

- County courts lack the staff or technological bandwidth to do this, and there was no funding allocated to increase that bandwidth in connection with this new requirement.

#### *USE OF ICHAT:*

- iCHAT is not the source of court records.
  - Accessing information at the county court provides the most up to date, complete and accurate information available for employment and housing decisions.
- iCHAT does not include local misdemeanors and traffic records.

- The offenses included are only those that are punishable by at least 93 days of incarceration. This leaves a lot of criminal history on the table.
- iCHAT does not include all pending case information, nor does it contain active warrants.
- The issue is not the cost of the ICHAT search. Employers/screeners already pay search fees to the local courts that are often higher than the ICHAT fees.

Chair Filler and Members of the Judiciary, my support of HB5368 is not just professional, but deeply personal as well. My entire family lives in the great state of Michigan. I grew up in the Grand Rapids area and maintain a second home in Wyoming, where my father, aunts and uncles, cousins and their children all still live today. I have god-sons attending Michigan colleges and a cousin who is a state trooper. This legislation, at its core, is about public safety; my family's safety. I would ask that you please keep me and my family safe in our Michigan communities by passing this important piece of legislation and ensuring access to complete and accurate background checks.