

November 16, 2011

Senate Law and Justice Committee
Letter in opposition to SB 1039

Chairmen Pippy and Ferlo, and Members of the Senate Law and Justice Committee:

On behalf of the Pennsylvania Retailers' Association, thank you for your consideration of our letter in opposition to SB 1039. As you know, the Pennsylvania Retailers' Association is the premier retail trade association in the Commonwealth whose encompassing membership consists of small and large independent retailers as well as national retail chains. Since 1932, we have successfully represented the retailing industry in the state's legislative chambers, protected and promoted the welfare of those engaged in retailing – an industry that provides jobs to a huge percentage of Pennsylvania citizens, and whose tax revenue contributes significantly to the general fund each year.

As an industry that supports 1 in 4 jobs in Pennsylvania and makes up 17% of the Commonwealth's gross domestic profit, the Retailers' Association opposes SB 1039, which would mandate that employers must use the PA State Police (PSP) to conduct criminal background checks. We oppose this bill, because it would create a state-controlled monopoly of information necessary to the success of our members. Such a monopoly affects not only the timely process of hiring prospective employees, unemployment rates, and cost, but also the accuracy of information without any safeguards for employers if such information is wrong.

Generally speaking, whenever a monopoly is created, it is inherently less efficient than the free market. Effectively this bill would create an artificial monopoly for background checking services in PA. This single source of information will never be as efficient as what the free market provides. Within the parameters of Pennsylvania law, employers are currently free to use any number of vendors who can provide a variety of different levels of background checks; there is a free marketplace for employers to shop vendors not just for prices, but also for accuracy and an array of different types of background checks that provide varying depths of investigation.

Repercussions of replacing this free marketplace with a government monopoly may result in higher costs of services and a less responsive service. Currently, some of our members can get the results of a background check within 24 hours while the PA State Police usually takes 7 to 10 days. That time frame may expand if all employers in the Commonwealth must use the PSP to conduct criminal background checks. Also, national and regional retailers currently can use a single service provider for all their locations, and much consideration and effort was given to ensure that all jurisdictional rules are obeyed. SB 1039 would negatively impact an already-complicated process. Any delays in receiving information will delay the hiring process. With unemployment hovering at 8.3%,

the Commonwealth should be taking steps to encourage economic recovery and put people back to work, not hinder the process.

There is also the concern of the accuracy of information from the PA State Police. No one entity is always perfect; whether it involves inaccurate, too much or too little information, mistakes happen. Currently when employers contract with private data providers, they are protected by “safe harbor” clauses that would indemnify users of such information from possible third party suits due to inaccuracy. Such a clause does not exist in this bill; this subjects our members to potential risks from which they are currently protected.

We understand that there are concerns about potential employees not being hired because of inaccurate information from some private data providers. Rather than change the entire hiring process, perhaps the Legislature may want to consider enacting private right of action legislation against the individual providers. Potential employees should have the right to question and correct their information as they can do for their credit information under the Fair Credit Reporting Act. The private data providers should be held accountable for the accuracy of their information instead of the individual employers who have nothing to do with the collection of such data.

In short, the Pennsylvania Retailers’ Association opposes SB 1039. It limits the marketplace for access to information, and it still does not resolve the underlying problem of holding the private data providers accountable for the information they offer employers. We understand and appreciate the intentions of this bill, but the consequences are overwhelming: delays in the hiring process, potentially increasing costs for the PA State Police and employers to handle the number of inquiries, and the lack of safeguards that employers currently exercise when contracting with private data providers.

Thank you for your time and consideration of our letter in opposition to SB 1039.

Best,

Brian A. Rider
President and CEO
PA Retailers’ Association

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