

Judiciary Committee Public Hearing – March 20, 2008
Testimony submitted in support of

**SB 704 AAC THE RELEASE, SALE AND ACCURACY OF
CONVICTION INFORMATION**

By LexisNexis

We thank the Judiciary Committee for its willingness and efforts to assist consumer reporting agencies, business trade groups and our customers by clarifying and amending PA 07-243 a recent law enacted that deals with criminal background checks used for a variety of purposes including employment background checks and security clearance checks.

We appreciate the efforts during a recent special session to postpone the effective date of this act to May 1, 2008 so that all interested parties could work collaboratively to make the necessary adjustments to the law so that the process of conducting employee background checks and security clearances can maintain their integrity and be reliable for our customers.

As you may recall, the 2007 Session the Connecticut Legislature enacted PA 07-243, which significantly altered the process of verifying criminal background checks processed by consumer reporting companies by requiring a real time update from the Connecticut Judicial Department's Internet web site before reporting a criminal record. The result of this change would have impact the states ability to balance the needs of rehabilitated convicted criminals, with the safety of the general public and the appropriate and accurate safeguards for employers required to search for previous criminal histories for potential employees.

Under Connecticut law there are more than 20 occupations that require the collection of criminal history information before hiring. We understood that one of the goals of the bill was to ensure that up-to-date information is used when searching the criminal records of Connecticut citizens. However, the provisions of this law would have the unintentional effect of precluding important national employment screenings of Connecticut citizens while achieving no additional accuracy in reporting. Additionally, one of the specific goals of the law was to ensure that Connecticut citizens who had received pardons would not have their records continue to be reported. However, this goal could not have been achieved because pardon data is not considered a public record and is was not received by the Judicial Department.

Prior to the passage of PA 07-243, the data updates and accuracy requirements of Connecticut were consistent with every other state and in compliance with the federal Fair Credit Reporting Act. Neither the federal Fair Credit Reporting Act nor any other State law requires a "real time" verification of criminal record data used for background screening purposes from the record provider or any other source. Such a requirement to perform manual, real time updates would have not only drive up costs for employers and volunteer organizations alike to screen applicants, it would have dramatically altered the availability and efficiency of accurate background screening services in Connecticut.

There is also a legitimate question whether "the [I]nternet web site of the Judicial Department" is capable of handling the volume that would be generated, or whether the Internet format presented is capable of correctly verifying criminal records provided by the State in its regular updates.

As a result, the only way to conduct background searches in Connecticut would be to have individuals from hundreds of consumer reporting agencies converge on each of thirteen court houses in the state—and the records compilation location in Enfield, Connecticut—to verify this information individually and manually. This costly and time-consuming burden will be felt by businesses around the state, and also by the numerous state agencies that are mandated by law to conduct background checks on individuals before hiring them.

In addition, without the changes in SB 704, this new method of criminal records searching would not have prevent discrimination against a candidate with a criminal history; in fact it may even inadvertently encourage discrimination. For example, if there are two candidates for an open position, and the employer must pay significantly higher costs for the manual background screen that would be allowed in Connecticut (with companies sending runners to the courts to compile information manually), the employer may simply select the candidate with no delays as part of his employment screen. It would be faster and less expensive. So, while the law attempted to facilitate the rehabilitation of individuals with prior criminal convictions, it may have had the opposite effect. Even a candidate with an expunged record may be turned down for more jobs because of the major costs and delays in getting information about them in Connecticut.

Moreover, the delays and increased costs of conducting a background check through a consumer reporting agency may lead the employer to attempt to conduct its own screen through the Judicial Department's website. This will take away many protections currently afforded to Connecticut consumers by the federal Fair Credit Reporting Act. This situation would occur if an employer begins to conduct searches on its own, and the search involves an individual with

Members, Judiciary Committee
March 20, 2008
Page 3

a common name. The Judicial Department website plans to remove identifiers making it more difficult to distinguish among candidates with common names. Confusion may well lead the employer to take the easier route and make the decision to hire the candidate with no similar or possible match on the website. Thus, the person with the common name may never know what led the employer to turn down the application as all notification procedures required of an employer using a criminal record to reject an applicant are triggered by the employer's use of a consumer reporting agency to obtain the information.

In sum, the requirements of PA 07-243 placed the state of background screening in Connecticut in a precarious position. SB 704 fixes these concerns and will provide a balance carefully in the area of employment reporting to achieve a perceived higher level of accuracy in reporting.

We strongly encourage the Connecticut legislature to approve SB 704. We thank you for your time and consideration of this issue of vital importance to citizens throughout Connecticut.