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Reed Business

March 23, 2010

The Honorable Andrew J. McDonald
The Honorable Michael P. Lawlor
Committee on the Judiciary
Connecticut General Assembly
Legislative Office Building, Room 2500
Hartford, CT 06106

Dear Chairman McDonald and Chairman Lawlor:

On behalf of Reed Elsevier and its division LexisNexis, I wanted to express our opposition to SB 399 as it is currently drafted. This bill would establish civil actions for violations of Connecticut's existing statute on the use of criminal records for employment decisions. We would respectfully request that the legislature take the needed steps to ensure that this law follows the important standards established under existing federal and Connecticut state law.

By way of background, LexisNexis is recognized as a leading provider of authoritative legal, public records, and business information which helps our customers make informed and accurate decisions. LexisNexis is a leading provider of background check and credential verification information for employers.

Our concern with SB 399 relates to the broad scope of the activities which could generate civil actions under the provisions of the bill. These provisions are much broader than similar provisions under federal law and parallel components under Connecticut law. SB 399 would add the following damages standards to the existing law relating to how employers and consumer reporting agencies maintain and correct criminal history information for employment screening purposes:

Section 31-51i(i) Any person aggrieved by a violation of this section may bring a civil action in the Superior Court to recover damages, together with costs and a reasonable attorney's fee.

Section 54-142e Any person aggrieved by a violation of this subsection may bring a civil action in the Superior Court to recover damages, together with costs and a reasonable attorney's fee.

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These sections of the bill would establish the standards under which civil actions could be brought. These standards differ greatly from the standards outlined in the federal law and in corresponding Connecticut law.

At the federal level, the use of information by consumer reporting agencies is regulated under the Fair Credit Reporting Act. This law establishes two standards when an action can be brought against a consumer reporting agency. The first standard is a willful violation of the law, and the second is a negligence standard. The federal standard recognizes there should be some type of intent or a breakdown of the standard of care before civil actions are brought. Similarly, an intent standard is also apparent in Connecticut's existing law determining the penalties for consumer reporting agencies under the consumer credit reporting statute. Those penalties are as follows:

Sec. 36a-699. (Formerly Sec. 36-435). Penalty. Any person who wilfully violates any provision of *sections 36a-695 to 36a-699, inclusive, or section 36a-699f* shall be fined not more than one hundred dollars for a first offense and not more than five hundred dollars for a second offense, and shall be fined not more than one thousand dollars or be imprisoned for not more than six months, or both, for each subsequent offense.

Therefore, under the existing laws at the federal and state levels, there are standards in penalties or actions where the wronged party must show either a willful, or a willful or negligent, standard of liability. We believe that the standards set forth in SB 399 would allow even the most innocuous, inadvertent departures from the law to be actionable for employers and for consumer reporting agencies. These standards would add costs to the businesses throughout Connecticut as the law would encourage civil actions for what might amount to minor or easily rectified violations.

We feel that it is important for Connecticut to maintain a consistent standard for civil actions, turning to existing state and federal laws as a model. As SB 399 departs from this standard in a way that would add costs to businesses and consumer reporting agencies without even showing clear harms to applicants or employees, we would respectfully request that the Committee on the Judiciary oppose this bill. I thank you for your time, and I would be happy to answer any questions the committee may have on this matter.

Sincerely,

A handwritten signature in black ink, appearing to read "Teresa Jennings". The signature is fluid and cursive, with a large initial "T" and "J".

Teresa L. Jennings
Senior Director & State Government Affairs Team Leader