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March 6, 2017

The Honorable Kwame Raoul  
Chair, Judiciary Committee  
Illinois Senate  
Springfield, IL 62706

Re: Opposition to H.B. 2074

Dear Chairman Raoul:

I write on behalf of the Consumer Data Industry Association (CDIA) to respectfully request that your committee oppose S.B. 2074 for four reasons. First, the bill could make workplaces more susceptible to crime by arbitrarily assigning a mythical point of redemption at five years. Second, the bill takes away the ability of an employer to consider arrests, which threatens safety. Third, the bill is preempted by federal law. Fourth, the bill unfairly penalizes only consumer reporting agencies for violations and not employers or others.

CDIA is an international trade association, founded in 1906, of more than 130 corporate members. Its mission is to enable consumers, media, legislators and regulators to understand the benefits of the responsible use of consumer data which creates opportunities for consumers and the economy. CDIA members provide businesses with the data and analytical tools necessary to manage risk. They help ensure fair and safe transactions for consumers, facilitate competition and expand consumers' access to a market which is innovative and focused on their needs. CDIA member products are used in more than nine billion transactions each year.

CDIA members are heavily regulated by the Federal Fair Credit Reporting Act (FCRA). 15 U.S.C. § 1681 *et seq.* The FCRA, in effect since 1971, is a comprehensive federal law that regulates providers of criminal history information (called consumer

reporting agencies) and employers (called users). The FCRA also offers substantial disclosures for and protections to consumers.

**1. The bill could make workplaces more susceptible to crime by arbitrarily assigning a mythical point of redemption at five years.**

Under the bill, a criminal history report furnished to a third party shall not include criminal history information that antedates the report by more than 5 years. The FCRA prohibits arrests from being reported by a CRA more than seven years while criminal convictions may remain reportable indefinitely.<sup>1</sup>

This bill sets an arbitrary redemption date for convictions that is shorter than the time period established by federal law. No matter how much research is undertaken, the search for a single bright redemption line is likely doomed to fail. Even the leading authors on papers seeking a redemption date seek such a date find false hope. Professors Alfred Blumstein and Kiminori Nakamura readily concede that “[t]hose with no prior record . . . are inherently less risky than those with a prior record.”<sup>2</sup>

**2. The bill takes away the ability of an employer to consider arrests.**

Arrests that are pending disposition are relevant to an employer considering an applicant’s criminal history. A day care center seeking to hire a staffer in March would surely be interested in an arrest in January for child pornography if that arrest has not yet resulted in a disposition. A trucking company would want to know if a driver applicant has a pending DUI. The bill should not tie an employer’s hands by taking away a critical piece of a criminal history if it means keeping her workers, customers, and the general public safe from criminal acts.

**3. Third, the bill is preempted by federal law.**

The bills limitations on the reporting of convictions and arrests are preempted under the FCRA. Under the FCRA [15 U.S.C. § 1681t\(b\)\(1\)\(F\)](#) preempts “any subject matter regulated under...[15 U.S.C. § 1681c](#) relating to information contained in consumer reports”, like the time limits on reporting arrests and convictions.

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<sup>1</sup> [15 U.S. Code § 1681c\(a\)\(2\), \(5\)](#).

<sup>2</sup> Alfred Blumstein and Kiminori Nakamura, *Extension of Current Estimates of Redemption Times: Robustness Testing, Out-of-State Arrests, and Racial Differences*, Oct. 2012, available at <https://www.ncjrs.gov/pdffiles1/nij/grants/240100.pdf> (“Blumstein & Nakamura, 2012”), 90.

**4. Fourth, the bill penalizes only consumer reporting agencies for violations and not employers or others.**

The bill should be opposed for the reasons noted above, but an additional point of objection is found in the penalties provisions. The bill imposes a \$1,000 penalty for violations on consumer reporting agencies, but not on anyone else. Employers and others who are not CRAs should also have obligations to use and report information fairly and accurately, not just CRAs

**5. Conclusion**

We respectfully request that you and your committee oppose S.B. 2074 for four reasons. First, the bill could make workplaces more susceptible to crime by arbitrarily assigning a mythical point of redemption at five years. Second, the bill takes away the ability of an employer to consider arrests. Third, the bill is preempted by federal law. Fourth, the bill penalizes only consumer reporting agencies for violations and not employers or others.

We hope that this information is helpful to you and we are happy to answer any questions you may have.

Sincerely,

A handwritten signature in blue ink, appearing to read 'E. Ellman', with a long horizontal flourish extending to the right.

Eric J. Ellman  
Interim President and Chief Executive Officer