

October 5, 2011

The Honorable Jerry Brown
Governor, State of California
State Capitol Bldg.
Sacramento, CA 95814

SUBJECT: AB 22 (MENDOZA) EMPLOYMENT: CREDIT REPORTS
JOB KILLER - REQUEST FOR VETO

Dear Governor Brown:

We respectfully request your **VETO** of **AB 22**, as amended September 1, 2011, which primarily impacts private employers by unfairly restricting their ability to utilize consumer credit reports when making employment-related decisions.

Although the recent amendments to **AB 22** are an improvement from the original version, **AB 22** still fails to provide private employers with the ability to protect their financial and non-financial assets by conducting credit reports on applicants. Specifically, **AB 22** prohibits an employer from conducting credit reports on the following applicants who duties include the following:

- (1) Direct and unsupervised access to employers, customers, or third parties', cash of less than \$10,000;
- (2) Direct and unsupervised access to marketable assets of the employer such as high-priced appliances, computer equipment, jewelry, etc.
- (3) Direct and unsupervised access to customers' or third parties' sensitive information that would allow such individuals to potentially commit identity theft or fraud, such as bank account/credit account numbers, expiration date of credit card, and security code of a credit card.

Employers utilize employee credit reports to assist in the overall evaluation of an applicant. Like other pre-employment screening tools such as a minimum grade point average or college degree requirement, employee credit reports provide objective information regarding an individual's past behavior or character as an indicator of their likely future behavior. Notably, sworn police officers and financial institutions, which **AB 22** exempts, utilize employee credit reports for this very purpose. In a letter issued by the Federal Deposit Insurance Corporation ("FDIC") to financial institutions, FIL-46-2005, regarding pre-employment background screening, the FDIC encourages financial institutions to incur the cost of completing comprehensive background checks to minimize "theft and embezzlement; and prevent litigation over hiring practices." Similarly, as set forth on the US Police Jobs website regarding an applicant's credit history it

states “a solid, responsible financial history . . . is a strong indication of the applicant’s reliability, dependability, and integrity.” It further states that “***bad credit (especially substantial debt), may be an indicator of someone who may be prone to corruption.***” (emphasis added).

We agree with the FDIC and US Police Jobs that an employee’s credit report can provide valuable information regarding an applicant’s overall responsibility, reliability, and integrity, which can help employers reduce future litigation and loss. These desired employee characteristics are not unique to financial institutions or police officers, but rather are values that all employers seek when determining whether to hire an applicant. Employees in many industries, such as in-home care, hospitals, restaurants, and retail stores, have access not only to the employer’s assets and financial information, but also the assets and financial information of the public, as well as access to medical and personal information. Accordingly, all employers need the ability to obtain and review the objective information provided in an employee credit report, which **AB 22** improperly seeks to limit.

Finally, with regard to employee credit reports, employers in California are already significantly limited in their use of such information. Specifically, the Federal Fair Credit Reporting Act and California’s Consumer Credit Reporting Agencies Act, require an employer to: (1) notify the individual that it may obtain a credit report for purposes of the employment action at issue and also provide information concerning the company utilized by the employer for obtaining a report; (2) the employee must consent to the employer obtaining the report, and if requested, receive a copy of the report as well; (3) if the employer intends to take an adverse action, such as not hiring the applicant based upon information contained in the credit report, to provide the individual with a copy of the report and a “Summary of Your Rights Under the Fair Credit Reporting Act;” and (4) if an adverse action is taken, disclosure to the individual of the credit reporting agency that provided the report as well as notice of the individual’s right to dispute any information in the report and also obtain another free report from the credit reporting agency. Existing law provides the needed protections for applicants and/or consumers with regard to employee credit reports.

For these reasons and more, we respectfully request your **VETO** of **AB 22** when it comes before you for consideration.

Sincerely,

A handwritten signature in black ink, appearing to read "Rick Wells", with a long horizontal flourish extending to the right.

Rick Wells

President and CEO

San Rafael Chamber of Commerce