

News and Legislation Relating to Employment and Background Checks

Federal News and Legislation:

Background Checks

- On February 9th, the Congressional Budget Office (CBO) published a cost estimate on S. 184, which would expand the background check requirements for people in positions related to the foster care of Native American children. The CBO “estimates that implementing the legislation would have no significant effect on the federal budget. CBO estimates that promulgating the procedural guidance required by the legislation would cost less than \$500,000 over the 2015-2020 period, and would be subject to the availability of appropriated funds.”
<https://www.cbo.gov/publication/49939>
- On February 6th, Uber Technologies, Inc. (Uber) filed a motion to compel arbitration in a putative class action lawsuit alleging the ridesharing company violated the Fair Credit Reporting Act (FCRA) by failing to obtain the plaintiff’s consent prior to procuring his background check information. The lawsuit was filed in federal district court; however, Uber argues that plaintiff signed a contract with Uber agreeing to arbitrate any disputes with the company, and that cases would be handled on an individual basis, rather than as a class of individuals. According to Uber, “[e]ach of the foregoing claims is encompassed by the broad terms of the arbitration provisions in the agreements that plaintiff executed with defendants.” As a result, “Plaintiff refused to abide by their terms by filing the instant action.”
(*Mohamed v. Uber Technologies, Inc. et al.*, No. 3:14-cv-05200 (N.D. Cal., Feb. 6, 2015).)
- On January 30th, Michaels Stores, Inc. (Michaels) filed a motion to dismiss in an action alleging the retailer violated the FCRA by not adequately notifying prospective employees that it would procure background checks on applicants, arguing that the plaintiff agreed to a clickwrap agreement that gave plaintiff’s consent and absolved Michaels from liability. Specifically, the plaintiff alleges that, after she applied for a position with Michaels, the retailer failed to adequately notify her that the company would procure a background check on her and made adverse employment decisions based

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on the report. However, Michaels argues that the plaintiff waived any legal claims against the company by clicking the “I Agree” box consenting to the terms and conditions of the employment application, which contained the background check disclosure. (*Graham v. Michaels Stores, Inc.*, No. 2:14-cv-07563 (D.N.J., Jan. 30, 2015).)

State News and Legislation:

- On February 11th, the South Dakota legislature’s House State Affairs Committee passed H.B. 1215, which would require a criminal background check to obtain an “optional enhanced permit to carry a concealed pistol.” The bill would require applicants to submit fingerprints for submission to the Federal Bureau of Investigation, and any other relevant government agency, to conduct a criminal history background check.
(<http://legis.sd.gov/docs/legsession/2015/Bills/HB1215HST.pdf>)
- On February 5th, the Indiana legislature’s Homeland Security and Transportation Committee passed S.B. 347, which would require background checks and motor vehicle insurance for drivers of rideshare companies. Specifically, the bill states that before a transportation network company (TNC) allows an individual to act as a TNC driver as part of a software application service, the TNC shall “require the individual to submit to the TNC application” which subjects the prospective driver to a background investigation. According to the bill, a TNC may not hire a driver who has been convicted of a felony within the past seven years or is in the national sex offender registry, among other requirements.
(<https://iga.in.gov/static-documents/6/9/d/d/69dd911b/SB0347.03.ENG.S.pdf>)
- On February 3rd, Arizona state lawmakers introduced S.B. 1432, which would require background checks for all hotel employees. Specifically, the bill states that “before a hotel or motel owner or manager allows a hotel or motel employee to have access to the room of a registered guest, the owner or manager must check the Internet sex offender website...and the United States Department of Justice National Sex Offender public website.” The bill would prohibit anyone who appears on either list from accessing the room of a registered guest.
(<http://www.azleg.gov/legtext/52leg/1r/bills/sb1432p.pdf>)

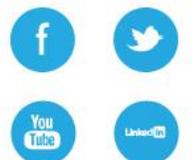
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- On January 23rd, Washington state senators introduced S.B. 5550, which would require commercial transportation companies to retain drivers' criminal history records as part of the companies' background check process. The bill is in response to recent reports involving Lyft, Inc. and Uber Technologies, Inc. not having adequate background screening procedures for its drivers. Under the bill, companies would be required to maintain criminal history records of its drivers for five years from the date the record was made. The bill also identifies particular offenses that would not permit a candidate to be employed as a driver, including:
 - An offense involving fraud;
 - A sex offense; or
 - Burglary, trespass, extortion, or possession of stolen property.

<http://lawfilesexternal.wa.gov/biennium/2015-16/Pdf/Bills/Senate%20Bills/5550.pdf>

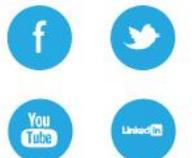
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