

News and Legislation Relating to Employment and Background Checks

Federal News and Legislation:

Background Checks

- On March 16th, the Government Accountability Office (GAO) released a study finding, among other things, that “additional actions could enhance the completeness of [criminal history] records used for employment background checks.” The GAO conducted the study to measure the completeness of criminal history records for background checks conducted on individuals working with “vulnerable populations – such as children and the elderly.” Specifically, the report addresses how:
 - States conduct Federal Bureau of Investigation (FBI) background checks for specific employment positions;
 - States have improved the completeness of criminal history records, and remaining challenges that background check agencies face; and
 - Private companies conduct criminal background checks.

The report highlights some improvement in the completeness of criminal history records, finding that twenty states reported that more than 75% of their arrest records contained dispositions in 2012, up from 16 states in 2006. The GAO emphasizes that, “[t]he Department of Justice has helped states improve the completeness of records through grant funding and other resources, but challenges remain.” For example, the GAO found that some agencies charged with improving the completeness of criminal history records – such as the FBI’s Disposition Task Force – lack “plans with time frames for completing remaining goals.” Additionally, some states lack an agency to review background check results altogether. Based on the remaining challenges, “GAO recommends, among other things, that the FBI establish plans with time frames for completing the Disposition Task Force’s remaining goals.”

<http://www.gao.gov/products/GAO-15-162>)

- On March 9th, eight members of Congress sent identical letters to Uber, Lyft, and Sidecar urging the ride-sharing companies to “adopt fingerprint-based background checks” for drivers. In the letter, the lawmakers expressed concern over recent reports regarding sexual assaults and potential gaps in the screening process for drivers. The signatories cite reports of assault, kidnapping, and groping of passengers in cities including San

Corporate Headquarters
CARCO Group, Inc.
5000 Corporate Court, Suite 203
Holtsville, NY 11742
Main Telephone Number: 631-862-9300
CARCO Toll-Free Number: 800-969-2272
Fax (Inspection Services Division): 631-862-0380
Fax (Research Division): 631-584-7094
FAX 631/584-0095

Fayetteville Office
CARCO Group, Inc.
1030 Lillington Hwy
Spring Lake, NC 28390
910-497-0081
877-867-2359
Fax: 910-497-0162
sales@carcogroup.com

Palm Beach Gardens Office
4440 PGA Blvd. Suite 306
Palm Beach Gardens, FL 33410
561-249-7300
877-347-7711
Fax: 800-663-0874
sales@carcogroup.com

Tulsa Office
4500 S 129TH EAST AVE, SUITE 127
Tulsa, OK 74134-5801
918-640-6863
800-848-3397
Fax: 918-591-2854
sales@carcogroup.com

Tustin Office
17821 E 17th Street, Suite 160
Tustin, CA 92780
714-547-6541
CA License # 24087
sales@carcogroup.com



www.carcogroup.com

Francisco, Los Angeles, Boston, and Washington, D.C. As a result, the lawmakers urge the ride-sharing companies to “implement fingerprint-based background checks right now.”

<http://delauro.house.gov/images/pdf/RideHailingCompanyBackgroundChecksFinal.pdf>

- On March 3rd, Rep. Peter King (R-NY) introduced H.R. 1217, the “*Public Safety and Second Amendment Rights Protection Act of 2015*.” The bill would require that all individuals who should be prohibited from buying a firearm are listed in the National Instant Criminal Background Check System, and to provide a responsible and consistent background check process. Specifically, the bill would reauthorize the National Criminal History Records Improvement Program and permit the Attorney General to make grants to States and Indian Tribal governments in a manner that is consistent with state plans for improvement of coordination and automation of criminal history records.
<http://www.gpo.gov/fdsys/pkg/BILLS-114hr1217ih/pdf/BILLS-114hr1217ih.pdf>
- On February 27th, Rep. Kevin Cramer (R-ND) introduced H.R. 1168, the “*Native American Children’s Safety Act*.” The bill would amend the *Indian Child Protection and Family Violence Prevention Act* to require background checks before foster care placements are ordered in tribal court proceedings. Specifically, the bill states that “no foster care placement shall be...approved and no foster care license shall be issued until the tribal social services agency – (i) completes a criminal records check on each covered individual who resides in the household or is employed at the institution in which the foster care placement will be made.” Under the bill, conducting a background check includes:
 - Fingerprint-based checks of national crime information databases;
 - Any abuse registries maintained by the Indian tribe; and
 - Any child abuse and neglect registry maintained by the State in which the covered individual resides.

<http://www.gpo.gov/fdsys/pkg/BILLS-114hr1168ih/pdf/BILLS-114hr1168ih.pdf>

State News and Legislation:

- On March 10th, the Arkansas state House Public Health, Welfare and Labor Committee reported out HB 1618, an act to limit the use of criminal background check information and to increase employment opportunities for persons with criminal records.

Corporate Headquarters
CARCO Group, Inc.
5000 Corporate Court, Suite 203
Holtsville, NY 11742
Main Telephone Number: 631-862-9300
CARCO Toll-Free Number: 800-969-2272
Fax (Inspection Services Division): 631-862-0380
Fax (Research Division): 631-584-7094
FAX 631/584-0095

Fayetteville Office
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1030 Lillington Hwy
Spring Lake, NC 28390
910-497-0081
877-867-2359
Fax: 910-497-0162
sales@carcogroup.com

Palm Beach Gardens Office
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sales@carcogroup.com

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Fax: 918-591-2854
sales@carcogroup.com

Tustin Office
17821 E 17th Street, Suite 160
Tustin, CA 92780
714-547-6541
CA License # 24087
sales@carcogroup.com



www.carcogroup.com

Specifically, the bill states that “[a]n employer shall not inquire into or consider the criminal record of an applicant for employment until the employer has extended a conditional offer of employment to the applicant.” Once an offer has been extended, the bill would permit an employer to consider the applicant’s criminal record if:

- The applicant has been convicted of a felony within the past ten years from the date of the background check request; or
- The applicant has been convicted of a misdemeanor within the past five years.

The bill states that “[a]n employer shall not withdraw an offer...based on an offense that bears no rational relationship to the duties and responsibilities of the position.”

Additionally, the bill provides factors for an employer to consider in deciding whether to withdraw an offer, including:

- The nature of the applicant’s offense;
- Whether the prospective job provides an opportunity for the commission of a similar offense; and
- Information pertaining to the degree of rehabilitation and good conduct of the applicant.

<http://www.arkleg.state.ar.us/assembly/2015/2015R/Bills/HB1618.pdf>

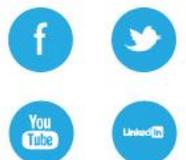
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