

Chair Chaney and Members of the Judiciary, Rules, and Administration Committee,

On behalf of the Professional Background Screening Association (PBSA), whose members include Idaho residents and businesses, we write to you with concerns regarding S 1338, which passed the Senate February 28th and that is being heard in your committee today. We are sorry we are unable to attend the hearing in person but we hope we can work with you, the committee, and Senator Johnson to remove what I believe are unintended consequences of an otherwise great bill.



To start: The PBSA is a nonprofit organization consisting of over 950 small and large businesses, including many in Idaho, engaged in the background screening profession. Our members have been dedicated to providing the public with safe places to live and work since 2003, and conduct employment and tenant related background checks, helping employers, staffing agencies, property managers, and nonprofit organizations make more informed decisions regarding the suitability of potential employees, contractors, tenants, and volunteers.

Millions of background screening reports are requested in the United States each year. Our members are hired to verify the education, employment, financial, and criminal histories of applicants. There are a number of important reasons for conducting these searches, including: (i) avoiding legal exposure for negligent hiring; (ii) ensuring a safe working environment by reducing the likelihood of workplace violence; (iii) reducing employee theft; (iv) reducing the hiring of individuals based on fraudulent credentials; (v) improving productivity and profits by making better hiring decisions; and (vi) meeting state law requirements designed to protect vulnerable populations like the elderly, the disabled, and children.

In 2018, the Idaho Court System changed court technology management and initially redacted identifiers such as Date of Birth in court records that have long been relied on by our membership to accurately identify the subjects of background checks. Redacting important identifying information like full Date of Birth from court records greatly impacts the ability of background screeners to obtain the critical information needed to help their clients make accurate and timely hiring and leasing decisions. Having an individual's full Date of Birth in conjunction with other personal identifying information like the last four digits of his/her social security number are key identifiers for public records to help ensure the correct data is matched to the proper individual in accordance with the stringent requirements of state and federal law. This is particularly important when dealing with common names when search results can potentially yield hundreds of results. The month and day of the individual's Date of Birth is particularly vital as there may be hundreds of people with the same name born in the same year.

After multiple discussions with the Courts, a solution was established to ensure verification of court record information, and this system has served both my membership and the Courts well. With the language contained in S 1338, we run into the grave concern that our ability to verify identities in court records with the individual information provided to us for screening will be diminished, if not removed entirely.

The fact is: a lack of personal identifiers—like dates of birth, in whole or in part-- in public documents makes it extremely difficult, if not impossible, for PBSA members to quickly and efficiently provide

complete, accurate, and thorough background screens, which negatively impacts prospective employees, tenants, and volunteers. If key identifiers like birth dates are redacted from public records, employers in Idaho will receive background reports containing “false negatives;” that is, the employer will not know that the applicant was convicted of a serious crime, and the individual may be hired and placed in a position of access to vulnerable third parties or entrusted with access to money and critical property. The members of PBSA perform background checks for healthcare providers, schools, and volunteer organizations in Idaho. The inability to provide accurate and complete background checks will increase the risk of harm to citizens.

While PBSA strongly supports efforts to protect consumers from identity theft and other privacy concerns, we believe that such measures must be balanced with the legitimate need of employers, landlords, and others to verify applicants’ backgrounds. In the interest of this balance, we would encourage you to work with us to continue to allow full date of birth to be included on publicly available court documents and for our access to these identifiers to be protected. As a whole, there is no risk of harm to citizens in granting the public access to full Dates of Birth in court records. Not only are Dates of Birth often readily available from other public sources, but Idaho’s own Data Breach Notification law does not classify Dates of Birth as sensitive personal information subject to the law’s data breach notification requirements. See: *Idaho Code § 28-51-104(5)*. Indeed, this is for good reason – dates of birth are not a gateway to identity theft. A malicious actor cannot steal someone’s identity merely by knowing his or her name and date of birth. Idaho’s law was enacted in 2006 specifically to address concerns relating to identity theft, and by not including dates of birth within the definition of sensitive personal information, the legislature was acknowledging that public access to dates of birth does not create a risk of identity theft to Idaho citizens. See: Statement of Purpose, 2006 Idaho Laws Ch. 258 (S.B. 1374).

It should be noted that background screeners who work with this data are highly regulated and required to operate to very high standards. PBSA members are considered consumer reporting agencies (CRA’s) and as such are governed by the Federal Fair Credit Reporting Act (FCRA) and regulated by the Federal Trade Commission and Consumer Financial Protection Bureau. Our members are also regulated by federal, state, and local rules pertaining to data security and privacy laws. We follow specific guidelines -- both through statute and industry best practices -- for identity theft prevention, fraud alerts, unauthorized dissemination of information, disposal of records, and other security practices. It should further be noted that in an FCRA governed background check, the screener already has the vital information like Social Security Number and full Date of Birth as given to them by the applicant with the applicants authorization to use it to verify their identity. Much of the need for public access is less the providing of information, and more the verification of a match or lack thereof.

With that lengthy background laid out, PBSA would ask for your help in ensuring we are not accidentally shut out from the vital information we need to do our important work. I would truly appreciate the chance to discuss a friendly amendment that could be brought in the House which would achieve one of three options: 1) allow an exemption to the redaction requirements for those entities engaging in background screening as governed by the FCRA; 2) clarify that the current established information verification/sharing system through the Idaho Courts is unaffected by the provisions of S 1338; OR 3) remove Date of Birth from the redaction provisions of S 1338. I believe all of these options would preserve the essential protections contained in S 1338, while ensuring my members can continue providing their vital public safety services.

I thank you for taking the time to hear PBSA's comments and I look forward to the chance to work with you on this important legislation. If you should have any questions, please feel free to contact me at your convenience at 402-957-1179 or brent.smoyer@thepbsa.org. Thank you for your time and your service.

Sincerely,



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**PBSA is now the Professional
Background Screening
Association*