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March 5, 2017

The Honorable Paul R. Doyle, Co-chair
The Honorable John A. Kissel, Co-chair
The Honorable William Tong, Co-chair
Joint Committee on the Judiciary
Connecticut Legislative Office Building
Hartford, CT 06106

Re: Opposition to Raised Bill 933

Dear Chairmen Doyle, Kissel, and Tong:

I write on behalf of the Consumer Data Industry Association (CDIA) to respectfully request that your committee oppose [Raised Bill 933](#). The bill would inappropriately interfere with the ability of an employer to perform criminal background checks on prospective employees.

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.

The bill would inappropriately interfere with the ability of an employer to perform criminal background checks on prospective employees. The bill would require employers to "adhere the [guidance](#) issued by the federal Equal Employment Opportunity Commission concerning the use of arrest, criminal charge or conviction

records in employment decisions under Title VII of the Civil Rights Act of 1964, as amended.” If the bill passes, Connecticut employers, unlike employers in most other states, would be required to comply with EEOC guidance that does not have the force of law.

Under the Civil Rights Act, EEOC guidance does not have and cannot have the force of law. The guidance the EEOC issued is just that – guidance – it is not law. This guidance has been widely criticized and subject to litigation. One of the most criticized parts of the guidance is the individualized assessment, which imposes a heavy requirement on employers to justify their background check policies. As noted in a critical law review article, the individualized assessment

is problematic in three important ways. First, the individualized assessment places an impractical burden by *what* it requires and *whom* it requires to conduct such an assessment. Second, employer liability for negligent hiring may actually increase if employers perform individualized assessments. Finally, the practical effect of the individualized assessment may be decreased employer reliance on criminal background checks...¹

Less criminal background checking by employers could risk more crime in workplaces without a significant benefit to minority hiring.²

By forcing employers to adhere to guidance, which has no force of law, the legislature is tying the hands of employers, risking less safe work places, and having no benefit on hiring minorities. We respectfully request that your committee reject Raised Bill 933.

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

¹ Note, Hands-Tied Hiring: How the EEOC’s Individualized Assessment is Taking Discretion Away From Employers’ Use of Criminal Background Checks, 63 Clev. St. L. Rev. 541 (2015)

² “Employers who conduct criminal background checks are, in fact, more likely to hire minorities, especially black males, than employers who do not conduct criminal background checks”. *Id.*, citing Harry J. Holzer, Steven Raphael, & Michael A. Stoll, *Perceived Criminality, Criminal Background Checks, and the Racial Hiring Practices of Employers*, 49 J.L. & ECON. 451 (2006).