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**Wisconsin AB 367
regarding the use of credit histories for employment purposes**

Issue

Assembly Bill 367 would prohibit an employer from using an individual's credit history for employment purposes, unless the history is substantially related to the circumstances of a particular job or if employment depends on the bondability of the individual and the individual may not be bondable due to his or her credit rating.

Quickly Dispelling Two Myths

1. Credit reports do not contain a consumer's race, gender, religion, creed, color, or national origin.
2. Credit scores are not provided to employers for employment decisions. Even if they were, readers should keep in mind two studies in 2007 on credit scoring that were issued by the Federal Reserve Board and the Federal Trade Commission. Among the Fed's conclusions was this: "credit characteristics included in credit history scoring models do not serve as substitutes, or proxies, for race, ethnicity, or sex". In fact, "[c]redit scoring likely increases the consistency and objectivity of credit evaluation and thus may help diminish the possibility that credit decisions will be influenced by personal characteristics or other factors prohibited by law, including race or ethnicity." While the FTC's study was focused on credit-based insurance scores, it too found that "[c]redit-based insurance scores appear to have little effect as a 'proxy' for membership in racial and ethnic groups in decisions related to insurance."

The Need for Credit Histories in Employment Screening

As currently written, AB 367 could jeopardize public health, safety, and financial security of Wisconsin businesses and their consumers. For example, on the financial side employee theft accounts for more than \$15 billion annually and the average employee embezzlement totals more than \$125,000. Consumer credit report checks are beneficial in determining whether an employee or prospective employee is a risk to the financial health of a business or is a risk to the consumers who provide businesses with credit or other personal information.

While it might not be readily apparent to many why a credit report would have applicability to a prospective employer, today's work environment does necessitate due diligence in some hiring situations. Small businesses are especially vulnerable to employee fraud. According to the Association of Certified Fraud Examiners, the median loss suffered by organizations with fewer than 100 employees was \$190,000 per incident. This was higher than the median loss in even the largest organizations. For some small businesses, fraud management is simply a matter of survival in a very

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competitive market. Here are some other figures by ACFE that attest to the value of properly vetting employees.

- Companies lose a median of 5% of their annual revenue to employee fraud;
- Fraud by employees accounts for \$652 billion in business losses annually;
- The median loss caused by fraud was \$159,000. Nearly one-quarter of the cases caused at least \$1 million in losses and nine cases caused losses of \$1 billion or more.

Our members provide credit reports to employers to help guard against crimes such as these. Transparency in the hiring process protects both employers and employees.

Existing Law

Existing law tightly regulates the use of consumer reports in employment situations. Under current law:

- Prior to requesting a consumer credit report, an employer must provide to the prospective employee a written notice stating the source of the information and how it will be used.
- The employer must also provide a copy of the consumer credit report to the consumer upon request, prior to taking an adverse action.
- If an adverse employment action is taken against a prospective employee due to the information contained in a consumer credit report, the user must provide the name and contact information for the reporting agency to the consumer and explain the reasons for the action.
- Under the FCRA, any person who willfully fails to comply is liable to that consumer in an amount equal to the sum of (1) (A) any actual damages sustained by the consumer as a result of the failure or damages of not less than \$100 and not more than \$1,000; or (2) such amount of punitive damages as the court may allow; and (3) in the case of any successful action to enforce any liability under this section, the costs of the action together with reasonable attorney's fees as determined by the court.

Conclusion

Assembly Bill 367 would deprive Wisconsin employers the use of a beneficial resource when making employment decisions. The legislation, though well-intentioned, should be opposed.

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