

October 31, 2019

**House Bill No. 38 – “Provide credit report to businesses/allow businesses to dispute”**

Chairman Jordan, Vice-Chairman Hillyer, Ranking Member Representative Crossman and members of the House Financial Institutions Committee, thank you for the opportunity to submit testimony at today’s hearing. I am Michael Carone, Manager of Government Relations, of the Consumer Data Industry Association (CDIA).<sup>1</sup>

My testimony today concerns only House Bill 38’s original language (section 1349.73) and none of the new substitute language that was adopted at last week’s hearing. The original bill language in Sec. 1349.73 would define new terms, require commercial credit reporting agencies to provide a free commercial credit report to businesses upon request, mandate that the agencies identify the source of information in the reports, create a process for a business to dispute the accuracy of information in the report, and provide a civil action against an agency with damages, statutory penalties, fees and more.

While we understand that House Bill 38 is intended to help small businesses and in a previous hearing there was an issue raised about an instance where a small business experienced a problem in the commercial credit reporting area; however, that complaint fundamentally relates to the marketing of products and services. These are issues that do not demand legislation to require the disclosure of a report or to create a dispute process. Under existing practices, businesses can obtain the commercial credit reports about themselves and they can request that errors in those reports be corrected through a dispute process.

The providers of commercial credit reports aim to have accurate information in the reports because their customers demand it. For this reason, the providers have procedures in place to allow for businesses to dispute inaccurate information. CDIA members have information readily available on their websites that explain this process in detail as well.

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<sup>1</sup> The Consumer Data Industry Association (CDIA) is the voice of the consumer reporting industry, representing consumer reporting agencies including the nationwide credit bureaus, regional and specialized credit bureaus, background check and residential screening companies, and others. Founded in 1906, CDIA promotes the responsible use of consumer data to help consumers achieve their financial goals, and to help businesses, governments and volunteer organizations avoid fraud and manage risk. Through data and analytics, CDIA members empower economic opportunity all over the world, helping ensure fair and safe transactions for consumers, facilitating competition and expanding consumers’ access to financial and other products suited to their unique needs.

House Bill 38 would require the disclosure of the specific information on the source, date and amount. Such information is not always included in commercial credit reports because unlike personal credit reports, commercial credit reports are available to the public. This means that anyone — including potential lenders, suppliers, and competitors — can openly view a business's credit report. Creditors' names are not listed on commercial credit reports for two primary reasons:

- 1) To protect businesses from a competitive disadvantage. Allowing a private businesses detailed financial information to be viewed by others, which is not currently occurring, would allow for their competitors to gain unprecedented access on them and would be harmful to their business and employees.
- 2) To protect businesses from business identity theft. The new disclosures of a businesses detailed financial information creates an opportunity for criminals to access this information that is used to commit business identity theft, which is something the Ohio Secretary of State's office is concerned about. They encourage businesses that believe they are a victim to contact CDIA members, consumer reporting agencies, about this as well.

The likely and unintended consequence of the mandatory disclosure requirement would be the reduction of creditors who are willing to furnish information for commercial reports and less information in the reports. If less information is being reported, it will make it more difficult for lenders to assess credit risk. If lenders decide to build in this new added risk, it could cause reduced lending, a tighter credit market and make credit more expensive.

Critically, House Bill 38 would encourage litigation and regulate activities outside of Ohio based on several problematic definitions and its current code placement, which we believe is incorrect. Our legal counsel believe that Chapter 1319 related to miscellaneous credit transactions is more appropriate than its current chapter that concerns personal consumer credit as opposed to what the bill seeks to impact in credit for businesses.

The requirement to delete information in a report unless its accuracy has been "verified" will almost certainly be a source of constant litigation. It is unclear what would be sufficient to verify accuracy. The bill defines "loss" broadly to include reputational injury in addition to economic damages. The bill defines a "subject" of a commercial credit report as a business operating in this state, but it does not restrict the action to occurring within Ohio. The definition for "Commercial credit reporting agency" would apply to many other businesses that provide these reports as resellers but are not an actual commercial credit reporting agency. The enforcement provisions create an incentive for litigation, even when information is completely accurate. More litigation will make the reporting of business credit information more costly and

challenging, and therefore less available. Additionally, a business that operates in Ohio could request a credit report or sue for actions that took place outside the state.

The only state with any form of regulation on commercial credit reports for businesses is California, which was enacted in 1993, House Bill 38 exceeds that significantly. We cannot recall seeing any legislation introduced on commercial credits for businesses around the country in quite some time as well. CDIA offered an amendment to the Chairman and Sponsor, which would have closely mirrored the California statute. That language does not contain any of the problematic pieces we have outlined in our testimony. California's commercial credit report statute is more business friendly, as it does not have a private right of action.

We would encourage the committee consider an amendment to House Bill 38's section on commercial credit reports for businesses that would bring it more in line with California, so that businesses do not have to create a new regulatory compliance program. We feel the commercial credit report for businesses section needs to be considered on its own given this language is unprecedented anywhere else in the country and completely unrelated to the new substitute amendment concerning banking. If our amendment incorporating California's less burdensome and more business-friendly language is not an option, we would encourage the committee strike the commercial credit for businesses section from House Bill 38 or facilitate two separate bills.

In conclusion, we believe that this legislation is unnecessary and could make it more difficult for small businesses in Ohio to access credit. CDIA members have already provided methods to address the concerns that this legislation seeks to address. This bill creates the possibility for unintended and negative consequences for Ohio business. For these reasons, we stand in opposition to only the language in Section 1349.73 of House Bill 38. Thank you for the consideration of our comments and please feel free to contact us with any questions you may have.

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