

BACKGROUND CHECKS PERFORMED BY PROFESSIONAL BACKGROUND SCREENERS BEST SERVE THE INTERESTS OF EMPLOYERS, CONSUMERS, AND THE PUBLIC

Professional background screeners exist to provide the public with safe places to live and work. The industry employs thousands of people and invests countless dollars dedicated to ensuring that employers, landlords, and volunteer groups have a full picture of those that enter workplaces, lease their apartments, and care for vulnerable populations. Competitive market forces and appropriate federal and state regulation have combined to make professional background screens the most comprehensive, accurate and fair way for employers, landlords and volunteer groups to make informed decisions about prospective employees, volunteers and tenants.

- ❖ **Professional Background Screeners - Many of Them Small Businesses – Conduct Millions of Name-based Background Checks Every Year.** NAPBS member companies use an applicant’s name, address, social security number and other personal identifiers to consult a variety of sources and provide a complete applicant profile. Once the profile is complete and search criteria has been identified, professional background screeners routinely engage their nationwide network of court researchers to directly check the primary source of criminal records in each jurisdiction– court houses – and use those sources to compile reports.
- ❖ **Professional Background Screeners are Subject to Consumer Protection Laws that Ensure Accuracy and Fairness.** Professional background screeners are regulated by both the Federal Trade Commission and the Consumer Financial Protection Bureau at the federal level as well as subject to state attorney general enforcement actions. Screeners must comply with the Fair Credit Reporting Act as well as state consumer protection laws. The FCRA, in place since the 1970s, requires professional background screeners and employers to provide consumers the highest level of protection.
 - **Consumer Disclosure and Consent Must Occur Before a Background Screen Can Be Performed.** Before ordering a background screening report, employers must disclose that a report may be ordered and obtain consent for such from the prospective employee. If the report contains information that might negatively impact the hiring decision, the employer must: (1) inform the consumer that it is considering acting on that information; and (2) provide the consumer both with a copy of the consumer report in question and the FCRA summary of rights. The applicant can then review the report and challenge any inaccurate or incomplete information in the report prior to the employer making an employment decision.
 - **Professional Background Screeners are Required to Ensure the Integrity of the Information they Report.** Professional background screeners must employ “reasonable procedures to ensure maximum possible accuracy” of the information they report. In addition, in the event of a consumer dispute, a professional background screener must promptly reinvestigate the disputed information. If the dispute is successful, the professional background screener must correct the report, delete or mask the offending data so it will not be reported again, and inform the information source that the data is incorrect.
- ❖ **Professional Background Screens Are Fast and Comprehensive.** Using a consumer’s personal identifiers, and depending on an employer’s needs, a professional background screen includes a nationwide search of criminal history information, professional credentials, education, motor vehicle records, sex offender registries, abuse and neglect registries, employment verification, and other criteria. All of these search results are combined into one comprehensive report for employers, enabling prompt and fair hiring decisions—generally within 48 hours.

- ❖ **Reports Prepared by Professional Background Screeners Are More Complete and Fair to Consumers than Those Provided When Conducting a Search of the FBI’s Fingerprint Database.** Market incentives and regulatory requirements ensure the comprehensiveness of a professional background screeners report which simply do not (and should not) apply to a database created and used for law enforcement purposes, such as the FBI database. Unlike professional background screeners, who investigate, collect, and utilize the most accurate sources of information for the specific purpose of employment and tenant screening, the FBI database is designed to generate investigative leads based on fingerprint evidence. Thus, while useful, the FBI database’s different historical purposes have created systemic and persistent problems with its accuracy and completeness. Consider the following:
 - **Roughly Half the Records in the FBI Database Are Inaccurate or Incomplete.** The Department of Justice has acknowledged that “. . . the [FBI] is still missing final disposition information for approximately 50 percent of its records.” The same report also advises that “users may not want to rely exclusively on an FBI and state repository check and may also want to check other record sources, such as commercial databases and local courthouses, to obtain more complete and up-to-date information.”¹
 - **Reports Prepared By Professional Background Screeners are More Complete than Those that Rely Only on the FBI Database.** The primary source of criminal record information resides in individual courthouses. Many of these records are not reported to the FBI nor are they indexed to fingerprints. Thus, while all states currently submit records to the FBI, the extent of state reporting varies widely and some never reach the FBI. Those shortcomings are not a secret: the federal government has noted that “[W]e often get more accurate data from the commercial sector. In addition, the processes by which government agencies manage data often makes it difficult to acquire and needs [a] great deal of labor intensity into making it usable and accessible to other entities.”²
 - Similarly, state officials consider commercial resources a “valuable tool of law enforcement,” and routinely use “national databases provided by private resellers to track down individuals who are delinquent in their child-support payments, as well as to help locate suspects in the course of conducting consumer protection and criminal investigations.”³
 - **FBI Database Checks Lack the Consumer Protection Afforded a Consumer Who Undergoes a Professional Background Screen.** Unlike the disclosure, consent and due process mandated by the FCRA in the use of professional background screens, the FBI does not afford consumers the same protections. For example, applicants must provide court documents or other proof to the FBI to correct their record, and it can take months to resolve a dispute.

¹ The Attorney General’s Report on Criminal History Background Checks, U.S. Department of Justice, Office of the Attorney General at 3, 6 (June 2006).

² Privacy Office, Dep’t of Homeland Sec., Official Workshop Transcript, *Privacy and Technology Workshop: Exploring Government Use of Commercial Data for Homeland Security*, Panel One: How are Government Agencies Using Commercial Data to Aid in Homeland Security? at 9 (Sept. 8-9, 2005).

³ *See* Brief of the State of Texas as Amicus Curiae in Support of Defendants at 2-3, *Taylor v. Acxiom Corp.*, 612 F.3d 325 (5th Cir. 2010) (Nos. 08-41083, 08-41180, 08-41232).