



April 1, 2016

The Honorable Bruce L. Hunter
Desk 93
1007 East Grand Avenue
Des Moines, Iowa 50319

RE: HF 2351, An Act prohibiting employers and employment agencies from seeking the criminal record or criminal history from applicants.

Dear Chairman Hunter,

On behalf of the Securities Industry and Financial Markets Association (“SIFMA”)¹, I would like to provide you with comments based on our review of HF 2351, which would prohibit employers and employment agencies from seeking criminal record or criminal history from applicants for employment. Specifically, we respectfully request your consideration of an amendment to criminal background check legislation, (HF 2351) which would allow financial services employers to continue to comply with their industry-specific compliance obligations.

SIFMA, which represents the shared interests of hundreds of securities firms, banks, and asset managers, holds that – at least for the financial services industry – the ability to conduct criminal background checks must be preserved in this bill in order for the industry to meet its legal and regulatory responsibilities. Under the federal Securities Exchange Act of 1934 and Financial Industry Regulatory Authority (“FINRA”) rules, individuals with certain criminal convictions (including, but not limited to, fraud, embezzlement, and money laundering) are barred from a number of financial services positions.

While a number of states and cities have introduced legislation with the intent of removing unfair barriers to employment, legislation which prohibits an employer from performing criminal background checks on job applicants conflicts with federal law and financial services regulatory obligations. SIFMA believes that this bill should include language that would allow the financial services industry to comply with its obligations under the Exchange Act, FINRA rules, and any other such federal or state law or regulation.

Legal and Regulatory Requirements Regarding Criminal Convictions

As stated above, federal law and certain regulatory requirements provide at least two separate hiring restrictions concerning individuals convicted of certain crimes, both of which originate from the Exchange Act. The first restriction is a bar from individuals convicted of certain crimes from registering with the Securities Exchange Commission (SEC), which is a requirement to work in a number of financial services positions. The second restriction originates from the Exchange Act’s requirement that certain financial

¹ SIFMA is the voice of the U.S. securities industry, representing the broker-dealers, banks and asset managers whose 889,000 employees provide access to the capital markets, raising over \$2.4 trillion for businesses and municipalities in the U.S., serving retail clients with over \$16 trillion in assets and managing more than \$62 trillion in assets for individual and institutional clients including mutual funds and retirement plans. For more information, visit <http://www.sifma.org>.

services employees be members of FINRA. Currently, FINRA bars individuals with certain criminal convictions from membership. Moreover, the initial determination of whether or not an individual is disqualified from either SEC registration or FINRA membership is required to be made by financial services firms – and according to federal regulators, a criminal background check must be performed as part of this determination.

Given the nature of these restrictions and obligations, and the legal and regulatory mechanisms by which they are enforced, SIFMA is concerned that HF 2351, as written, would not allow financial services firms to comply with their existing legal and regulatory obligations. Therefore, we respectfully recommend the addition of the following language: “Nothing in this chapter shall preclude an employer from complying with requirements of state and federal statutes, rules or regulations, case law or self-regulatory organizations as defined in section 3(a)(26) of the securities and exchange act of 1934, 15 U.S.C. § 78(c)(a)(26), which require the use of criminal record or criminal history information.” However, we would be more than happy to work on developing a technical amendment that would permit industry compliance without endangering the integrity of the bill.

We appreciate your consideration of our concerns and look forward to future discussions on an amendment. In the meantime, please call me at 212-313-1233 if you have any questions.

Sincerely,

A handwritten signature in cursive script that reads "Nancy Lancia".

Nancy Lancia
Managing Director
State Government Affairs