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March 30, 2015

### **House Committee On Business and Labor**

Chair Paul Holvey	Vice-Chair Brent Barton
Vice-Chair Bill Kennemer	Representative Greg Barreto
Representative Margaret Doherty	Representative Sal Esquivel
Representative Paul Evans	Representative Shemia Fagan
Representative Dallas Heard	Representative Rob Nosse
Representative Jim Weidner	

### **Plaid Pantry - HB 3025 Background Checks**

Dear Chair Holvey, Vice-Chairs Barton and Kennemer, Committee Members:

Plaid Pantry owns and operates 108 convenience stores in the Northwest, with the majority of our stores being here in Oregon. We have been operating locally for over 50 years and employ over 750 Oregonians. Please see Exhibit 1 for details of Plaid's contributions to the State's economy. Plaid is also a member of the Oregon Neighborhood Store Association (ONSA), which provides legislative and regulatory representation for Oregon's 2,500 smaller, mostly family-owned and operated convenience food stores.

Plaid and ONSA strongly support the intent and goals of HB 3025. We believe all applicants deserve a "Fair Chance", and we should "Ban the Box" on job applications. It is reasonable that prior criminal history not be automatically disqualifying without considering whether the particular circumstances of the individual, the offenses, and the nature of the job would constitute an unacceptable risk to the business, other employees and the public. However we have serious concerns with HB 3025 in terms of overly broad and subjective definitions and not enough detail to determine the desired legislative intent. This would present problems in the rulemaking process, and in future compliance with the proposed law. We believe these issues can be remedied, and Plaid and ONSA would welcome the opportunity to work on amendments.

Section 2 (b) refers to "convictions directly related to the duties and responsibilities of the position." This is too subjective, open to interpretation, vague, and subject to disputes as to what might be "directly related." For example, in positions dealing with the general public, particularly in positions that are not directly supervised at all times, the following convictions should be addressed and considered whether they would be disqualifying: violent crimes of any nature, assault, sexual assault, conviction as sexual offender, harassment, and menacing.

Employers could be liable for negligent hiring practices if incidents occur with other employees or customers, since the employer would have been aware of such history. In our business, such prior conduct is particularly troubling since we have many young customers and female customers who frequent our stores. If these types of crimes are not deemed to be disqualifying, then we would urge you to consider some type of indemnification mechanism for employers.

In the case of positions dealing with money, financial services, merchandise sales, the following convictions should be relevant, disqualifying, and should be specified in the statute: theft, burglary, ID theft, stolen property, credit card fraud, check fraud, and possession of a forged instrument.

Regarding positions with responsibility for selling or serving alcohol, the following convictions should be disqualifying, as they represent a very serious public safety threat, and could put an employer's critical government licensing privileges in danger: minor in possession of alcohol or illegal drugs, furnishing alcohol to a minor, illegal drug use or drug-dealing, driving under the influence of intoxicants, patterns of reckless driving or endangerment.

In each of the cases above, the language should be along the lines of "including, but not limited to" as there are likely other criminal convictions for which exclusion from a position would be appropriate under specific circumstances.

The statute should also provide more specific direction on disqualifying convictions to avoid confusion, misunderstandings, and disputes. With more specific details established, employers and applicants both would know very early in the screening process which convictions are disqualifying for a specific position.

Section 2 (c)(A) requires the employer to make a "good faith determination that the relevant position is of such sensitivity that a background check is warranted." This is another example of subjectivity that is unduly open to interpretation and argument. Different jobs will have different requirements, and should be more objectively established for various categories of employment positions.

Section 2 (d) requires a "conditional offer letter" prior to conducting a background check. This requires a burdensome and lengthy process for both the employer and the applicant, particularly in the case of convictions that in the end would be disqualifying. Plaid hires hundreds of employees each year, and the number goes into the tens of thousands including ONSA stores. It would be preferable to have a more complete relevant list that the applicant could rely upon before applying for a position that would likely result in rejection based on the applicant's criminal history.

Section 2 (e)(B) disallows considering "a conviction in which the records have been sealed by the court." This exposes an employer to potential liability if the conviction is directly related to an aspect of the position being considered.

Section 2 (e)(E) excludes “misdemeanor convictions for which no jail sentence may be imposed.” In the case of alcohol sales or service, minor-in-possession and providing alcohol to a minor, these offenses almost always result in no jail sentences, however such activity is absolutely relevant to a position involving alcohol sales, and could put the public at risk and jeopardize employers’ liquor licenses.

Section 2 (f) contains a general catch-all prohibiting disqualification unless it is “job-related”, and here we again have the same concerns mentioned earlier in terms of being too subjective and undefined. The section goes on with additional subjective qualifications, in subparagraph:

- (A) Again states the undefined “directly related to the duties and responsibilities of the position;”
- (B) Contains a vague reference to “the opportunity for the same or a similar offense to occur” requires unreasonable prescience on the part of employers;
- (C) Adds further unknowable and undefinable criteria of “opportunity for other circumstances leading to the conduct” relating to the conviction;
- (D) Contains the undefined “length of time” to be considered since the conviction, including in subsection (2)(a) to “identify the elements of the conviction that may be the basis for adverse action and provide that information to the applicant with a written explanation of how the elements identified affected the adverse action taken.”

Each of these place the employer in the position of making a subjective judgment that undoubtedly will come under intense criticism, either in a failure-to-hire claim, or worse, in the event of an incident with employees or customers in which it would be claimed that the employer “should have known” that such an incident was likely to occur. The criteria must be more clearly identified because as written this bill places employers in very untenable positions almost regardless of their attempt to comply with the proposed law.

Section 2 (2)(a) goes even further, requiring employers to counsel applicants by providing “examples of mitigation or rehabilitation evidence that the applicant may voluntarily provide to be reconsidered for the position.” Employers are ill-equipped to provide such counseling, and in any event it would be much more desirable to have more clear-cut criteria early in the screening process to avoid confusion, frustration and delays for both parties.

Section 2 (3) grants the applicant four (4) business days to provide the above information, including challenging the accuracy of the background check. This is a burdensome delay as most of our job openings are due to an immediate vacancy, and other existing employees are filling in with overtime and missing days off. It also has an adverse effect on the business and customers when the business is understaffed. Here again, discussions of criminal history are

better handled much earlier in the hiring process. We do support the concept that applicants should be provided an opportunity to correct information in the criminal history databases.

Section (2)(4) requires the employer to keep the position open throughout a potentially lengthy process and final “individualized assessment” as the facts only gradually become determined. This places even further burden on the business, other employees, and other applicants.

Section (2)(5) requires all other applicants to await this full process, which is unrealistic. Applicants seeking employment can ill afford such delays, and will likely accept positions with other companies if the processes outlined in this bill come into play. This is particularly problematic when disqualifying convictions could and should have been addressed early on, and employers miss hiring the most qualified applicant for the position.

In summary, we support the intent of this bill, we believe in providing a “Fair Chance”, we believe rehabilitation can work, and we agree that an applicant should not be rejected “automatically” because a conviction box is checked. However we believe in fairness to employers, applicants, and existing employees, and consideration of business impacts and efficiency in the hiring process. This bill goes far beyond just “banning the box” and the stated objective of preventing the misuse of background check information. It goes too far because of the burdens and compliance pitfalls to which employers will find themselves exposed.

So while we support the broad objectives of this bill, we believe it can be accomplished in a much better way. We urge you to consider amendments to address more specific criteria so employers don’t have to speculate whether they will be in compliance with the law, and won’t be responsible for establishing criteria that is beyond their areas of expertise.

Respectfully submitted,



Chris Girard  
CEO – Plaid Pantries, Inc.  
Chair – Oregon Neighborhood Store Association  
*Exhibit 1*

**Plaid Pantries, Inc.:**

**An Oregon Business,**

**An Oregon Employer,**

**Contributing to Oregon's Economy**

Locations in Oregon & Washington	110
Number of Employees	800
Customers per Day	70,000+
Annual Sales	\$203,000,000
Number of Supplier/Trade Companies	300+

**Contributions to The Northwest's Economy in 2014**

Employee Payroll	20,600,000
Payroll Taxes, Unemployment, 401k match, Tuition Reimbursement, Worker's Compensation & Social Security Contributions	2,400,000
Employee Health Insurance Contributions (by Plaid Pantry)	2,300,000
Rent Payments to Landlords	6,100,000
Property Taxes and Income Taxes	2,700,000
Services purchased including repairs, banking, insurance, legal and accounting	4,100,000
<b>TOTAL</b>	<b>----- \$38,200,000</b>