



August 9, 2011

Submitted Electronically

Commission Meeting
EEOC Executive Officer
Equal Employment Opportunity Commission
131 M Street, NE
Washington, D. C. 20507

Re: Public Meeting on Arrest and Conviction Records as a Hiring Barrier

Dear Sir or Madam:

The Food Marketing Institute (FMI) respectfully submits the following comments to the Equal Employment Opportunity Commission (EEOC) in response to a meeting that was held on July 26, 2011, to examine arrest and conviction records as a hiring barrier.

By way of background, FMI is the national trade association that conducts programs in public affairs, food safety, research, education and industry relations on behalf of its 1,500 member companies – food retailers and wholesalers – in the United States and around the world. FMI's members in the United States operate approximately 26,000 retail food stores and 14,000 pharmacies. Their combined annual sales volume of \$680 billion represents three-quarters of all retail food store sales in the United States. FMI's retail membership is composed of large multi-store chains, regional firms, and independent supermarkets. Our international membership includes 200 companies from more than 50 countries. FMI's associate members include the supplier partners of its retail and wholesale members.

More than 3.4 million persons are employed in the supermarket industry in the United States. Due to this large number of individuals who are working in various capacities at both the retail and wholesaler level and reflective of the ongoing need to hire new associates because of retirements and turnover—especially among part-time workers—FMI and our members have an overriding interest in the Commission's deliberations and policy guidance regarding the use of arrest and conviction records in employment hiring decisions.

In order to keep our stores as safe and secure as possible, most FMI member companies use criminal background checks as part of their screening and hiring process. Regrettably, workplace violence, fraud and theft remain a constant which necessitates reliance on a host of policies and

tools such as criminal background checks by our industry to minimize the risk of violent behavior and loss of property.

Moreover, the supermarket industry is required to comply with numerous federal regulations that mandate or strongly encourage careful screening of individuals before they are hired. For example, the Drug Enforcement Administration (DEA) insists that companies operating retail pharmacies and warehouses where controlled substances are kept need to conduct comprehensive screening to ascertain if an individual has convictions of any kind or has engaged in unauthorized use of controlled drugs. The Food and Drug Administration (FDA) has put forth “good practice” guidelines that food establishments are expected to conduct criminal background checks on all employees. The Department of Transportation (DOT’s) Federal Motor Carrier Safety Administration (FMCSA) has established “Driver Disqualifications and Penalties” that either restrict or ban the hiring of drivers who have been convicted of reckless or unsafe driving of a commercial motor vehicle, vehicle manslaughter or alcohol or controlled substance abuse. As a result, supermarket companies with truck fleets must conduct criminal background checks on all applicants seeking a truck driving positions. Similarly, Federal law prohibits individuals convicted of certain crimes from providing healthcare services which result in reimbursement payments under Medicare. This prohibition affects pharmacists and technicians practicing in a retail setting who are dispensing prescription drugs or providing durable medical equipment to Medicare patients.

In addition to these federal pre-screening obligations for our industry many states also have laws on the books that hold employers liable for negligent hiring as well as negligent retention of employees with a history of violent behavior who have caused harm to co-workers. Thus, many companies strongly believe that criminal background checks are necessary in order to avoid liability for actions by employees who have a criminal record.

To conclude, FMI deeply appreciates the opportunity to provide the Commission with our views and comments regarding the need and obligation to conduct criminal background checks by the supermarket industry. FMI urges the Commission not to move forward with any proposal that would impose limitations on the use of criminal background checks by our members.

Sincerely,

A handwritten signature in black ink, appearing to read "Erik R. Lieberman". The signature is fluid and cursive, with the first name "Erik" being the most prominent.

Erik R. Lieberman
Regulatory Counsel