



INTRODUCTION TO THE LAW ON BACKGROUND SCREENING
Presented By: Todd M. Higey, General Counsel

Legal stuff...

Todd M. Higey, Esq. is General Counsel for Employment Screening Services, Inc. This PowerPoint presentation is provided only for educational purposes; it should not be relied upon as legal advice, and it should not be used, in whole or in part, as a basis for establishing employment practices or policies, nor should it be used for resolving disputes or managing risk. Every company's circumstances are unique and legal advice should be obtained only from a lawyer with whom the company has established an attorney-client relationship.

ESS, accredited by the National Association of Professional Background Screeners, is dedicated to protecting companies and their employees through extensive background screenings. ESS combines experience, advanced technology and unparalleled customer service to ensure that an employer's screening services are fast, affordable and effective. The company also offers drug screening, electronic fingerprinting, third-party exit interviewing, and E-Verify processing.

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The law on background screening

- i. Law on consumer reports
- ii. Law on drug & alcohol screening
- iii. Law on fair chance hiring
- iv. Medical examinations
- v. Skills / abilities testing
- vi. Honesty testing



A consumer report is a controlled substance

- i. Pharmacy
- ii. Prescription for the Substance
- iii. Authorized Use of Substance

“Any person who knowingly and willfully obtains information on a consumer from a consumer reporting agency under false pretenses shall be fined under Title 18, imprisoned for not more than 2 years, or both.” 15 U.S.C. 1681q.



Prescription for the consumer report

- i. Permissible Purpose
- ii. Legitimate Business
- iii. Consent



Prescription for the consumer report: Permissible Purpose

- i. Credit Transaction
- ii. Legitimate business need
- iii. Employment Purposes
 - An applicant
 - An employee
 - An independent contractor
 - A volunteer



Prescription for the consumer report: Permissible Purpose

Legitimate business need in connection with. . .

- a business transaction
- initiated by the consumer.
- For example:
 - Landlord - Tenant



Prescription for the consumer report: Legitimate Business

CRA must:

- verify the identity of the user
- verify the uses certified

Accomplished by:

- Contract
- Due diligence paperwork
- Continuing affirmations
- Audits



Prescription for the consumer report: Consent

EMPLOYMENT



DISCLOSURE



AUTHORIZATION

DISCLOSURE OF PROCUREMENT OF CONSUMER REPORT AND/OR INVESTIGATIVE CONSUMER REPORT

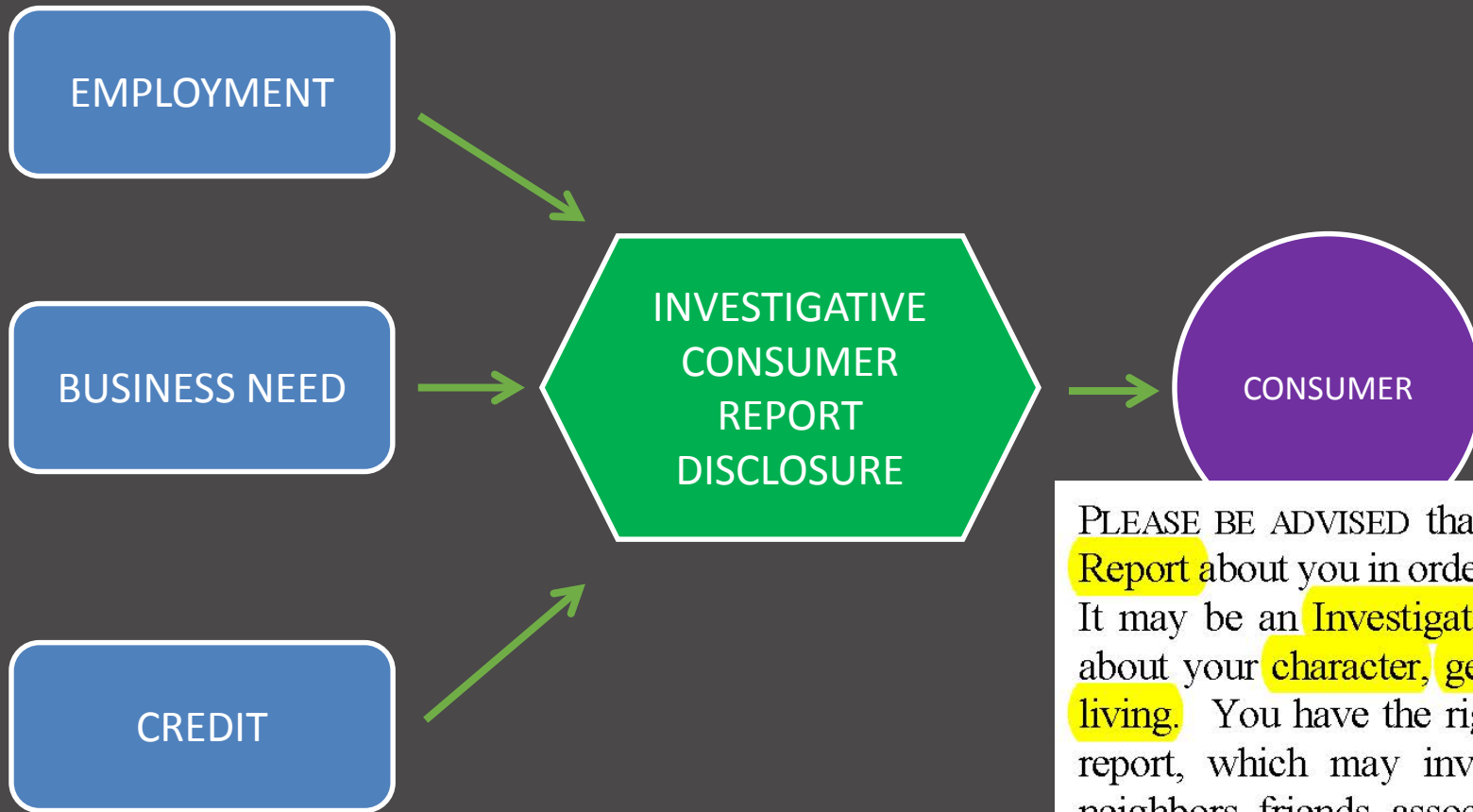
PLEASE READ THE FOLLOWING STATEMENTS CAREFULLY:

PLEASE BE ADVISED that [CLICK HERE TO ENTER TEXT.](#) may obtain a Consumer Report about you in order to evaluate your eligibility for employment purposes.

AUTHORIZATION

I HEREBY AUTHORIZE ACME CORPORATION (the "End User") to obtain "consumer reports" and/or "investigative consumer reports" at any time after receipt of this Authorization and, if I am hired, throughout my employment. To this end, I hereby authorize, without reservation, any person or entity, law enforcement agency, administrator, state or federal agency, institution, school or university (public or private), information service bureau, employer, or insurance company to furnish any and all background information to ESS Inc., 2500 Southlake Park, Birmingham, AL 35244, toll free 866.859.0143, www.es2.com, or its subcontractor or another outside organization acting on behalf of ESS. The term "background information" includes, but

Prescription for the consumer report: Consent



PLEASE BE ADVISED that [CLICK HERE TO ENTER TEXT](#) may obtain a Consumer Report about you in order to evaluate your eligibility for employment purposes. It may be an Investigative Consumer Report, which may include information about your character, general reputation, personal characteristics, and mode of living. You have the right to request disclosure of the nature and scope of the report, which may involve personal interviews with sources such as your neighbors, friends, associates, or others.

These reports may include credit information, credit history, employment history and reference checks, criminal and civil history information, motor vehicle records and moving violation reports (“driving records”), sex offender status

consumer report: Consent

Experience (list below your last three employers, beginning with the most recent employer)

| Most Recent Employer | Name of Employer | Name of Employer |
|-----------------------|-----------------------|-----------------------|
| Street Address | Street Address | Street Address |
| City, State, Zip Code | City, State, Zip Code | City, State, Zip Code |

Authorization

I certify that the answers given herein are true and complete to my knowledge. I authorize the company and/or its agents, including consumer reporting bureaus, to investigate all statements contained in this application, as may be necessary in arriving at an employment decision (including, but not limited to, criminal history and motor vehicle driving records). I release the company and/or its agents from any liability which might arise from such an investigation.

I understand that this application is not a contract of employment. In the event of employment, I understand that false or misleading information given in my application or interview(s) will result in termination. I also understand that the use of illegal drugs or alcohol on the job is prohibited during employment. In the event that I am employed, I agree to abide by all policies and procedures of this company.

Signature of Applicant

Date

This information must be kept on file for one year. This application will remain in our active files for 30 days.

by all policies and procedures of this company.

Signature of Applicant

Date

This information must be kept on file for one year. This application will remain in our active files for 30 days.

port: Consent

Online Application | Nine West | Designer Shoes | Latest trends | Heels | Boots | Handbags | Accessories

NINEWEST WORLD OF 9 BLOG SOCIAL JOIN OUR MAILING LIST WELCOME (SIGN IN) | MY CLOSET (0 ITEMS) | MY BAG \$0.00

FREE STANDARD SHIPPING ON ANY PURCHASE OVER \$100 AUSTRALIA WIDE *

NINE WEST

WHAT'S NEW SHOES BAGS ACCESSORIES TRENDS SALE OUTLET

CAREERS | Online Application

Thankyou for your interest in Nine West, please review our [employment privacy policy](#) before filling in your details below.

*First name

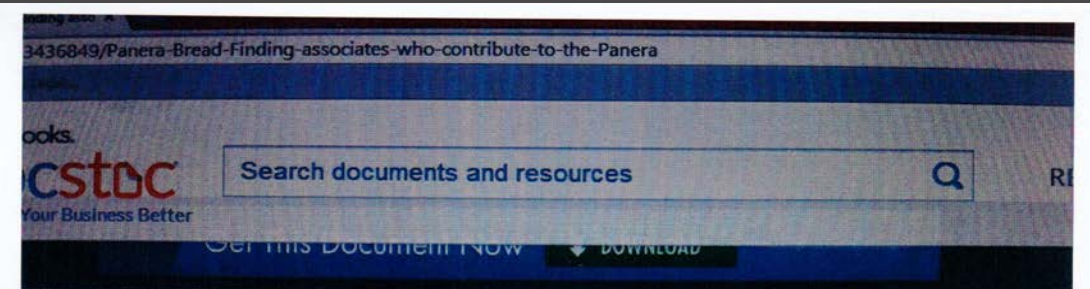
*Surname

*Email address

*Contact number

*I am willing to undergo a pre-employment police record check, I understand this information will remain completely confidential

*I have read and agree to Nine West's privacy policy



Signature

PLEASE READ CAREFULLY BEFORE SIGNING

By my signature below, I affirm that I have read and understand this application, that I have not withheld any information requested, and that any statements that have made are true and correct. I understand that any omission or misrepresentation of fact in this application may result in refusal or separation from employment.

I authorize verification and investigation of the statements made on this application and of my employment history.

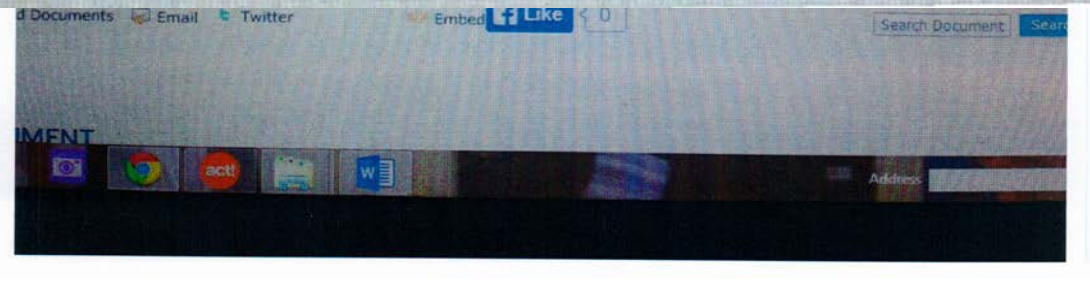
If I am accepted for employment, I understand and agree that such employment will be at will and may be terminated by either party at any time with reason or no reason and with or without prior notice. I further understand and agree that this at-will employment status constitutes the entire understanding between me and the company regarding the right and ability of either party to terminate employment and that this at-will status cannot be changed except through a written understanding signed by the President of the Company.

Signature

(BY TYPING IN THIS FIELD YOU ARE ELECTRONICALLY SIGNING THIS Date FORM)

[Empty signature field]

2010-02-18



Pursuant to the requirements of the Fair Credit Reporting Act, I acknowledge that a credit report, consumer report¹ and/or investigative consumer report¹ may be made in connection with my application for employment with prospective employer. (including contract for services). I understand that these investigative background inquiries may include credit, consumer, criminal, driving, prior employment and other reports. These reports may include information as to my character, work habits performance and experience, along with reasons for termination of past employment from previous employers. Further, I understand that prospective employer and PreCheck, Inc., may be requesting information from various Federal, State, and other agencies which maintain records concerning my past activities relating to my driving, credit, criminal, civil and other experiences, as well as claims involving me in the files of insurance companies.

I authorize, without reservation, any party or agency contacted by PreCheck, Inc. to furnish the above mentioned information. I authorize VIE to Provide PreCheck, Inc. or any potential employer of this employment transaction, state records of employment, including information reported by individual employers to the state, including State Employment Security Agency records. This authorization is for this employment transaction only and continues in effect for 365 days from the date of Applicant's execution of this consent unless limited by state law, in which case the authorization continues in effect for the maximum period, not to exceed 365 days, allowed by law. I understand that my refusal to consent shall not be the basis for the denial of employment and that my decision is voluntary and not required by law. A photocopy of this authorization shall have the same effect as the original.

I understand the information obtained will be used as one basis for employment or denial of employment. I hereby discharge, release and indemnify prospective employer, PreCheck, Inc., their agents, servants and employees, and all parties that rely on this release and/or the information obtained with this release from any and all liability and claims arising by reason of the use of this release and dissemination of information that is false and untrue if obtained from a third party without verification.

CA, WA, OR, NV, AZ, AK, HI, MT, ID

Authorized use of the consumer report

- i. Limited Use
- ii. EEO Laws
- iii. Adverse Action Process
- iv. Safe storage & disposal



Authorized use of the consumer report: Limited Use

- i. You can only use it for the certified purpose
- ii. You cannot give it to a 3rd party

Unless. . .

- ✓ Verify identity of 3rd party
- ✓ Verify permissible purpose
- ✓ Notify original CRA



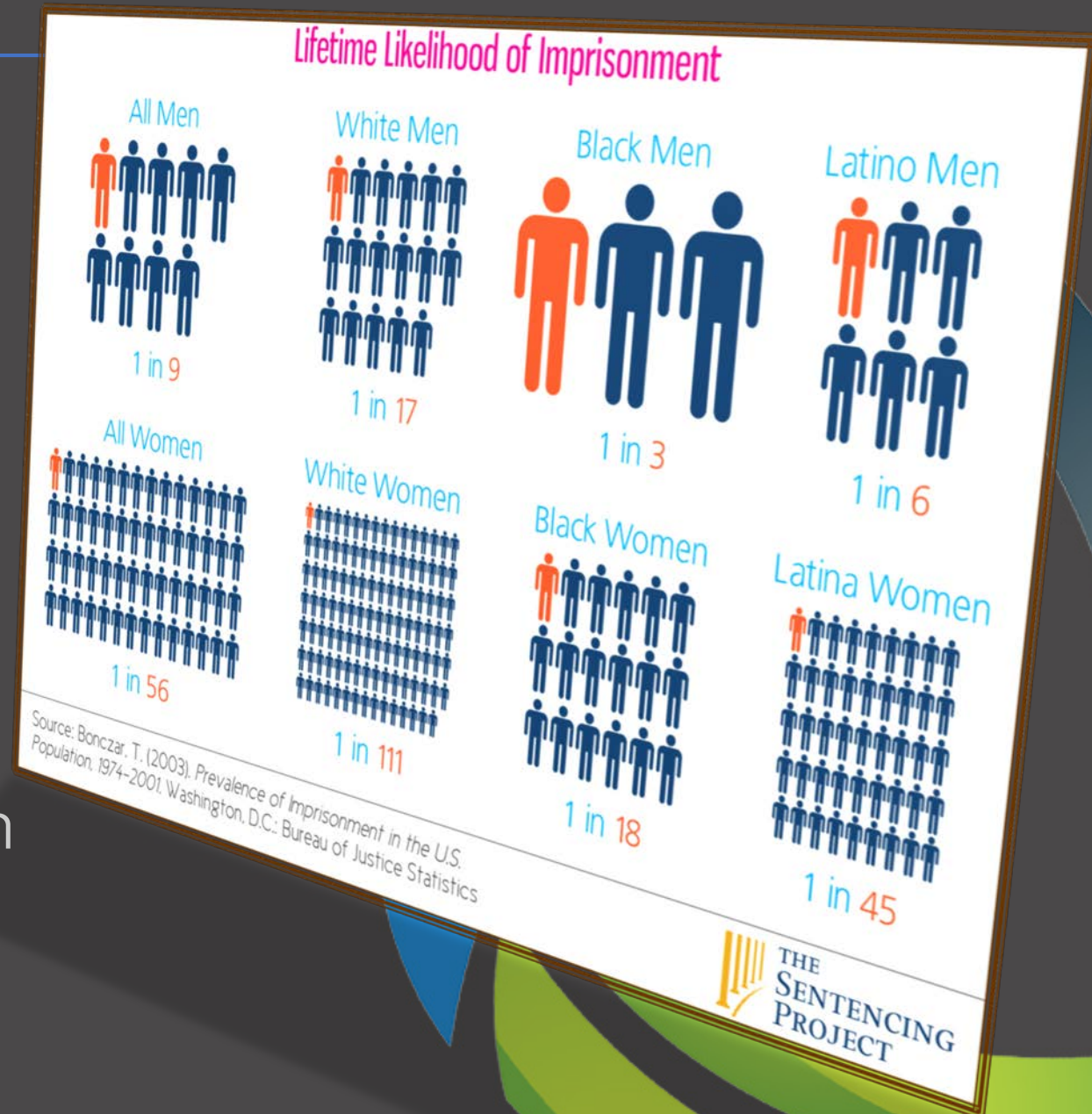
Authorized use of the consumer report: EEO Laws

Must not violate EEO laws

- ADA
- ADEA
- GINA
- Title VII

Disparate Impact

- Race-Based Discrimination
- Sex-based Discrimination



Authorized use of the consumer report: EEO Laws

- i. Nature of the crime
- ii. Nature of the job
 - Effectively link the two
- iii. Time elapsed
- iv. Individualized assessment
 - Mitigation evidence
 - Rehabilitation evidence
 - Uneventful employment after conviction
 - Subsequent education / training
 - Suitable character references



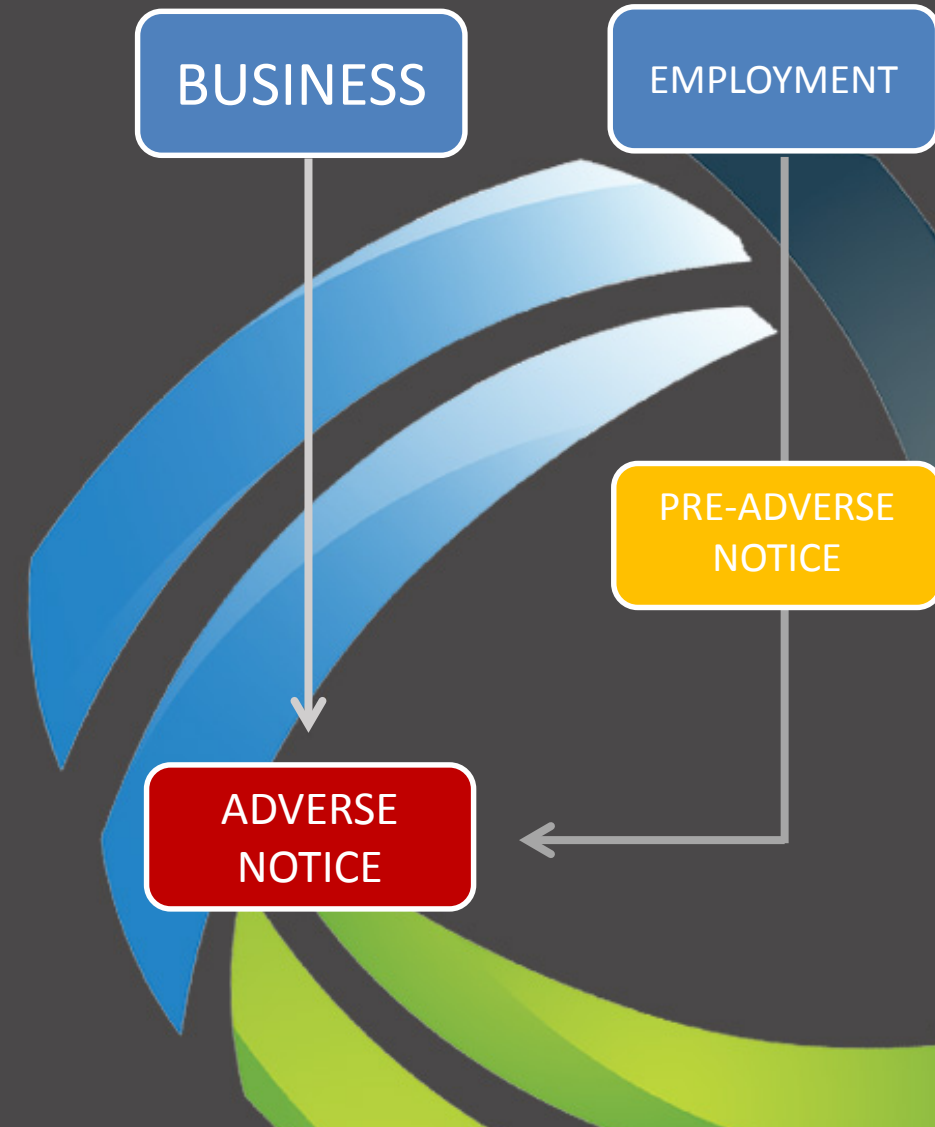
Authorized use of the consumer report: Adverse Action

Written pre-adverse notice

- Before decision is made
- Provide copy of report
- Provide copy of rights
 - By U.S. Mail or Hand Delivery
- Provide time to respond
 - At least 5 business days

Adverse Notice

- Explain CRA had no role in decision
- Explain how to get copy of report



**Pre-Adverse Action Letter
Notice of Background Report**

**ROBERT BRYAN
123 FAKE STREET
BIRMINGHAM, AL 35244**

Dear Applicant,

You previously authorized our company to obtain consumer reports and/or investigative consumer reports about you from a consumer reporting agency. **Our company is considering taking action in whole or in part based on this report.**

In accordance with the Federal Fair Credit Reporting Act, you will find enclosed a (1) copy of the report we obtained from Employment Screening Services, (2) a summary of your rights under the Fair Credit Reporting Act, and (3) Notice Regarding Background Investigation Pursuant to California Law (4) Article 23-A of the New York Correction Law, if applicable, (5) Notice Regarding Credit Checks Per Vermont Law (6) A Summary of Your Rights Under New Jersey Law and (7) A Summary of Your Rights Under Washington Law.

You may respond to the information contained in the report within five (5) business days from the date of this letter. If you choose to do so, you must contact us at the following address:

**Mary Smith
2500 Southlake Park
Birmingham, AL 35244
800-987-6543**

If you wish to dispute the accuracy of the information in the report directly with the consumer reporting agency (i.e. the source of the information obtained in the report), you should contact the agency directly.

Employment Screening Services
2500 Southlake Park
Birmingham, AL 35244
205-879-0143
1-866-859-0143
www.es2.com

Sincerely,

Human Resources Department
Mary Smith

Enclosures:

Copy of Consumer Report
FCRA Notice of Rights

mer report: Adverse Action

Consumer report: Adverse Action

August 1, 2016

John Q. Consumer
356 Ex Con Lane
Alcatraz, CA 010101

Dear Consumer:

Please let this letter serve as notice that we are taking adverse action against you based in whole or in part on information contained in a consumer report about you. If you applied for employment, or received a contingent offer of employment, that offer is now withdrawn. If you are a current employee, please consult with your supervisor to determine the nature of the adverse action.

The consumer reporting agency that supplied the consumer report did not make the decision to take the adverse action and is unable to provide you with the specific reasons why the adverse action was taken. You have the right to obtain a free copy of your consumer report from the consumer reporting agency if you submit a written request to the agency within sixty (60) days of receipt of this letter. Please note, however, that we are also enclosing a copy of your report with this letter. You have the right to dispute the accuracy or completeness of any information contained in the consumer report by contacting the agency.

The name and contact information for the consumer reporting agency is as follows:

ESS, Inc.
Attention: Disputes
2500 Southlake Park
Birmingham, Alabama 35244
Toll Free: 1-866-859-0143
E-mail: Disputes@es2.com
www.es2.com

Sincerely,
Dolores Umbridge
Human Resources Department



Authorized use of the consumer report: Adverse Action

The official Summary of Rights form can be found here:

<https://www.consumer.ftc.gov/articles/pdf-0096-fair-credit-reporting-act.pdf>



Authorized use of the consumer report: Safe Storage & Disposal

Must store & dispose in a manner calculated to prevent...

- Unauthorized access
- Unauthorized use

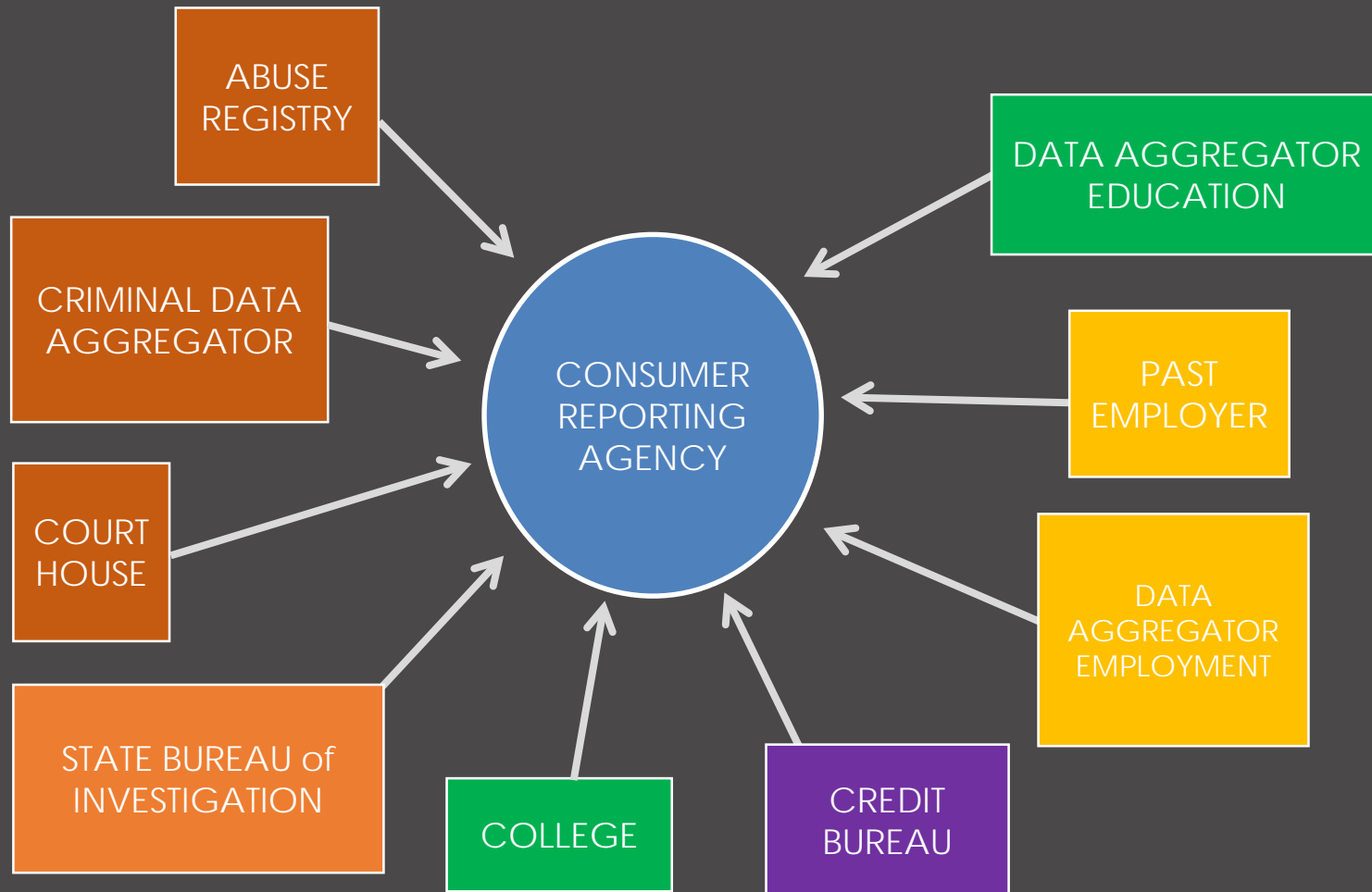
For example...

- Encrypt
- Password protect
- Firewall
- Anti-virus / anti-malware
- Shred / Pulverize
- Hard delete



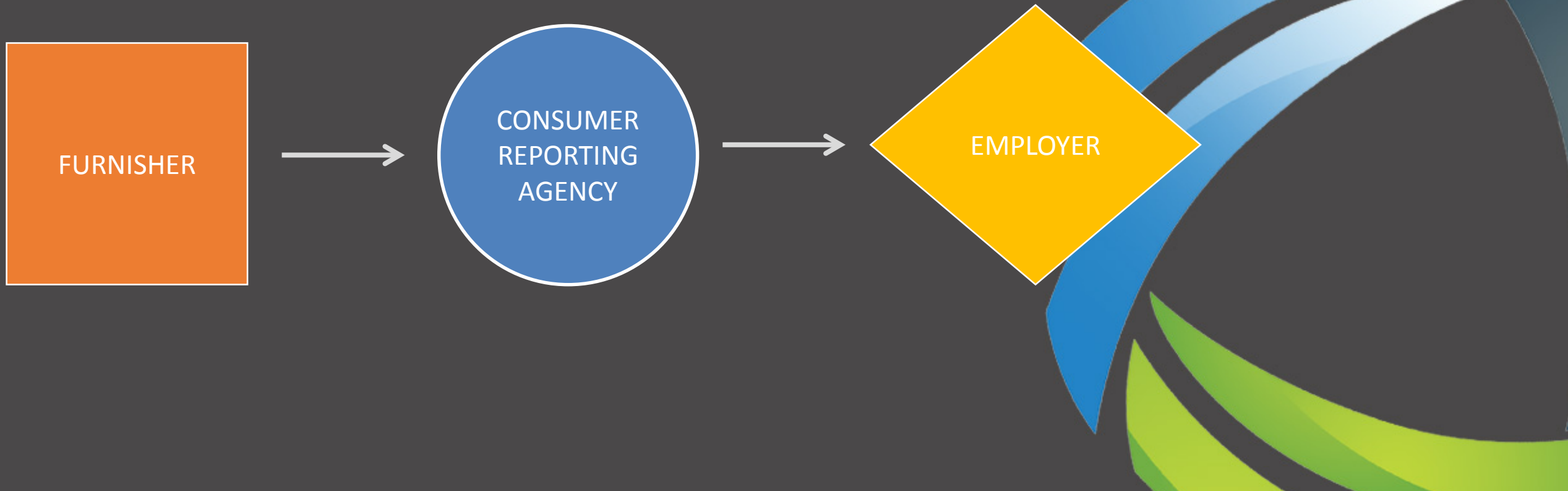
The Pharmacy – the Consumer Reporting Agency

The CRA assembles & prepares a consumer report.

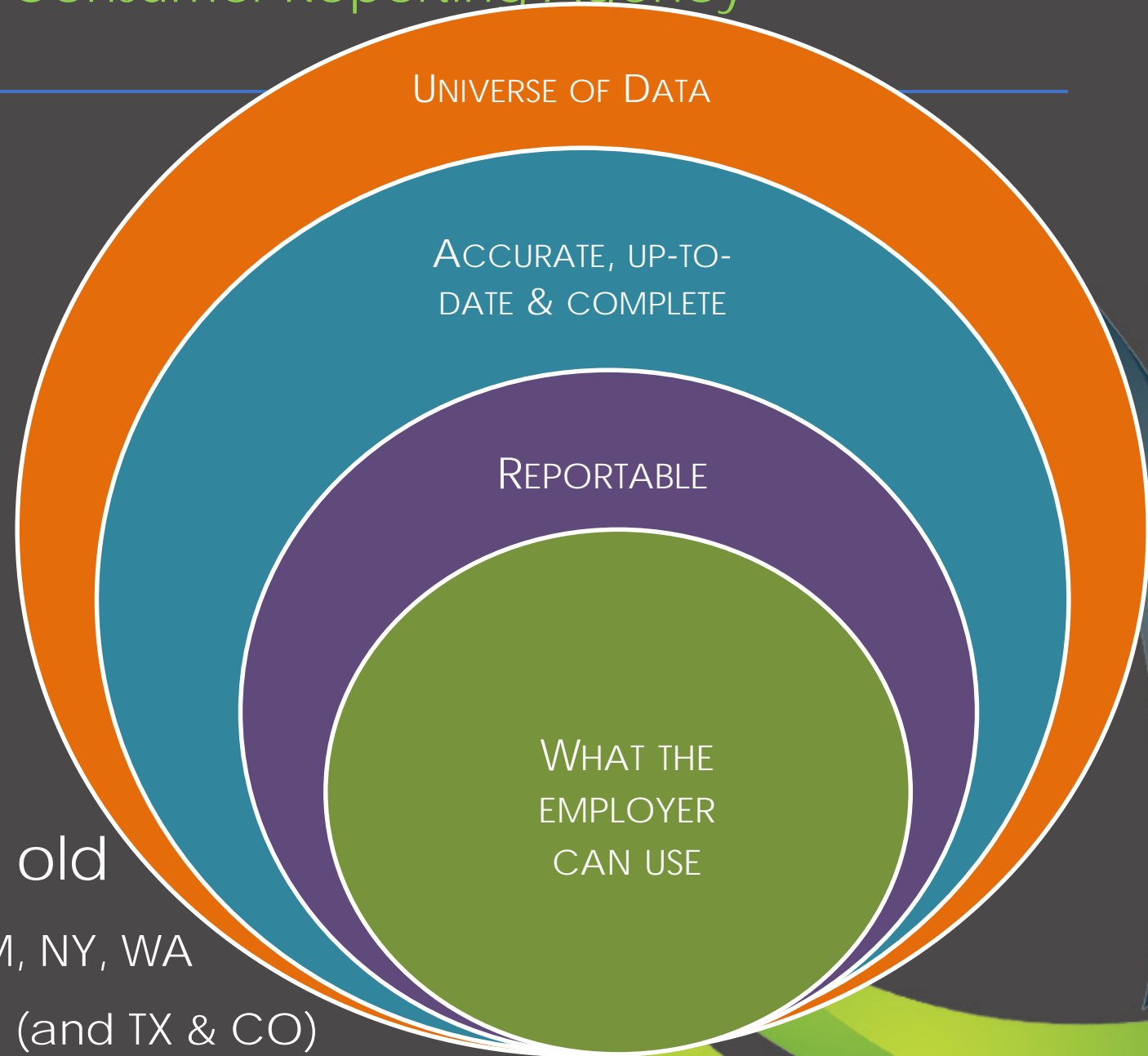


The Pharmacy – the Consumer Reporting Agency

...And it furnishes the report to a third party.



The Pharmacy – the Consumer Reporting Agency



- Identity Accuracy
- Content Accuracy
- Latest item on file
- No adverse > 7 years
- Convictions – no matter how old
 - Except: CA, KS, MD, MA, MT, NH, NM, NY, WA

(and TX & CO)

