

MEMORANDUM

Regarding: NAPBS Grassroots Subcommittee
To: State Grass Roots Captains and Volunteers
From: Co-Chairs, Derek De Vette, Renee Harbeson and NAPBS Leadership

January 22, 2015

In the last year, the NAPBS Government Relations Committee has implemented a program that looks to members in specific states to assist its state advocacy program. Although we have had successes in particular states (Georgia and California for example), NAPBS is still in need of coverage in many large population centers. We expect to see the volume of state legislation increase considerably in the coming months.

The “State Captain” program will help close the gap in coverage by recruiting and training NAPBS members to advocate for the industry in certain key jurisdictions. Those who did participate in past years enjoyed the experience, and their contributions led to successful engagements with the legislatures in Massachusetts, Rhode Island and Georgia, among other jurisdictions.

The purpose of this memorandum is twofold. First, it summarizes the four main categories of legislation that we expect to see in the coming months so that each potential state advocate knows the kinds of legislation that is of greatest concern. Second, it clarifies the role and responsibilities of NAPBS State Captains and identifies those states in which NAPBS State Captains are most needed.

Finally, all of the activities would occur with the help and training of both the Government Relations contract partner and members of the Government Relations Committee who have done this before.

I. Types of Legislation

The list below is not all inclusive, as we also have seen bills that raise court fees, restrict access to public records, and require CRAs to become licensed as “private investigators.” Nonetheless, the majority of expected legislative activity falls into the four following general categories:

1. **Ban the box.** New Jersey, Rhode Island, the District of Columbia, and numerous municipalities have adopted varying forms of “ban the box” legislation. In their narrowest form, they prohibit the government as an employer from including a question on their applications asking about an applicant’s criminal history. In their broadest forms, these bills ban private employers not only from asking about criminal history, but also impose numerous recordkeeping, overlapping and conflicting requirements with the Fair Credit Reporting Act and in some cases effectively set ex-offenders up as a protected class.

2. **Expungement bills.** These bills generally are designed to redress the ills created by what their sponsors call “fly by night” background check operations. They generally prohibit the dissemination of criminal record information that has been expunged, and require private entities to delete that information from their databases. Other bills, such as SB 990 from Texas (2014), would have required CRAs to file lists of everyone to whom they have provided compilations of criminal data, imposed additional notice requirements beyond what appears in the FCRA, and created a state-law civil cause of action for failure to comply.¹

3. **Credit bills.** Several states have adopted some form of legislation restricting the use of credit in hiring decisions. The reason for this legislation stems from the perceived unfairness that a person with bad credit cannot fix that credit without a paying job, and the belief that the use of credit in hiring unfairly prejudices minority applicants. The industry has generally been successful in adding exemptions to the legislation that greatly weaken its effect, often allowing continued use of credit reports by employers when such use is related to the position being filled.

4. **Privacy.** The variety of legislation that can be characterized as such—from the FCRA to state defamation law—reflects the vagueness of this term. Nonetheless, both newspapers² and even courts³ have become increasingly aware of the policy issues

¹ TX SB 990, available at [http://www.capitol.state.tx.us/tlodocs/83R/billtext/pdf/SB00990H.pdf - navpanes=0](http://www.capitol.state.tx.us/tlodocs/83R/billtext/pdf/SB00990H.pdf-navpanes=0).

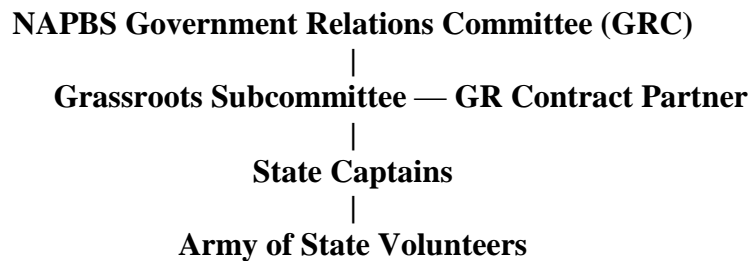
² *E.g.*, Smartwatches and Weak Privacy Rules, http://www.nytimes.com/2014/09/16/opinion/smartwatches-and-weak-privacy-rules.html?_r=0

³ *E.g.*, Riley v. California, http://www.supremecourt.gov/opinions/13pdf/13-132_8l9c.pdf (finding that police need a warrant to search a cell phone because of the numerous types of information available on a cell phone, and the fact that even one kind of digital information can convey far more about an individual than previously possible).

created by the retention and potential commercial use of reservoirs of digital information. Those challenges have motivated state legislators to “do something,” resulting in legislation like California’s recent SB 1348, which would have enshrined a “right to be forgotten” into state law, and in its introduced form would have required CRAs to delete consumer information on request, and whether or not that information was accurate.

5. **Fingerprinting.** This category encompasses bills that mandate an FBI or state-based fingerprint repository check as opposed to one performed by a CRA. In terms of sheer numbers, we saw more of these bills than of any other sort either mandating such checks in new areas, or amending and broadening existing requirements to new areas of commercial activity. That trend seems unlikely to abate.

II. Structure



Grass Roots Subcommittee Functions

1. Recruits and engages State Captains and State Volunteers
2. Updates knowledge base of NAPBS member information, political activities, connections, association memberships, etc. (Aristotle)
3. With IMIAE staff help, maintains grassroots communications system resources and communications
4. Acts as primary liaison point between GRC, State Captains and State Volunteers for advocacy efforts
5. Works closely with GRC and GR Contract Partner to develop and refine advocacy model; exports model via training to State Captains and State Volunteers (webinars, templates, seminars, breakout sessions, etc.)
6. Works with GRC and GR Contract Partner to identify priority bills at the State level for grass-roots advocacy. Recommends best State Captain and State Volunteer resources to bring to bear; engages them on behalf of the GRC
7. Works with GR Contract Partner to facilitate Capitol Hill visits/meetings for State Captains and State Volunteers
8. Maintains a representative on all GRC calls, keeps them briefed on key Grassroots activities. In turn, briefs Grassroots on key GRC activities, flaps or handlings requiring immediate attention

Operational Parameter

1. Line of demarcation: Grassroots does not get involved with day to day GRC tasks such as legislative wording or proposed political correspondence. However, Grassroots will coordinate communications of such items to State Captain and State Volunteer resources to engage them as needed.

State Captain Functions

1. Reviews introduced legislation for assigned State; seeks bills or legislation affecting the industry and alerts GRC and Grassroots Chairs/Co-chairs, Board Liaisons, GR Contract Partner and selected members for action as needed. Note: GR contract partner will also be reviewing legislation, by having State Captains also review legislation within their resources the coverage and scope will be more thorough.
2. Assists GR Contract Partner by reviewing state action alerts before they are released to the membership
3. Reaches out to in-State legislators and associations; builds relationships and educates them on key NAPBS issues so we have a network of allies to help and defend our cause
4. Determines how best to reach key legislators and passes on to State Volunteers and Grassroots for advocacy model refinement
5. As needed, visits individual members around the time of votes, markups, and other key legislative activity. Testifies as needed or coordinates such amongst the State Volunteers beneath them
6. Runs State Volunteers on advocacy issues, rallies the troops as needed and is the primary management and communications relay point to between them, GRC and Grassroots

State Volunteer Functions

1. Writes letters to local legislators when called upon by State Captain or Grassroots
2. Reaches out to in-State legislators and associations; builds relationships and educates them on key NAPBS issues so we have a network of allies to help and defend our cause
3. Keeps State Captain briefed on key activities and allies created for future activation as needed

Note: The above is subject to change over time but presented herein as a baseline starting point.

Initial States

NAPBS' short term goal is to identify and train certain key, committed members as NAPBS State Captains in targeted states based upon state population, membership availability and legislation. The states we are initially focusing on are the following:

Texas. Its legislature meets only every other year, and may only meet for 140 calendar days. The result is (a) a high volume of proposed legislation and (b) very rapid movement. We have begun to see an alliance between advocates for ex-offenders and a certain streak of libertarian conservatism that has led to proposed legislation harmful to NAPBS members. Given the volume, recruitment of a state captain for this state is a priority.

California. Not only is this state a population center, it is a bellwether for problematic legislation. In addition to SB 1348, we have also seen the legislature consider restrictions on public record access and increases in court record fees. Each session, the legislature considers a high volume of bills, and “boots on the ground” would be most helpful.

Illinois. This year, Illinois adopted ban the box legislation, and many advocacy organizations with different agendas from NAPBS’s have a presence in Chicago and elsewhere.

Indiana. NAPBS has a few members in the state of Indiana that have partnered with local counsel, established relationships with regulators and are monitoring legislation. Bringing this group into NAPBS’ grassroots efforts will allow for consolidated and consistent efforts within the industry.

Florida. Another population center, Florida has also seen bills restricting credit and the use of criminal record information. This state also has the same kind of left/right potential for political alchemy that occurred in Georgia.

New York. New York has not been a source of problem legislation so far, however New York City has been considering a broad ban the box ordinance for some time. Given the state’s size, it would be useful for NAPBS to have a State Captain in the state to track issues and begin to get to know relevant legislators.

North Carolina. This state has some of the same political currents as Texas, Florida and Georgia that could lead to problems. In addition, the court clerks are extremely unfriendly to industry. Its population is also growing.

Ohio. Two NAPBS members have stepped up and asked to participate and lead in the state of Ohio, with several members headquartered in Ohio, including the state in the initial rollout is appropriate.

On behalf of NAPBS, thank you for volunteering to participate in the NAPBS Grassroots Subcommittee. *E pluribus unum*, out of many states emerges a single nation. With your help the industry can effectively impact legislation across the nation.