

AMENDED IN ASSEMBLY APRIL 18, 2002

CALIFORNIA LEGISLATURE—2001–02 REGULAR SESSION

ASSEMBLY BILL

No. 2868

Introduced by Assembly Member Wright

February 25, 2002

An act to amend ~~Section 1785.20.3~~ *Sections 1785.20.3, 1786.2, 1786.11, 1786.18, 1786.20, and 1786.24*, of, and to add Section 1785.16.3 to the Civil Code, relating to consumer ~~credit~~ reporting, and declaring the urgency thereof, to take effect immediately.

LEGISLATIVE COUNSEL'S DIGEST

AB 2868, as amended, Wright. Consumer ~~credit~~ reporting agencies.

(1) Existing law establishes a process by which a consumer may dispute the accuracy of information in a consumer credit report. Existing law requires a consumer credit reporting agency to promptly and permanently block information in specified instances, and establishes requirements for unblocking information after an allegation of identity theft.

This bill would exclude from these provisions a consumer reporting agency that acts only as a reseller of credit information, as specified, and that does not maintain a permanent database of credit information from which new credit reports are produced.

(2) Existing law requires a user of a consumer credit report in connection with a credit transaction who discovers that the address on the consumer credit report does not match the address of the consumer requesting or being offered credit to take reasonable steps to verify the accuracy of the consumer's address.

This bill would exclude from these provisions a United States Armed Forces Post Office or a United States Fleet Post Office address.

(3) *Existing law defines an investigative consumer reporting agency to mean any person who, for monetary fees or dues, engages in whole or in part in collecting, assembling, evaluating, compiling, reporting, transmitting, transferring, or communicating information concerning consumers for the purposes of furnishing investigative consumer reports to 3rd parties, and excepts certain occupations from this definition, including licensed insurance agents.*

This bill would also except a licensed attorney from this definition.

(4) *Existing law requires an investigative consumer reporting agency to keep a copy of an investigative consumer report for at least 3 years.*

This bill would reduce the period of time the report must be made available to the consumer to 2 years after the report is provided.

(5) *Existing law prohibits an investigative consumer reporting agency from making or furnishing an investigative consumer report containing specified items of information, except where the report is used in the underwriting of life insurance, as specified.*

This bill would provide an additional exception to the above-described prohibition on specified items of information when an employer is explicitly required by a governmental regulatory agency to check for records that investigative consumer reports are prohibited from containing when the employer is reviewing a consumer's qualification for employment.

(6) *Existing law requires an investigative consumer reporting agency to require that prospective users of information identify themselves and to certify the purposes for which the information sought will be used. Existing law further requires an investigative consumer reporting agency to keep a record of the purposes for which information is sought.*

This bill would permit an investigative consumer reporting agency to assume that the purpose for which a user seeks information remains the same as that which a user has previously stated. The bill would require the investigative consumer reporting agency to inform the user that the user is obligated to notify the agency of any change in the purpose for which information will be used.

(7) *Existing law requires an investigative consumer reporting agency to promptly notify a consumer, as specified, when information deleted from a consumer's file is reinserted, and requires the agency to*



provide a notice to the consumer stating that the consumer has a right to a reinvestigation of the information and to add a statement to the file, as specified.

This bill would provide an exception to the notice regarding reinvestigation of the information and the right to add a statement when the reinsertion results from the resolution of a prior dispute by the consumer.

(8) Existing law requires an investigative consumer reporting agency to provide certain notices to specified parties who have received, in the prior 2 years, an investigative consumer report regarding a consumer when information is deleted from a consumer's file or following the filing of a specified dispute regarding the information, unless the consumer explicitly requests this notification not be given.

This bill would provide that the notifications described above be furnished, instead, to any person specifically designated by the consumer.

(9) This bill would declare that it is to take effect immediately as an urgency statute.

Vote: ²/₃. Appropriation: no. Fiscal committee: no. State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Section 1785.16.3 is added to the Civil Code, to
2 read:

3 1785.16.3. The provisions of subdivisions (k) and (l) of
4 Section 1785.16 do not apply to a consumer reporting agency that
5 acts only as a reseller of credit information by assembling and
6 merging information contained in the database of another
7 consumer reporting agency or agencies, and that does not maintain
8 a permanent database of credit information from which new credit
9 reports are produced.

10 SEC. 2. Section 1785.20.3 of the Civil Code is amended to
11 read:

12 1785.20.3. (a) Any person who uses a consumer credit report
13 in connection with a credit transaction, and who discovers that the
14 address on the consumer credit report does not match the address
15 of the consumer requesting or being offered credit, shall take
16 reasonable steps to verify the accuracy of the consumer's address,



1 and shall either communicate to consumer by telephone, or write
2 the consumer, to confirm that the credit transaction is not the result
3 of identity theft, as defined in Section 1798.90.

4 (b) Any person who uses a consumer credit report in
5 connection with a credit transaction, and who receives a clearly
6 identifiable notification, consisting of more than a tradeline, from
7 a consumer credit reporting agency that information in the report
8 has been blocked pursuant to Section 1785.16 as the result of an
9 identity theft, shall not lend money or extend credit without taking
10 reasonable steps to verify the consumer's identity and to confirm
11 that the credit transaction is not the result of identity theft.

12 (c) Any consumer who suffers damages as a result of a violation
13 of this section by any person may bring an action in a court of
14 appropriate jurisdiction against that person to recover actual
15 damages, court costs, attorney's fees, and punitive damages of not
16 more than thirty thousand dollars (\$30,000) for each violation, as
17 the court deems proper.

18 (d) As used in this section, "identity theft" has the meaning
19 given in Section 1798.90.

20 (e) This section does not apply to a United States Armed Forces
21 Post Office address or a United States Fleet Post Office address.

22 SEC. 3. *Section 1786.2 of the Civil Code is amended to read:*
23 1786.2. The following terms as used in this title have the
24 meaning expressed in this section:

25 (a) The term "person" means any individual, partnership,
26 corporation, limited liability company, trust, estate, cooperative,
27 association, government or governmental subdivision or agency,
28 or other entity. The term "person" as used in this title shall not be
29 construed to require duplicative reporting by any individual,
30 corporation, trust, estate, cooperative, association, government, or
31 governmental subdivision or agency, or other entity involved in
32 the same transaction.

33 (b) The term "consumer" means a natural individual who has
34 made application to a person for employment purposes, for
35 insurance for personal, family, or household purposes, or *for* the
36 hiring of a dwelling unit, as defined in subdivision (c) of Section
37 1940.

38 (c) The term "investigative consumer report" means a
39 consumer report in which information on a consumer's character,
40 general reputation, personal characteristics, or mode of living is



1 obtained through any means. The term does not include a
2 consumer report or other compilation of information that is limited
3 to specific factual information relating to a consumer’s credit
4 record or manner of obtaining credit obtained directly from a
5 creditor of the consumer or from a consumer reporting agency
6 when that information was obtained directly from a potential or
7 existing creditor of the consumer or from the consumer.
8 Notwithstanding the foregoing, for transactions between
9 investigative consumer reporting agencies and insurance
10 institutions, agents, or insurance-support organizations subject to
11 Article 6.6 (commencing with Section 791) of Chapter 1 of Part
12 2 of Division 1 of the Insurance Code, the term “investigative
13 consumer report” shall have the meaning set forth in subdivision
14 (n) of Section 791.02 of the Insurance Code.

15 (d) The term “investigative consumer reporting agency”
16 means any person who, for monetary fees or dues, engages in
17 whole or in part in the practice of collecting, assembling,
18 evaluating, compiling, reporting, transmitting, transferring, or
19 communicating information concerning consumers for the
20 purposes of furnishing investigative consumer reports to third
21 parties, but does not include any governmental agency whose
22 records are maintained primarily for traffic safety, law
23 enforcement, or licensing purposes, or any licensed *attorney*,
24 *licensed* insurance agent, insurance broker, or solicitor, insurer, or
25 life insurance agent.

26 (e) The term “file,” when used in connection with information
27 on any consumer, means all of the information on that consumer
28 recorded and retained by an investigative consumer reporting
29 agency regardless of how the information is stored.

30 (f) The term “employment purposes,” when used in
31 connection with an investigative consumer report, means a report
32 used for the purpose of evaluating a consumer for employment,
33 promotion, reassignment, or retention as an employee.

34 (g) The term “medical information” means information on a
35 person’s medical history or condition obtained directly or
36 indirectly from a licensed physician, medical practitioner,
37 hospital, clinic, or other medical or medically related facility.

38 *SEC. 4. Section 1786.11 of the Civil Code is amended to read:*
39 1786.11. Every investigative consumer reporting agency that
40 provides an investigative consumer report to a person other than



1 the consumer shall make a copy of that report available, upon
2 request and proper identification, to the consumer for at least ~~three~~
3 *two* years after the date that the report is provided to the other
4 person.

5 *SEC. 5. Section 1786.18 of the Civil Code is amended to read:*

6 1786.18. (a) Except as authorized under subdivision (b), ~~no~~
7 *an* investigative consumer reporting agency ~~shall~~ *may not* make or
8 furnish any investigative consumer report containing any of the
9 following items of information:

10 (1) Bankruptcies that, from the date of adjudication, antedate
11 the report by more than 10 years.

12 (2) Suits that, from the date of filing, and satisfied judgments
13 that, from the date of entry, antedate the report by more than seven
14 years.

15 (3) Unsatisfied judgments that, from the date of entry, antedate
16 the report by more than seven years.

17 (4) Unlawful detainer actions where the defendant was the
18 prevailing party or where the action is resolved by settlement
19 agreement.

20 (5) Paid tax liens that, from the date of payment, antedate the
21 report by more than seven years.

22 (6) Accounts placed for collection or charged to profit and loss
23 that antedate the report by more than seven years.

24 (7) Records of arrest, indictment, information, misdemeanor
25 complaint, or conviction of a crime that, from the date of
26 disposition, release, or parole, antedate the report by more than
27 seven years. These items of information shall no longer be
28 reported if at any time it is learned that, in the case of a conviction,
29 a full pardon has been granted or, in the case of an arrest,
30 indictment, information, or misdemeanor complaint, a conviction
31 did not result; except that records of arrest, indictment,
32 information, or misdemeanor complaints may be reported pending
33 pronouncement of judgment on the particular subject matter of
34 those records.

35 (8) Any other adverse information that antedates the report by
36 more than seven years.

37 (b) The provisions of subdivision (a) are not applicable in
38 *either of the case of any following circumstances:*

39 (1) *If the* investigative consumer report *is* to be used in the
40 underwriting of life insurance involving, or that may reasonably



1 be expected to involve, an amount of two hundred fifty thousand
2 dollars (\$250,000) or more.

3 (2) *If the investigative consumer report is to be used by an*
4 *employer who is explicitly required by a governmental regulatory*
5 *agency to check for records that are prohibited by subdivision (a)*
6 *when the employer is reviewing a consumer's qualification for*
7 *employment.*

8 (c) Except as otherwise provided in Section 1786.28, an
9 investigative consumer reporting agency shall not furnish an
10 investigative consumer report that includes information that is a
11 matter of public record and that relates to an arrest, indictment,
12 conviction, civil judicial action, tax lien, or outstanding judgment,
13 unless the agency has verified the accuracy of the information
14 during the 30-day period ending on the date on which the report
15 is furnished.

16 (d) An investigative consumer reporting agency shall not
17 prepare or furnish an investigative consumer report on a consumer
18 that contains information that is adverse to the interest of the
19 consumer and that is obtained through a personal interview with
20 a neighbor, friend, or associate of the consumer or with another
21 person with whom the consumer is acquainted or who has
22 knowledge of the item of information, unless either (1) the
23 investigative consumer reporting agency has followed reasonable
24 procedures to obtain confirmation of the information, from an
25 additional source that has independent and direct knowledge of the
26 information, or (2) the person interviewed is the best possible
27 source of the information.

28 *SEC. 6. Section 1786.20 of the Civil Code is amended to read:*

29 1786.20. (a) Every investigative consumer reporting agency
30 shall maintain reasonable procedures designed to avoid violations
31 of Section 1786.18 and to limit furnishing of investigative
32 consumer reports for the purposes listed under Section 1786.12.
33 These procedures shall require that prospective users of the
34 information identify themselves, certify the purposes for which
35 the information is sought and that the information will be used for
36 no other purposes, and make the certifications described in
37 paragraph (4) of subdivision (a) of Section 1786.16. From the
38 effective date of this title, the investigative consumer reporting
39 agency shall keep a record of the purposes for which information
40 is sought, as stated by the user. *The investigative consumer*



1 *reporting agency may assume that the purpose for which a user*
2 *seeks information remains the same as that which a user has*
3 *previously stated. The investigative consumer reporting agency*
4 *shall inform the user that the user is obligated to notify the agency*
5 *of any change in the purpose for which information will be used.*
6 Every investigative consumer reporting agency shall make a
7 reasonable effort to verify the identity of a new prospective user
8 and the uses certified by the prospective user prior to furnishing the
9 user any investigative consumer reports. No investigative
10 consumer reporting agency may furnish any investigative
11 consumer reports to any person unless it has a written agreement
12 that the investigative consumer reports will be used by that person
13 only for purposes listed in Section 1786.12.

14 (b) Whenever an investigative consumer reporting agency
15 prepares an investigative consumer report, it shall follow
16 reasonable procedures to assure maximum possible accuracy of
17 the information concerning the individual about whom the report
18 relates. An investigative consumer reporting agency shall retain
19 the investigative consumer report for a period of ~~three~~ two years
20 *after the report is provided.*

21 (c) An investigative consumer reporting agency shall not make
22 an inquiry for the purpose of preparing an investigative consumer
23 report on a consumer for employment purposes if the making of
24 the inquiry by an employer or prospective employer of the
25 consumer would violate any applicable federal or state equal
26 employment opportunity law or regulation.

27 (d) Any investigative consumer reporting agency that violates
28 this section shall be liable to the consumer affected in an amount
29 not less than twenty-five thousand dollars (\$25,000).

30 *SEC. 7. Section 1786.24 of the Civil Code is amended to read:*

31 1786.24. (a) If the completeness or accuracy of any item of
32 information contained in his or her file is disputed by a consumer,
33 and the dispute is conveyed directly to the investigative consumer
34 reporting agency by the consumer, the investigative consumer
35 reporting agency shall, without charge, reinvestigate and record
36 the current status of the disputed information or delete the item
37 from the file in accordance with subdivision (c), before the end of
38 the 30-day period beginning on the date on which the agency
39 receives the notice of the dispute from the consumer.



1 (b) The agency shall notify any person who provided
2 information in dispute at the address and in the manner specified
3 by that person. The notice shall include all relevant information
4 regarding the dispute that the investigative consumer reporting
5 agency has received from the consumer. The agency shall also
6 promptly provide to the person who provided the information in
7 dispute all relevant information regarding the dispute that is
8 received by the agency from the consumer during the
9 reinvestigation.

10 (c) In conducting a reinvestigation, the investigative consumer
11 reporting agency shall review and consider all relevant
12 information submitted by the consumer with respect to the
13 disputed item of information.

14 (d) Notwithstanding subdivision (a), an investigative
15 consumer reporting agency may terminate a reinvestigation of
16 information disputed by a consumer if the investigative consumer
17 reporting agency reasonably determines that the dispute is
18 frivolous or irrelevant, including by reason of a failure by a
19 consumer to provide sufficient information to investigate the
20 disputed information. Upon making a determination that a dispute
21 is frivolous or irrelevant, the investigative consumer reporting
22 agency shall notify the consumer, by mail or, if authorized by the
23 consumer for that purpose, by any other means available to the
24 agency. In this notification, the investigative consumer reporting
25 agency shall state the specific reasons why it has determined that
26 the consumer's dispute is frivolous or irrelevant and provide a
27 description of any information required to investigate the disputed
28 information, that may consist of a standardized form describing
29 the general nature of the required information.

30 (e) If a reinvestigation is made and, after reinvestigation, the
31 disputed item of information is found to be inaccurate, incomplete,
32 or cannot be verified by the evidence submitted, the investigative
33 consumer reporting agency shall promptly delete that information
34 from the consumer's file or modify the information, as
35 appropriate, based on the results of the reinvestigation, and shall
36 notify the consumer that the information has been deleted or
37 modified. The consumer reporting agency shall also notify any and
38 all sources from which the disputed information was obtained and
39 inform them in writing of the reasons and results of the



1 reinvestigation, and send a copy of this notification to the
2 consumer.

3 (f) No information may be reinserted in a consumer's file after
4 having been deleted pursuant to this section unless the person who
5 furnished the information verifies that the information is complete
6 and accurate. If any information deleted from a consumer's file is
7 reinserted in the file, the investigative consumer reporting agency
8 shall promptly notify the consumer of the reinsertion in writing or,
9 if authorized by the consumer for that purpose, by any other means
10 available to the agency. As part of, or in addition to, this notice, the
11 investigative consumer reporting agency shall provide to the
12 consumer in writing (1) a statement that the disputed information
13 has been reinserted, (2) the name, address, and telephone number
14 of any furnisher of information contacted or that contacted the
15 investigative consumer reporting agency in connection with the
16 reinsertion, and the telephone number of the furnisher, if
17 reasonably available, and (3) a notice that the consumer has the
18 right to a reinvestigation of the information reinserted by the
19 investigative consumer reporting agency and to add a statement to
20 his or her file disputing the accuracy or completeness of the
21 information, *except when the reinsertion results from the*
22 *resolution of a prior dispute by the consumer.*

23 (g) An investigative consumer reporting agency shall provide
24 notice to the consumer of the results of any reinvestigation under
25 this section by mail or, if authorized by the consumer for that
26 purpose, by other means available to the agency. The notice shall
27 include (1) a statement that the reinvestigation is completed, (2) an
28 investigative consumer report that is based on the consumer's file
29 as that file is revised as a result of the reinvestigation, (3) a
30 description or indication of any changes made in the investigative
31 consumer report as a result of those revisions to the consumer's
32 file, (4) a notice that, if requested by the consumer, a description
33 of the procedure used to determine the accuracy and completeness
34 of the information shall be provided to the consumer by the
35 investigative consumer reporting agency, including the name,
36 business address, and telephone number of any furnisher of
37 information contacted in connection with that information, (5) a
38 notice that the consumer has the right to add a statement to the
39 consumer's file disputing the accuracy or completeness of the
40 information, and (6) a notice that the consumer has the right to



1 request that the investigative consumer reporting agency furnish
2 notifications under subdivision (k).

3 (h) The presence of information in the consumer's file that
4 contradicts the contention of the consumer shall not, in and of
5 itself, constitute reasonable grounds for believing the dispute is
6 frivolous or irrelevant.

7 (i) If the investigative consumer reporting agency determines
8 that the dispute is frivolous or irrelevant, or if the reinvestigation
9 does not resolve the dispute, or if the information is reinserted into
10 the consumer's file pursuant to subdivision (f), the consumer may
11 file a brief statement setting forth the nature of the dispute. The
12 investigative consumer reporting agency may limit these
13 statements to not more than 500 words if it provides the consumer
14 with assistance in writing a clear summary of the dispute.

15 (j) Whenever a statement of dispute is filed, the investigative
16 consumer reporting agency shall, in any subsequent investigative
17 consumer report containing the information in question, clearly
18 note that the information is disputed by the consumer and shall
19 include in the report either the consumer's statement or a clear and
20 accurate summary thereof.

21 (k) Following the deletion of information from a consumer's
22 file pursuant to this section, or following the filing of a dispute
23 pursuant to subdivision (i), the investigative consumer reporting
24 agency shall, at the request of the consumer, furnish notification
25 that the item of information has been deleted or that the item of
26 information is disputed. In the case of disputed information, the
27 notification shall include the statement or summary of the dispute
28 filed pursuant to subdivision (i). This notification shall be
29 furnished to any person, *specifically designated by the consumer*,
30 who has, within two years prior to the deletion or the filing of the
31 dispute, received an investigative consumer report concerning the
32 consumer for employment purposes, or who has, within one year
33 of the deletion or the filing of the dispute, received an investigative
34 consumer report concerning the consumer for any other purpose,
35 if these investigative consumer reports contained the deleted or
36 disputed information, ~~unless the consumer specifically requests in
37 writing, that this notification not be given to all persons or to any
38 specified persons.~~ The investigative consumer reporting agency
39 shall clearly and conspicuously disclose to the consumer his or her
40 rights to make a request ~~that for this notification not be made.~~



1 (l) An investigative consumer reporting agency shall maintain
2 reasonable procedures designed to prevent the reappearance in a
3 consumer's file and in investigative consumer reports information
4 that has been deleted pursuant to this section and not reinserted
5 pursuant to subdivision (f).

6 (m) If the consumer's dispute is resolved by deletion of the
7 disputed information within three business days, beginning with
8 the day the investigative consumer reporting agency receives
9 notice of the dispute in accordance with subdivision (a), the
10 investigative consumer reporting agency shall be exempt from
11 requirements for further action under subdivisions (g), (i), and (j),
12 if the agency: (1) provides prompt notice of the deletion to the
13 consumer by telephone, (2) provides written confirmation of the
14 deletion and a copy of an investigative consumer report of the
15 consumer that is based on the consumer's file after the deletion,
16 and (3) includes, in the telephone notice or in a written notice that
17 accompanies the confirmation and report, a statement of the
18 consumer's right to request under subdivision (k) that the agency
19 ~~not~~ furnish notifications under that subdivision.

20 (n) Any investigative consumer reporting agency that compiles
21 and maintains files on consumers on a nationwide basis, as defined
22 in the federal Fair Credit Reporting Act, as amended (15 U.S.C.
23 Sec. 1681 et seq.), shall implement an automated system through
24 which furnishers of information to that agency may report the
25 results of a reinvestigation that finds incomplete or inaccurate
26 information in a consumer's file to other investigative consumer
27 reporting agencies.

28 (o) All actions to be taken by an investigative consumer
29 reporting agency under this section are governed by the applicable
30 time periods specified in Section 611 of the federal Fair Credit
31 Reporting Act, as amended (15 U.S.C. Sec. 1681i).

32 *SEC. 8.* This act is an urgency statute necessary for the
33 immediate preservation of the public peace, health, or safety
34 within the meaning of Article IV of the Constitution and shall go
35 into immediate effect. The facts constituting the necessity are:

36 In order to provide relief to our service men and women by
37 addressing the negative effects of recent legislation on their ability
38 to create new sources of credit, and thereby endangering the public



1 peace, health, and safety, it is necessary that this act take
2 immediate effect.

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