

AMENDED IN SENATE AUGUST 14, 2002

AMENDED IN SENATE JUNE 26, 2002

AMENDED IN SENATE JUNE 12, 2002

AMENDED IN ASSEMBLY APRIL 18, 2002

CALIFORNIA LEGISLATURE—2001–02 REGULAR SESSION

**ASSEMBLY BILL**

**No. 2868**

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**Introduced by Assembly Member Wright**

February 25, 2002

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An act to amend Sections 47, 1786.11, 1786.18, 1786.20, 1786.24, and 1786.50 of, and to add Section 1785.16.3 to the Civil Code, relating to personal information reporting, and declaring the urgency thereof, to take effect immediately.

LEGISLATIVE COUNSEL'S DIGEST

AB 2868, as amended, Wright. Personal information reporting.

(1) Existing law relating to defamation provides that libel is a false and unprivileged written publication that injures the reputation, and that slander is a false and unprivileged publication, orally uttered, that injures the reputation, as specified. Existing law makes privileged, and therefore protected from the threat of civil action, certain publications and communications, including those communications regarding job performance and qualifications, as specified.

This bill would revise the provisions concerning the privileged character of communications regarding job performance and qualifications to specify their application to ~~current or former employees~~ *applicants for employment* and to authorize a current or

former employer, or the employer's agent, to answer whether or not the employer would rehire a current or former employee.

(2) 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.

(3) 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.

(4) 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.

(5) 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. Existing law provides that an investigative consumer reporting agency that violates these and other specified provisions is liable to the affected consumer for not less than \$25,000, in addition to liability for actual damages or \$10,000, whichever is greater, as specified, reasonable attorneys' fees, costs of the action, and punitive damages, in the discretion of the court, when the violation is willful or grossly negligent.



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. The bill would also limit the liability of an investigative consumer reporting agency as described above, to an amount not less than \$25,000, reasonable attorneys' fees, and the costs of the action, as specified.

(6) 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~~, *and was made at the request of, or with the prior approval of,* the consumer.

(7) 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.

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

Vote: <sup>2</sup>/<sub>3</sub>. 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 47 of the Civil Code is amended to read:
- 2 47. A privileged publication or broadcast is one made:
- 3 (a) In the proper discharge of an official duty.



1 (b) In any (1) legislative proceeding, (2) judicial proceeding,  
2 (3) in any other official proceeding authorized by law, or (4) in the  
3 initiation or course of any other proceeding authorized by law and  
4 reviewable pursuant to Chapter 2 (commencing with Section  
5 1084) of Title 1 of Part 3 of the Code of Civil Procedure, except  
6 as follows:

7 (1) An allegation or averment contained in any pleading or  
8 affidavit filed in an action for marital dissolution or legal  
9 separation made of or concerning a person by or against whom no  
10 affirmative relief is prayed in the action shall not be a privileged  
11 publication or broadcast as to the person making the allegation or  
12 averment within the meaning of this section unless the pleading is  
13 verified or affidavit sworn to, and is made without malice, by one  
14 having reasonable and probable cause for believing the truth of the  
15 allegation or averment and unless the allegation or averment is  
16 material and relevant to the issues in the action.

17 (2) This subdivision does not make privileged any  
18 communication made in furtherance of an act of intentional  
19 destruction or alteration of physical evidence undertaken for the  
20 purpose of depriving a party to litigation of the use of that  
21 evidence, whether or not the content of the communication is the  
22 subject of a subsequent publication or broadcast which is  
23 privileged pursuant to this section. As used in this paragraph,  
24 “physical evidence” means evidence specified in Section 250 of  
25 the Evidence Code or evidence that is property of any type  
26 specified in Section 2031 of the Code of Civil Procedure.

27 (3) This subdivision does not make privileged any  
28 communication made in a judicial proceeding knowingly  
29 concealing the existence of an insurance policy or policies.

30 (4) A recorded lis pendens is not a privileged publication unless  
31 it identifies an action previously filed with a court of competent  
32 jurisdiction which affects the title or right of possession of real  
33 property, as authorized or required by law.

34 (c) In a communication, without malice, to a person interested  
35 therein, (1) by one who is also interested, or (2) by one who stands  
36 in such a relation to the person interested as to afford a reasonable  
37 ground for supposing the motive for the communication to be  
38 innocent, or (3) who is requested by the person interested to give  
39 the information. This subdivision applies to and includes a  
40 communication concerning the job performance or qualifications



1 of a ~~current or former employee~~ *an applicant for employment*,  
2 based upon credible evidence, made without malice, by a current  
3 or former employer of the ~~employee~~ *applicant* to, and upon  
4 request of, one whom the employer reasonably believes is a  
5 prospective ~~or current~~ employer of the ~~employee~~ *applicant*. This  
6 subdivision authorizes a current or former employer, or the  
7 employer's agent, to answer whether or not the employer would  
8 rehire a current or former employee. This subdivision shall not  
9 apply to a communication concerning the speech or activities of an  
10 applicant for employment if the speech or activities are  
11 constitutionally protected, or otherwise protected by Section  
12 527.3 of the Code of Civil Procedure or any other provision of law.

13 (d) (1) By a fair and true report in, or a communication to, a  
14 public journal, of (A) a judicial, (B) legislative, or (C) other public  
15 official proceeding, or (D) of anything said in the course thereof,  
16 or (E) of a verified charge or complaint made by any person to a  
17 public official, upon which complaint a warrant has been issued.

18 (2) Nothing in paragraph (1) shall make privileged any  
19 communication to a public journal that does any of the following:

20 (A) Violates Rule 5-120 of the State Bar Rules of Professional  
21 Conduct.

22 (B) Breaches a court order.

23 (C) Violates any requirement of confidentiality imposed by  
24 law.

25 (e) By a fair and true report of (1) the proceedings of a public  
26 meeting, if the meeting was lawfully convened for a lawful  
27 purpose and open to the public, or (2) the publication of the matter  
28 complained of was for the public benefit.

29 SEC. 2. Section 1785.16.3 is added to the Civil Code, to read:

30 1785.16.3. The provisions of subdivisions (k) and (l) of  
31 Section 1785.16 do not apply to a consumer reporting agency that  
32 acts only as a reseller of credit information by assembling and  
33 merging information contained in the database of another  
34 consumer reporting agency or agencies, and that does not maintain  
35 a permanent database of credit information from which new credit  
36 reports are produced.

37 SEC. 3. Section 1786.11 of the Civil Code is amended to read:

38 1786.11. Every investigative consumer reporting agency that  
39 provides an investigative consumer report to a person other than  
40 the consumer shall make a copy of that report available, upon



1 request and proper identification, to the consumer for at least two  
2 years after the date that the report is provided to the other person.

3 SEC. 4. Section 1786.18 of the Civil Code is amended to read:

4 1786.18. (a) Except as authorized under subdivision (b), an  
5 investigative consumer reporting agency may not make or furnish  
6 any investigative consumer report containing any of the following  
7 items of information:

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

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

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

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

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

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

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

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

35 (b) The provisions of subdivision (a) are not applicable in  
36 either of the following circumstances:

37 (1) If the investigative consumer report is to be used in the  
38 underwriting of life insurance involving, or that may reasonably  
39 be expected to involve, an amount of two hundred fifty thousand  
40 dollars (\$250,000) or more.



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

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

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

26 SEC. 5. Section 1786.20 of the Civil Code is amended to read:

27 1786.20. (a) Every investigative consumer reporting agency  
28 shall maintain reasonable procedures designed to avoid violations  
29 of Section 1786.18 and to limit furnishing of investigative  
30 consumer reports for the purposes listed under Section 1786.12.  
31 These procedures shall require that prospective users of the  
32 information identify themselves, certify the purposes for which  
33 the information is sought and that the information will be used for  
34 no other purposes, and make the certifications described in  
35 paragraph (4) of subdivision (a) of Section 1786.16. From the  
36 effective date of this title, the investigative consumer reporting  
37 agency shall keep a record of the purposes for which information  
38 is sought, as stated by the user. The investigative consumer  
39 reporting agency may assume that the purpose for which a user  
40 seeks information remains the same as that which a user has



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

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

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

25 (d) Any investigative consumer reporting agency that violates  
26 this section shall be liable to the consumer affected in an amount  
27 not less than twenty-five thousand dollars (\$25,000). In the case  
28 of a successful action to enforce liability under this section, a court  
29 may award the costs of the action together with reasonable  
30 attorney's fees as determined by the court.

31 SEC. 6. Section 1786.24 of the Civil Code is amended to read:

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

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



1 information, and (6) a notice that the consumer has the right to  
2 request that the investigative consumer reporting agency furnish  
3 notifications under subdivision (k).

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

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

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

22 (k) Following the deletion of information from a consumer's  
23 file pursuant to this section, or following the filing of a dispute  
24 pursuant to subdivision (i), the investigative consumer reporting  
25 agency shall, at the request of the consumer, furnish notification  
26 that the item of information has been deleted or that the item of  
27 information is disputed. In the case of disputed information, the  
28 notification shall include the statement or summary of the dispute  
29 filed pursuant to subdivision (i). This notification shall be  
30 furnished to any person, specifically designated by the consumer,  
31 who has, within two years prior to the deletion or the filing of the  
32 dispute, received an investigative consumer report concerning the  
33 consumer for employment purposes, or who has, within one year  
34 of the deletion or the filing of the dispute, received an investigative  
35 consumer report concerning the consumer for any other purpose,  
36 if these investigative consumer reports contained the deleted or  
37 disputed information. The investigative consumer reporting  
38 agency shall clearly and conspicuously disclose to the consumer  
39 his or her rights to make a request for this notification.



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 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. 7. Section 1786.50 of the Civil Code is amended to read:

33 1786.50. (a) An investigative consumer reporting agency or  
34 user of information that fails to comply with any requirement  
35 under this title, except for the requirements of Section 1786.20,  
36 with respect to an investigative consumer report is liable to the  
37 consumer who is the subject of the report in an amount equal to the  
38 sum of all the following:



1 (1) Any actual damages sustained by the consumer as a result  
2 of the failure or, except in the case of class actions, ten thousand  
3 dollars (\$10,000), whichever sum is greater.

4 (2) In the case of any successful action to enforce any liability  
5 under this chapter, the costs of the action together with reasonable  
6 attorney's fees as determined by the court.

7 (b) If the court determines that the violation was grossly  
8 negligent or willful, the court may, in addition, assess, and the  
9 consumer may recover, punitive damages.

10 (c) Notwithstanding subdivision (a), an investigative  
11 consumer reporting agency or user of information that fails to  
12 comply with any requirement under this title with respect to an  
13 investigative consumer report shall not be liable to a consumer  
14 who is the subject of the report where the failure to comply results  
15 in a more favorable investigative consumer report than if there had  
16 not been a failure to comply.

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

21 In order to clarify confusion over the operational provisions of  
22 Chapter 354 of the Statutes of 2001, and further protect consumer  
23 interests in relation to credit information and identity theft, it is  
24 necessary that this act take immediate effect.

