

AMENDED IN ASSEMBLY APRIL 7, 2008

CALIFORNIA LEGISLATURE—2007—08 REGULAR SESSION

ASSEMBLY BILL

No. 2918

Introduced by Assembly Member Lieber

February 22, 2008

An act to amend Section 1785.20.5 of the Civil Code, relating to employment.

LEGISLATIVE COUNSEL'S DIGEST

AB 2918, as amended, Lieber. Employment: usage of consumer credit reports.

The federal Fair Credit Reporting Act (FCRA) and the state Consumer Credit Reporting Agencies Act define and regulate consumer credit reports and authorize the use of consumer credit reports for employment purposes, pursuant to specified requirements. The FCRA provides that it does not preempt state law, except as specifically provided or to the extent that state laws are inconsistent with its provisions.

~~This bill would express the intent of the Legislature to enact legislation to restrict the use of consumer credit reports as a condition of employment.~~

Existing federal and state law specify the procedures that a potential user of a consumer credit report in the employment context is required to follow before requesting a report and if adverse action is taken based on the report. Both federal and state law provide an exemption from liability for a violation of the provisions specified in those statutes if the person can show, by a preponderance of the evidence, that he or she maintained reasonable procedures to ensure compliance with those requirements.

This bill would prohibit the potential user of a consumer credit report from obtaining a consumer credit report for employment purposes unless the information is (1) substantially job related and the employer’s reasons for the use of the information are disclosed to the consumer in writing or (2) required by law to be disclosed to or obtained by the potential user of the report. The bill also would extend the exemption from liability for the maintenance of reasonable procedures to ensure compliance with the provisions specified in state law to encompass the new prohibition.

Vote: majority. 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 1785.20.5 of the Civil Code is amended
2 to read:

3 1785.20.5. (a) Prior to requesting a consumer credit report for
4 employment purposes, the user of the report shall provide written
5 notice to the person involved. The notice shall inform the person
6 that a report will be used and the source of the report, and shall
7 contain a box that the person may check off to receive a copy of
8 the credit report. If the consumer indicates that he or she wishes
9 to receive a copy of the report, the user shall request that a copy
10 be provided to the person when the user requests its copy from the
11 credit reporting agency. The report to the user and to the subject
12 person shall be provided contemporaneously and at no charge to
13 the subject person.

14 (b) *The potential user of a consumer credit report shall not*
15 *procure a consumer credit report for employment purposes unless*
16 *the information in the report is either of the following:*

17 (1) *Substantially job related and the employer’s reasons for the*
18 *use of the information are disclosed to the consumer in writing.*

19 (2) *Required by law to be disclosed to or obtained by the*
20 *potential user of the report.*

21 ~~(b)~~

22 (c) Whenever employment involving a consumer is denied either
23 wholly or partly because of information contained in a consumer
24 credit report from a consumer credit reporting agency, the user of
25 the consumer credit report shall so advise the consumer against
26 whom the adverse action has been taken and supply the name and

1 address or addresses of the consumer credit reporting agency
2 making the report. ~~No~~ A person shall *not* be held liable for any
3 violation of this section if he or she shows by a preponderance of
4 the evidence that, at the time of the alleged violation, he or she
5 maintained reasonable procedures to ~~assure~~ *ensure* compliance
6 with this section.

7 ~~SECTION 1. It is the intent of the Legislature to enact~~
8 ~~legislation to restrict the use of consumer credit reports as a~~
9 ~~condition of employment.~~