

AMENDED IN SENATE SEPTEMBER 1, 2011

AMENDED IN ASSEMBLY MAY 12, 2011

AMENDED IN ASSEMBLY MARCH 8, 2011

CALIFORNIA LEGISLATURE—2011–12 REGULAR SESSION

ASSEMBLY BILL

No. 22

**Introduced by Assembly Member Mendoza
(Coauthors: Assembly Members Allen, Davis, and Huffman)**

December 6, 2010

An act to *amend Section 1785.20.5 of the Civil Code, and to add Chapter 3.6 (commencing with Section 1024.5) to Part 2 of Division 2 of the Labor Code, relating to employment.*

LEGISLATIVE COUNSEL'S DIGEST

AB 22, as amended, Mendoza. Employment: 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.

Existing federal and state law specify the procedures that an employer is required to follow before requesting a report and if adverse action is taken based on the report. ~~Under Existing federal law provides that, subject to certain exceptions, an employer may not procure a report or cause one to be procured for employment purposes, unless prior disclosure of the procurement is made to the consumer and the consumer authorizes the procurement, as specified. Existing federal law further requires, subject to certain exceptions, an employer, before taking any~~

adverse action based on the report, to provide the consumer with a copy of the report and a written description of certain rights of the consumer.

Under existing state law, an employer may request a credit report for employment purposes so long as he or she provides prior written notice of the request to the person for whom the report is sought. Existing state law also requires that the written notice inform the person for whom the consumer credit report was is sought that a report will be used and of the source of the report and contain space for the person to request a copy of the report. Existing state law further requires an employer, whenever he or she bases an adverse employment decision on information contained in a consumer credit report, to advise the person for whom the report was sought that an adverse action was taken based upon information contained in the report and provide the person with the name and address of the consumer credit agency making the report. A consumer who suffers damages resulting from a violation of these state law provisions may bring a court action to recover monetary damages, as specified, but no person is liable for the violation if he or she shows reasonable procedures were maintained to assure compliance with the provisions, as specified.

This bill would prohibit an employer or prospective employer, with the exception of certain financial institutions, from obtaining a consumer credit report, as defined, for employment purposes unless—the information is (1) substantially job-related, meaning that the position of the person for whom the report is sought has access to money, other assets, or confidential information, and (2) the position of the person for whom the report is sought is (1) a position in the state Department of Justice, (2) a managerial position, as defined, (3) that of a sworn peace officer or other law enforcement position, or (4) a position for which the information contained in the report is required by law to be disclosed by law or to be or obtained, by the employer (5) a position that involves regular access to specified personal information for any purpose other than the routine solicitation and processing of credit card applications in a retail establishment, (6) a position in which the person is or would be a named signatory on the employer's bank or credit card account, or authorized to transfer money or enter into financial contracts on the employer's behalf, (7) a position that involves access to confidential or proprietary information, as specified, or (8) a position that involves regular access to \$10,000 or more of cash, as specified.

This bill would also require the written notice informing the person for whom a consumer credit report is sought for employment purposes to also inform the person of the specific reason for obtaining the report, as specified.

Vote: majority. Appropriation: no. Fiscal committee: yes.
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 *shall identify the specific basis under*
7 *subdivision (a) of Section 1024.5 of the Labor Code for use of the*
8 *report. The notice shall also inform the person of the source of the*
9 *report, and shall contain a box that the person may check off to*
10 *receive a copy of the credit report. If the consumer indicates that*
11 *he or she wishes to receive a copy of the report, the user shall*
12 *request that a copy be provided to the person when the user requests*
13 *its copy from the credit reporting agency. The report to the user*
14 *and to the subject person shall be provided contemporaneously*
15 *and at no charge to the subject person.*

16 (b) Whenever employment involving a consumer is denied either
17 wholly or partly because of information contained in a consumer
18 credit report from a consumer credit reporting agency, the user of
19 the consumer credit report shall so advise the consumer against
20 whom the adverse action has been taken and supply the name and
21 address or addresses of the consumer credit reporting agency
22 making the report. No person shall be held liable for any violation
23 of this section if he or she shows by a preponderance of the
24 evidence that, at the time of the alleged violation, he or she
25 maintained reasonable procedures to assure compliance with this
26 section.

27 ~~SECTION 1.~~

28 **SEC. 2.** Chapter 3.6 (commencing with Section 1024.5) is
29 added to Part 2 of Division 2 of the Labor Code, to read:

1 CHAPTER 3.6. EMPLOYER USE OF CONSUMER CREDIT REPORTS

2
3 1024.5. (a) An employer *or prospective employer* shall not
4 use a consumer credit report, ~~as defined in subdivision (e) of~~
5 ~~Section 1785.3 of the Civil Code~~, for employment purposes unless
6 ~~the following criteria are satisfied:~~

7 ~~(1) The information contained in the report is substantially~~
8 ~~job-related, meaning that the position of the person for whom the~~
9 ~~report is sought has access to money, other assets, or confidential~~
10 ~~information.~~

11 ~~(2) The~~ *the* position of the person for whom the report is sought
12 is any of the following:

13 ~~(A)~~

14 *(1) A managerial position.*

15 ~~(B)~~

16 *(2) A position in the state Department of Justice.*

17 ~~(C)~~

18 *(3) That of a sworn peace officer or other law enforcement*
19 *position.*

20 ~~(D)~~

21 *(4) A position for which the information contained in the report*
22 *is required by law to be disclosed by law or to be obtained by the*
23 *employer or obtained.*

24 *(5) A position that involves regular access, for any purpose*
25 *other than the routine solicitation and processing of credit card*
26 *applications in a retail establishment, to all of the following types*
27 *of information of any one person:*

28 *(A) Bank or credit card account information.*

29 *(B) Social security number.*

30 *(C) Date of birth.*

31 *(6) A position in which the person is, or would be, any of the*
32 *following:*

33 *(A) A named signatory on the bank or credit card account of*
34 *the employer.*

35 *(B) Authorized to transfer money on behalf of the employer.*

36 *(C) Authorized to enter into financial contracts on behalf of the*
37 *employer.*

38 *(7) A position that involves access to confidential or proprietary*
39 *information, including a formula, pattern, compilation, program,*
40 *device, method, technique, process or trade secret that (i) derives*

1 *independent economic value, actual or potential, from not being*
2 *generally known to, and not being readily ascertainable by proper*
3 *means by, other persons who may obtain economic value from the*
4 *disclosure or use of the information, and (ii) is the subject of an*
5 *effort that is reasonable under the circumstances to maintain*
6 *secrecy of the information.*

7 (8) *A position that involves regular access to cash totaling ten*
8 *thousand dollars (\$10,000) or more of the employer, a customer,*
9 *or client, during the workday.*

10 (b) This section does not apply to a person or business subject
11 to Sections 6801 to 6809, inclusive, of Title 15 of the United States
12 Code and state and federal statutes or regulations implementing
13 those sections if the person or business is subject to compliance
14 oversight by a state or federal regulatory agency with respect to
15 those laws.

16 ~~(e) For purposes of this section, “managerial position” means~~
17 ~~a position held by a person who has authority, in the interest of~~
18 ~~the employer, to hire, transfer, suspend, lay off, recall, promote,~~
19 ~~discharge, assign, reward, or discipline other employees, or~~
20 ~~responsibly to direct them, or to adjust their grievances, or~~
21 ~~effectively to recommend such action, if in connection with the~~
22 ~~foregoing the exercise of this authority is not of a merely routine~~
23 ~~or clerical nature, but requires the use of independent judgment.~~

24 (c) *The following definitions apply to this section:*

25 (1) *“Consumer credit report” has the same meaning as defined*
26 *in subdivision (c) of Section 1785.3 of the Civil Code, but does not*
27 *include a report that (A) verifies income or employment, and (B)*
28 *does not include credit-related information, such as credit history,*
29 *credit score, or credit record.*

30 (2) *“Managerial position” means an employee covered by the*
31 *executive exemption set forth in subparagraph (1) of paragraph*
32 *(A) of Section 1 of Wage Order 4 of the Industrial Welfare*
33 *Commission (8 Cal. Code Regs. 11040).*