

Assembly Bill No. 22

Passed the Assembly September 8, 2011

Chief Clerk of the Assembly

Passed the Senate September 8, 2011

Secretary of the Senate

This bill was received by the Governor this _____ day
of _____, 2011, at _____ o'clock ____M.

Private Secretary of the Governor

CHAPTER _____

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, 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. 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 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 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, (4) a position for which the information contained in the report is required by law to be disclosed or obtained, (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.

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

SECTION 1. Section 1785.20.5 of the Civil Code is amended to read:

1785.20.5. (a) Prior to requesting a consumer credit report for employment purposes, the user of the report shall provide written notice to the person involved. The notice shall inform the person that a report will be used, and shall identify the specific basis under subdivision (a) of Section 1024.5 of the Labor Code for use of the report. The notice shall also inform the person of the source of the report, and shall contain a box that the person may check off to

receive a copy of the credit report. If the consumer indicates that he or she wishes to receive a copy of the report, the user shall request that a copy be provided to the person when the user requests its copy from the credit reporting agency. The report to the user and to the subject person shall be provided contemporaneously and at no charge to the subject person.

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

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

CHAPTER 3.6. EMPLOYER USE OF CONSUMER CREDIT REPORTS

1024.5. (a) An employer or prospective employer shall not use a consumer credit report for employment purposes unless the position of the person for whom the report is sought is any of the following:

- (1) A managerial position.
- (2) A position in the state Department of Justice.
- (3) That of a sworn peace officer or other law enforcement position.
- (4) A position for which the information contained in the report is required by law to be disclosed or obtained.
- (5) A position that involves regular access, for any purpose other than the routine solicitation and processing of credit card applications in a retail establishment, to all of the following types of information of any one person:
 - (A) Bank or credit card account information.
 - (B) Social security number.
 - (C) Date of birth.

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

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

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

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

(7) A position that involves access to confidential or proprietary information, including a formula, pattern, compilation, program, device, method, technique, process or trade secret that (i) derives independent economic value, actual or potential, from not being generally known to, and not being readily ascertainable by proper means by, other persons who may obtain economic value from the disclosure or use of the information, and (ii) is the subject of an effort that is reasonable under the circumstances to maintain secrecy of the information.

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

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

(c) The following definitions apply to this section:

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

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

Approved _____, 2011

Governor