

AMENDED IN ASSEMBLY MARCH 21, 2013

CALIFORNIA LEGISLATURE—2013–14 REGULAR SESSION

**ASSEMBLY BILL**

**No. 1169**

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**Introduced by Assembly Member Daly**

February 22, 2013

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An act to amend Section ~~17421~~ 1785.3 of the ~~Financial~~ Civil Code, relating to ~~escrow agents~~ *consumer credit reports*.

LEGISLATIVE COUNSEL'S DIGEST

AB 1169, as amended, Daly. ~~Escrow agents~~. *Consumer credit reports: escrow agents: real estate.*

*Existing law defines and regulates consumer credit reporting agencies and investigative consumer reporting agencies. Existing law defines a consumer credit report as a written, oral, or other communication of any information by a consumer credit reporting agency bearing on a consumer's credit worthiness, credit standing, or credit capacity, which is used or is expected to be used, or collected in whole or in part, for the purpose of serving as a factor in establishing the consumer's eligibility for certain purposes, as specified.*

*This bill would revise the definition of a consumer credit report to include a communication of information by a consumer credit reporting agency used for the purpose of serving as a factor in establishing the consumer's eligibility for a proprietary database and rating evaluation. This bill would define a proprietary database and rating evaluation as a report prepared for a fee and provided to a furnisher of credit, for the purpose of evaluating a consumer, for use or retention in the furnisher's capacity as an escrow agent in the business of title insurance or in business regulated under the provisions of the Real Estate Law.*

~~The Escrow Law regulates the activities of escrow agents, as defined, including, but not limited to, authorizing a disbursement to be advanced or paid out before the close of an escrow, as specified.~~

~~This bill would make nonsubstantive changes to this provision.~~

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 1785.3 of the Civil Code is amended to  
2 read:

3     1785.3. The following terms as used in this title have the  
4 meaning expressed in this section:

5     (a) “Adverse action” means a denial or revocation of credit, a  
6 change in the terms of an existing credit arrangement which is  
7 adverse to the interests of the consumer, or a refusal to grant credit  
8 in substantially the amount or on substantially the terms requested.

9 “Adverse action” includes all of the following:

10     (1) Any denial of, increase in any charge for, or reduction in  
11 the amount of, insurance for personal, family, or household  
12 purposes made in connection with the underwriting of insurance.

13     (2) Any denial of employment or any other decision made for  
14 employment purposes which adversely affects any current or  
15 prospective employee.

16     (3) Any action taken, or determination made, with respect to a  
17 consumer (A) for an application for an extension of credit, or an  
18 application for the hiring of a dwelling unit, and (B) that is adverse  
19 to the interests of the consumer.

20     “Adverse action” does not include (A) a refusal to extend  
21 additional credit to a consumer under an existing credit  
22 arrangement if (i) the applicant is delinquent or otherwise in default  
23 under that credit arrangement or (ii) the additional credit would  
24 exceed a credit limit previously established for the consumer or  
25 (B) a refusal or failure to authorize an account transaction at a  
26 point of sale.

27     (b) “Consumer” means a natural individual.

28     (c) “Consumer credit report” means any written, oral, or other  
29 communication of any information by a consumer credit reporting  
30 agency bearing on a consumer’s credit worthiness, credit standing,  
31 or credit capacity, which is used or is expected to be used, or

1 collected in whole or in part, for the purpose of serving as a factor  
2 in establishing the consumer's eligibility for: (1) credit to be used  
3 primarily for personal, family, or household purposes, or (2)  
4 employment purposes, or (3) hiring of a dwelling unit, as defined  
5 in subdivision (c) of Section 1940, (4) *a proprietary database and*  
6 *rating evaluation*, or ~~(4)~~ (5) other purposes authorized in Section  
7 1785.11.

8 The term does not include (1) any report containing information  
9 solely as to transactions or experiences between the consumer and  
10 the person making the report, (2) any communication of that  
11 information or information from a credit application by a consumer  
12 that is internal within the organization that is the person making  
13 the report or that is made to an entity owned by, or affiliated by  
14 corporate control with, that person; provided that the consumer is  
15 informed by means of a clear and conspicuous written disclosure  
16 that information contained in the credit application may be  
17 provided to these persons; however, where a credit application is  
18 taken by telephone, disclosure shall initially be given orally at the  
19 time the application is taken, and a clear and conspicuous written  
20 disclosure shall be made to the consumer in the first written  
21 communication to that consumer after the application is taken, (3)  
22 any authorization or approval of a specific extension of credit  
23 directly or indirectly by the issuer of a credit card or similar device,  
24 (4) any report by a person conveying a decision whether to make  
25 a specific extension of credit directly or indirectly to a consumer  
26 in response to a request by a third party, if the third party advises  
27 the consumer of the name and address of the person to whom the  
28 request was made and the person makes the disclosures to the  
29 consumer required under Section 1785.20, (5) any report containing  
30 information solely on a consumer's character, general reputation,  
31 personal characteristics, or mode of living which is obtained  
32 through personal interviews with neighbors, friends, or associates  
33 of the consumer reported on, or others with whom he is acquainted  
34 or who may have knowledge concerning those items of  
35 information, (6) any communication about a consumer in  
36 connection with a credit transaction which is not initiated by the  
37 consumer, between persons who are affiliated (as defined in Section  
38 150 of the Corporations Code) by common ownership or common  
39 corporate control (as defined by Section 160 of the Corporations  
40 Code), if either of those persons has complied with paragraph (2)

1 of subdivision (b) of Section 1785.20.1 with respect to a  
2 prequalifying report from which the information communicated  
3 is taken and provided the consumer has consented to the provision  
4 and use of the prequalifying report in writing, or (7) any consumer  
5 credit report furnished for use in connection with a transaction  
6 which consists of an extension of credit to be used solely for a  
7 commercial purpose.

8 (d) “Consumer credit reporting agency” means any person who,  
9 for monetary fees, dues, or on a cooperative nonprofit basis,  
10 regularly engages in whole or in part in the business of assembling  
11 or evaluating consumer credit information or other information on  
12 consumers for the purpose of furnishing consumer credit reports  
13 to third parties, but does not include any governmental agency  
14 whose records are maintained primarily for traffic safety, law  
15 enforcement, or licensing purposes.

16 (e) “Credit transaction that is not initiated by the consumer”  
17 does not include the use of a consumer credit report by an assignee  
18 for collection or by a person with which the consumer has an  
19 account for purposes of (1) reviewing the account or (2) collecting  
20 the account. For purposes of this subdivision, “reviewing the  
21 account” includes activities related to account maintenance and  
22 monitoring, credit line increases, and account upgrades and  
23 enhancements.

24 (f) “Employment purposes,” when used in connection with a  
25 consumer credit report, means a report used for the purpose of  
26 evaluating a consumer for employment, promotion, reassignment,  
27 or retention as an employee.

28 (g) “File,” when used in connection with information on any  
29 consumer, means all of the information on that consumer recorded  
30 and retained by a consumer credit reporting agency, regardless of  
31 how the information is stored.

32 (h) “Firm offer of credit” means any offer of credit to a  
33 consumer that will be honored if, based on information in a  
34 consumer credit report on the consumer and other information  
35 bearing on the creditworthiness of the consumer, the consumer is  
36 determined to meet the criteria used to select the consumer for the  
37 offer and the consumer is able to provide any real property  
38 collateral specified in the offer. For purposes of this subdivision,  
39 the phrase “other information bearing on the creditworthiness of  
40 the consumer” means information that the person making the offer

1 is permitted to consider pursuant to any rule, regulation, or formal  
2 written policy statement relating to the federal Fair Credit  
3 Reporting Act, as amended (15 U.S.C. Sec. 1681 et seq.),  
4 promulgated by the Federal Trade Commission or any federal bank  
5 regulatory agency.

6 (i) “Item of information” means any of one or more informative  
7 entries in a credit report which causes a creditor to deny credit to  
8 an applicant or increase the cost of credit to an applicant or deny  
9 an applicant a checking account with a bank or other financial  
10 institution.

11 (j) “Person” means any individual, partnership, corporation,  
12 trust, estate, cooperative, association, government or governmental  
13 subdivision or agency, or other entity.

14 (k) “Prequalifying report” means a report containing the limited  
15 information permitted under paragraph (2) of subdivision (b) of  
16 Section 1785.11.

17 (l) *The term “proprietary database and rating evaluation”*  
18 *means a report prepared for a fee and provided to a furnisher of*  
19 *credit for the purpose of evaluating a consumer, for use or*  
20 *retention in the furnisher’s capacity as an “escrow agent,” as that*  
21 *term is defined in Section 17004 of the Financial Code, in the*  
22 *“business of title insurance,” as that term is used in Section*  
23 *12340.3 of the Insurance Code, or in a business regulated under*  
24 *the Real Estate Law (Part 1 (commencing with Section 10000) of*  
25 *Division 4 of the Business and Professions Code).*

26 (†)

27 (m) “State or local child support enforcement agency” means  
28 the Department of Child Support Services or local child support  
29 agency acting pursuant to Division 17 (commencing with Section  
30 17000) of the Family Code to establish, enforce or modify child  
31 support obligations, and any state or local agency or official that  
32 succeeds to these responsibilities under a successor statute.

33 ~~SECTION 1. Section 17421 of the Financial Code is amended~~  
34 ~~to read:~~

35 ~~17421. Notwithstanding Section 17420, a disbursement, other than~~  
36 ~~for a fee, commission, or compensation may be advanced or paid~~  
37 ~~out before the close of an escrow, if the written instructions of all~~  
38 ~~parties to the transaction so provide.~~

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