

AMENDED IN SENATE MAY 15, 2012

SENATE BILL

No. 1384

Introduced by Senator Simitian

February 24, 2012

An act to amend Sections 1785.2, 1785.3, 1785.11.2, and 1785.11.3 of, and to amend the heading of Title 1.6 (commencing with Section 1785.1) of Part 4 of Division 3 of, the Civil Code, relating to consumer information privacy.

LEGISLATIVE COUNSEL'S DIGEST

SB 1384, as amended, Simitian. Consumer information privacy.

Existing state and federal law define and regulate consumer credit reports. Existing federal law regulates consumer file information that is compiled and maintained by a nationwide specialty consumer reporting agency, which is defined as a consumer reporting agency that compiles and maintains files on consumers on a nationwide basis relating to medical records or payments, residential or tenant history, check writing history, employment history, or insurance claims. Existing state law permits a consumer to place and to remove a security on his or her credit report by following a specified procedure.

This bill would define a nationwide specialty consumer reporting agency and consumer file for purposes of California law and would authorize a consumer to place a freeze on his or her consumer file that is compiled and maintained by a nationwide specialty consumer reporting agency. The bill would also make conforming changes.

Vote: majority. Appropriation: no. Fiscal committee: no.
State-mandated local program: no.

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

SECTION 1. The heading of Title 1.6 (commencing with Section 1785.1) of Part 4 of Division 3 of the Civil Code is amended to read:

TITLE 1.6. CONSUMER REPORTING AGENCIES ACT

SEC. 2. Section 1785.2 of the Civil Code is amended to read:
1785.2. This act may be referred to as the Consumer Reporting Agencies Act.

SEC. 3. Section 1785.3 of the Civil Code is amended to read:
1785.3. The following terms as used in this title have the meaning expressed in this section:

(a) "Adverse action" means a denial or revocation of credit, a change in the terms of an existing credit arrangement which is adverse to the interests of the consumer, or a refusal to grant credit in substantially the amount or on substantially the terms requested. "Adverse action" includes all of the following:

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

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

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

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

(b) "Consumer" means a natural individual.

(c) "Consumer credit report" means any written, oral, or other communication of any information by a consumer credit reporting agency bearing on a consumer's creditworthiness, credit standing,

1 or credit capacity, which is used or is expected to be used, or
2 collected in whole or in part, for the purpose of serving as a factor
3 in establishing the consumer's eligibility for: (1) credit to be used
4 primarily for personal, family, or household purposes, or (2)
5 employment purposes, or (3) hiring of a dwelling unit, as defined
6 in subdivision (c) of Section 1940, or (4) other purposes authorized
7 in Section 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 *or she* is
34 acquainted or who may have knowledge concerning those items
35 of 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) “Consumer file” means a file compiled and maintained on
17 consumers by a nationwide specialty consumer reporting agency.

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

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

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

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

1 information bearing on the creditworthiness of the consumer”
2 means information that the person making the offer is permitted
3 to consider pursuant to any rule, regulation, or formal written
4 policy statement relating to the federal Fair Credit Reporting Act,
5 as amended (15 U.S.C. Sec. 1681 et seq.), promulgated by the
6 Federal Trade Commission or any federal bank regulatory agency.

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

12 (k) “Nationwide specialty consumer reporting agency” means
13 a consumer reporting agency that compiles and maintains files on
14 consumers on a nationwide basis relating to any of the following:

15 (1) Medical records or payments.

16 (2) Residential or tenant history.

17 ~~(3) Check writing history.~~

18 ~~(4)~~

19 (3) Employment history.

20 ~~(5)~~

21 (4) Insurance claims.

22 (l) “Person” means any individual, partnership, corporation,
23 trust, estate, cooperative, association, government or governmental
24 subdivision or agency, or other entity.

25 (m) “Prequalifying report” means a report containing the limited
26 information permitted under paragraph (2) of subdivision (b) of
27 Section 1785.11.

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

34 SEC. 4. Section 1785.11.2 of the Civil Code is amended to
35 read:

36 1785.11.2. (a) A consumer may elect to place a security freeze
37 on his or her credit report or consumer file by making a request in
38 writing by mail to a consumer credit reporting agency or
39 nationwide specialty consumer reporting agency. “Security freeze”
40 means a notice placed in a consumer’s credit report or consumer

1 file, at the request of the consumer, and subject to certain
2 exceptions, that prohibits the consumer credit reporting agency or
3 nationwide specialty consumer reporting agency from releasing
4 the consumer's credit report or consumer file or any information
5 from it without the express authorization of the consumer. If a
6 security freeze is in place, information from a consumer's credit
7 report or consumer file may not be released to a third party without
8 prior express authorization from the consumer. This subdivision
9 does not prevent a consumer credit reporting agency or nationwide
10 specialty consumer reporting agency from advising a third party
11 that a security freeze is in effect with respect to the consumer's
12 credit report or consumer file.

13 (b) A consumer credit reporting agency or nationwide specialty
14 consumer reporting agency shall place a security freeze on a
15 consumer's credit report or consumer file no later than three
16 business days after receiving a written request from the consumer.

17 (c) The consumer credit reporting agency or nationwide specialty
18 consumer reporting agency shall send a written confirmation of
19 the security freeze to the consumer within 10 business days and
20 shall provide the consumer with a unique personal identification
21 number or password to be used by the consumer when providing
22 authorization for the release of his or her credit or consumer file
23 information for a specific party or period of time.

24 (d) If the consumer wishes to allow his or her credit report or
25 consumer file to be accessed for a specific party or period of time
26 while a freeze is in place, he or she shall contact the consumer
27 credit reporting agency or nationwide specialty consumer reporting
28 agency, request that the freeze be temporarily lifted, and provide
29 the following:

30 (1) Proper identification, as defined in subdivision (c) of Section
31 1785.15.

32 (2) The unique personal identification number or password
33 provided by the credit reporting agency or nationwide specialty
34 consumer reporting agency pursuant to subdivision (c).

35 (3) The proper information regarding the third party who is to
36 receive the credit report or consumer file or the time period for
37 which the report shall be available to users of the credit report or
38 consumer file.

39 (e) A consumer credit reporting agency or nationwide specialty
40 consumer reporting agency that receives a request from a consumer

1 to temporarily lift a freeze on a credit report or consumer file
2 pursuant to subdivision (d) shall comply with the request no later
3 than three business days after receiving the request.

4 (f) A consumer credit reporting agency or nationwide specialty
5 consumer reporting agency may develop procedures involving the
6 use of telephone, ~~fax~~ *facsimile*, the Internet, or other electronic
7 media to receive and process a request from a consumer to
8 temporarily lift a freeze on a credit report or consumer file pursuant
9 to subdivision (d) in an expedited manner.

10 (g) A consumer credit reporting agency or nationwide specialty
11 consumer reporting agency shall remove or temporarily lift a freeze
12 placed on a consumer's credit report or consumer file only in the
13 following cases:

14 (1) Upon consumer request, pursuant to subdivision (d) or (j).

15 (2) If the consumer's credit report or consumer file was frozen
16 due to a material misrepresentation of fact by the consumer. If a
17 consumer credit reporting agency or nationwide specialty consumer
18 reporting agency intends to remove a freeze upon a consumer's
19 credit report or consumer file pursuant to this paragraph, the
20 consumer credit reporting agency or nationwide specialty consumer
21 reporting agency shall notify the consumer in writing prior to
22 removing the freeze on the consumer's credit report or consumer
23 file.

24 (h) A third party who requests access to a consumer credit report
25 or consumer file in connection with an application for credit or
26 any other use may treat the application as incomplete if a security
27 freeze is in effect and the consumer does not allow his or her credit
28 report or consumer file to be accessed for that specific party or
29 period of time.

30 (i) If a consumer requests a security freeze, the consumer credit
31 reporting agency or nationwide specialty consumer reporting
32 agency shall disclose the process of placing and temporarily lifting
33 a freeze and the process for allowing access to information from
34 the consumer's credit report or consumer file for a specific party
35 or period of time while the freeze is in place.

36 (j) A security freeze shall remain in place until the consumer
37 requests that the security freeze be removed. A consumer credit
38 reporting agency or nationwide specialty consumer reporting
39 agency shall remove a security freeze within three business days

1 of receiving a request for removal from the consumer if the
2 consumer provides both of the following:

3 (1) Proper identification, as defined in subdivision (c) of Section
4 1785.15.

5 (2) The unique personal identification number or password
6 provided by the credit reporting agency or nationwide specialty
7 consumer reporting agency pursuant to subdivision (c).

8 (k) A consumer credit reporting agency or nationwide specialty
9 consumer reporting agency shall require proper identification, as
10 defined in subdivision (c) of Section 1785.15, of the person making
11 a request to place or remove a security freeze.

12 (l) The provisions of this section do not apply to the use of a
13 consumer credit report or consumer file by any of the following:

14 (1) (A) (i) A person or entity with which the consumer has or
15 had, prior to any assignment, an account or contract, including a
16 demand deposit account, or to which the consumer issued a
17 negotiable instrument, for the purpose of reviewing the account
18 or collecting the financial obligation owing for the account,
19 contract, or negotiable instrument.

20 (ii) A subsidiary, affiliate, or agent of a person or entity
21 described in clause (i), an assignee of a financial obligation owing
22 by the consumer to such a person or entity, or a prospective
23 assignee of a financial obligation owing by the consumer to such
24 a person or entity in conjunction with the proposed purchase of
25 the financial obligation, for the purpose of reviewing the account
26 or collecting the financial obligation owing for the account,
27 contract, or negotiable instrument.

28 (B) For purposes of this paragraph, “reviewing the account”
29 includes activities related to account maintenance, monitoring,
30 credit line increases, and account upgrades and enhancements.

31 (2) A subsidiary, affiliate, agent, assignee, or prospective
32 assignee of a person to whom access has been granted under
33 subdivision (d) for purposes of facilitating the extension of credit
34 or other permissible use.

35 (3) Any state or local agency, law enforcement agency, trial
36 court, or private collection agency acting pursuant to a court order,
37 warrant, or subpoena.

38 (4) A child support agency acting pursuant to Chapter 2
39 (commencing with Section 17400) of Division 17 of the Family
40 Code or Title IV-D of the Social Security Act (42 U.S.C. et seq.).

1 (5) The State Department of Health Care Services or its agents
2 or assigns acting to investigate Medi-Cal fraud.

3 (6) The Franchise Tax Board or its agents or assigns acting to
4 investigate or collect delinquent taxes or unpaid court orders or to
5 fulfill any of its other statutory responsibilities.

6 (7) The use of credit information for the purposes of
7 prescreening as provided for by the federal Fair Credit Reporting
8 Act.

9 (8) Any person or entity administering a credit file monitoring
10 subscription service to which the consumer has subscribed.

11 (9) Any person or entity for the purpose of providing a consumer
12 with a copy of his or her credit report or consumer file upon the
13 consumer's request.

14 (m) (1) Except as provided in paragraph (2), this title does not
15 prevent a consumer credit reporting agency or nationwide specialty
16 consumer reporting agency from charging a fee of no more than
17 ten dollars (\$10) to a consumer for the placement of each freeze,
18 the removal of the freeze, the temporary lift of the freeze for a
19 period of time, or the temporary lift of the freeze for a specific
20 party, regarding access to a consumer credit report, except that a
21 consumer credit reporting agency or nationwide specialty consumer
22 reporting agency may not charge a fee to a victim of identity theft
23 who has submitted a valid police report or valid Department of
24 Motor Vehicles investigative report that alleges a violation of
25 Section 530.5 of the Penal Code.

26 (2) With respect to a consumer who is 65 years of age or older
27 and who has provided identification confirming his or her age, a
28 consumer credit reporting agency or nationwide specialty consumer
29 reporting agency may charge a fee not to exceed five dollars (\$5)
30 for the placement of each freeze, the removal of the freeze, the
31 temporary lift of the freeze for a period of time, or the temporary
32 lift of the freeze for a specific party.

33 (n) Regardless of the existence of a security freeze, a consumer
34 reporting agency or nationwide specialty consumer reporting
35 agency may disclose public record information lawfully obtained
36 by, or for, the consumer reporting agency or nationwide specialty
37 consumer reporting agency from an open public record to the extent
38 otherwise permitted by law. This subdivision does not prohibit a
39 consumer reporting agency or nationwide specialty consumer

1 reporting agency from electing to apply a valid security freeze to
2 the entire contents of a credit report or consumer file.

3 SEC. 5. Section 1785.11.3 of the Civil Code is amended to
4 read:

5 1785.11.3. (a) If a security freeze is in place, a consumer credit
6 reporting agency or nationwide specialty consumer reporting
7 agency shall not change any of the following official information
8 in a consumer credit report or consumer file without sending a
9 written confirmation of the change to the consumer within 30 days
10 of the change being posted to the consumer's file: name, date of
11 birth, social security number, and address. Written confirmation
12 is not required for technical modifications of a consumer's official
13 information, including name and street abbreviations, complete
14 spellings, or transposition of numbers or letters. In the case of an
15 address change, the written confirmation shall be sent to both the
16 new address and to the former address.

17 (b) If a consumer has placed a security alert, a consumer credit
18 reporting agency ~~or nationwide specialty consumer reporting~~
19 ~~agency~~ shall provide the consumer, upon request, with a free copy
20 of his or her credit report ~~or consumer file~~ at the time the 90-day
21 security alert period expires.