

California Civil Code Section 1785 The Consumer Credit Reporting Agencies Act

Note: effective January 1, 2002, the following sections have been amended: 1785.10, 1785.16;
and the following sections have been added - 1785.11.8, 1785.16.1, 1785.16.2, 1785.20.3

§ 1785.20. Notice following adverse action

- (a) If any person takes any adverse action with respect to any consumer, and the adverse action is based, in whole or in part, on any information contained in a consumer credit report, that person shall do all of the following: (b) (1) Provide written notice of the adverse action to the consumer.
- (2) Provide the consumer with the name, address, and telephone number of the consumer credit reporting agency, which furnished the report to the person.
- (3) Provide a statement that the credit grantor's decision to take adverse action was based in whole or in part upon information contained in a consumer credit report.
- (4) Provide the consumer with a written notice of the following rights of the consumer:
- (A) The right of the consumer to obtain within 60 days a free copy of the consumer's consumer credit report from the consumer credit reporting agency identified pursuant to paragraph (2) and from any other consumer credit reporting agency which compiles and maintains files on consumers on a nationwide basis.
- (B) The right of the consumer under Section 1785.16 to dispute the accuracy or completeness of any information in a consumer credit report furnished by the consumer credit reporting agency.
- (b) Whenever credit or insurance for personal, family, or household purposes involving a consumer is denied or the charge for such credit is increased either wholly or in part because of information obtained from a person other than a consumer credit reporting agency bearing upon consumer's credit worthiness or credit standing, the user of that information shall, within a reasonable period of time, and upon the consumer's written request for the reasons for that adverse action received within 60 days after learning of the adverse action, disclose the nature and substance of the information to the consumer. The user of the information shall clearly and accurately disclose to the consumer his or her right to make such a written request at the time the adverse action is communicated to the consumer.
- (c) 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.
- (d) Nothing in this chapter shall excuse compliance with the requirements of Section 1787.2.

§ 1785.20.1. Transactions not initiated by consumer

- (a) Except as provided in subdivision
- (b) Any person who uses a consumer credit report in connection with any credit transaction not initiated by the consumer and which consists of a firm offer of credit shall provide with any solicitation made to the consumer a clear and conspicuous statement as to all of the following:
- (1) Information contained in the consumer's pre-qualifying report was used in connection with the transaction.
- (2) The consumer received the offer of credit, because the consumer satisfied the criteria for creditworthiness under which the consumer was selected for the offer.
- (3) Where applicable, the credit may not be extended if, after the consumer responds to the offer, the consumer does not meet the criteria used to select the consumer for the offer.
- (4) The consumer has a right to prohibit use of information contained in the consumer's file with any consumer credit reporting agency in connection with any credit transaction that is not initiated by the consumer. The consumer may exercise this right by notifying the notification system or joint notification system established under subdivision (d) or (e) of Section 1785.11.
- (b) Subdivision (a) does not apply to any person using a pre-qualifying report if all of the following conditions are met:
- (1) The person using the pre-qualifying report is affiliated by common ownership or common corporate control with the person who procured the report.
- (2) The person who procures the pre-qualifying report from the consumer credit reporting agency clearly and conspicuously discloses to the consumer to whom the report relates, before the pre-qualifying report is provided to the person who uses the report, that the pre-qualifying report might be provided to, and used by, person affiliated in the manner specified in paragraph (1) with the person that procured the report.
- (3) The consumer consents in writing to this provision and use of the pre-qualifying report.
- (c) No person shall be denied credit on the basis of the consumer's refusal to provide consent pursuant to paragraph (3) of subdivision (b), unless that consent is necessary for the extension of credit, related to that transaction, by an affiliate.

§ 1785.20.5. Reports for employment purposes

(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 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.

§ 1785.21. Request for investigation

(a) A user in its discretion may notify the consumer that upon request the user may contact the consumer reporting agency and request that the consumer reporting agency investigate the current status of an item of items or information contained in the consumer report if the consumer disputes the completeness or accuracy of an item or items of information as provided to the user.

(b) The consumer credit reporting agency may require identification from the user to insure the validity of the request and, in that regard, may require that the request be put in writing with proper identification.

(c) In the event that any such request is made and identification given in the form or manner demanded by the consumer credit reporting agency, such agency shall review the file of the consumer and report the current status of the disputed information to the user and the consumer by the most expeditious means possible.

(d) No user who furnishes information pursuant to this section shall be liable to any person for furnishing such information.

§ 1785.22. Reselling credit reports

(a) A person may not procure a consumer credit report for the purpose of reselling the report or any information therein unless the person discloses to the consumer credit reporting agency which issues the report the identity of the ultimate end user and each permissible purpose for which the report is furnished to the end user of the consumer credit report or information therein.

(b) A person that procures a consumer credit report for the purpose of reselling the report or any information therein shall do all of the following:

(1) Establish and comply with reasonable procedures designed to ensure that the consumer credit report or information is resold by the person only for a purpose for which the report may be furnished under this title. These procedures shall include all of the following:

(A) Identification of each prospective user of the resold consumer credit report or information.

(B) Certification of each purpose for which the consumer credit report or information will be used.

(C) Certification that the consumer credit report or information will be used for no other purpose.

(2) Before reselling the consumer credit report or information, the person shall make reasonable efforts to verify the identities and certifications made under paragraph (1).

California Civil Code Section 1786

The Investigative Consumer Reporting Agencies Act

Note: In November, 2002, AB655 was amended with AB1068 and AB2868. The salient sections for California employers are provided below:

§ 1786.2. The following terms as used in this title have the meaning expressed in this section:

- (a) The term "person" means any individual, partnership, corporation, limited liability company, trust, estate, cooperative, association, government or governmental subdivision or agency, or other entity. The term "person" as used in this title shall not be construed to require duplicative reporting by any individual, corporation, trust, estate, cooperative, association, government, or governmental subdivision or agency, or other entity involved in the same transaction.
- (b) The term "consumer" means a natural individual who has made application to a person for employment purposes, for insurance for personal, family, or household purposes, or the hiring of a dwelling unit, as defined in subdivision (c) of Section 1940.
- (c) The term "investigative consumer report" means a consumer report in which information on a consumer's character, general reputation, personal characteristics, or mode of living is obtained through any means. The term does not include a consumer report or other compilation of information that is limited to specific factual information relating to a consumer's credit record or manner of obtaining credit obtained directly from a creditor of the consumer or from a consumer reporting agency when that information was obtained directly from a potential or existing creditor of the consumer or from the consumer. Notwithstanding the foregoing, for transactions between investigative consumer reporting agencies and insurance institutions, agents, or insurance-support organizations subject to Article 6.6 (commencing with Section 791) of Chapter 1 of Part 2 of Division 1 of the Insurance Code, the term "investigative consumer report" shall have the meaning set forth in subdivision (n) of Section 791.02 of the Insurance Code.
- (d) The term "investigative consumer reporting agency" means any person who, for monetary fees or dues, engages in whole or in part in the practice of collecting, assembling, evaluating, compiling, reporting, transmitting, transferring, or communicating information concerning consumers for the purposes of furnishing investigative consumer reports to third parties, but does not include any governmental agency whose records are maintained primarily for traffic safety, law enforcement, or licensing purposes, or any licensed insurance agent, insurance broker, or solicitor, insurer, or life insurance agent.
- (e) The term "file," when used in connection with information on any consumer, means all of the information on that consumer recorded and retained by an investigative consumer reporting agency regardless of how the information is stored.
- (f) The term "employment purposes," when used in connection with an investigative consumer report, means a report used for the purpose of evaluating a consumer for employment, promotion, reassignment, or retention as an employee.

§ 1786.12. Issuance of investigative consumer reports

An investigative consumer reporting agency shall only furnish an investigative consumer report under the following circumstances:

- (c) In accordance with the written instructions of the consumer to whom it relates.
- (d) To a person which it has reason to believe:
- (1) Intends to use the information for employment purposes

And... The person procuring or causing the request to be made shall certify to the investigative consumer reporting agency that the person has made the applicable disclosures to the consumer required and that the person will comply

§ 1786.16. Conditions precedent to preparation of report

(a) Any person described in subdivision (d) of Section 1786.12 shall not procure or cause to be prepared an investigative consumer report unless the following applicable conditions are met:

- (1) *Pertains to the underwriting of insurance*
- (2) If, at any time, an investigative consumer report is sought for employment purposes other than suspicion of wrongdoing or misconduct by the subject of the investigation, the person *seeking* the investigative consumer report may procure the report, or cause the report to be made, *only if all of the following apply*:
 - (A) The person procuring or causing the report to be made has a permissible purpose, as defined in Section 1786.12.
 - (B) The person procuring or causing the report to be made provides a clear and conspicuous disclosure in writing to the consumer at any time before the report is procured or caused to be made in a document that consists solely of the disclosure, that:
 - (i) An investigative consumer report may be obtained.

(ii) The permissible purpose of the report is identified.

(iii) The disclosure may include information on the consumer's character, general reputation, personal characteristics, and mode of living.

(iv) Identifies the name, address, and telephone number of the investigative consumer reporting agency conducting the investigation.

(v) Notifies the consumer in writing of the nature and scope of the investigation requested, including a summary of the provisions of Section 1786.22.

(C) The consumer has authorized in writing the procurement of the report.

(3) *Pertains to dwelling unit*

(4) The person procuring or causing the request to be made shall certify to the investigative consumer reporting agency that the person has made the applicable disclosures to the consumer required by this subdivision and that the person will comply with subdivision(b).

(5) The person procuring the report or causing it to be prepared agrees to provide a copy of the report to the subject of the investigation, as provided in subdivision(b).

(b) Any person described in subdivision (d) of Section 1786.12 who requests an investigative consumer report, in accordance with subdivision (a) regarding that consumer, shall do the following:

(1) Provide the consumer a means by which the consumer may indicate on a written form, by means of a box to check, that the consumer wishes to receive a copy of any report that is prepared. If the consumer wishes to receive a copy of the report, the recipient of the report shall send a copy of the report to the consumer within three business days of the date that the report is provided to the recipient, who may contract with any other entity to send a copy to the consumer. The notice to request the report may be contained on either the disclosure form, as required by subdivision (a), or a separate consent form. The copy of the report shall contain the name, address, and telephone number of the person who issued the report and how to contact them.

(2) Comply with Section 1786.40, if the taking of adverse action is a consideration.

(c) Subdivisions (a) and (b) do not apply to an investigative consumer report procured or caused to be prepared by an employer, if the report is sought for employment purposes due to suspicion held by an employer of wrongdoing or misconduct by the subject of the investigation.

(d) Those persons described in subdivision (d) of Section 1786.12 constitute the sole and exclusive class of persons who may cause an investigative consumer report to be prepared.

§ 1786.18. Items of Information Prohibited

(a) Except as authorized under subdivision (b) no investigative consumer reporting agency shall make any investigative consumer report containing any of the following items of information:

(1) Bankruptcies that, from the date of adjudication, antedate the report by more than 10 years.

(2) Suits that, from the date of filing, and satisfied judgments that, from the date of entry, antedate the report by more than seven years.

(3) Unsatisfied judgments that, from the date of entry, antedate the report by more than seven years.

(4) Unlawful detainer actions where the defendant was the prevailing party or where the action is resolved by settlement agreement.

(5) Paid tax liens that, from the date of payment, antedate the report by more than seven years.

(6) Accounts placed for collection or charged to profit and loss that antedate the report by more than seven years.

(7) Records of arrest, indictment, information, misdemeanor complaint, or conviction of a crime that, from the date of disposition, release, or parole, antedate the report by more than seven years. These items of information shall no longer be reported if at any time it is learned that, in the case of a conviction, a full pardon has been granted or, in the case of an arrest, indictment, information, or misdemeanor complaint, a conviction did not result; except that records of arrest, indictment, information, or misdemeanor complaints may be reported pending pronouncement of judgment on the particular subject matter of those records.

(8) Any other adverse information that antedates the report by more than seven years.

(b) The provisions of subdivision (a) are not applicable in the case of any investigative consumer report to be used in the underwriting of life insurance involving, or that may reasonably be expected to involve, an amount of two hundred fifty thousand dollars (\$250,000) or more.

(c) Except as otherwise provided in Section 1786.28, an investigative consumer reporting agency shall not furnish an investigative consumer report that includes information that is a matter of public record and that relates to an arrest, indictment, conviction, civil judicial action, tax lien, or outstanding judgment, unless the agency has verified the accuracy of the information during the 30-day period ending on the date on which the report is furnished.

§1786.40 (a) Whenever insurance for personal, family, or household purposes, employment, or the hiring of a dwelling unit involving a consumer is denied, or the charge for that insurance or the hiring of a dwelling unit is increased, under circumstances in which a report regarding the consumer was obtained from an investigative consumer reporting agency, the user of the investigative consumer report shall so advise the consumer against whom the adverse action has been taken and supply the name and address of the investigative consumer reporting agency making the report.

(b) *Relates to insurance*

§1786.50 (a) An investigative consumer reporting agency or user of information that fails to comply with any requirement under this title, except for the requirements of Section 1786.20, with respect to an investigative consumer report is liable to the consumer who is the subject of the report in an amount equal to the sum of all the following:

(1) Any actual damages sustained by the consumer as a result of the failure or, except in the case of class actions, ten thousand dollars (\$10,000), whichever sum is greater.

(2) In the case of any successful action to enforce any liability under this chapter, the costs of the action together with reasonable attorney's fees as determined by the court.

(b) If the court determines that the violation was grossly negligent or willful, the court may, in addition, assess, and the consumer may recover, punitive damages.

(c) Notwithstanding subdivision (a), an investigative consumer reporting agency or user of information that fails to comply with any requirement under this title with respect to an investigative consumer report shall not be liable to a consumer who is the subject of the report where the failure to comply results in a more favorable investigative consumer report than if there had not been a failure to comply.

§ 1786.53. a) Any person who collects, assembles, evaluates, compiles, reports, transmits, transfers, or communicates information on a consumer's character, general reputation, personnel characteristics, or mode of living, for employment purposes, which are matters of public record, and does not use the services of an investigative consumer reporting agency, shall provide that information to the consumer pursuant to subdivision (b). For purposes of this section:

(1) "Adverse action," as relating to employment, means a denial of employment or any decision made for an employment purpose that adversely affects any current or prospective employee.

(2) The term "person" does not include an agency subject to the Information Practices Act of 1977 (Chapter 1 (commencing with Section 1798) of Title 1.8).

(3) "Public records" means records documenting an arrest, indictment, conviction, civil judicial action, tax lien, or outstanding judgment.

(b) (1) Any person described in subdivision (a), or any person who receives information pursuant to subdivision (a), shall provide a copy of the related public record to the consumer within seven days after receipt of the information, regardless of whether the information is received in a written or oral form.

(2) Any person shall provide on any job application form, or any other written form, a box that, if checked by the consumer, permits the consumer to waive his or her right to receive a copy of any public record obtained pursuant to this section.

(3) If any person obtains a public record pursuant to this section for the purpose of conducting an investigation for suspicion of wrongdoing or misconduct by the subject of the investigation, the person may withhold the information until the completion of the investigation. Upon completion, the person shall provide a copy of the public record pursuant to paragraph (1), unless the consumer waived his or her rights pursuant to paragraph (2).

(4) If any person takes any adverse action as a result of receiving information pursuant to subdivision (a), the person shall provide to the consumer a copy of the public record, regardless of whether the consumer waived his or her rights pursuant to paragraph (2).

(c) Nothing in subdivision (a) or (b) requires any person to provide the same information to any consumer on more than one occasion.

Complying with California Disclosure Rules

§ 1786.16. Conditions precedent to preparation of report

(a) Any person described in subdivision (d) of Section 1786.12 shall not procure or cause to be prepared an investigative consumer report unless the following applicable conditions are met: (2) If, at any time, an investigative consumer report is sought for employment purposes other than suspicion of wrongdoing or misconduct by the subject of the investigation, the person *seeking* the investigative consumer report may procure the report, or cause the report to be made, *only if all of the following apply*: (B) The person procuring or causing the report to be made provides a clear and conspicuous disclosure in writing to the consumer at any time before the report is procured or caused to be made in a document that consists solely of the disclosure, that: (v) Notifies the consumer in writing of the nature and scope of the investigation requested, including a summary of the provisions of Section 1786.22.

Summary of §1786.22 *California law requires that the disclosure summarize this section as follows:*

1. CRA shall supply files and information during normal business hours and on reasonable notice
2. Files shall be made available for consumer's visual inspection
 - A. In person after supplying proper identification; or,
 - B. By certified mail after written request, with proper identification for copies to be sent to a specified addressee; or,
 - C. By telephone, if the consumer has made a written request, with proper identification.
 - i. A copy shall be available for a fee not to exceed the actual costs of duplication services provided
 - ii. Proper identification shall mean that information generally deemed sufficient to identify a person.
3. The Consumer Reporting Agency shall provide trained personnel to explain to the consumer any information furnished him
4. The investigative consumer reporting agency shall provide a written explanation of any coded information contained in files maintained by a consumer reporting agency
5. The consumer shall be permitted to be accompanied by one other person of his choosing, who shall furnish reasonable identification

ADDITIONAL CALIFORNIA CODES & ACTS

California Labor Code §432.7

No employer, whether a public agency or private individual or corporation, shall ask an applicant for employment to disclose, through any written form or verbally, information concerning an arrest or detention that did not result in conviction, or information concerning a referral to, and participation in, any pretrial or post-trial diversion program, **nor shall any employer seek from any source whatsoever,** or utilize, as a factor in determining any condition of employment including hiring, promotion, termination, or any apprenticeship training program or any other training program leading to employment, **any record of arrest or detention that did not result in conviction, or any record regarding a referral to, and participation in, any pretrial or post-trial diversion program.** As used in this section, a conviction shall include a plea, verdict, or finding of guilt regardless of whether sentence is imposed by the court. **Nothing in this section shall prevent an employer from asking an employee or applicant for employment about an arrest for which the employee or applicant is out on bail or on his or her own recognizance pending trial.**

California Fair Employment and Housing Commission

Rules and regulations of the Commission indicate that, **it is unlawful for an employer or other covered entity to inquire or seek information about an applicant that concerns any arrest or detention not resulting in conviction;** any conviction for which the record has been sealed or expunged by court order or statutorily eradicated (e.g., sealed juvenile offense records); any misdemeanor conviction for which probation has been successfully completed or otherwise discharged, **and** the case has been dismissed judicially; and any arrest for which a pretrial diversion program has been successfully completed.

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