

FILED

SEP. 18 2020

Clerk of the Court
Superior Court of CA County of Santa Clara
BY M. OLIVERA DEPUTY

1 Nick Miletak – In Pro Se
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6
7 **SUPERIOR COURT OF CALIFORNIA**
8 **SANTA CLARA COUNTY DOWNTOWN FACILITY**

9
10 NICK MILETAK,

11 Plaintiff,

12 vs.

13 CARCO GROUP INC.,

14 Defendant,

CASE NO.: 19CV359214

**PLAINTIFF'S REQUEST FOR JUDICIAL
NOTICE IN SUPPORT OF PLAINTIFF'S
MOTION FOR RECONSIDERATION**

DATE: 11/05/2020

TIME: 9:00 am

DEPT: 20

JUDGE: HON. SOCRATES P.
MANOUKIAN

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25 **PLAINTIFF'S REQUEST FOR JUDICIAL NOTICE IN SUPPORT OF**
26 **PLAINTIFF'S MOTION FOR RECONSIDERATION**

1 Pursuant to Evidence Code sections 451, 452 and 459, as well as Rule 8.252 of the
2 California Rules of Court, Plaintiff Nick Miletak hereby moves the Court to take judicial notice
3 of the documents listed below.

4 This motion is based upon the declarations of counsel and Nick Miletak attached hereto,
5 and upon the supporting memorandum of points and authorities.

6 Exhibits A through K are true and correct copies of documents obtained by counsel for
7 Appellants that pertain to the legislative history of the Investigative Consumer Reporting
8 Agencies Act ("ICRAA"), Civil Code § 1786 et seq., and the Consumer Credit Reporting
9 Agencies Act ("CCRAA), Civil Code § 1785.1 et seq. Exhibits A through K include copies of
10 legislative bills and legislative history, as follows:

11 Exhibit A: Assembly Bill No. 600, Chapter 1271, filed
12 with the Secretary of State on October 1, 1975
13 (1975 enactment of CCRAA);

14 Exhibit B: Assembly Bill No. 601, Chapter 1272, filed
15 with the Secretary of State on October 1, 1975
16 (1975 enactment of ICRAA);

17 Exhibit C: Assembly Bill No. 601, Enrolled Bill Report,
18 Department of Consumer Affairs (February 17,
19 1975);

20 Exhibit D: Senate Bill No. 1454, Chapter 988, filed with
21 the Secretary of State on September 30, 1998
22 (1998 amendments to ICRAA);

23 Exhibit E: Senate Final History of SB 1454;

24 Exhibit F: Memorandum to Legislative Counsel from
25 Kevin Smith (December 29, 1997);

26 Exhibit G: Memorandum to Members, Senate Judiciary
27 Committee (May 4, 1998);

28 Exhibit H: Letter to the Hon. Pete Wilson, Governor, from
Senator Leslie re: SB 1454(September 8, 1998);

PLAINTIFF'S REQUEST FOR JUDICIAL NOTICE IN SUPPORT OF
PLAINTIFF'S MOTION FOR RECONSIDERATION

- 1 Exhibit I: All versions of SB 1454 as introduced,
2 amended, and finally adopted by the
3 Legislature;
- 4 Exhibit J: Bill analyses from the files of the Senate
5 Committee on the Judiciary, the Office of
6 Senate Floor Analyses; the Assembly
7 Committee on Consumer Protection,
8 Governmental Efficiency, and Economic
9 Development; and the Chaptered Bill File of
10 former Governor Pete Wilson;
- 11 Exhibit K: Assembly Bill No. 655, Chapter 354, filed with
12 the Secretary of State September 27, 2001.

13 Plaintiff also seeks judicial notice of Exhibits L and M, which are
14 dockets of federal court cases, as follows:

- 15 Exhibit L: Civil Docket California Supreme Court case
16 of *Connor v. First Student* 5 Civ. No.
17 S229428 Cal.5th 1026*, 423 P.3d 953** 236
18 Cal.Rptr. 3d 26***2018 Cal.LEXIS 6266
19 ****2018 WL 3966434 containing an
20 *Amicus Curiae* brief by the California
21 Attorney General around April 26, 2016;
- 22 Exhibit M: Civil Docket in County of Orange Case 30-2018-
23 00995472 *Alexander, et. al., vs Equifax* containing
24 the settlement agreement and accompanying retainer
25 agreement in which this Plaintiff was represented by
26 Lake Shore Law Center as a victim of identity theft
27 case against Equifax around 2018

28 Date: September 17, 2020



Nick Miletak – In Pro Se

PLAINTIFF'S REQUEST FOR JUDICIAL NOTICE IN SUPPORT OF
PLAINTIFF'S MOTION FOR RECONSIDERATION

1
2 **DECLARATION OF JAN S. RAYMOND**

3 I, Jan Raymond, declare:

4 1. I am an attorney licensed to practice by the California State Bar, State Bar number
5 88703, and admitted to practice in the United States Federal Court for the Eastern District of
6 California. My business is researching the history and intent of legislative and regulatory
7 enactments and adoptions; I have over 20 years experience in research and analysis of
8 legislative and regulatory intent. In cooperation with persons working under my supervision, I
9 undertook to research the following project. All use of the word "project" in this declaration
10 refers to legislative research addressed to this focus:

11
12 **Civil Code Section 1786.12 & 1786.52**
13 As added by Chapter 1272 of 1975.

14 2. At all times, all persons working on this project operated under instructions to locate
15 all documents available pertinent to this adoption. This research was compiled in the days
16 immediately prior to the date of this declaration, and reflects all the documents, and sources,
17 available during that time pertinent to this project.

18 3. The documents listed are the substantive documents collected pertinent to the history
19 of this project. The term "substantive documents" as used in the previous sentence refers to
20 those documents relevant to the scope of the project. Some documents regarding the proposal
21 related to this project may not be forwarded in this report. Documents not forwarded may
22 include fiscal analyses addressing the budgetary impact of legislation, documents addressing
23 other portions of the proposal not directly relevant to the project, documents addressing simple
24 support for or opposition to the proposal, or other documents unlikely to be helpful in
25 understanding the substantive purpose of the proposal. The complete collection of documents
26 is organized in generally chronological order and sequentially numbered.

27 4. The California Legislature historically has not regularly recorded and/or transcribed

1 committee or floor proceedings. But in recent decades, individual committees have sporadically
2 recorded, and in some cases transcribed, committee proceedings. In addition, a select few
3 committee, and many floor, proceedings since the early 1990's are available on videotape.
4 Beginning in the 2003-2004 session, an effort has been made to record almost all legislative
5 proceedings in either audio or video format, although the effort is informal rather than mandated
6 by detailed legislative rules and procedures. The recordings available in all media are uniformly
7 difficult and time-consuming to access, rarely transcribed, and rarely contain substantive
8 discussion that goes beyond the most simple and basic assertions about the legislation in
9 question. In general, the documentary history contains much more detailed discussion of the
10 intent and purpose of the bill under consideration. Therefore, this report was compiled using
11 documentary sources only.

12 5. Individual documents may appear in multiple locations or files. We endeavor to
13 obtain only one copy of the document. Where it is clearly important, we endeavor to note each
14 source of the document in this declaration. But some documents for which we cite a single
15 source may in fact have been found in multiple locations. Where this raises an issue important
16 in individual circumstances, all source locations of particular documents can be identified upon
17 request.

18 6. All documents listed are included with this declaration, except as otherwise noted in
19 this declaration. All documents included are true and correct copies of the original documents.
20 Unless otherwise noted in this declaration, all documents were obtained at one of the following
21 sources: legislative offices at the State Capitol, the California State Library, the California State
22 Archives, or libraries at the University of California at Davis. References to "bill file" as used in
23 this declaration refer to files maintained regarding the legislation that is the subject of the
24 document collection. Some documents copied from microfilm originals may be of poor quality;
25 all copies included with this report are the best available copies.
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1 Bill Analyses regarding Senate Bill 1454, from the bill file of the Chaptered Bill File of
2 former Governor Pete Wilson, six pages.

Page 107

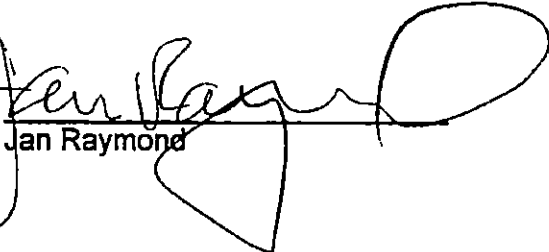
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I declare under penalty of perjury the foregoing is true and correct.

Executed at Sacramento, California, October 10, 2014.



Jan Raymond

EXHIBIT A

Volume 2

STATUTES OF CALIFORNIA

AND DIGESTS OF MEASURES

1975

Constitution of 1879 as Amended

**General Laws, Amendments to the Codes, Resolutions,
and Constitutional Amendments passed by the
California Legislature**

1975-76 Regular Session

1975-76 First Extraordinary Session

1975-76 Second Extraordinary Session

1975-76 Third Extraordinary Session



Compiled by
GEORGE H. MURPHY
Legislative Counsel

CHAPTER 1271

An act to add Title 1.6 (commencing with Section 1785.1) to Part 4 of Division 3 of the Civil Code, and to repeal Title 1.6 (commencing with Section 1785.1) of Part 4 of Division 3 of the Civil Code, relating to consumer reporting.

[Approved by Governor October 1, 1975 Filed with
Secretary of State October 1, 1975]

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

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

**TITLE 1.6. CONSUMER CREDIT REPORTING AGENCIES
ACT**

CHAPTER 1. GENERAL PROVISIONS

1785.1. The Legislature finds and declares as follows:

(a) An elaborate mechanism has been developed for investigating and evaluating the credit worthiness, credit standing, credit capacity, and general reputation of consumers.

(b) Consumer credit reporting agencies have assumed a vital role in assembling and evaluating consumer credit and other information on consumers.

(c) There is a need to insure that consumer credit reporting agencies exercise their grave responsibilities with fairness, impartiality, and a respect for the consumer's right to privacy.

(d) It is the purpose of this title to require that consumer credit reporting agencies adopt reasonable procedures for meeting the needs of commerce for consumer credit, personnel, insurance, and other information in a manner which is fair and equitable to the consumer, with regard to the confidentiality, accuracy, relevancy, and proper utilization of such information in accordance with the requirements of this title.

(e) The Legislature hereby intends to regulate consumer credit reporting agencies pursuant to this title in a manner which will best protect the interests of the people of the State of California.

1785.2. This act may be referred to as the Consumer Credit Reporting Agencies Act.

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

(a) The term "person" means any individual, partnership, corporation, trust, estate, cooperative, association, government or governmental subdivision or agency, or other entity.

(b) The term "consumer" means a natural individual.

(c) The term "consumer credit report" means any written, oral,

or other communication of any information by a consumer 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: (1) credit or insurance to be used primarily for personal, family, or household purposes, or (2) employment purposes, or (3) other purposes authorized in Section 1785.11.

The term does not include: (1) any report containing information solely as to transactions or experiences between the consumer and the person making the report, or (2) any authorization or approval of a specific extension of credit directly or indirectly by the issuer of a credit card or similar device, or (3) any report by a person conveying a decision whether to make a specific extension of credit directly or indirectly to a consumer in response to a request by a third party, if the third party advises the consumer of the name and address of the person to whom the request was made and such person makes the disclosures to the consumer required under Section 1785.20, or (4) any report containing information solely on a consumer's character, general reputation, personal characteristics, or mode of living which is obtained through personal interviews with neighbors, friends, or associates of the consumer reported on, or others with whom he is acquainted or who may have knowledge concerning any such items of information.

(d) The term "consumer credit reporting agency" means any person who, for monetary fees, dues, or on a cooperative nonprofit basis, regularly engages in whole or in part in the practice of assembling or evaluating consumer credit information or other information on consumers for the purpose of furnishing 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.

(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 a consumer credit reporting agency regardless of how the information is stored.

(f) The term "employment purposes", when used in connection with a consumer credit report, means a report used for the purpose of evaluating a consumer for employment, promotion, reassignment, or retention as an employee.

1785.4. Nothing in this title shall apply to any person licensed pursuant to the provisions of Chapter 11 (commencing with Section 7500) of Division 3 of the Business and Professions Code, or to any employee of such person, unless such person is employed directly by a consumer credit reporting agency.

CHAPTER 2. OBLIGATIONS OF CONSUMER CREDIT REPORTING AGENCIES

1785.10. Every consumer credit reporting agency shall, upon request and proper identification of any consumer, allow the consumer to visually inspect all files maintained regarding such consumer at the time of the request.

(a) All items of information shall be available for inspection, including the sources of information.

(b) The consumer credit reporting agency shall also disclose the recipients of any consumer credit report on the consumer which the consumer credit reporting agency has furnished:

(1) For employment purposes within the two-year period preceding the request.

(2) For any other purpose within the six-month period preceding the request.

1785.11. A consumer credit reporting agency shall only furnish a consumer credit report under the following circumstances:

(a) In response to the order of a court having jurisdiction to issue such an order.

(b) In compliance with a lawful subpoena issued by a court of competent jurisdiction.

(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 in connection with a credit transaction, or entering or enforcing an order of a court of competent jurisdiction for support, involving the consumer on whom the information is to be furnished and involving the extension of credit to, or review or collection of an account of, the consumer; or

(2) Intends to use the information for employment purposes; or

(3) Intends to use the information in connection with the underwriting of insurance involving the consumer, the rate for such insurance, or for insurance claims settlements; or

(4) Intends to use the information in connection with a determination of the consumer's eligibility for a license or other benefit granted by a governmental instrumentality required by law to consider the applicant's financial responsibility or status; or

(5) Otherwise has a legitimate business need for the information in connection with a business transaction involving the consumer.

1785.12. Notwithstanding the provisions of Section 1785.11, a consumer credit reporting agency may furnish to a governmental agency a consumer's name, address, former address, places of employment, or former places of employment.

1785.13. (a) Except as authorized under subdivision (b) no consumer credit reporting agency shall make any consumer credit report containing any of the following items of information:

(1) Bankruptcies which, from the date of adjudication, antedate the report by more than 14 years.

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

(3) Unpaid judgments which, from the date of entry, antedate the report by more than 10 years.

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

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

(6) Records of arrest, indictment, information, misdemeanor complaint, or conviction of a crime which, from the date of disposition, release, or parole, antedate the report by more than seven years. Such 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.

(7) Any other adverse information which antedates the report by more than seven years.

(b) The provisions of subdivision (a) are not applicable in the case of any consumer credit report to be used in the following transactions:

(1) A credit transaction involving, or which may reasonably be expected to involve, a principal amount of fifty thousand dollars (\$50,000) or more.

(2) The underwriting of life insurance, involving or which may reasonably be expected to involve, an amount of one hundred thousand dollars (\$100,000) or more.

(3) The employment of any individual at an annual salary which equals, or may reasonably be expected to equal, thirty thousand dollars (\$30,000) or more.

1785.14. (a) Every consumer credit reporting agency shall maintain reasonable procedures designed to avoid violations of Section 1785.13 and to limit furnishing of consumer credit reports to the purposes listed under Section 1785.11. These procedures shall require that prospective users of the information identify themselves, certify the purposes for which the information is sought and certify that the information will be used for no other purposes. From the effective date of this act the consumer credit reporting agency shall keep a record of the purposes as stated by the user. Every consumer credit reporting agency shall make a reasonable effort to verify the identity of a new prospective user and the uses certified by such prospective user prior to furnishing such user a consumer report. No consumer credit reporting agency may furnish a consumer credit report to any person unless it has reasonable grounds for believing that the consumer credit report will be used by such person for purposes listed in Section 1785.11.

(b) Whenever a consumer credit reporting agency prepares a consumer credit report, it shall follow reasonable procedures to assure maximum possible accuracy of the information concerning the individual about whom the report relates.

1785.15. (a) A consumer credit reporting agency shall supply files and information required under Section 1785.10 during normal business hours and on reasonable notice.

(b) Files maintained on a consumer shall be made available for the consumer's visual inspection, as follows:

(1) In person, if he appears in person and furnishes proper identification. A copy of his file shall also be available to the consumer for a fee.

(2) By mail, if he makes a written request, with proper identification, for copies to be sent to a specified addressee, and pays a fee sufficient to cover costs of reproduction. Consumer credit reporting agencies complying with requests for mailings under this section shall not be liable for disclosures to third parties caused by mishandling of mail after such mailings leave the consumer credit reporting agencies.

(3) A summary of all information contained in files on a consumer and required to be provided by Section 1785.10 shall be provided by telephone, if the consumer has made a written request, with proper identification for telephone disclosure, and the toll charge, if any, for the telephone call is prepaid by or charged directly to the consumer.

(c) The term "proper identification" as used in subdivision (b) shall mean that information generally deemed sufficient to identify a person. Such information includes documents such as a valid driver's license, social security account number, military identification card, and credit cards. Only if the consumer is unable to reasonably identify himself with the information described above, may a consumer credit reporting agency require additional information concerning the consumer's employment and personal or family history in order to verify his identity.

(d) The consumer credit reporting agency shall provide trained personnel to explain to the consumer any information furnished him pursuant to Section 1785.10.

(e) The consumer credit reporting agency shall provide a written explanation of any coded information contained in files maintained on a consumer. This written explanation shall be distributed whenever a file is provided to a consumer for visual inspection as required under Section 1785.15.

(f) The consumer shall be permitted to be accompanied by one other person of his choosing, who shall furnish reasonable identification. A consumer credit reporting agency may require the consumer to furnish a written statement granting permission to the consumer credit reporting agency to discuss the consumer's file in such person's presence.

1785.16. (a) If the completeness or accuracy of any item of information contained in his file is disputed by a consumer, and such dispute is conveyed directly to the consumer credit reporting agency by the consumer, the consumer credit reporting agency shall within a reasonable period of time reinvestigate and record the current status of that information unless it has reasonable grounds to believe

that the dispute by the consumer is frivolous or irrelevant. If the consumer credit reporting agency determines that the dispute is frivolous or irrelevant, it shall notify the consumer in writing within five days after such determination is made that it will not reinvestigate the item of information. In this notification, the consumer credit reporting agency shall state the specific reasons why it has determined that the consumer's dispute is frivolous or irrelevant. If a reinvestigation is made and, after reinvestigation, the disputed item of information is found to be inaccurate or can no longer be verified, the consumer credit reporting agency shall promptly delete such information from the consumer's file and shall notify the consumer that such information has been deleted. The presence of information in the consumer's file that contradicts the contention of the consumer shall not, in and of itself, constitute reasonable grounds for believing the dispute is frivolous or irrelevant.

(b) If the consumer credit reporting agency determines that the dispute is frivolous or irrelevant, or if the reinvestigation does not resolve the dispute, the consumer may file a brief statement setting forth the nature of the dispute. The consumer credit reporting agency may limit such statements to not more than 100 words if it provides the consumer with assistance in writing a clear summary of the dispute.

(c) Whenever a statement of dispute is filed, the consumer credit reporting agency shall, in any subsequent consumer credit report containing the information in question, clearly note that the information is disputed by the consumer and shall include in the report either the consumer's statement or a clear and accurate summary thereof.

(d) Following the deletion of information from a consumer's file pursuant to subdivision (a), or following the filing of a dispute pursuant to subdivision (b), the consumer credit reporting agency shall, at the request of the consumer, furnish notification that the item of information has been deleted or that the item of information is disputed. In the case of disputed information, the notification shall include the statement or summary of the dispute filed pursuant to subdivision (b). Such notification shall be furnished to any person, specifically designated by the consumer, who has, within two years prior to the deletion or the filing of the dispute, received a consumer credit report concerning the consumer for employment purposes, or who has, within six months of the deletion or the filing of the dispute, received a consumer credit report concerning the consumer for any other purpose, if such consumer credit reports contained the deleted or disputed information. The consumer credit reporting agency shall clearly and conspicuously disclose to the consumer his rights to make a request for notification. Such disclosure shall be made at or prior to the time the information is deleted or the consumer's statement regarding the disputed information is received.

1785.17. A consumer credit reporting agency shall make all

disclosures pursuant to Sections 1785.10 and 1785.15 and furnish all consumer reports pursuant to Section 1785.16 without charge to the consumer if, within 30 days after receipt by such consumer of a notification pursuant to Section 1785.20 or notification from a debt collection agency affiliated with such consumer credit reporting agency stating that the consumer's credit rating may be or has been adversely affected, the consumer makes a request under Section 1785.15 or 1785.16. Otherwise, the consumer credit reporting agency may impose a reasonable charge on the consumer for making disclosure to such consumer pursuant to Section 1785.15, the charge for which shall be indicated to the consumer prior to making disclosure; and for furnishing notifications, statements, summaries, or codifications to persons designated by the consumer pursuant to Section 1785.16, the charge for which shall be indicated to the consumer prior to furnishing such information and shall not exceed the charge that the consumer credit reporting agency would impose on each designated recipient for a consumer report except that no charge may be made for notifying such persons of the deletion of information which is found to be inaccurate or which can no longer be verified.

1785.18. (a) Each consumer credit reporting agency which compiles and reports items for information concerning consumers which are matters of public record shall specify in any report containing public record information the source from which such information was obtained, including the particular court, if there be such, and the date that such information was initially reported or publicized.

(b) A consumer reporting agency which furnishes a consumer report for employment purposes and which for that purpose compiles and reports items of information on consumers which are matters of public record and are likely to have an adverse effect upon a consumer's ability to obtain employment shall in addition maintain strict procedures designed to insure that whenever public record information which is likely to have an adverse effect on a consumer's ability to obtain employment is reported it is complete and up to date. For purposes of this paragraph, items of public record relating to arrests, indictments, convictions, suits, tax liens, and outstanding judgments shall be considered up to date if the current public record status of the item at the time of the report is reported.

CHAPTER 3. REQUIREMENTS ON USERS OF CONSUMER CREDIT REPORTS

1785.20. (a) Whenever credit or insurance for personal, family, or household purposes, or employment involving a consumer is denied or the charge for such credit or insurance is increased 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 such adverse action has been taken and supply the name and address or addresses of the consumer credit reporting agency making the report.

(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 such information shall, within a reasonable period of time, and upon the consumer's written request for the reasons for such adverse action received within 60 days after learning of such adverse action, disclose the nature and substance of the information to the consumer. The user of such information shall clearly and accurately disclose to the consumer his right to make such written request at the time such adverse action is communicated to the consumer.

(c) No person shall be held liable for any violation of this section if he shows by a preponderance of the evidence that at the time of the alleged violation he maintained reasonable procedures to assure compliance with the provisions of subdivisions (a) and (b) of this section.

CHAPTER 4. REMEDIES

1785.30. (a) Any consumer credit reporting agency or user of information which negligently fails to comply with any requirement under this title with respect to a consumer credit 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, three hundred dollars (\$300), whichever sum is greater, and

(2) In the case of any successful action to enforce any liability under this title, 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), a consumer credit reporting agency or user of information which fails to comply with any requirement under this title with respect to a consumer credit 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 consumer credit report than if there had not been a failure to comply.

1785.31. "Except as provided in Section 1785.30, no consumer may bring any action or proceeding in the nature of defamation, invasion of privacy or negligence with respect to the reporting of information against any consumer reporting agency, any user of information, or any person who furnishes information to a consumer

reporting agency, based on information disclosed pursuant to Section 1785.10, 1785.15 or 1785.20 of this title, except as to false information furnished with malice or willful intent to injure such consumer.

1785.32. An action to enforce any liability created under this chapter may be brought in any appropriate court of competent jurisdiction within two years from the date on which the liability arises except that where a defendant has materially and willfully misrepresented any information required under this chapter to be disclosed to a consumer and the information so misrepresented is material to the establishment of the defendant's liability to the consumer under this chapter, the action may be brought at any time within two years after the discovery by the consumer of the misrepresentation.

1785.33. (a) Any consumer credit reporting agency or user of information against whom an action brought pursuant to Section 1681n or 1681o of Title 15 of the United States Code is pending shall not be subject to suit for the same act or omission under Section 1785.30.

(b) The entry of a final judgment against a consumer credit reporting agency or user of information in an action brought pursuant to the provisions of Section 1681n or 1681o of Title 15 of the United States Code shall be a bar to the maintenance of any action based on the same act or omission which might be brought under this chapter.

1785.34. This title does not apply to any consumer credit report which by its terms is limited to disclosures from public records relating to land and land titles and does not apply to any person whose records and files are maintained for the primary purpose of reporting those portions of the public records which impart constructive notice under the law of matters relating to land and land titles.

SEC. 2. Title 1.6 (commencing with Section 1785.1) of Part 4 of Division 3 of the Civil Code is repealed.

CHAPTER 1272

An act to add Title 1.6A (commencing with Section 1786) to Part 4 of Division 3 of the Civil Code, relating to consumer reporting.

[Approved by Governor October 1, 1975 Filed with
Secretary of State October 1, 1975.]

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

SECTION 1. Title 1.6A (commencing with Section 1786) is added to Part 4 of Division 3 of the Civil Code, to read:

EXHIBIT B

Volume 2

STATUTES OF CALIFORNIA

AND DIGESTS OF MEASURES

1975

Constitution of 1879 as Amended

**General Laws, Amendments to the Codes, Resolutions,
and Constitutional Amendments passed by the
California Legislature**

1975-76 Regular Session

1975-76 First Extraordinary Session

1975-76 Second Extraordinary Session

1975-76 Third Extraordinary Session



Compiled by
GEORGE H. MURPHY
Legislative Counsel

reporting agency, based on information disclosed pursuant to Section 1785.10, 1785.15 or 1785.20 of this title, except as to false information furnished with malice or willful intent to injure such consumer.

1785.32. An action to enforce any liability created under this chapter may be brought in any appropriate court of competent jurisdiction within two years from the date on which the liability arises except that where a defendant has materially and willfully misrepresented any information required under this chapter to be disclosed to a consumer and the information so misrepresented is material to the establishment of the defendant's liability to the consumer under this chapter, the action may be brought at any time within two years after the discovery by the consumer of the misrepresentation.

1785.33. (a) Any consumer credit reporting agency or user of information against whom an action brought pursuant to Section 1681n or 1681o of Title 15 of the United States Code is pending shall not be subject to suit for the same act or omission under Section 1785.30.

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An act to add Title 1.6A (commencing with Section 1786) to Part 4 of Division 3 of the Civil Code, relating to consumer reporting.

[Approved by Governor October 1, 1975. Filed with
Secretary of State October 1, 1975.]

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

SECTION 1. Title 1.6A (commencing with Section 1786) is added to Part 4 of Division 3 of the Civil Code, to read:

**TITLE 1.6A. INVESTIGATIVE CONSUMER REPORTING
AGENCIES****Article 1. General Provisions**

1786. The Legislature finds and declares as follows:

(a) Investigative consumer reporting agencies have assumed a vital role in assembling and evaluating information on consumers for employment and insurance purposes.

(b) There is a need to insure that investigative consumer reporting agencies exercise their grave responsibilities with fairness, impartiality, and a respect for the consumer's right to privacy.

(c) It is the purpose of this title to require that investigative consumer reporting agencies adopt reasonable procedures for meeting the needs of commerce for employment and insurance information in a manner which is fair and equitable to the consumer, with regard to the confidentiality, accuracy, relevancy, and proper utilization of such information in accordance with the requirements of this title.

(d) The Legislature hereby intends to regulate investigative consumer reporting agencies pursuant to this title in a manner which will best protect the interests of the people of the State of California.

1786.1. This title may be referred to as the Investigative Consumer Reporting Agencies Act.

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, trust, estate, cooperative, association, government or governmental subdivision or agency, or other entity.

(b) The term "consumer" means a natural individual who has made application to a person for employment purposes or insurance for personal, family, or household purposes.

(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 personal interviews with neighbors, friends, or associates of the consumer reported on, or others with whom he is acquainted or who may have knowledge concerning any such items of information. Such information shall not include specific factual information on a consumer's credit record obtained directly from a creditor of the consumer or from a consumer reporting agency when such information was obtained directly from a creditor of the consumer or from the consumer.

(d) The term "investigative consumer reporting agency" means any person who, for monetary fees or dues, regularly engages in whole or in part in the practice of assembling or evaluating employment or insurance information, or both, concerning consumers for personal, family, or household purposes, for the purposes of furnishing investigative consumer reports to third

parties, to be used with respect to consumers for employment purposes or insurance primarily for personal, family, or household purposes, but does not include any governmental agency whose records are maintained primarily for traffic safety, law enforcement, or licensing purposes, or a private investigator licensed in this state or employees of such a private investigator.

(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.

(g) The term "medical information" means information on a person's medical history or condition obtained directly from such person or another person related to such person and acting on his behalf by an application, or questionnaire, or by a similar means, or obtained directly or indirectly from a licensed physician, medical practitioner, hospital, clinic, or other medical or medically related facility.

Article 2. Obligations of Investigative Consumer Reporting Agencies

1786.10. Every investigative consumer reporting agency shall, upon request and proper identification of any consumer, allow the consumer to visually inspect all files maintained regarding such consumer at the time of the request, except that medical information, as defined in subdivision (g) of Section 1786.2 may be withheld. The consumer shall be informed by the investigative consumer reporting agency of the existence of any such medical information withheld and shall have a right to visually inspect such information upon written authorization from the consumer's attending physician. The investigative credit reporting agency shall inform the consumer of the consumer's right to visually inspect such withheld information at the time the consumer makes a request to inspect all files pursuant to this section.

(a) All items of information shall be available for inspection, except that the sources of information need not be disclosed. However, in the event an action is brought under this title such sources shall be available to the consumer under appropriate discovery procedures in the court in which the action is brought.

Nothing in this title shall be interpreted to mean that investigative consumer reporting agencies are required to divulge to consumers the sources of investigative consumer reports except in appropriate discovery procedures as outlined herein.

(b) The investigative consumer reporting agency shall also disclose the recipients of any investigative consumer report on the

consumer which the investigative consumer reporting agency has furnished:

(1) For employment or insurance purposes within the two-year period preceding the request.

(2) For any other purpose within the six-month period preceding the request.

1786.12. An investigative consumer reporting agency shall only furnish an investigative consumer report under the following circumstances:

(a) In response to the order of a court having jurisdiction to issue such an order.

(b) In compliance with a lawful subpoena issued by a court of competent jurisdiction.

(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; or

(2) Intends to use the information serving as a factor in determining a consumer's eligibility for insurance, the rate for such insurance, or for insurance claims settlements; or

(3) Intends to use the information in connection with a determination of the consumer's eligibility for a license or other benefit granted by a governmental instrumentality required by law to consider the applicant's financial responsibility or status.

(4) Intends to use the information in connection with an order of a court of competent jurisdiction to provide support where the imposition or enforcement of the order involves the consumer.

1786.14. Notwithstanding the provisions of Section 1786.12 an investigative consumer reporting agency may furnish to a governmental agency a consumer's name, address, former address, places of employment, or former places of employment.

1786.16. A person shall not procure or cause to be prepared an investigative consumer report unless all of the following conditions are met:

(a) If an investigative consumer report may be sought in connection with the underwriting of insurance, it shall be clearly and accurately disclosed in writing on the application form, binder, or similar document signed by the consumer that an investigative consumer report regarding the consumer's character, general reputation, personal characteristics, and mode of living may be made. If no signed application form, binder, or similar document is involved in the underwriting transaction, such disclosure shall be made to the consumer in a writing mailed or otherwise delivered to the consumer not later than three days after the report was first requested.

(b) If, at any time, an investigative consumer report is sought in conjunction with an application for employment purposes, the person procuring or causing the report to be made shall, not later than three days after the date on which the report was first

requested, notify the consumer in writing that an investigative consumer report regarding the consumer's character, general reputation, personal characteristics, and mode of living will be made. This notification shall include the name of the consumer reporting agency conducting the investigation and a summary of the provisions of Section 1786.22.

(c) The provisions of subdivision (b) shall not apply to an investigative consumer report procured by an employer solely for the purpose of determining whether a person currently in his employ is engaged in any criminal activity likely to result in a loss to the employer.

1786.18. (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 which, from the date of adjudication, antedate the report by more than 14 years.

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

(3) Unpaid judgments which, from the date of entry, antedate the report by more than 10 years.

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

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

(6) Records of arrest, indictment, information, misdemeanor complaint, or conviction of a crime which, from the date of disposition, release, or parole, antedate the report by more than seven years. Such 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, and information misdemeanor complaints may be reported pending pronouncement of judgment on the particular matter subject of such records.

(7) Any other adverse information which antedates the report by more than seven years.

(b) The provisions of subdivision (a) are not applicable in the case of any consumer report to be used in the following transactions:

(1) The underwriting of life insurance, involving or which may reasonably be expected to involve, an amount of one hundred thousand dollars (\$100,000) or more.

(2) The employment of any individual at an annual salary which equals, or may reasonably be expected to equal, thirty thousand dollars (\$30,000) or more.

1786.20. (a) Every investigative consumer reporting agency shall maintain reasonable procedures designed to avoid violations of Section 1786.18 and to limit furnishing of investigative consumer reports to the purposes listed under Section 1786.12. These

procedures shall require that prospective users of the information identify themselves, certify the purposes for which the information is sought and certify that the information will be used for no other purposes. From the effective date of this title the investigative consumer reporting agency shall keep a record of the purposes as stated by the user. Every investigative consumer reporting agency shall make a reasonable effort to verify the identity of a new prospective user and the uses certified by such prospective user prior to furnishing such user any consumer reports. No investigative consumer reporting agency may furnish any investigative consumer reports to any person unless it has reasonable grounds for believing that the investigative consumer reports will be used by such person for purposes listed in Section 1786.12.

(b) Whenever an investigative consumer reporting agency prepares an investigative consumer report, it shall follow reasonable procedures to assure maximum possible accuracy of the information concerning the individual about whom the report relates.

1786.22. (a) An investigative consumer reporting agency shall supply files and information required under Section 1786.10 during normal business hours and on reasonable notice.

(b) Files maintained on a consumer shall be made available for the consumer's visual inspection, as follows:

(1) In person, if he appears in person and furnishes proper identification. A copy of his file shall also be available to the consumer for a fee.

(2) By certified mail, if he makes a written request, with proper identification; for copies to be sent to a specified addressee. Investigative consumer reporting agencies complying with requests for certified mailings under this section shall not be liable for disclosures to third parties caused by mishandling of mail after such mailings leave the investigative consumer reporting agencies.

(3) A summary of all information contained in files on a consumer and required to be provided by Section 1786.10 shall be provided by telephone, if the consumer has made a written request, with proper identification for telephone disclosure, and the toll charge, if any, for the telephone call is prepaid by or charged directly to the consumer.

(c) The term "proper identification" as used in subdivision (b) shall mean that information generally deemed sufficient to identify a person. Such information includes documents such as a valid driver's license, social security account number, military identification card, and credit cards. Only if the consumer is unable to reasonably identify himself with the information described above, may an investigative consumer reporting agency require additional information concerning the consumer's employment and personal or family history in order to verify his identity.

(d) The investigative consumer reporting agency shall provide trained personnel to explain to the consumer any information furnished him pursuant to Section 1786.10.

(e) The investigative consumer reporting agency shall provide a

written explanation of any coded information contained in files maintained on a consumer. This written explanation shall be distributed whenever a file is provided to a consumer for visual inspection as required under Section 1786.22.

(f) The consumer shall be permitted to be accompanied by one other person of his choosing, who shall furnish reasonable identification. An investigative consumer reporting agency may require the consumer to furnish a written statement granting permission to the consumer reporting agency to discuss the consumer's file in such person's presence.

1786.24. (a) If the completeness or accuracy of any item of information contained in his file is disputed by a consumer, and such dispute is conveyed directly to the investigative consumer reporting agency by the consumer, the investigative consumer reporting agency shall within a reasonable period of time reinvestigate and record the current status of that information unless it has reasonable grounds to believe that the dispute by the consumer is frivolous or irrelevant. If the investigative consumer reporting agency determines that the dispute is frivolous or irrelevant, it shall notify the consumer in writing within five days after such determination is made that it will not reinvestigate the item of information. In this notification, the investigative consumer reporting agency shall state the specific reasons why it has determined that the consumer's dispute is frivolous or irrelevant. If a reinvestigation is made and, after reinvestigation, the disputed item of information is found to be inaccurate or can no longer be verified, the investigative consumer reporting agency shall promptly delete such information from the consumer's file and shall notify the consumer that such information has been deleted. The presence of information in the consumer's file that contradicts the contention of the consumer shall not, in and of itself, constitute reasonable grounds for believing the dispute is frivolous or irrelevant.

(b) If the investigative consumer reporting agency determines that the dispute is frivolous or irrelevant, or if the reinvestigation does not resolve the dispute, the consumer may file a brief statement setting forth the nature of the dispute. The investigative consumer reporting agency may limit such statements to not more than 100 words if it provides the consumer with assistance in writing a clear summary of the dispute.

(c) Whenever a statement of dispute is filed, the investigative consumer reporting agency shall, in any subsequent investigative consumer report containing the information in question, clearly note that the information is disputed by the consumer and shall include in the report either the consumer's statement or a clear and accurate summary thereof.

(d) Following the deletion of information from a consumer's file pursuant to subdivision (a), or following the filing of a dispute pursuant to subdivision (b), the investigative consumer reporting agency shall, at the request of the consumer, furnish notification that

the item of information has been deleted or that the item of information is disputed. In the case of disputed information, the notification shall include the statement or summary of the dispute filed pursuant to subdivision (b). Such notification shall be furnished to any person, specifically designated by the consumer, who has, within two years prior to the deletion or the filing of the dispute, received an investigative consumer report concerning the consumer for employment purposes, or who has, within six months of the deletion or the filing of the dispute, received an investigative consumer report concerning the consumer for any other purpose, if such investigative consumer reports contained the deleted or disputed information. The investigative consumer reporting agency shall clearly and conspicuously disclose to the consumer his rights to make a request for notification. Such disclosure shall be made at or prior to the time the information is deleted or the consumer's statement regarding the disputed information is received.

1786.26. An investigative consumer reporting agency shall make all disclosures pursuant to Sections 1786.10 and 1786.22 and furnish all consumer reports pursuant to Section 1786.24 without charge to the consumer if, within 30 days after receipt by such consumer of a notification pursuant to Section 1786.40 stating that adverse action may be or has been taken on the consumer, the consumer makes a request under Section 1786.27 or 1786.24. Otherwise, the investigative consumer reporting agency may impose a reasonable charge on the consumer for making disclosure to such consumer pursuant to Section 1786.22 as it relates to providing a copy of the report to the consumer, the charge for which shall be indicated to the consumer prior to making disclosure; and for furnishing notifications, statements, summaries, or codifications to person designated by the consumer pursuant to Section 1786.24 the charge for which shall be indicated to the consumer prior to furnishing such information and shall not exceed the charge that the investigative consumer reporting agency would impose on each designated recipient for a consumer report except that no charge may be made for notifying such persons of the deletion of information which is found to be inaccurate or which can no longer be verified.

1786.28. (a) Each investigative consumer reporting agency which compiles and reports items of information concerning consumers which are matters of public record shall specify in any report containing public record information the source from which such information was obtained, including the particular court, if there be such, and the date that such information was initially reported or publicized.

(b) A consumer reporting agency which furnishes a consumer report for employment purposes and which for that purpose compiles and reports items of information on consumers which are matters of public record and are likely to have an adverse effect upon a consumer's ability to obtain employment shall in addition maintain strict procedures designed to insure that whenever public record

information which is likely to have an adverse effect on a consumer's ability to obtain employment is reported it is complete and up to date. For purposes of this paragraph, items of public record relating to arrests, indictments, convictions, suits, tax liens, and outstanding judgments shall be considered up to date if the current public record status of the item at the time of the report is reported.

1786.30. Whenever an investigative consumer reporting agency prepares an investigative consumer report, no adverse information in the report (other than information which is a matter of public record, the status of which has been updated pursuant to Section 1786.28 may be included in a subsequent investigative consumer report unless such adverse information has been verified in the process of making such subsequent consumer report, or the adverse information was received within the three-month period preceding the date the subsequent report is furnished.

Article 3. Requirements on Users of Investigative Consumer Reports

1786.40. (a) Whenever insurance for personal, family, or household purposes, or employment involving a consumer is denied or the charge for such insurance is increased either wholly or partly because of information contained in an investigative consumer report from an investigative consumer reporting agency, the user of the investigative consumer report shall so advise the consumer against whom such adverse action has been taken and supply the name and address of the investigative consumer reporting agency making the report.

(b) Whenever insurance for personal, family, or household purposes involving a consumer is denied or the charge for such insurance is increased either wholly or in part because of information obtained from a person other than an investigative consumer reporting agency bearing upon the consumer's general reputation, personal characteristics or mode of living, the user of such information shall, within a reasonable period of time, and upon the consumer's written request for the reasons for such adverse action received within 60 days after learning of such adverse action, disclose the nature and substance of the information to the consumer. The user of such information shall clearly and accurately disclose to the consumer his right to make such written request at the time such adverse action is communicated to the consumer. The user may withhold the substance of such medical information, as defined in subdivision (g) of Section 1786.2, but shall inform the consumer of the existence of any such medical information withheld. The consumer shall have a right to be informed in writing of the substance of such information upon written authorization from the consumer's attending physician. The user shall inform the consumer of the consumer's right to be informed in writing of the substance of such withheld information at the time of disclosure pursuant to this subdivision.

Article 4. Remedies

1786.50. (a) Any investigative consumer reporting agency or user of information which fails to comply with any requirement under this title 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, three hundred dollars (\$300), whichever sum is greater, and

(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 which 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.

1786.52. Nothing in this chapter shall in any way affect the right of any consumer to maintain an action against an investigative consumer reporting agency, a user of an investigative consumer report, or an informant for invasion of privacy or defamation.

An action to enforce any liability created under this title may be brought in any appropriate court of competent jurisdiction within two years from the date on which the liability arises except that where a defendant has materially and willfully misrepresented any information required under this title to be disclosed to a consumer and the information so misrepresented is material to the establishment of the defendant's liability to the consumer under this title the action may be brought at any time within two years after the discovery by the consumer of the misrepresentation.

(a) Any investigative consumer reporting agency or user of information against whom an action brought pursuant to Section 1681n or 1681o of Title 15 of the United States Code is pending shall not be subject to suit for the same act or omission under Section 1786.50.

(b) The entry of a final judgment against the investigative consumer reporting agency or user of information in an action brought pursuant to the provisions of Section 1681n or 1681o of Title 15 of the United States Code shall be a bar to the maintenance of any action based on the same act or omission which might be brought under this title.

1786.54. This title does not apply to any investigative consumer report which by its terms is limited to disclosures from public records relating to land and land titles or which is a report issued preliminary to the issuance of a policy of title insurance, and it does not apply to any person whose records are maintained for the primary purpose of reporting those portions of public records which impart constructive notice under the law of matters relating to land and land titles and which may be issued as the basis for the issuance of a policy of title insurance.

1786.56. If any provision of this act or the application thereof to any person or circumstances is held invalid, such invalidity shall not affect other provisions or applications of the act which can be given effect without the invalid provision or application, and to this end the provisions of this act are severable.

CHAPTER 1273

An act to amend Section 18613 of, and to add Section 18056.1 to, the Health and Safety Code, relating to inspection of mobilehomes.

[Approved by Governor October 1, 1975. Filed with
Secretary of State October 1, 1975.]

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

SECTION 1. Section 18056.1 is added to the Health and Safety Code, to read:

18056.1. The commission shall adopt such regulations for the inspection of mobilehomes under construction as it determines are reasonably necessary to assure compliance with this part and the regulations promulgated under this part. Such regulations shall include the inspection of the construction, assembly, and installation of parts and components which will subsequently be enclosed within the floor, walls, ceiling, or roof of the mobilehome.

An insignia of approval shall not be affixed to any new mobilehome unless such mobilehome has been inspected by the department while under construction pursuant to the regulations of the commission under this section.

SEC. 2. Section 18613 of the Health and Safety Code is amended to read:

18613. On and after July 1, 1974, a permit shall be obtained from the enforcement agency each time a mobilehome, which is required to be moved under a permit, is to be located or installed on any site for the purpose of human habitation or occupancy as a dwelling.

The contractor engaged to install the mobilehome shall obtain the permit, except when the owner of the mobilehome proposes to perform the installation. When a contractor applies for a permit to install a mobilehome, he shall display a valid contractor's license. The

EXHIBIT C

ENROLLED BILL REPORT

Agriculture and Services	AB 601
DEPARTMENT BOARD OF COMMISSIONS Department of Consumer Affairs	OTHER LAW

SUBJECT: Investigative Consumer Reporting Agencies

HISTORY, SPONSORSHIP, AND RELATED LEGISLATION:

AB 601 is essentially a reintroduction of AB 449 (Lewin) from 1974, which was written and sponsored by the Department of Consumer Affairs, with no significant change. AB 449 applied to both credit reporting and investigative reporting agencies; the bill has been divided this year into two proposals, AB 600 and AB 601, the first dealing with credit reporting agencies, the second with investigative reporting agencies. Both were drafted in an effort to remedy obvious deficiencies in the laws delineating obligations of consumer reporting agencies regarding accuracy and disclosure of information.

ANALYSIS

Specific Findings:

Current California law provides for nonlicensure regulation of credit reporting agencies providing credit information or credit ratings on a consumer (Civil Code section 1785.1, et seq.) It does not, however, provide specific nonlicensure regulation for investigative consumer reporting agencies engaged in the practice of assembling or evaluating employment and insurance information for the purpose of furnishing such reports to third parties.

The Federal Fair Credit Reporting Act (FCRA), passed in 1970, does provide very necessary regulation in this area and has consequently become the standard in California. However, the FCRA has been declared inadequate in a number of respects by the agency responsible for its enforcement, the Federal Trade Commission, and federal efforts to improve the FCRA have thus far met defeat. AB 601 has been designed to provide badly needed protections for California consumers in areas where the FCRA has proved most sadly deficient. Major improvements are outlined below:

A. ~~General~~ Content

FCRA - Under the FCRA, a consumer reporting agency is only required to disclose to a consumer the "nature and substance" of information contained in his file. Studies reveal "wholesale withholding" of adverse information from consumers requesting knowledge of the contents of their files.

AB 601 - AB 601 requires a consumer reporting agency to permit the consumer to visually inspect his file (as under the FCRA, the sources of information may be deleted) and make copies, for a fee designed to cover agency's costs. A written explanation of coded information must be provided.

B. Medical Information

FCRA - Under the FCRA, the consumer reporting agency does not have to disclose to the consumer any medical information contained in his file. The consumer therefore never has the opportunity to dispute information which may be totally erroneous.

AB 601 - AB 601 requires disclosure of medical information upon authorization from the consumer's attending physician.

RECOMMENDATION:

Sign

*Sign.
Hooley for privacy!*

DEPARTMENT DIRECTOR <i>Atkinson</i>	DATE 9-17-75	AGENCY SECRETARY <i>P. E. Reid</i>	DATE 9/18
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II. Frivolous or Irrelevant Dispute

FCRA - If the completion of a consumer report is a result of information furnished to the CRA by a consumer, and the consumer, upon the request of the CRA, determines that such information is frivolous or irrelevant, the CRA may refuse to re-investigate the item of information without notifying the consumer, and is not required to place a statement of dispute written by the consumer in the file.

AB 601 - Under AB 601, if a consumer reporting agency determines a dispute is frivolous or irrelevant and therefore refuses to re-investigate, it must notify the consumer within 5 days, giving specific reasons for such refusal. The consumer will then be allowed to file a statement of dispute under any circumstances.

III. Use of Reports

FCRA - The FCRA permits investigative reports to be used for any of the purposes for which consumer reports in general may be prepared (credit, insurance, employment, "legitimate business need").

AB 601 - AB 601 limits the reasons for which an investigative report may be prepared to insurance and employment purposes.

IV. Public Record Information

FCRA - Under the FCRA, the consumer reporting agency is required to take precautions to insure that public record information is current only when it is used for employment purposes. Even then, procedures for establishing "current public record information" are inadequately defined. Under no circumstances is the source of public record information required to be identified.

AB 601 - AB 601 incorporates guidelines to insure that information is correct. The court in which a matter was determined must be identified.

V. Remedies

FCRA - Under the FCRA, in order to collect compensation for damages it is necessary for the consumer to prove that a consumer reporting agency negligently failed to comply with the Act. As actual damages are extremely difficult to determine (what damages are sustained when credit is denied?), there is little incentive for the consumer to exercise his right to sue in the event of negligent noncompliance and little incentive for the consumer reporting agency to comply with the Act. For willful noncompliance, the consumer may receive actual plus punitive damages, but, of course, it is very difficult to prove that consumer reporting agency personnel made a conscious decision to disobey the law.

In addition, the FCRA provides that no required disclosure by a consumer reporting agency may be used by the consumer as the basis for a suit based on defamation, invasion of privacy, or a person who furnishes information for a report unless a willful misrepresentation is involved. This exception virtually immunizes the whole information collection process from suit and again reduces the incentive to ensure that information is absolutely correct.

No Impact

Fiscal Analysis

In our last analysis of AB 601, we requested an express position on the bill so that we could attempt to convince the Legislature to reword the remedies section back to its original form. We were successful in this effort and now consider the bill to be an excellent consumer protection measure.

In its current form, the bill is supported by the State Bar, the California Trial Lawyer's Association, the Western Center on Law and Poverty, and the American Civil Liberties Union. It is opposed by the Retail Credit Association, an investigative reporter now the subject of several law suits filed by the Federal Trade Commission.

which were provided by a consumer seeking to respect his rights.

A final significant change involves the definition of "proper identification" of a party or defendant.

Section 1709.1, a new section, provides for a remedy for a party or defendant who fails to provide proper identification to a consumer in order to obtain a loan.

The bill also provides for a remedy for a party or defendant who fails to provide proper identification to a consumer in order to obtain a loan.

Section 1709.1, a new section, provides for a remedy for a party or defendant who fails to provide proper identification to a consumer in order to obtain a loan.

The bill also provides for a remedy for a party or defendant who fails to provide proper identification to a consumer in order to obtain a loan.

EXHIBIT D

1998 Cal. Legis. Serv. Ch. 988 (S.B. 1454) (WEST)

CALIFORNIA 1998 LEGISLATIVE SERVICE

1998 Portion of 1997-98 Regular Session

Additions are indicated by <<+ Text +>>; deletions by <<- * * * ->>. Changes in tables are made but not highlighted.

CHAPTER 988

S.B. No. 1454

CONSUMER LAW—INVESTIGATIVE REPORTING

AN ACT to amend Sections 1786.2, 1786.10, 1786.12, 1786.16, 1786.18, 1786.20, 1786.24, 1786.26, 1786.30, 1786.40, and 1786.50 of, and to add Section 1786.11 to, the Civil Code, relating to investigative consumer reporting.

[Approved by Governor September 29, 1998.]

[Filed with Secretary of State September 30, 1998.]

LEGISLATIVE COUNSEL'S DIGEST

SB 1454, Leslie. Investigative consumer reporting.

Existing law, as contained in the Investigative Consumer Reporting Agencies Act, regulates the preparation, disclosure, and use of investigative consumer reports.

Existing law defines an "investigative consumer report" as a report in which specified information on a consumer is obtained through personal interviews and defines an "investigative consumer reporting agency" as any person who, for a fee, assembles employment or insurance information, or information relating to the hiring of dwelling units concerning consumers for 3rd parties for specified purposes.

This bill would redefine an "investigative consumer report" as a report in which specified consumer information is obtained by any means, subject to an exception, and an "investigative consumer reporting agency" as any person who, for a fee, assembles any information concerning consumers for 3rd parties.

Existing law generally provides that a person may not obtain an investigative consumer report with respect to a consumer unless the person discloses in writing to the consumer that the report will be made and provides other specified information.

This bill would require, as a further condition to obtaining an investigative consumer report, that the person certify to the agency that he or she (1) has made the required consumer disclosures and (2) will provide additional specified disclosures if requested by the consumer. The bill would also require an investigative consumer reporting agency that provides an investigative consumer report to a person other than the consumer to make a copy of that report available to the consumer, as specified, for at least 60 days after the date the report is provided to the other person.

Existing law provides that consumers have the right to visually inspect all files maintained by an investigative consumer reporting agency regarding that consumer, except medical information, as defined. Existing law also provides that consumers have the right to be informed by the user of consumer information of the reasons for any adverse action taken with respect to specified insurance due to information obtained from a person other than an investigative consumer reporting agency, except that the user may withhold medical information, as defined, until the consumer obtains written authorization from the consumer's physician.

This bill would delete both of these exceptions relating to medical information. It would also prohibit an investigative consumer reporting agency from furnishing an investigative consumer report containing that defined medical information without the consumer's consent.

Existing law provides that investigative consumer reports may not include, among other things, any arrest records, unlawful detainer actions unless the lessor was the prevailing party, as specified, paid tax liens, or other specified items that antedate the report by more than 7 years.

This bill would revise the prohibition against inclusion of unlawful detainer actions and specify that information relating to an arrest, indictment, conviction, civil action, tax lien, or outstanding judgment may not be included in a report unless verified by the agency no more than 30 days prior to the date of the report, and adverse information obtained through a personal interview, as specified, may not be included in a report unless it is either verified by a 2nd party or the interviewee is the best source of the information.

Existing law gives consumers the right to dispute inaccurate information contained in an investigative consumer report and to bring an action to recover damages for violations of the act in an amount equal to the greater of actual damages or \$300.

This bill would add new procedures and notice requirements relating to the investigation of disputes by consumers and the deletion of information in a consumer's file that is determined to be inaccurate. The bill would also increase the minimum amount of damages recoverable by a consumer for violations of the act from \$300 to \$2,500.

Existing law specifies that reasonable charges may be imposed upon a consumer to receive a copy of an investigative consumer report relating to that consumer, unless the copy is requested after the taking of an adverse action against the consumer based on the report, as specified.

This bill would specify the amount of fee, if any, that may be charged to a consumer to receive a copy of an investigative consumer report or other disclosures relating to that consumer. The bill would require investigative consumer reporting agencies to provide a consumer with a copy of his or her investigative consumer report, free of charge, not more often than once a year, if the consumer is unemployed, is seeking employment, receives public welfare assistance, or believes that his or her file contains inaccurate information due to fraud.

The bill would make other related changes.

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

SECTION 1. Section 1786.2 of the Civil Code is amended to read:

<< CA CIVIL § 1786.2 >>

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, regularly engages in whole or in part in the practice of assembling or evaluating <<-* * *->>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.

(g) The term "medical information" means information on a person's medical history or condition obtained directly or indirectly from a licensed physician, medical practitioner, hospital, clinic, or other medical or medically related facility.

SEC. 2. Section 1786.10 of the Civil Code is amended to read:

<< CA CIVIL § 1786.10 >>

1786.10. <<+(a)+>> Every investigative consumer reporting agency shall, upon request and proper identification of any consumer, allow the consumer to visually inspect all files maintained regarding <<+the+>> consumer at the time of the request<<-* * *->>.

<<+(b)+>> All items of information shall be available for inspection, except that the sources of information <<+acquired solely for use in preparing an investigative consumer report and actually used for no other purpose+>> need not be disclosed. However, <<-* * *->><<+if+>> an action is brought under this title<<-* * *->><<+, those+>> sources shall be available to the consumer under appropriate discovery procedures in the court in which the action is brought.

Nothing in this title shall be interpreted to mean that investigative consumer reporting agencies are required to divulge to consumers the sources of investigative consumer reports except in appropriate discovery procedures as outlined herein.

<<+(c)+>> The investigative consumer reporting agency shall also <<+ identify+>> the recipients of any investigative consumer report on the consumer <<+that+>> the investigative consumer reporting agency has furnished:

(1) For employment or insurance purposes within the two-year period preceding the request.

(2) For any other purpose within the <<+one-year+>> period preceding the request.

<<+(d) The identification of a recipient under subdivision (c) shall include the name of the recipient or, if applicable, the trade name (written in full) under which the recipient conducts business and, upon request of the consumer, the address and telephone number of the recipient.+>>

<<+(e) The investigative consumer reporting agency shall also disclose the dates, original payees, and amounts of any checks or charges upon which is based any adverse characterization of the consumer, included in the file at the time of the disclosure.+>>

SEC. 3. Section 1786.11 is added to the Civil Code, to read:

<< CA CIVIL § 1786.11 >>

1786.11. Every investigative consumer reporting agency that provides an investigative consumer report to a person other than the consumer shall make a copy of that report available, upon request and proper identification, to the consumer for at least 60 days after the date that the report is provided to the other person.

SEC. 4. Section 1786.12 of the Civil Code is amended to read:

<< CA CIVIL § 1786.12 >>

1786.12. An investigative consumer reporting agency shall only furnish an investigative consumer report under the following circumstances:

(a) In response to the order of a court having jurisdiction to issue <<-* * *->><<+the+>> order.

- (b) In compliance with a lawful subpoena issued by a court of competent jurisdiction.
- (c) In accordance with the written instructions of the consumer to whom it relates.
- (d) To a person <<+that+>> it has reason to believe:
- (1) Intends to use the information for employment purposes; or
 - (2) Intends to use the information serving as a factor in determining a consumer's eligibility for insurance or the rate for <<+any+>> insurance; or
 - (3) Intends to use the information in connection with a determination of the consumer's eligibility for a license or other benefit granted by a governmental instrumentality required by law to consider the applicant's financial responsibility or status; or
 - (4) Intends to use the information in connection with an order of a court of competent jurisdiction to provide support where the imposition or enforcement of the order involves the consumer; or
 - (5) Intends to use the information in connection with the hiring of a dwelling unit, as defined in subdivision (c) of Section 1940.
- <<+(e) An investigative consumer reporting agency shall not prepare or furnish an investigative consumer report to a person described in subdivision (d) unless the agency has received the certification under paragraph (4) of subdivision (a) of Section 1786.16 from the person requesting the report.+>>
- <<+(f) An investigative consumer reporting agency shall not furnish an investigative consumer report to a person described in subdivision (d) if that report contains medical information about a consumer, unless the consumer consents to the furnishing of the report.+>>

SEC. 5. Section 1786.16 of the Civil Code is amended to read:

<< CA CIVIL § 1786.16 >>

1786.16. (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) If an investigative consumer report is sought in connection with the underwriting of insurance, it shall be clearly and accurately disclosed in writing at the time the application form, medical form, binder, or similar document is signed by the consumer that an investigative consumer report regarding the consumer's character, general reputation, personal characteristics, and mode of living may be made. If no signed application form, medical form, binder, or similar document is involved in the underwriting transaction, <<+the+>> disclosure shall be made to the consumer in <<.* * *->>writing <<+and+>> mailed or otherwise delivered to the consumer not later than three days after the report was first requested.

(2) If, at any time, an investigative consumer report is sought for employment purposes other than promotion or reassignment, the person procuring or causing the report to be made shall, not later than three days after the date on which the report was first requested, notify the consumer in writing that an investigative consumer report regarding the consumer's character, general reputation, personal characteristics, and mode of living will be made. This notification shall include the name of the <<+investigative+>> consumer reporting agency conducting the investigation and a summary of the provisions of Section 1786.22.

(3) If an investigative consumer report is sought in connection with the hiring of a dwelling unit, as defined in subdivision (c) of Section 1940, the person procuring or causing the request to be made shall, not later than three days after the date on which the report was first requested, notify the consumer in writing that an investigative consumer report will be made regarding the consumer's character, general reputation, personal characteristics, and mode of living. The notification shall also include the name and address of the <<+investigative+>> consumer reporting agency <<+that+>> will prepare the report.

<<+(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).+>>

<<+(b) Any person described in subdivision (d) of Section 1786.12 shall, upon written request made by the consumer within a reasonable period of time after the receipt by the consumer of the disclosure required by subdivision (a), make a complete and accurate disclosure of the nature and scope of the investigation requested. This disclosure shall be made in writing and mailed or otherwise delivered to the consumer not later than five days after the date the request for the disclosure was received from the consumer or the report was first requested, whichever is later.+>>

<<+(c)+>> The provisions of subdivision (a) shall not apply to an investigative consumer report procured or caused to be prepared by an employer if the purpose of the employer is to <<.* * *->><<+d+>>etermine whether <<.* * *->><<+to retain

+>> an employee <<-* * *->><<+when there is a good faith belief that the+>> employee is engaged in any criminal activity likely to result in a loss to the employer.

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

SEC. 6. Section 1786.18 of the Civil Code is amended to read:

<< CA CIVIL § 1786.18 >>

1786.18. (a) Except as authorized under subdivision (b)<<+,+>> no investigative consumer reporting agency shall make <<+or furnish+>> 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 following transactions:

- (1) The underwriting of life insurance<<-* * *->> involving<<+,+>> or <<+that+>> may reasonably be expected to involve, an amount of one hundred <<+fifty+>> thousand dollars (\$<<+150,000+>>) or more.
- (2) The employment of any individual at an annual salary <<+that+>> equals, or may reasonably be expected to equal, <<+seventy-five+>> thousand dollars (\$<<+75,000+>>) or more.
- (3) The rental of a dwelling unit <<+that+>> exceeds <<+two+>> thousand dollars (\$<<+2,000+>>) per month.

<<+(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.+>>

<<+(d) An investigative consumer reporting agency shall not prepare or furnish an investigative consumer report on a consumer that contains information that is adverse to the interest of the consumer and that is obtained through a personal interview with a neighbor, friend, or associate of the consumer or with another person with whom the consumer is acquainted or who has knowledge of the item of information, unless either (1) the investigative consumer reporting agency has followed reasonable procedures to obtain confirmation of the information, from an additional source that has independent and direct knowledge of the information, or (2) the person interviewed is the best possible source of the information.+>>

SEC. 7. Section 1786.20 of the Civil Code is amended to read:

<< CA CIVIL § 1786.20 >>

1786.20. (a) Every investigative consumer reporting agency shall maintain reasonable procedures designed to avoid violations of Section 1786.18 and to limit furnishing of investigative consumer reports <<+for+>> the purposes listed under Section 1786.12. These procedures shall require that prospective users of the information identify themselves, certify the purposes for which the information is sought and <<-* * *->>that the information will be used for no other purposes<<+, and make

the certifications described in paragraph (4) of subdivision (a) of Section 1786.16. From the effective date of this title, the investigative consumer reporting agency shall keep a record of the purposes for which information is sought, as stated by the user. Every investigative consumer reporting agency shall make a reasonable effort to verify the identity of a new prospective user and the uses certified by the prospective user prior to furnishing the user any investigative consumer reports. No investigative consumer reporting agency may furnish any investigative consumer reports to any person unless it has reasonable grounds for believing that the investigative consumer reports will be used by that person for purposes listed in Section 1786.12.

(b) Whenever an investigative consumer reporting agency prepares an investigative consumer report, it shall follow reasonable procedures to assure maximum possible accuracy of the information concerning the individual about whom the report relates.

(c) An investigative consumer reporting agency shall not make an inquiry for the purpose of preparing an investigative consumer report on a consumer for employment purposes if the making of the inquiry by an employer or prospective employer of the consumer would violate any applicable federal or state equal employment opportunity law or regulation.

SEC. 8. Section 1786.24 of the Civil Code is amended to read:

CA CIVIL § 1786.24

1786.24. (a) If the completeness or accuracy of any item of information contained in his or her file is disputed by a consumer, and the dispute is conveyed directly to the investigative consumer reporting agency by the consumer, the investigative consumer reporting agency shall, without charge, reinvestigate and record the current status of the disputed information or delete the item from the file in accordance with subdivision (c), before the end of the 30-day period beginning on the date on which the agency receives the notice of the dispute from the consumer.

(b) The agency shall notify any person who provided information in dispute at the address and in the manner specified by that person. The notice shall include all relevant information regarding the dispute that the investigative consumer reporting agency has received from the consumer. The agency shall also promptly provide to the person who provided the information in dispute all relevant information regarding the dispute that is received by the agency from the consumer during the reinvestigation.

(c) In conducting a reinvestigation, the investigative consumer reporting agency shall review and consider all relevant information submitted by the consumer with respect to the disputed item of information.

(d) Notwithstanding subdivision (a), an investigative consumer reporting agency may terminate a reinvestigation of information disputed by a consumer if the investigative consumer reporting agency reasonably determines that the dispute is frivolous or irrelevant, including by reason of a failure by a consumer to provide sufficient information to investigate the disputed information. Upon making a determination that a dispute is frivolous or irrelevant, the investigative consumer reporting agency shall notify the consumer, by mail or, if authorized by the consumer for that purpose, by any other means available to the agency. In this notification, the investigative consumer reporting agency shall state the specific reasons why it has determined that the consumer's dispute is frivolous or irrelevant and provide a description of any information required to investigate the disputed information, that may consist of a standardized form describing the general nature of the required information.

(e) If a reinvestigation is made and, after reinvestigation, the disputed item of information is found to be inaccurate, incomplete, or cannot be verified by the evidence submitted, the investigative consumer reporting agency shall promptly delete that information from the consumer's file or modify the information, as appropriate, based on the results of the reinvestigation, and shall notify the consumer that the information has been deleted or modified.

(f) No information may be reinserted in a consumer's file after having been deleted pursuant to this section unless the person who furnished the information verifies that the information is complete and accurate. If any information deleted from a consumer's file is reinserted in the file, the investigative consumer reporting agency shall promptly notify the consumer of the reinsertion in writing or, if authorized by the consumer for that purpose, by any other means available to the agency. As part of, or in addition to, this notice, the investigative consumer reporting agency shall provide to the consumer in writing (1) a statement that the disputed information has been reinserted, (2) the name, address, and telephone number of any furnisher of information contacted or that contacted the investigative consumer reporting agency in connection with the reinsertion, and the telephone number of the furnisher, if reasonably available, and (3) a notice that the consumer has the right to a reinvestigation.

of the information reinserted by the investigative consumer reporting agency and to add a statement to his or her file disputing the accuracy or completeness of the information.+>>

<<+(g)>> An investigative consumer reporting agency shall provide notice to the consumer of the results of any reinvestigation under this section by mail or, if authorized by the consumer for that purpose, by other means available to the agency. The notice shall include (1) a statement that the reinvestigation is completed, (2) an investigative consumer report that is based on the consumer's file as that file is revised as a result of the reinvestigation, (3) a description or indication of any changes made in the investigative consumer report as a result of those revisions to the consumer's file, (4) a notice that, if requested by the consumer, a description of the procedure used to determine the accuracy and completeness of the information shall be provided to the consumer by the investigative consumer reporting agency, including the name, business address, and telephone number of any furnisher of information contacted in connection with that information, (5) a notice that the consumer has the right to add a statement to the consumer's file disputing the accuracy or completeness of the information, and (6) a notice that the consumer has the right to request that the investigative consumer reporting agency furnish notifications under subdivision (k).+>>

<<+(h)>> The presence of information in the consumer's file that contradicts the contention of the consumer shall not, in and of itself, constitute reasonable grounds for believing the dispute is frivolous or irrelevant.

<<+(i)>> If the investigative consumer reporting agency determines that the dispute is frivolous or irrelevant, or if the reinvestigation does not resolve the dispute, <<+or if the information is reinserted into the consumer's file pursuant to subdivision (f),+>> the consumer may file a brief statement setting forth the nature of the dispute. The investigative consumer reporting agency may limit <<+these+>> statements to not more than 100 words if it provides the consumer with assistance in writing a clear summary of the dispute.

<<+(j)>> Whenever a statement of dispute is filed, the investigative consumer reporting agency shall, in any subsequent investigative consumer report containing the information in question, clearly note that the information is disputed by the consumer and shall include in the report either the consumer's statement or a clear and accurate summary thereof.

<<+(k)>> Following the deletion of information from a consumer's file pursuant to <<-* * *->><<+this section+>>, or following the filing of a dispute pursuant to subdivision <<+(i)+>>, the investigative consumer reporting agency shall, at the request of the consumer, furnish notification that the item of information has been deleted or that the item of information is disputed. In the case of disputed information, the notification shall include the statement or summary of the dispute filed pursuant to subdivision <<+(i). This+>> notification shall be furnished to any person, specifically designated by the consumer, who has, within two years prior to the deletion or the filing of the dispute, received an investigative consumer report concerning the consumer for employment purposes, or who has, within <<-* * *->><<+one year+>> of the deletion or the filing of the dispute, received an investigative consumer report concerning the consumer for any other purpose, if <<+these+>> investigative consumer reports contained the deleted or disputed information. The investigative consumer reporting agency shall clearly and conspicuously disclose to the consumer his <<+or her+>> rights to make a request for <<+this+>> notification.<<-* * *->>

<<+(l)>> An investigative consumer reporting agency shall maintain reasonable procedures designed to prevent the reappearance in a consumer's file and in investigative consumer reports information that has been deleted pursuant to this section and not reinserted pursuant to subdivision (f).+>>

<<+(m)>> If the consumer's dispute is resolved by deletion of the disputed information within three business days, beginning with the day the investigative consumer reporting agency receives notice of the dispute in accordance with subdivision (a), the investigative consumer reporting agency shall be exempt from requirements for further action under subdivisions (g), (i), and (j), if the agency: (1) provides prompt notice of the deletion to the consumer by telephone, (2) provides written confirmation of the deletion and a copy of an investigative consumer report of the consumer that is based on the consumer's file after the deletion, and (3) includes, in the telephone notice or in a written notice that accompanies the confirmation and report, a statement of the consumer's right to request under subdivision (k) that the agency furnish notifications under that subdivision.+>>

<<+(n)>> Any investigative consumer reporting agency that compiles and maintains files on consumers on a nationwide basis, as defined in the federal Fair Credit Reporting Act, as amended (15 U.S.C. Sec. 1681 et seq.), shall implement an automated system through which furnishers of information to that agency may report the results of a reinvestigation that finds incomplete or inaccurate information in a consumer's file to other investigative consumer reporting agencies.+>>

<<+(o)>> All actions to be taken by an investigative consumer reporting agency under this section are governed by the applicable time periods specified in Section 611 of the federal Fair Credit Reporting Act, as amended (15 U.S.C. Sec. 1681i).+>>

SEC. 9. Section 1786.26 of the Civil Code is amended to read:

<< CA CIVIL § 1786.26 >>

1786.26. <<(a)>> An investigative consumer reporting agency shall make all disclosures pursuant to Sections 1786.10 and 1786.22 and furnish all <<+ investigative+>> consumer reports pursuant to Section 1786.24<< * * * >><<+, w+>> without charge, if requested by the consumer within <<+60+>> days after receipt by <<+the+>> consumer of a notification of adverse action pursuant to Section 1786.40 stating that adverse action may be or has been taken on the consumer.<< * * * >>

<< * * * >><<(b) Except as otherwise provided in subdivision (d), an+>> investigative consumer reporting agency may << * * * >><<+charge a consumer a fee not exceeding eight dollars (\$8) for making disclosures to the+>> consumer pursuant to Sections 1786.10<<+, 1786.11,+>> and 1786.22<< * * * >><<+.+>> Any charges shall be indicated to the consumer prior to disclosure<< * * * >><<+.+>>

<<(c) An investigative consumer reporting agency shall not impose any charge for providing notice to a consumer required under Section 1786.24 or notifying a person pursuant to subdivision (k) of Section 1786.24+>> of the deletion of information <<+that+>> is found to be inaccurate or << * * * >><<+ that cannot+>> be verified.

<< * * * >>

<<(d) Upon the request of the consumer, an investigative consumer reporting agency shall make all disclosures pursuant to Section 1786.10 and 1786.22 once during any 12-month period without charge to that consumer if the consumer certifies in writing that he or she (1) is unemployed and intends to apply for employment in the 60-day period beginning on the date the certification is made, (2) is a recipient of public welfare assistance, or (3) has reason to believe that the file on the consumer at the investigative consumer reporting agency contains inaccurate information due to fraud.+>>

<<(e) An investigative consumer reporting agency shall not impose any charge on a consumer for providing any notification or making any disclosure required by this title, except as authorized by this section.+>>

SEC. 10. Section 1786.30 of the Civil Code is amended to read:

<< CA CIVIL § 1786.30 >>

1786.30. Whenever an investigative consumer reporting agency prepares an investigative consumer report, no adverse information in the report (other than information <<+that+>> is a matter of public record, the status of which has been updated pursuant to Section 1786.28<<+)>> may be included in a subsequent investigative consumer report unless <<+that+>> adverse information has been verified in the process of making <<+the+>> subsequent <<+investigative+>> consumer report, or the adverse information was received within the three-month period preceding the date the subsequent report is furnished.

SEC. 11. Section 1786.40 of the Civil Code is amended to read:

<< CA CIVIL § 1786.40 >>

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 either wholly or partly because of information contained in an investigative consumer report 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) Whenever insurance for personal, family, or household purposes involving a consumer is denied or the charge for <<+that+>> insurance is increased either wholly or in part because of information obtained from a person other than an investigative consumer reporting agency, the consumer, or another person related to the consumer and acting on the consumer's behalf and bearing upon the consumer's general reputation, personal characteristics or mode of living, the user of <<+the+>> information shall, within a reasonable period of time, and upon the consumer's written request for the reasons for <<+the+>> 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 <<+this+>> written request at the time <<+the+>> adverse action is communicated to the consumer.<< * * * >>

SEC. 12. Section 1786.50 of the Civil Code is amended to read:

EXHIBIT E

VOLUME 2
CALIFORNIA LEGISLATURE
AT SACRAMENTO
1997-98 REGULAR SESSION

SENATE FINAL HISTORY

SHOWING ACTIONS TAKEN IN THIS SESSION ON ALL SENATE BILLS,
CONSTITUTIONAL AMENDMENTS, CONCURRENT, JOINT,
AND SENATE RESOLUTIONS

CONVENED DECEMBER 2, 1996
ADJOURNED SINE DIE NOVEMBER 30, 1998

DAYS IN SESSION 271
CALENDAR DAYS 729

LIEUTENANT GOVERNOR
President of the Senate

SENATOR JOHN L. BURTON
President pro Tempore.

Compiled Under the Direction of
GREGORY SCHMIDT
Secretary of the Senate

By
DAVID H. KNEALE, ESQ.
History Clerk

S.B. No. 1454—Leslie (Coauthor: Senator Watson) (Coauthors: Assembly Members Bowler, House, Kaloogian, and Prenter).

An act to amend Sections 1786.2, 1786.10, 1786.12, 1786.16, 1786.18, 1786.20, 1786.24, 1786.26, 1786.30, 1786.40, and 1786.50 of, and to add Section 1786.11 to, the Civil Code, relating to investigative consumer reporting.

1998

- Feb. 2—Introduced. Read first time. To Com. on RLS. for assignment. To print.
- Feb. 3—From print. May be acted upon on or after March 5.
- Feb. 12—To Com. on JUD.
- April 21—Set for hearing April 28.
- April 22—Hearing postponed by committee.
- April 27—From committee with author's amendments. Read second time. Amended. Re-referred to committee.
- April 28—Set for hearing May 5.
- May 11—From committee: Do pass as amended. (Ayes 8. Noes 0. Page 4465.)
- May 12—Read second time. Amended. To third reading.
- May 18—To Special Consent Calendar.
- May 21—Read third time. Passed. (Ayes 36. Noes 0. Page 4721.) To Assembly.
- May 21—In Assembly. Read first time. Held at Desk.
- June 4—To Com. on C.P., G.E. & E.D.
- June 8—From committee with author's amendments. Read second time. Amended. Re-referred to committee.
- June 10—Hearing postponed by committee.
- June 18—From committee with author's amendments. Read second time. Amended. Re-referred to committee.
- June 24—From committee: Do pass. To Consent Calendar. (Ayes 11. Noes 0.)
- June 25—Read second time. To Consent Calendar.
- July 2—Placed on inactive file on request of Assembly Member Bowler.
- Aug. 17—Notice of motion to remove from inactive file given by Assembly Member Keeley.
- Aug. 18—From inactive file to third reading file.
- Aug. 24—Read third time. Amended. Re-referred to Com. on C. P., G. E. & E. pursuant to Assembly Rule 77.2.
- Aug. 25—From committee: Do pass. (Ayes 8. Noes 0.)
- Aug. 26—Read second time. To third reading.
- Aug. 27—Read third time. Passed. (Ayes 73. Noes 0. Page 9189.) To Senate.
- Aug. 27—In Senate. To unfinished business.
- Aug. 28—Senate concurs in Assembly amendments. (Ayes 38. Noes 0. Page 6491.) To enrollment.
- Sept. 11—Enrolled. To Governor at 11 a.m.
- Sept. 29—Approved by Governor.
- Sept. 30—Chaptered by Secretary of State. Chapter 988, Statutes of 1998.

EXHIBIT F

COMMITTEES:
VICE CHAIRMAN
APPROPRIATIONS
JUDICIARY
RURAL CAUCUS
CHAIRMAN
WESTERN STATES LEGISLATIVE
FORESTRY TASK FORCE
MEMBER:
INSURANCE
NATURAL RESOURCES AND WILDLIFE
SUBCOMMITTEES:
INSURANCE SUBCOMMITTEE ON
HEALTH CARE REFORM

JOINT COMMITTEES:
FAIRS ALLOCATION AND
CLASSIFICATION
LEGISLATIVE BUDGET
PRISON CONSTRUCTION
AND OPERATIONS
SELECT COMMITTEES:
CALIFORNIA'S WINE INDUSTRY
GENETICS AND PUBLIC POLICY

Senate
California Legislature



TIM LESLIE
SENATOR, FIRST DISTRICT

MEMORANDUM
29-December-1997

TO: LEGISLATIVE COUNSEL
FROM: KEVIN SMITH
RE: BILL REQUEST

It is our intent to continue to work on the issue of "employee background checks." Although your office has prepared a proposal (RN 24765), recent amendments to the "Fair Credit and Reporting Act" (FCRA) (15 U.S.C. Section 1681 et seq.) have addressed many of our concerns. Having discussed these "federal" changes with Ms. Cindy Cardullo of your office, it was agreed that a new proposal would be drafted, mindful of the following changes:

- Avoidance of federal preemption (Section 1681t)
- An expanded definition of "Investigative Consumer Reports," per RN 24765, which incorporates factual data (e.g., DMV or court records)
- No caps on actual damages as included in the FCRA (Section 1681n), with a minimum of \$1000 (see CC Section 1786.50(a)(1))
- No caps on attorney's fees or punitive damages, as currently allowed under CC Section 1786.50(a)(2)-(b)
- Incorporation of all permissible federal provisions with the exception of the aforementioned changes

Additionally, please add the following coauthors:

- Senators Ray Haynes and Diane Watson
- Assemblyman Larry Bowler

Any questions regarding "policy goals" or "practical application" can be determined by reference to the attached materials from "Background America, Inc." (BA, Inc.). BA, Inc. has provided us with a visual model of how the process of employee background checks should occur in California (with the exception of some minor changes noted above).

This request has been orally conveyed to Ms. Cardullo on December 29, 1997. Both she and Mr. Jack Zorman (who completed RN 24765) are familiar with the topic and should be consulted.

Feel free to contact Kevin Smith at 445-5788 for further clarification or regarding any comments you may have.

Please have this prepared by Monday, January 5, 1998, SURE.

Thank you for your attention to this request!

ATTACHMENTS: background materials from Background America, Inc.

SB 1454

Employee Privacy

Background:

Similar to a consumer credit report, an investigative consumer report is a compilation of information on an individual, often used by employers when screening new applicants.

Existing law provides a framework for what is called an "investigative consumer reporting agency," but its definition only includes those reports compiled through personal interviews. Existing practice, however, includes data compilation profiles which may or may not include information obtained through personal interviews. (E.g. Often times, the information is obtained from the Internet.) Most consumer reporting agency practices, therefore, are not covered by existing statute.

What we need:

Existing law needs to be changed to reflect the current broad use of database information, such as DMV records, civil judgments, bankruptcies, criminal records, etc...

What this bill will do:

This legislation provides a similar disclosure requirement to that of consumer credit reporting agencies. It will amend a portion of the civil code (section 1786 et seq.), pertaining to investigative consumer reports. The measure's basic components provide:

- Notification to the consumer/applicant that an "investigative consumer report" is being conducted by the employer or potential employer.
- Notification to the consumer on how he or she may obtain a copy of the investigative consumer report conducted on behalf of the employer.
- A corrective plan for the consumer to follow in the event that information on his or her report is incorrect.
- Legal remedies for the consumer in the event that a consumer reporting agency refuses to correct factually incorrect information.
- Bring California into conformity with recent amendments to the federal Fair Credit and Reporting Act (15 USC Sections 1681 et seq.)

Why California needs this bill:

- This measure will update existing law and plug numerous loopholes which allow most reporting agencies to escape the law's direct application.
- By expanding these provisions, fewer of these employment background search organizations will be afforded an opportunity to make bogus or inaccurate data available on an individual.
- Employers who use such agencies will benefit by receiving the most accurate information available on current and prospective employees.
- Most importantly, the individual who is the subject of the background check will be empowered in two ways:
 1. He or she will know what is contained in their report; and
 2. If the report is flawed, the individual will be in a position to address any misinformation.

EXHIBIT G

DM

COMMITTEES:
 VICE CHAIRMAN
 APPROPRIATIONS
 JUDICIARY
 RURAL CAUCUS
 CHAIRMAN
 WESTERN STATES LEGISLATIVE FORESTRY TASK FORCE
 MEMBER:
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 NATURAL RESOURCES AND WILDLIFE
 SUBCOMMITTEES:
 INSURANCE SUBCOMMITTEE ON HEALTH CARE REFORM

JOINT COMMITTEES:
 FAIRS ALLOCATION AND CLASSIFICATION
 LEGISLATIVE BUDGET
 PRISON CONSTRUCTION AND OPERATIONS
 SELECT COMMITTEES:
 CALIFORNIA'S WINE INDUSTRY
 GENETICS AND PUBLIC POLICY

Senate
 California Legislature



TIM LESLIE
 SENATOR, FIRST DISTRICT

Memorandum

DATE: May 4, 1998
 TO: Members, Senate Judiciary Committee
 FROM: Tim Leslie
 RE: Tomorrow's Committee Hearing: Senate Bill 1454:
 Investigative Consumer Reports

Similar to a consumer credit report, an investigative consumer report is a compilation of information on an individual that is often used by employers, landlords and insurers when screening job, rental or insurance applicants. Given the fact that greater number of employers, landlords and insurers are utilizing these investigative consumer reports as a tool to minimize potential legal or financial risks, it behooves California to update its laws to promote greater accuracy, fairness and privacy for all involved.

Previous state law relating to investigative consumer reports pertained only to reports compiled *through personal interviews* and did not pertain to information gleaned from any other sources, such as court documents or arrest records. Consequently, the bulk of personal information appearing on your investigative consumer report was essentially "off limits" with regards to your being notified about its existence and your ability to review and purge inaccurate information. Likewise, certain entities, such as licensed private investigators, could provide third parties with information about you, and this information could be used whenever you applied for employment, a rental or insurance. Yet, state law was not applicable to these entities or the information they compiled on you.

Recent substantial amendments to the federal Fair Credit Reporting Act (15 U.S.C. 1681-1681u) now ensures your access to any information contained on an investigative consumer report that is compiled on you and used for employment, rental or insurance purposes. Congress amended the FCRA in 1996 in response to consumer complaints and newspaper articles about inaccurate credit reports resulting in frustrated consumers and lost employment opportunities (the FCRA amendments pertain to consumer credit reports *and* investigative consumer reports).

SACRAMENTO OFFICE • STATE CAPITOL • SACRAMENTO, CA 95814 • (916) 445-5788
 ROSEVILLE OFFICE • 1200 MELODY LANE, SUITE 110 • ROSEVILLE, CA 95678 • (916) 969-8232 • (916) 783-8232 • (916) 624-9588 • (800) 772-7296
 E-MAIL ADDRESS - senator.leslie@sen.ca.gov

SB 1454 simply updates our state laws to provide that:

- You are notified in writing when an investigative consumer report will be obtained on you by a third party for employment, rental, or insurance purposes.
- Only legitimate third parties obtain a copy of your investigative consumer report and then only after certifying to the investigative consumer reporting agency that you have first been notified in writing.
- Access to your investigative consumer report file by other persons is limited.
- A copy of this investigative consumer report must be made available to you for at least 60 days after the date on which the report has been obtained by a third party.
- You can find out what information is contained in your report, and to whom this information has been sent.
- You can dispute inaccurate information appearing on your report with the investigative consumer reporting agency, and the agency must correct or delete this inaccurate or unverified information within 30 days after you dispute it. The agency must also notify any person who provided information you disputed and provide that person with any relevant information you have brought to the agency's attention.
- Outdated information on you that is generally older than seven years may not be reported (14 years for bankruptcies).
- You have reasonable legal remedies available for actual damages sustained in the event that an investigative consumer reporting agency refuses to correct factually incorrect information.

Providing consumers access to review their investigative consumer reports, to dispute inaccurate information, and to ensure that these reports are as accurate as possible not only makes good common sense, but is also good business sense. Greater disclosure means greater accuracy. Moreover, I think this is also an issue of fairness and equity, as so compellingly detailed in a recent Los Angeles Times article, which I have attached for your review. Hearing of Mr. Bronti Kelly's plight prompted my decision to author this measure and Senate Bill 1374, pertaining to identity theft.

I hope you will support SB 1454 when it comes before you tomorrow for your consideration.

Thank you.

attachment

INVESTIGATIVE CONSUMER REPORTS: SUMMARY POINTS

THIS MEASURE WILL AMEND A PORTION OF THE CIVIL CODE (SECTION 1786 ET SEQ.), PERTAINING TO INVESTIGATIVE CONSUMER REPORTS.

SIMILAR TO A CONSUMER CREDIT REPORT, AN INVESTIGATIVE CONSUMER REPORT IS A COMPILATION OF INFORMATION ON AN INDIVIDUAL, OFTEN USED BY EMPLOYERS WHEN SCREENING NEW APPLICANTS.

THIS LEGISLATION PROVIDES A SIMILAR DISCLOSURE REQUIREMENT TO THAT OF CONSUMER CREDIT REPORTING AGENCIES. ITS BASIC COMPONENTS PROVIDE:

- NOTIFICATION TO THE CONSUMER/APPLICANT THAT AN "INVESTIGATIVE CONSUMER REPORT" IS BEING CONDUCTED BY THE EMPLOYER.
- INFORMATION TO THE CONSUMER ON HOW TO OBTAIN A COPY OF THE INVESTIGATIVE CONSUMER REPORT CONDUCTED ON BEHALF OF THE EMPLOYER.
- A CORRECTIVE PLAN FOR THE CONSUMER TO FOLLOW IN THE EVENT THAT INFORMATION ON HIS OR HER REPORT IS INCORRECT.
- LEGAL REMEDIES FOR THE CONSUMER IN THE EVENT THAT A CONSUMER REPORTING AGENCY REFUSES TO CORRECT FACTUALLY INCORRECT INFORMATION.

EXISTING LAW ALREADY PROVIDES A FRAMEWORK FOR WHAT IS CALLED AN "INVESTIGATIVE CONSUMER REPORTING AGENCY."

THIS MEASURE WILL UPDATE EXISTING LAW AND PLUG NUMEROUS LOOPHOLES WHICH ALLOW MOST REPORTING AGENCIES TO ESCAPE THE LAW'S DIRECT APPLICATION.

FOR EXAMPLE, EXISTING LAW EXCLUDES PRIVATE INVESTIGATORS FROM THE DEFINITION OF A "CONSUMER REPORTING AGENCY," ALTHOUGH PRIVATE INVESTIGATORS PROVIDE A GREAT DEAL OF EMPLOYMENT INFORMATION TO EMPLOYERS. THIS LEGISLATION WILL DELETE THIS EXEMPTION.

MOREOVER, EXISTING LAW NARROWLY DEFINES AN "INVESTIGATIVE CONSUMER REPORT" TO ONLY INCLUDE THOSE REPORTS COMPILED

THROUGH PERSONAL INTERVIEWS. THEREFORE, IT IS NECESSARY THAT THIS LAW BE CHANGED TO REFLECT THE CURRENT BROAD USE OF DATABASE INFORMATION, SUCH AS DMV RECORDS, CIVIL JUDGMENTS, BANKRUPTCIES, CRIMINAL RECORDS, ETC.

BY EXPANDING THESE PROVISIONS, LESS OF THESE EMPLOYMENT BACKGROUND SEARCH ORGANIZATIONS WILL BE AFFORDED AN OPPORTUNITY TO PROLIFERATE BOGUS OR INACCURATE DATA ON AN INDIVIDUAL.

MOST IMPORTANT, THE INDIVIDUAL WHO IS THE SUBJECT OF THE BACKGROUND CHECK WILL BE EMPOWERED BY KNOWING WHAT IS CONTAINED IN THEIR REPORT AND WILL THEREFORE BE IN A POSITION TO CORRECT ANY MISINFORMATION.

OUR THEME FOR THIS LEGISLATION IS SIMPLE: **DISCLOSURE, DISCLOSURE, DISCLOSURE!**

EXHIBIT H

COMMITTEES
VETO CHAIRMAN
APPROPRIATIONS
CLERK
LEGISLATIVE COUNCIL
MEMBERS
WESTERN STATES LEGISLATIVE
LIBRARY FUNKHOFF
MEMBERS
INSURANCE
NATURAL RESOURCES AND WILDLIFE
SUBCOMMITTEES
INSURANCE SUBCOMMITTEES ON
HEALTH CARE REFORM

POST COMMITTEES
EARS ALTERNATION AND
CLASSIFICATION
LEGISLATIVE BUREAU
PERSONNEL SERVICES
AND OPERATIONS
SPECIAL COMMITTEES
CALIFORNIA WINE INDUSTRY
GENETICS AND PUBLIC POLICY

Senate
California Legislature



TIM LESLIE
SENATOR, FIRST DISTRICT

September 8, 1998

The Honorable Pete Wilson
Governor
State of California
State Capitol, First Floor
Sacramento, CA 95814

Dear Governor Wilson:

I am writing in response to the comments contained in a "Request for Veto of Senate Bill 1454" letter, dated September 3, 1998, that was written at the behest of ChoicePoint, a firm located in Atlanta that conducts employee background checks. Since allegations in this letter are grossly inaccurate, I feel compelled to respond to them.

First of all, there is no confusion on my part -- or on the part of the Legislature, which overwhelmingly passed this measure -- as to purpose of SB 1454 with regards to the use of "investigative consumer reports" for employment, insurance or landlord/tenant transactions. This measure is intended to strengthen disclosure requirements for investigative consumer reports similar to what already exists today for consumer credit reports. The fact of the matter is that current state law is unclear as to the types of information that can be contained in an investigative consumer report. For example, Section 1786.2(c) of the Civil Code defines "investigative consumer report" to mean:

...a consumer report in which information on a consumer's character, general reputation, personal characteristics, or mode of living is obtained through personal interviews with neighbors, friends, or associates of the consumer reported on, or others with whom he or she is acquainted or who may have knowledge concerning any such items of information....

The language in this definition, however, conflicts with Section 1786.18(a), which clearly states those items of information that are prohibited from being contained in an investigative consumer report. Obviously, a narrow interpretation of what can be contained in an "investigative consumer report," as provided under Section 1786.2 -- and as advocated by ChoicePoint -- would render Section 1786.18 meaningless.

The business community and the insurance industry also obviously know that investigative consumer reports in fact contain much more information than ChoicePoint, or Section 1768.2(c) would lead one to believe. For example, SB 1454 -- in Section 1786.18(b)(1) and (2) -- conforms state law to federal law with regards to exemptions under which business transactions for underwriting insurance and for employing individuals can ignore the prohibitions otherwise contained in Section 1786.18(a). The bill also gave similar treatment to the realtors and landlords with regards to the types of information that can be contained on an investigative consumer report involving transactions relative to renting dwelling units [Section 1786.18(b)(3)]. Keep in mind that SB 1454 did not create these exemptions, but merely increased the amounts of the respective dollar thresholds already contained in current state law. Logic dictates that neither the business community nor the insurance industry would have insisted on this amendments were the types of information routinely contained in and provided by investigative consumer reports limited only to information gleaned from personal interviews of third parties.

Further evidence of ChoicePoint's faulty assumptions with respect to the California's statutory perspective of investigative consumer reports can be found in Sections 1786.28 and 1786.30, which both expressly recognize that these reports can and do contain information that is a matter of public record. Again, such information would not be available on investigative consumer reports if these reports contained only the types of information that ChoicePoint mistakenly argues can be contained on such reports under current state law.

My assertion throughout SB 1454's legislative journey was that this measure's definition of an investigative consumer report does not expand or deviate from what is already applicable under current state law. In short, while SB 1454, increases disclosure and accountability requirements, which is consistent with federal law, the parameters of what types of information can be included in an investigative consumer report under state law remains unchanged and does not conflict with, nor is superseded by, federal law.

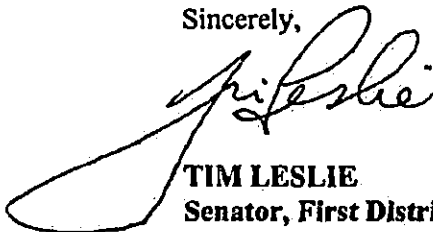
Second, ChoicePoint's assertion that SB 1454 is somehow "bad for employers" borders on the ridiculous, especially given my consistently strong pro-business record as a legislator. What I find particularly galling about ChoicePoint's allegations is that it appears that the individual advocating on their behalf is ignorant of FCRA, of current state law, and of the language contained in SB 1454. One only has to read SB 1454 to immediately realize that ChoicePoint's charges of the bill's supposed affects upon employers are specious. *Nowhere does SB 1454 contain language that requires employers (or insurers or landlords, for that matter) to "provide [any] applicant with a copy..." of the investigative consumer report. Similarly, there is no provision in SB 1454 that requires employers, et. al., to pay for the cost of providing an applicant/consumer a copy of that subject's investigative consumer report.*

An applicant/consumer can obtain a copy of that report from the investigative consumer reporting agency -- and can be charged up to \$8 by that agency for the cost of providing that report -- but SB 1454 does not force an employer, insurer or landlord to provide a copy of that report or to pay for the provision of that report. ChoicePoint's "advocacy" on behalf of employers with regards to SB 1454 clearly displays, at best, a complete ignorance of current state law, the intent of SB 1454 and the provisions contained therein. One only hopes that ChoicePoint conducts its employee background investigations in a much more thorough manner than the "research" conducted for its veto request.

I strongly believe -- and SB 1454's language reflects this belief -- that it should not matter *from where* information on a person is obtained, but that if this information is contained on a background check of that person for the expressed purpose of obtaining employment, renting an dwelling or obtaining an insurance policy, then it should be subject to greater disclosure and accountability standards. I stated my position loudly and clearly throughout SB 1454's legislative process and, obviously, my colleagues in the Legislature overwhelmingly agreed with me since the bill received nary a no vote, nor did it receive any opposition letters from any special interests. SB 1454 is a fair and balanced measure and is deserving of your support. .

I hope this information is helpful to you.

Sincerely,



TIM LESLIE
Senator, First District

TL:cm

- cc: 1) Happy Chastain
California State and Consumer Services Agency
- 2) John Caldwell
Heim, Noack, Kelly & Spahn

EXHIBIT I

Introduced by Senators Leslie and Watson
(Coauthors: Assembly Members Bowler, House, Kaloogian,
and Prenter)

February 2, 1998

An act to amend Sections 1786.2, 1786.10, 1786.12, 1786.16, 1786.18, 1786.20, 1786.24, 1786.26, 1786.30, 1786.40, and 1786.50 of, and to add Section 1786.11 to, the Civil Code, relating to investigative consumer reporting.

LEGISLATIVE COUNSEL'S DIGEST

SB 1454, as introduced, Leslie. Investigative consumer reporting.

Existing law, as contained in the Investigative Consumer Reporting Agencies Act, regulates the preparation, disclosure, and use of investigative consumer reports.

Existing law defines an "investigative consumer report" as a report in which specified information on a consumer is obtained through personal interviews and defines an "investigative consumer reporting agency" as any person who, for a fee, assembles employment or insurance information, or information relating to the hiring of dwelling units concerning consumers for specified purposes.

This bill would redefine an "investigative consumer report" as a report in which specified consumer information is obtained for employment or insurance purposes or for renting a dwelling, and an "investigative consumer reporting agency" as any person who, for a fee, assembles any information concerning consumers for those specified purposes.

Existing law generally provides that a person may not obtain an investigative consumer report with respect to a consumer unless the person discloses in writing to the consumer that the report will be made, and provides other specified information.

This bill would require, as a further condition to obtaining an investigative consumer report, that the person certify to the agency that he or she (a) has made the required consumer disclosures and (b) will provide additional specified disclosures if requested by the consumer. The bill would also require an investigative consumer reporting agency that provides an investigative consumer report to a person other than the consumer to make a copy of that report available to the consumer, as specified, for at least 60 days after the date the report is provided to the other person.

Existing law provides that consumers have the right to visually inspect all files maintained by an investigative consumer reporting agency regarding that consumer, except medical information, as defined. Existing law also provides that consumers have the right to be informed by the user of consumer information of the reasons for any adverse action taken with respect to specified insurance due to information obtained from a person other than an investigative consumer reporting agency, except that the user may withhold medical information, as defined, until the consumer obtains written authorization from the consumer's physician.

This bill would delete both of these exceptions relating to medical information.

Existing law provides that investigative consumer reports may not include, among other things, any arrest records, paid tax liens, or other specified items that antedate the report by more than 7 years.

This bill would specify that information relating to an arrest, indictment, conviction, civil action, tax lien, or outstanding judgment may not be included in a report unless verified by the agency no more than 30 days prior to the date of the report, and adverse information obtained through a personal interview, as specified, may not be included in a report unless it is either verified by a 2nd party or the interviewee is the best source of the information.

Existing law gives consumers the right to dispute inaccurate information contained in an investigative consumer report and to bring an action to recover damages for violations of the act in an amount equal to the greater of actual damages or \$300.

This bill would add new procedures and notice requirements relating to the investigation of disputes by consumers and the deletion of information in a consumer's file that is determined to be inaccurate. The bill would also increase the minimum amount of damages recoverable by a consumer for violations of the act from \$300 to \$1,000.

Existing law specifies that reasonable charges may be imposed upon a consumer to receive a copy of an investigative consumer report relating to that consumer, unless the copy is requested after the taking of an adverse action against the consumer based on the report, as specified.

This bill would specify the amount of fee, if any, that may be charged to consumer to receive a copy of an investigative consumer report or other information, notices or disclosures, relating to that consumer. The bill would require investigative consumer reporting agencies to provide a consumer with a copy of his or her investigative consumer report, free of charge, not more often than once a year, if the consumer is unemployed, is seeking employment, receives public welfare assistance, or believes that his or her file contains inaccurate information due to fraud.

The bill would make other related changes.

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 1786.2 of the Civil Code is
2 amended to read:

3 1786.2. The following terms as used in this title have
4 the meaning expressed in this section:

5 (a) The term "person" means any individual,
6 partnership, corporation, limited liability company, trust,
7 estate, cooperative, association, government or
8 governmental subdivision or agency, or other entity. The

1 *consumer, the address and telephone number of the*
2 *recipient.*

3 *(e) The investigative consumer reporting agency shall*
4 *also disclose the dates, original payees, and amounts of*
5 *any checks upon which is based any adverse*
6 *characterization of the consumer, included in the file at*
7 *the time of the disclosure.*

8 SEC. 3. Section 1786.11 is added to the Civil Code, to
9 read:

10 1786.11. Every investigative consumer reporting
11 agency that provides an investigative consumer report to
12 a person other than the consumer shall make a copy of
13 that report available, upon request and proper
14 identification, to the consumer for at least 60 days after
15 the date that the report is provided to the other person.

16 SEC. 4. Section 1786.12 of the Civil Code is amended
17 to read:

18 1786.12. An investigative consumer reporting agency
19 shall only furnish an investigative consumer report under
20 the following circumstances:

21 (a) In response to the order of a court having
22 jurisdiction to issue such an order.

23 (b) In compliance with a lawful subpoena issued by a
24 court of competent jurisdiction.

25 (c) In accordance with the written instructions of the
26 consumer to whom it relates.

27 (d) To a person ~~which~~ *that* it has reason to believe:

28 (1) Intends to use the information for employment
29 purposes; or

30 (2) Intends to use the information serving as a factor
31 in determining a consumer's eligibility for insurance or
32 the rate for such insurance; or

33 (3) Intends to use the information in connection with
34 a determination of the consumer's eligibility for a license
35 or other benefit granted by a governmental
36 instrumentality required by law to consider the
37 applicant's financial responsibility or status; or

38 (4) Intends to use the information in connection with
39 an order of a court of competent jurisdiction to provide

1 support where the imposition or enforcement of the
2 order involves the consumer; or

3 (5) Intends to use the information in connection with
4 the hiring of a dwelling unit, as defined in subdivision (c)
5 of Section 1940.

6 *(e) An investigative consumer reporting agency shall*
7 *not prepare or furnish an investigative consumer report*
8 *to a person described in subdivision (d) unless the agency*
9 *has received the certification under paragraph (4) of*
10 *subdivision (a) of Section 1786.16 from the person*
11 *requesting the report.*

12 SEC. 5. Section 1786.16 of the Civil Code is amended
13 to read:

14 1786.16. (a) Any person described in subdivision (d)
15 of Section 1786.12 shall not procure or cause to be
16 prepared an investigative consumer report unless the
17 following applicable conditions are met:

18 (1) If an investigative consumer report is sought in
19 connection with the underwriting of insurance, it shall be
20 clearly and accurately disclosed in writing at the time the
21 application form, medical form, binder, or similar
22 document is signed by the consumer that an investigative
23 consumer report regarding the consumer's character,
24 general reputation, personal characteristics, and mode of
25 living may be made. If no signed application form,
26 medical form, binder, or similar document is involved in
27 the underwriting transaction, ~~such~~ *the* disclosure shall be
28 made to the consumer in a writing mailed or otherwise
29 delivered to the consumer not later than three days after
30 the report was first requested.

31 (2) If, at any time, an investigative consumer report is
32 sought for employment purposes other than promotion
33 or reassignment, the person procuring or causing the
34 report to be made shall, not later than three days after the
35 date on which the report was first requested, notify the
36 consumer in writing that an investigative consumer
37 report regarding the consumer's character, general
38 reputation, personal characteristics, and mode of living
39 will be made. This notification shall include the name of
40 the consumer reporting agency conducting the

1 investigation and a summary of the provisions of Section
2 1786.22.

3 (3) If an investigative consumer report is sought in
4 connection with the hiring of a dwelling unit, as defined
5 in subdivision (c) of Section 1940, the person procuring
6 or causing the request to be made shall, not later than
7 three days after the date on which the report was first
8 requested, notify the consumer in writing that an
9 investigative consumer report will be made regarding
10 the consumer's character, general reputation, personal
11 characteristics, and mode of living. The notification shall
12 also include the name and address of the consumer
13 reporting agency ~~which~~ that will prepare the report.

14 (b)

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

20 (b) *Any person described in subdivision (d) of Section*
21 *1786.12 shall, upon written request made by the*
22 *consumer within a reasonable period of time after the*
23 *receipt by the consumer of the disclosure required by*
24 *subdivision (a), make a complete and accurate disclosure*
25 *of the nature and scope of the investigation requested.*
26 *This disclosure shall be made in writing, mailed or*
27 *otherwise delivered, to the consumer not later than five*
28 *days after the date the request for the disclosure was*
29 *received from the consumer or the report was first*
30 *requested, whichever is later.*

31 (c) The provisions of subdivision (a) shall not apply to
32 an investigative consumer report procured or caused to
33 be prepared by an employer if the purpose of the
34 employer is to:

35 (1) Determine whether or not an employee is to be
36 retained; and

37 (2) To determine whether or not such employee is
38 engaged in any criminal activity likely to result in a loss
39 to the employer.

40 (e)

AMENDED IN SENATE APRIL 27, 1998

SENATE BILL

No. 1454

Introduced by Senators Leslie and Watson
(Coauthors: Assembly Members Bowler, House, Kaloogian,
and Prenter)

February 2, 1998

An act to amend Sections 1786.2, 1786.10, 1786.12, 1786.16, 1786.18, 1786.20, 1786.24, 1786.26, 1786.30, 1786.40, and 1786.50 of, and to add Section 1786.11 to, the Civil Code, relating to investigative consumer reporting.

LEGISLATIVE COUNSEL'S DIGEST

SB 1454, as amended, Leslie. Investigative consumer reporting.

Existing law, as contained in the Investigative Consumer Reporting Agencies Act, regulates the preparation, disclosure, and use of investigative consumer reports.

Existing law defines an "investigative consumer report" as a report in which specified information on a consumer is obtained through personal interviews and defines an "investigative consumer reporting agency" as any person who, for a fee, assembles employment or insurance information, or information relating to the hiring of dwelling units concerning consumers for *3rd parties for* specified purposes.

This bill would redefine an "investigative consumer report" as a report in which specified consumer information is obtained ~~for employment or insurance purposes or for renting a dwelling by any means~~, and an "investigative consumer

reporting agency” as any person who, for a fee, assembles any information concerning consumers for ~~these~~ specified purposes *3rd parties*.

Existing law generally provides that a person may not obtain an investigative consumer report with respect to a consumer unless the person discloses in writing to the consumer that the report will be made, and provides other specified information.

This bill would require, as a further condition to obtaining an investigative consumer report, that the person certify to the agency that he or she (a) has made the required consumer disclosures and (b) will provide additional specified disclosures if requested by the consumer. The bill would also require an investigative consumer reporting agency that provides an investigative consumer report to a person other than the consumer to make a copy of that report available to the consumer, as specified, for at least 60 days after the date the report is provided to the other person.

Existing law provides that consumers have the right to visually inspect all files maintained by an investigative consumer reporting agency regarding that consumer, except medical information, as defined. Existing law also provides that consumers have the right to be informed by the user of consumer information of the reasons for any adverse action taken with respect to specified insurance due to information obtained from a person other than an investigative consumer reporting agency, except that the user may withhold medical information, as defined, until the consumer obtains written authorization from the consumer’s physician.

This bill would delete both of these exceptions relating to medical information.

Existing law provides that investigative consumer reports may not include, among other things, any arrest records, paid tax liens, or other specified items that antedate the report by more than 7 years.

This bill would specify that information relating to an arrest, indictment, conviction, civil action, tax lien, or outstanding judgment may not be included in a report unless verified by the agency no more than 30 days prior to the date of the report, and adverse information obtained through a personal

interview, as specified, may not be included in a report unless it is either verified by a 2nd party or the interviewee is the best source of the information.

Existing law gives consumers the right to dispute inaccurate information contained in an investigative consumer report and to bring an action to recover damages for violations of the act in an amount equal to the greater of actual damages or \$300.

This bill would add new procedures and notice requirements relating to the investigation of disputes by consumers and the deletion of information in a consumer's file that is determined to be inaccurate. The bill would also increase the minimum amount of damages recoverable by a consumer for violations of the act from \$300 to \$1,000.

Existing law specifies that reasonable charges may be imposed upon a consumer to receive a copy of an investigative consumer report relating to that consumer, unless the copy is requested after the taking of an adverse action against the consumer based on the report, as specified.

This bill would specify the amount of fee, if any, that may be charged to a consumer to receive a copy of an investigative consumer report or other ~~information, notices or disclosures~~ relating to that consumer. The bill would require investigative consumer reporting agencies to provide a consumer with a copy of his or her investigative consumer report, free of charge, not more often ~~that~~ *than* once a year, if the consumer is unemployed, is seeking employment, receives public welfare assistance, or believes that his or her file contains inaccurate information due to fraud.

The bill would make other related changes.

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 1786.2 of the Civil Code is
- 2 amended to read:
- 3 1786.2. The following terms as used in this title have
- 4 the meaning expressed in this section:

1 consumer under appropriate discovery procedures in the
2 court in which the action is brought.

3 Nothing in this title shall be interpreted to mean that
4 investigative consumer reporting agencies are required
5 to divulge to consumers the sources of investigative
6 consumer reports except in appropriate discovery
7 procedures as outlined herein.

8 (c) The investigative consumer reporting agency shall
9 also identify the recipients of any investigative consumer
10 report on the consumer that the investigative consumer
11 reporting agency has furnished:

12 (1) For employment or insurance purposes within the
13 two-year period preceding the request.

14 (2) For any other purpose within the one-year period
15 preceding the request.

16 (d) The identification of a recipient under subdivision
17 (c) shall include the name of the recipient or, if
18 applicable, the trade name (written in full) under which
19 the recipient conducts business and, upon request of the
20 consumer, the address and telephone number of the
21 recipient.

22 (e) The investigative consumer reporting agency shall
23 also disclose the dates, original payees, and amounts of
24 any checks upon which is based any adverse
25 characterization of the consumer, included in the file at
26 the time of the disclosure.

27 SEC. 3. Section 1786.11 is added to the Civil Code, to
28 read:

29 1786.11. Every investigative consumer reporting
30 agency that provides an investigative consumer report to
31 a person other than the consumer shall make a copy of
32 that report available, upon request and proper
33 identification, to the consumer for at least 60 days after
34 the date that the report is provided to the other person.

35 SEC. 4. Section 1786.12 of the Civil Code is amended
36 to read:

37 1786.12. An investigative consumer reporting agency
38 shall only furnish an investigative consumer report under
39 the following circumstances:

- 1 (a) In response to the order of a court having
2 jurisdiction to issue ~~such an~~ *the* order.
- 3 (b) In compliance with a lawful subpoena issued by a
4 court of competent jurisdiction.
- 5 (c) In accordance with the written instructions of the
6 consumer to whom it relates.
- 7 (d) To a person that it has reason to believe:
- 8 (1) Intends to use the information for employment
9 purposes; or
- 10 (2) Intends to use the information serving as a factor
11 in determining a consumer's eligibility for insurance or
12 the rate for ~~such~~ *any* insurance; or
- 13 (3) Intends to use the information in connection with
14 a determination of the consumer's eligibility for a license
15 or other benefit granted by a governmental
16 instrumentality required by law to consider the
17 applicant's financial responsibility or status; or
- 18 (4) Intends to use the information in connection with
19 an order of a court of competent jurisdiction to provide
20 support where the imposition or enforcement of the
21 order involves the consumer; or
- 22 (5) Intends to use the information in connection with
23 the hiring of a dwelling unit, as defined in subdivision (c)
24 of Section 1940.
- 25 (e) An investigative consumer reporting agency shall
26 not prepare or furnish an investigative consumer report
27 to a person described in subdivision (d) unless the agency
28 has received the certification under paragraph (4) of
29 subdivision (a) of Section 1786.16 from the person
30 requesting the report.
- 31 SEC. 5. Section 1786.16 of the Civil Code is amended
32 to read:
- 33 1786.16. (a) Any person described in subdivision (d)
34 of Section 1786.12 shall not procure or cause to be
35 prepared an investigative consumer report unless the
36 following applicable conditions are met:
- 37 (1) If an investigative consumer report is sought in
38 connection with the underwriting of insurance, it shall be
39 clearly and accurately disclosed in writing at the time the
40 application form, medical form, binder, or similar

1 document is signed by the consumer that an investigative
2 consumer report regarding the consumer's character,
3 general reputation, personal characteristics, and mode of
4 living may be made. If no signed application form,
5 medical form, binder, or similar document is involved in
6 the underwriting transaction, the disclosure shall be
7 made to the consumer in a writing mailed or otherwise
8 delivered to the consumer not later than three days after
9 the report was first requested.

10 (2) If, at any time, an investigative consumer report is
11 sought for employment purposes other than promotion
12 or reassignment, the person procuring or causing the
13 report to be made shall, not later than three days after the
14 date on which the report was first requested, notify the
15 consumer in writing that an investigative consumer
16 report regarding the consumer's character, general
17 reputation, personal characteristics, and mode of living
18 will be made. This notification shall include the name of
19 the consumer reporting agency conducting the
20 investigation and a summary of the provisions of Section
21 1786.22.

22 (3) If an investigative consumer report is sought in
23 connection with the hiring of a dwelling unit, as defined
24 in subdivision (c) of Section 1940, the person procuring
25 or causing the request to be made shall, not later than
26 three days after the date on which the report was first
27 requested, notify the consumer in writing that an
28 investigative consumer report will be made regarding
29 the consumer's character, general reputation, personal
30 characteristics, and mode of living. The notification shall
31 also include the name and address of the consumer
32 reporting agency that will prepare the report.

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

38 (b) Any person described in subdivision (d) of Section
39 1786.12 shall, upon written request made by the
40 consumer within a reasonable period of time after the

1 receipt by the consumer of the disclosure required by
2 subdivision (a), make a complete and accurate disclosure
3 of the nature and scope of the investigation requested.
4 This disclosure shall be made in writing; *and* mailed or
5 otherwise delivered; to the consumer not later than five
6 days after the date the request for the disclosure was
7 received from the consumer or the report was first
8 requested, whichever is later.

9 (c) The provisions of subdivision (a) shall not apply to
10 an investigative consumer report procured or caused to
11 be prepared by an employer if the purpose of the
12 employer is to:

13 (1) Determine whether or not an employee is to be
14 retained; and

15 (2) To determine whether or not ~~such~~ *the* employee
16 is engaged in any criminal activity likely to result in a loss
17 to the employer.

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

22 SEC. 6. Section 1786.18 of the Civil Code is amended
23 to read:

24 1786.18. (a) Except as authorized under subdivision
25 (b), no investigative consumer reporting agency shall
26 make or furnish any investigative consumer report
27 containing any of the following items of information:

28 (1) Bankruptcies that, from the date of adjudication,
29 antedate the report by more than 14 years.

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

33 (3) Unsatisfied judgments that, from the date of entry,
34 antedate the report by more than 10 years.

35 (4) Unlawful detainer actions, unless the lessor was the
36 prevailing party. For purposes of this paragraph, the
37 lessor shall be deemed to be the prevailing party only if
38 (A) final judgment was awarded to the lessor (i) upon
39 entry of the tenant's default, (ii) upon the granting of the
40 lessor's motion for summary judgment, or (iii) following

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AMENDED IN SENATE MAY 12, 1998
AMENDED IN SENATE APRIL 27, 1998

SENATE BILL

No. 1454

Introduced by Senators Leslie and Watson
(Coauthors: Assembly Members Bowler, House, Kaloogian,
and Prenter)

February 2, 1998

An act to amend Sections 1786.2, 1786.10, 1786.12, 1786.16, 1786.18, 1786.20, 1786.24, 1786.26, 1786.30, 1786.40, and 1786.50 of, and to add Section 1786.11 to, the Civil Code, relating to investigative consumer reporting.

LEGISLATIVE COUNSEL'S DIGEST

SB 1454, as amended, Leslie. Investigative consumer reporting.

Existing law, as contained in the Investigative Consumer Reporting Agencies Act, regulates the preparation, disclosure, and use of investigative consumer reports.

Existing law defines an "investigative consumer report" as a report in which specified information on a consumer is obtained through personal interviews and defines an "investigative consumer reporting agency" as any person who, for a fee, assembles employment or insurance information, or information relating to the hiring of dwelling units concerning consumers for 3rd parties for specified purposes.

This bill would redefine an "investigative consumer report" as a report in which specified consumer information is

obtained by any means, and an “investigative consumer reporting agency” as any person who, for a fee, assembles any information concerning consumers for 3rd parties.

Existing law generally provides that a person may not obtain an investigative consumer report with respect to a consumer unless the person discloses in writing to the consumer that the report will be made and provides other specified information.

This bill would require, as a further condition to obtaining an investigative consumer report, that the person certify to the agency that he or she (a) has made the required consumer disclosures and (b) will provide additional specified disclosures if requested by the consumer. The bill would also require an investigative consumer reporting agency that provides an investigative consumer report to a person other than the consumer to make a copy of that report available to the consumer, as specified, for at least 60 days after the date the report is provided to the other person.

Existing law provides that consumers have the right to visually inspect all files maintained by an investigative consumer reporting agency regarding that consumer, except medical information, as defined. Existing law also provides that consumers have the right to be informed by the user of consumer information of the reasons for any adverse action taken with respect to specified insurance due to information obtained from a person other than an investigative consumer reporting agency, except that the user may withhold medical information, as defined, until the consumer obtains written authorization from the consumer’s physician.

This bill would delete both of these exceptions relating to medical information.

Existing law provides that investigative consumer reports may not include, among other things, any arrest records, paid tax liens, or other specified items that antedate the report by more than 7 years.

This bill would specify that information relating to an arrest, indictment, conviction, civil action, tax lien, or outstanding judgment may not be included in a report unless verified by the agency no more than 30 days prior to the date of the report, and adverse information obtained through a personal

interview, as specified, may not be included in a report unless it is either verified by a 2nd party or the interviewee is the best source of the information.

Existing law gives consumers the right to dispute inaccurate information contained in an investigative consumer report and to bring an action to recover damages for violations of the act in an amount equal to the greater of actual damages or \$300.

This bill would add new procedures and notice requirements relating to the investigation of disputes by consumers and the deletion of information in a consumer's file that is determined to be inaccurate. The bill would also increase the minimum amount of damages recoverable by a consumer for violations of the act from \$300 to ~~\$1,000~~ \$2,500.

Existing law specifies that reasonable charges may be imposed upon a consumer to receive a copy of an investigative consumer report relating to that consumer, unless the copy is requested after the taking of an adverse action against the consumer based on the report, as specified.

This bill would specify the amount of fee, if any, that may be charged to a consumer to receive a copy of an investigative consumer report or other disclosures relating to that consumer. The bill would require investigative consumer reporting agencies to provide a consumer with a copy of his or her investigative consumer report, free of charge, not more often than once a year, if the consumer is unemployed, is seeking employment, receives public welfare assistance, or believes that his or her file contains inaccurate information due to fraud.

The bill would make other related changes.

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 1786.2 of the Civil Code is
- 2 amended to read:
- 3 1786.2. The following terms as used in this title have
- 4 the meaning expressed in this section:

1 consumer reports except in appropriate discovery
2 procedures as outlined herein.

3 (c) The investigative consumer reporting agency shall
4 also identify the recipients of any investigative consumer
5 report on the consumer that the investigative consumer
6 reporting agency has furnished:

7 (1) For employment or insurance purposes within the
8 two-year period preceding the request.

9 (2) For any other purpose within the one-year period
10 preceding the request.

11 (d) The identification of a recipient under subdivision
12 (c) shall include the name of the recipient or, if
13 applicable, the trade name (written in full) under which
14 the recipient conducts business and, upon request of the
15 consumer, the address and telephone number of the
16 recipient.

17 (e) The investigative consumer reporting agency shall
18 also disclose the dates, original payees, and amounts of
19 any checks *or charges* upon which is based any adverse
20 characterization of the consumer, included in the file at
21 the time of the disclosure.

22 SEC. 3. Section 1786.11 is added to the Civil Code, to
23 read:

24 1786.11. Every investigative consumer reporting
25 agency that provides an investigative consumer report to
26 a person other than the consumer shall make a copy of
27 that report available, upon request and proper
28 identification, to the consumer for at least 60 days after
29 the date that the report is provided to the other person.

30 SEC. 4. Section 1786.12 of the Civil Code is amended
31 to read:

32 1786.12. An investigative consumer reporting agency
33 shall only furnish an investigative consumer report under
34 the following circumstances:

35 (a) In response to the order of a court having
36 jurisdiction to issue the order.

37 (b) In compliance with a lawful subpoena issued by a
38 court of competent jurisdiction.

39 (c) In accordance with the written instructions of the
40 consumer to whom it relates.

1 (d) To a person that it has reason to believe:
2 (1) Intends to use the information for employment
3 purposes; or
4 (2) Intends to use the information serving as a factor
5 in determining a consumer's eligibility for insurance or
6 the rate for any insurance; or
7 (3) Intends to use the information in connection with
8 a determination of the consumer's eligibility for a license
9 or other benefit granted by a governmental
10 instrumentality required by law to consider the
11 applicant's financial responsibility or status; or
12 (4) Intends to use the information in connection with
13 an order of a court of competent jurisdiction to provide
14 support where the imposition or enforcement of the
15 order involves the consumer; or
16 (5) Intends to use the information in connection with
17 the hiring of a dwelling unit, as defined in subdivision (c)
18 of Section 1940.
19 (e) An investigative consumer reporting agency shall
20 not prepare or furnish an investigative consumer report
21 to a person described in subdivision (d) unless the agency
22 has received the certification under paragraph (4) of
23 subdivision (a) of Section 1786.16 from the person
24 requesting the report.
25 SEC. 5. Section 1786.16 of the Civil Code is amended
26 to read:
27 1786.16. (a) Any person described in subdivision (d)
28 of Section 1786.12 shall not procure or cause to be
29 prepared an investigative consumer report unless the
30 following applicable conditions are met:
31 (1) If an investigative consumer report is sought in
32 connection with the underwriting of insurance, it shall be
33 clearly and accurately disclosed in writing at the time the
34 application form, medical form, binder, or similar
35 document is signed by the consumer that an investigative
36 consumer report regarding the consumer's character,
37 general reputation, personal characteristics, and mode of
38 living may be made. If no signed application form,
39 medical form, binder, or similar document is involved in
40 the underwriting transaction, the disclosure shall be

1 made to the consumer in ~~a writing~~ *writing and* mailed or
2 otherwise delivered to the consumer not later than three
3 days after the report was first requested.

4 (2) If, at any time, an investigative consumer report is
5 sought for employment purposes other than promotion
6 or reassignment, the person procuring or causing the
7 report to be made shall, not later than three days after the
8 date on which the report was first requested, notify the
9 consumer in writing that an investigative consumer
10 report regarding the consumer's character, general
11 reputation, personal characteristics, and mode of living
12 will be made. This notification shall include the name of
13 the consumer reporting agency conducting the
14 investigation and a summary of the provisions of Section
15 1786.22.

16 (3) If an investigative consumer report is sought in
17 connection with the hiring of a dwelling unit, as defined
18 in subdivision (c) of Section 1940, the person procuring
19 or causing the request to be made shall, not later than
20 three days after the date on which the report was first
21 requested, notify the consumer in writing that an
22 investigative consumer report will be made regarding
23 the consumer's character, general reputation, personal
24 characteristics, and mode of living. The notification shall
25 also include the name and address of the consumer
26 reporting agency that will prepare the report.

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

32 (b) Any person described in subdivision (d) of Section
33 1786.12 shall, upon written request made by the
34 consumer within a reasonable period of time after the
35 receipt by the consumer of the disclosure required by
36 subdivision (a), make a complete and accurate disclosure
37 of the nature and scope of the investigation requested.
38 This disclosure shall be made in writing and mailed or
39 otherwise delivered to the consumer not later than five
40 days after the date the request for the disclosure was

1 received from the consumer or the report was first
2 requested, whichever is later.

3 (c) The provisions of subdivision (a) shall not apply to
4 an investigative consumer report procured or caused to
5 be prepared by an employer if the purpose of the
6 employer is to:

7 ~~(1) Determine whether or not an employee is to be~~
8 ~~retained; and~~

9 ~~(2) To determine whether or not the employee is~~
10 ~~engaged in any criminal activity likely to result in a loss~~
11 ~~to the employer. determine whether to retain an~~
12 ~~employee following or in accordance with a good faith~~
13 ~~belief that the employee is engaged in any criminal~~
14 ~~activity likely to result in a loss to the employer.~~

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

19 SEC. 6. Section 1786.18 of the Civil Code is amended
20 to read:

21 1786.18. (a) Except as authorized under subdivision
22 (b), no investigative consumer reporting agency shall
23 make or furnish any investigative consumer report
24 containing any of the following items of information:

25 (1) Bankruptcies that, from the date of adjudication,
26 antedate the report by more than 14 years.

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

30 (3) Unsatisfied judgments that, from the date of entry,
31 antedate the report by more than 10 years.

32 (4) Unlawful detainer actions, unless the lessor was the
33 prevailing party. For purposes of this paragraph, the
34 lessor shall be deemed to be the prevailing party only if
35 (A) final judgment was awarded to the lessor (i) upon
36 entry of the tenant's default, (ii) upon the granting of the
37 lessor's motion for summary judgment, or (iii) following
38 trial, or (B) the action was resolved by a written
39 settlement agreement between the parties that states
40 that the unlawful detainer action may be reported. In any

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AMENDED IN ASSEMBLY JUNE 8, 1998

AMENDED IN SENATE MAY 12, 1998

AMENDED IN SENATE APRIL 27, 1998

SENATE BILL

No. 1454

**Introduced by ~~Senators Leslie and Watson~~ Senator Leslie
(Coauthor: Senator Watson)
(Coauthors: Assembly Members Bowler, House, Kaloogian,
and Prenter)**

February 2, 1998

An act to amend Sections 1786.2, 1786.10, 1786.12, 1786.16, 1786.18, 1786.20, 1786.24, 1786.26, 1786.30, 1786.40, and 1786.50 of, and to add Section 1786.11 to, the Civil Code, relating to investigative consumer reporting.

LEGISLATIVE COUNSEL'S DIGEST

SB 1454, as amended, Leslie. Investigative consumer reporting.

Existing law, as contained in the Investigative Consumer Reporting Agencies Act, regulates the preparation, disclosure, and use of investigative consumer reports.

Existing law defines an "investigative consumer report" as a report in which specified information on a consumer is obtained through personal interviews and defines an "investigative consumer reporting agency" as any person who, for a fee, assembles employment or insurance information, or information relating to the hiring of dwelling units concerning consumers for 3rd parties for specified purposes.

This bill would redefine an “investigative consumer report” as a report in which specified consumer information is obtained by any means, and an “investigative consumer reporting agency” as any person who, for a fee, assembles any information concerning consumers for 3rd parties.

Existing law generally provides that a person may not obtain an investigative consumer report with respect to a consumer unless the person discloses in writing to the consumer that the report will be made and provides other specified information.

This bill would require, as a further condition to obtaining an investigative consumer report, that the person certify to the agency that he or she ~~(a)~~ (1) has made the required consumer disclosures and ~~(b)~~ (2) will provide additional specified disclosures if requested by the consumer. The bill would also require an investigative consumer reporting agency that provides an investigative consumer report to a person other than the consumer to make a copy of that report available to the consumer, as specified, for at least 60 days after the date the report is provided to the other person.

Existing law provides that consumers have the right to visually inspect all files maintained by an investigative consumer reporting agency regarding that consumer, except medical information, as defined. Existing law also provides that consumers have the right to be informed by the user of consumer information of the reasons for any adverse action taken with respect to specified insurance due to information obtained from a person other than an investigative consumer reporting agency, except that the user may withhold medical information, as defined, until the consumer obtains written authorization from the consumer’s physician.

This bill would delete both of these exceptions relating to medical information.

Existing law provides that investigative consumer reports may not include, among other things, any arrest records, *unlawful detainer actions unless the lessor was the prevailing party, as specified*, paid tax liens, or other specified items that antedate the report by more than 7 years.

This bill would *revise the prohibition against inclusion of unlawful detainer actions and specify that information*

relating to an arrest, indictment, conviction, civil action, tax lien, or outstanding judgment may not be included in a report unless verified by the agency no more than 30 days prior to the date of the report, and adverse information obtained through a personal interview, as specified, may not be included in a report unless it is either verified by a 2nd party or the interviewee is the best source of the information.

Existing law gives consumers the right to dispute inaccurate information contained in an investigative consumer report and to bring an action to recover damages for violations of the act in an amount equal to the greater of actual damages or \$300.

This bill would add new procedures and notice requirements relating to the investigation of disputes by consumers and the deletion of information in a consumer's file that is determined to be inaccurate. The bill would also increase the minimum amount of damages recoverable by a consumer for violations of the act from \$300 to \$2,500.

Existing law specifies that reasonable charges may be imposed upon a consumer to receive a copy of an investigative consumer report relating to that consumer, unless the copy is requested after the taking of an adverse action against the consumer based on the report, as specified.

This bill would specify the amount of fee, if any, that may be charged to a consumer to receive a copy of an investigative consumer report or other disclosures relating to that consumer. The bill would require investigative consumer reporting agencies to provide a consumer with a copy of his or her investigative consumer report, free of charge, not more often than once a year, if the consumer is unemployed, is seeking employment, receives public welfare assistance, or believes that his or her file contains inaccurate information due to fraud.

The bill would make other related changes.

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 1786.2 of the Civil Code is
2 amended to read:

3 1786.2. The following terms as used in this title have
4 the meaning expressed in this section:

5 (a) The term "person" means any individual,
6 partnership, corporation, limited liability company, trust,
7 estate, cooperative, association, government or
8 governmental subdivision or agency, or other entity. The
9 term "person" as used in this title shall not be construed
10 to require duplicative reporting by any individual,
11 corporation, trust, estate, cooperative, association,
12 government, or governmental subdivision or agency, or
13 other entity involved in the same transaction.

14 (b) The term "consumer" means a natural individual
15 who has made application to a person for employment
16 purposes, for insurance for personal, family, or household
17 purposes, or the hiring of a dwelling unit, as defined in
18 subdivision (c) of Section 1940.

19 (c) The term "investigative consumer report" means
20 a consumer report in which information on a consumer's
21 character, general reputation, personal characteristics, or
22 mode of living is obtained through any means. The term
23 does not include a consumer report or other compilation
24 of information that is limited to specific factual
25 information relating to a consumer's credit record or
26 manner of obtaining credit obtained directly from a
27 creditor of the consumer or from a consumer reporting
28 agency when that information was obtained directly from
29 a potential or existing creditor of the consumer or from
30 the consumer.

31 (d) The term "investigative consumer reporting
32 agency" means any person who, for monetary fees or
33 dues, regularly engages in whole or in part in the practice
34 of assembling or evaluating information concerning
35 consumers for the purposes of furnishing investigative
36 consumer reports to third parties, but does not include
37 any governmental agency whose records are maintained
38 primarily for traffic safety, law enforcement, or licensing

1 purposes, or any licensed insurance agent, insurance
2 broker, or solicitor, insurer, or life insurance agent.

3 (e) The term “file,” when used in connection with
4 information on any consumer, means all of the
5 information on that consumer recorded and retained by
6 an investigative consumer reporting agency regardless of
7 how the information is stored.

8 (f) The term “employment purposes,” when used in
9 connection with an investigative consumer report, means
10 a report used for the purpose of evaluating a consumer for
11 employment, promotion, reassignment, or retention as
12 an employee.

13 SEC. 2. Section 1786.10 of the Civil Code is amended
14 to read:

15 1786.10. (a) Every investigative consumer reporting
16 agency shall, upon request and proper identification of
17 any consumer, allow the consumer to visually inspect all
18 files maintained regarding the consumer at the time of
19 the request.

20 (b) All items of information shall be available for
21 inspection, except that the sources of information
22 acquired solely for use in preparing an investigative
23 consumer report and actually used for no other purpose
24 need not be disclosed. However, if an action is brought
25 under this title, those sources shall be available to the
26 consumer under appropriate discovery procedures in the
27 court in which the action is brought.

28 Nothing in this title shall be interpreted to mean that
29 investigative consumer reporting agencies are required
30 to divulge to consumers the sources of investigative
31 consumer reports except in appropriate discovery
32 procedures as outlined herein.

33 (c) The investigative consumer reporting agency shall
34 also identify the recipients of any investigative consumer
35 report on the consumer that the investigative consumer
36 reporting agency has furnished:

37 (1) For employment or insurance purposes within the
38 two-year period preceding the request.

39 (2) For any other purpose within the one-year period
40 preceding the request.

1 (d) The identification of a recipient under subdivision
2 (c) shall include the name of the recipient or, if
3 applicable, the trade name (written in full) under which
4 the recipient conducts business and, upon request of the
5 consumer, the address and telephone number of the
6 recipient.

7 (e) The investigative consumer reporting agency shall
8 also disclose the dates, original payees, and amounts of
9 any checks or charges upon which is based any adverse
10 characterization of the consumer, included in the file at
11 the time of the disclosure.

12 SEC. 3. Section 1786.11 is added to the Civil Code, to
13 read:

14 1786.11. Every investigative consumer reporting
15 agency that provides an investigative consumer report to
16 a person other than the consumer shall make a copy of
17 that report available, upon request and proper
18 identification, to the consumer for at least 60 days after
19 the date that the report is provided to the other person.

20 SEC. 4. Section 1786.12 of the Civil Code is amended
21 to read:

22 1786.12. An investigative consumer reporting agency
23 shall only furnish an investigative consumer report under
24 the following circumstances:

25 (a) In response to the order of a court having
26 jurisdiction to issue the order.

27 (b) In compliance with a lawful subpoena issued by a
28 court of competent jurisdiction.

29 (c) In accordance with the written instructions of the
30 consumer to whom it relates.

31 (d) To a person that it has reason to believe:

32 (1) Intends to use the information for employment
33 purposes; or

34 (2) Intends to use the information serving as a factor
35 in determining a consumer's eligibility for insurance or
36 the rate for any insurance; or

37 (3) Intends to use the information in connection with
38 a determination of the consumer's eligibility for a license
39 or other benefit granted by a governmental

1 instrumentality required by law to consider the
2 applicant's financial responsibility or status; or

3 (4) Intends to use the information in connection with
4 an order of a court of competent jurisdiction to provide
5 support where the imposition or enforcement of the
6 order involves the consumer; or

7 (5) Intends to use the information in connection with
8 the hiring of a dwelling unit, as defined in subdivision (c)
9 of Section 1940.

10 (e) An investigative consumer reporting agency shall
11 not prepare or furnish an investigative consumer report
12 to a person described in subdivision (d) unless the agency
13 has received the certification under paragraph (4) of
14 subdivision (a) of Section 1786.16 from the person
15 requesting the report.

16 SEC. 5. Section 1786.16 of the Civil Code is amended
17 to read:

18 1786.16. (a) Any person described in subdivision (d)
19 of Section 1786.12 shall not procure or cause to be
20 prepared an investigative consumer report unless the
21 following applicable conditions are met:

22 (1) If an investigative consumer report is sought in
23 connection with the underwriting of insurance, it shall be
24 clearly and accurately disclosed in writing at the time the
25 application form, medical form, binder, or similar
26 document is signed by the consumer that an investigative
27 consumer report regarding the consumer's character,
28 general reputation, personal characteristics, and mode of
29 living may be made. If no signed application form,
30 medical form, binder, or similar document is involved in
31 the underwriting transaction, the disclosure shall be
32 made to the consumer in writing and mailed or otherwise
33 delivered to the consumer not later than three days after
34 the report was first requested.

35 (2) If, at any time, an investigative consumer report is
36 sought for employment purposes other than promotion
37 or reassignment, the person procuring or causing the
38 report to be made shall, not later than three days after the
39 date on which the report was first requested, notify the
40 consumer in writing that an investigative consumer

1 report regarding the consumer's character, general
2 reputation, personal characteristics, and mode of living
3 will be made. This notification shall include the name of
4 the *investigative* consumer reporting agency conducting
5 the investigation and a summary of the provisions of
6 Section 1786.22.

7 (3) If an investigative consumer report is sought in
8 connection with the hiring of a dwelling unit, as defined
9 in subdivision (c) of Section 1940, the person procuring
10 or causing the request to be made shall, not later than
11 three days after the date on which the report was first
12 requested, notify the consumer in writing that an
13 investigative consumer report will be made regarding
14 the consumer's character, general reputation, personal
15 characteristics, and mode of living. The notification shall
16 also include the name and address of the consumer
17 reporting agency that will prepare the report.

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

23 (b) Any person described in subdivision (d) of Section
24 1786.12 shall, upon written request made by the
25 consumer within a reasonable period of time after the
26 receipt by the consumer of the disclosure required by
27 subdivision (a), make a complete and accurate disclosure
28 of the nature and scope of the investigation requested.
29 This disclosure shall be made in writing and mailed or
30 otherwise delivered to the consumer not later than five
31 days after the date the request for the disclosure was
32 received from the consumer or the report was first
33 requested, whichever is later.

34 (c) The provisions of subdivision (a) shall not apply to
35 an investigative consumer report procured or caused to
36 be prepared by an employer if the purpose of the
37 employer is to determine whether to retain an employee
38 following or in accordance with a good faith belief that
39 the employee is engaged in any criminal activity likely to
40 result in a loss to the employer.

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

5 SEC. 6. Section 1786.18 of the Civil Code is amended
6 to read:

7 1786.18. (a) Except as authorized under subdivision
8 (b), no investigative consumer reporting agency shall
9 make or furnish any investigative consumer report
10 containing any of the following items of information:

11 (1) Bankruptcies that, from the date of adjudication,
12 antedate the report by more than 14 years.

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

16 (3) Unsatisfied judgments that, from the date of entry,
17 antedate the report by more than 10 years.

18 ~~(4) Unlawful detainer actions, unless the lessor was the~~
19 ~~prevailing party. For purposes of this paragraph, the~~
20 ~~lessor shall be deemed to be the prevailing party only if~~
21 ~~(A) final judgment was awarded to the lessor (i) upon~~
22 ~~entry of the tenant's default, (ii) upon the granting of the~~
23 ~~lessor's motion for summary judgment, or (iii) following~~
24 ~~trial, or (B) the action was resolved by a written~~
25 ~~settlement agreement between the parties that states~~
26 ~~that the unlawful detainer action may be reported. In any~~
27 ~~other instance in which the action is resolved by~~
28 ~~settlement agreement, the lessor shall not be deemed to~~
29 ~~be the prevailing party for purposes of this paragraph.~~

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

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

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

38 (7) Records of arrest, indictment, information,
39 misdemeanor complaint, or conviction of a crime that,
40 from the date of disposition, release, or parole, antedate

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AMENDED IN ASSEMBLY JUNE 18, 1998

AMENDED IN ASSEMBLY JUNE 8, 1998

AMENDED IN SENATE MAY 12, 1998

AMENDED IN SENATE APRIL 27, 1998

SENATE BILL

No. 1454

**Introduced by Senator Leslie
(Coauthor: Senator Watson)
(Coauthors: Assembly Members Bowler, House, Kaloogian,
and Prenter)**

February 2, 1998

An act to amend Sections 1786.2, 1786.10, 1786.12, 1786.16, 1786.18, 1786.20, 1786.24, 1786.26, 1786.30, 1786.40, and 1786.50 of, and to add Section 1786.11 to, the Civil Code, relating to investigative consumer reporting.

LEGISLATIVE COUNSEL'S DIGEST

SB 1454, as amended, Leslie. Investigative consumer reporting.

Existing law, as contained in the Investigative Consumer Reporting Agencies Act, regulates the preparation, disclosure, and use of investigative consumer reports.

Existing law defines an "investigative consumer report" as a report in which specified information on a consumer is obtained through personal interviews and defines an "investigative consumer reporting agency" as any person who, for a fee, assembles employment or insurance information, or information relating to the hiring of dwelling

units concerning consumers for 3rd parties for specified purposes.

This bill would redefine an “investigative consumer report” as a report in which specified consumer information is obtained by any means, and an “investigative consumer reporting agency” as any person who, for a fee, assembles any information concerning consumers for 3rd parties.

Existing law generally provides that a person may not obtain an investigative consumer report with respect to a consumer unless the person discloses in writing to the consumer that the report will be made and provides other specified information.

This bill would require, as a further condition to obtaining an investigative consumer report, that the person certify to the agency that he or she (1) has made the required consumer disclosures and (2) will provide additional specified disclosures if requested by the consumer. The bill would also require an investigative consumer reporting agency that provides an investigative consumer report to a person other than the consumer to make a copy of that report available to the consumer, as specified, for at least 60 days after the date the report is provided to the other person.

Existing law provides that consumers have the right to visually inspect all files maintained by an investigative consumer reporting agency regarding that consumer, except medical information, as defined. Existing law also provides that consumers have the right to be informed by the user of consumer information of the reasons for any adverse action taken with respect to specified insurance due to information obtained from a person other than an investigative consumer reporting agency, except that the user may withhold medical information, as defined, until the consumer obtains written authorization from the consumer’s physician.

This bill would delete both of these exceptions relating to medical information. *It would also prohibit an investigative consumer reporting agency from furnishing an investigative consumer report containing that defined medical information without the consumer’s consent.*

Existing law provides that investigative consumer reports may not include, among other things, any arrest records,

unlawful detainer actions unless the lessor was the prevailing party, as specified, paid tax liens, or other specified items that antedate the report by more than 7 years.

This bill would revise the prohibition against inclusion of unlawful detainer actions and specify that information relating to an arrest, indictment, conviction, civil action, tax lien, or outstanding judgment may not be included in a report unless verified by the agency no more than 30 days prior to the date of the report, and adverse information obtained through a personal interview, as specified, may not be included in a report unless it is either verified by a 2nd party or the interviewee is the best source of the information.

Existing law gives consumers the right to dispute inaccurate information contained in an investigative consumer report and to bring an action to recover damages for violations of the act in an amount equal to the greater of actual damages or \$300.

This bill would add new procedures and notice requirements relating to the investigation of disputes by consumers and the deletion of information in a consumer's file that is determined to be inaccurate. The bill would also increase the minimum amount of damages recoverable by a consumer for violations of the act from \$300 to \$2,500.

Existing law specifies that reasonable charges may be imposed upon a consumer to receive a copy of an investigative consumer report relating to that consumer, unless the copy is requested after the taking of an adverse action against the consumer based on the report, as specified.

This bill would specify the amount of fee, if any, that may be charged to a consumer to receive a copy of an investigative consumer report or other disclosures relating to that consumer. The bill would require investigative consumer reporting agencies to provide a consumer with a copy of his or her investigative consumer report, free of charge, not more often than once a year, if the consumer is unemployed, is seeking employment, receives public welfare assistance, or believes that his or her file contains inaccurate information due to fraud.

The bill would make other related changes.

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 1786.2 of the Civil Code is
2 amended to read:

3 1786.2. The following terms as used in this title have
4 the meaning expressed in this section:

5 (a) The term “person” means any individual,
6 partnership, corporation, limited liability company, trust,
7 estate, cooperative, association, government or
8 governmental subdivision or agency, or other entity. The
9 term “person” as used in this title shall not be construed
10 to require duplicative reporting by any individual,
11 corporation, trust, estate, cooperative, association,
12 government, or governmental subdivision or agency, or
13 other entity involved in the same transaction.

14 (b) The term “consumer” means a natural individual
15 who has made application to a person for employment
16 purposes, for insurance for personal, family, or household
17 purposes, or the hiring of a dwelling unit, as defined in
18 subdivision (c) of Section 1940.

19 (c) The term “investigative consumer report” means
20 a consumer report in which information on a consumer’s
21 character, general reputation, personal characteristics, or
22 mode of living is obtained through any means. The term
23 does not include a consumer report or other compilation
24 of information that is limited to specific factual
25 information relating to a consumer’s credit record or
26 manner of obtaining credit obtained directly from a
27 creditor of the consumer or from a consumer reporting
28 agency when that information was obtained directly from
29 a potential or existing creditor of the consumer or from
30 the consumer.

31 (d) The term “investigative consumer reporting
32 agency” means any person who, for monetary fees or
33 dues, regularly engages in whole or in part in the practice
34 of assembling or evaluating information concerning
35 consumers for the purposes of furnishing investigative

1 consumer reports to third parties, but does not include
2 any governmental agency whose records are maintained
3 primarily for traffic safety, law enforcement, or licensing
4 purposes, or any licensed insurance agent, insurance
5 broker, or solicitor, insurer, or life insurance agent.

6 (e) The term “file,” when used in connection with
7 information on any consumer, means all of the
8 information on that consumer recorded and retained by
9 an investigative consumer reporting agency regardless of
10 how the information is stored.

11 (f) The term “employment purposes,” when used in
12 connection with an investigative consumer report, means
13 a report used for the purpose of evaluating a consumer for
14 employment, promotion, reassignment, or retention as
15 an employee.

16 (g) *The term “medical information” means*
17 *information on a person’s medical history or condition*
18 *obtained directly or indirectly from a licensed physician,*
19 *medical practitioner, hospital, clinic, or other medical or*
20 *medically related facility.*

21 SEC. 2. Section 1786.10 of the Civil Code is amended
22 to read:

23 1786.10. (a) Every investigative consumer reporting
24 agency shall, upon request and proper identification of
25 any consumer, allow the consumer to visually inspect all
26 files maintained regarding the consumer at the time of
27 the request.

28 (b) All items of information shall be available for
29 inspection, except that the sources of information
30 acquired solely for use in preparing an investigative
31 consumer report and actually used for no other purpose
32 need not be disclosed. However, if an action is brought
33 under this title, those sources shall be available to the
34 consumer under appropriate discovery procedures in the
35 court in which the action is brought.

36 Nothing in this title shall be interpreted to mean that
37 investigative consumer reporting agencies are required
38 to divulge to consumers the sources of investigative
39 consumer reports except in appropriate discovery
40 procedures as outlined herein.

1 (c) The investigative consumer reporting agency shall
2 also identify the recipients of any investigative consumer
3 report on the consumer that the investigative consumer
4 reporting agency has furnished:

5 (1) For employment or insurance purposes within the
6 two-year period preceding the request.

7 (2) For any other purpose within the one-year period
8 preceding the request.

9 (d) The identification of a recipient under subdivision
10 (c) shall include the name of the recipient or, if
11 applicable, the trade name (written in full) under which
12 the recipient conducts business and, upon request of the
13 consumer, the address and telephone number of the
14 recipient.

15 (e) The investigative consumer reporting agency shall
16 also disclose the dates, original payees, and amounts of
17 any checks or charges upon which is based any adverse
18 characterization of the consumer, included in the file at
19 the time of the disclosure.

20 SEC. 3. Section 1786.11 is added to the Civil Code, to
21 read:

22 1786.11. Every investigative consumer reporting
23 agency that provides an investigative consumer report to
24 a person other than the consumer shall make a copy of
25 that report available, upon request and proper
26 identification, to the consumer for at least 60 days after
27 the date that the report is provided to the other person.

28 SEC. 4. Section 1786.12 of the Civil Code is amended
29 to read:

30 1786.12. An investigative consumer reporting agency
31 shall only furnish an investigative consumer report under
32 the following circumstances:

33 (a) In response to the order of a court having
34 jurisdiction to issue the order.

35 (b) In compliance with a lawful subpoena issued by a
36 court of competent jurisdiction.

37 (c) In accordance with the written instructions of the
38 consumer to whom it relates.

39 (d) To a person that it has reason to believe:

- 1 (1) Intends to use the information for employment
2 purposes; or
- 3 (2) Intends to use the information serving as a factor
4 in determining a consumer's eligibility for insurance or
5 the rate for any insurance; or
- 6 (3) Intends to use the information in connection with
7 a determination of the consumer's eligibility for a license
8 or other benefit granted by a governmental
9 instrumentality required by law to consider the
10 applicant's financial responsibility or status; or
- 11 (4) Intends to use the information in connection with
12 an order of a court of competent jurisdiction to provide
13 support where the imposition or enforcement of the
14 order involves the consumer; or
- 15 (5) Intends to use the information in connection with
16 the hiring of a dwelling unit, as defined in subdivision (c)
17 of Section 1940.
- 18 (e) An investigative consumer reporting agency shall
19 not prepare or furnish an investigative consumer report
20 to a person described in subdivision (d) unless the agency
21 has received the certification under paragraph (4) of
22 subdivision (a) of Section 1786.16 from the person
23 requesting the report.
- 24 (f) *An investigative consumer reporting agency shall*
25 *not furnish an investigative consumer report to a person*
26 *described in subdivision (d) if that report contains*
27 *medical information about a consumer, unless the*
28 *consumer consents to the furnishing of the report.*
- 29 SEC. 5. Section 1786.16 of the Civil Code is amended
30 to read:
- 31 1786.16. (a) Any person described in subdivision (d)
32 of Section 1786.12 shall not procure or cause to be
33 prepared an investigative consumer report unless the
34 following applicable conditions are met:
- 35 (1) If an investigative consumer report is sought in
36 connection with the underwriting of insurance, it shall be
37 clearly and accurately disclosed in writing at the time the
38 application form, medical form, binder, or similar
39 document is signed by the consumer that an investigative
40 consumer report regarding the consumer's character,

1 general reputation, personal characteristics, and mode of
2 living may be made. If no signed application form,
3 medical form, binder, or similar document is involved in
4 the underwriting transaction, the disclosure shall be
5 made to the consumer in writing and mailed or otherwise
6 delivered to the consumer not later than three days after
7 the report was first requested.

8 (2) If, at any time, an investigative consumer report is
9 sought for employment purposes other than promotion
10 or reassignment, the person procuring or causing the
11 report to be made shall, not later than three days after the
12 date on which the report was first requested, notify the
13 consumer in writing that an investigative consumer
14 report regarding the consumer's character, general
15 reputation, personal characteristics, and mode of living
16 will be made. This notification shall include the name of
17 the investigative consumer reporting agency conducting
18 the investigation and a summary of the provisions of
19 Section 1786.22.

20 (3) If an investigative consumer report is sought in
21 connection with the hiring of a dwelling unit, as defined
22 in subdivision (c) of Section 1940, the person procuring
23 or causing the request to be made shall, not later than
24 three days after the date on which the report was first
25 requested, notify the consumer in writing that an
26 investigative consumer report will be made regarding
27 the consumer's character, general reputation, personal
28 characteristics, and mode of living. The notification shall
29 also include the name and address of the *investigative*
30 consumer reporting agency that will prepare the report.

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

36 (b) Any person described in subdivision (d) of Section
37 1786.12 shall, upon written request made by the
38 consumer within a reasonable period of time after the
39 receipt by the consumer of the disclosure required by
40 subdivision (a), make a complete and accurate disclosure

1 of the nature and scope of the investigation requested.
2 This disclosure shall be made in writing and mailed or
3 otherwise delivered to the consumer not later than five
4 days after the date the request for the disclosure was
5 received from the consumer or the report was first
6 requested, whichever is later.

7 (c) The provisions of subdivision (a) shall not apply to
8 an investigative consumer report procured or caused to
9 be prepared by an employer if the purpose of the
10 employer is to determine whether to retain an employee
11 ~~following or in accordance with~~ *when there is* a good faith
12 belief that the employee is engaged in any criminal
13 activity likely to result in a loss to the employer.

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

18 SEC. 6. Section 1786.18 of the Civil Code is amended
19 to read:

20 1786.18. (a) Except as authorized under subdivision
21 (b), no investigative consumer reporting agency shall
22 make or furnish any investigative consumer report
23 containing any of the following items of information:

24 (1) Bankruptcies that, from the date of adjudication,
25 antedate the report by more than ~~14~~ 10 years.

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

29 (3) Unsatisfied judgments that, from the date of entry,
30 antedate the report by more than ~~10~~ seven years.

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

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

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

39 (7) Records of arrest, indictment, information,
40 misdemeanor complaint, or conviction of a crime that,

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AMENDED IN ASSEMBLY AUGUST 24, 1998

AMENDED IN ASSEMBLY JUNE 18, 1998

AMENDED IN ASSEMBLY JUNE 8, 1998

AMENDED IN SENATE MAY 12, 1998

AMENDED IN SENATE APRIL 27, 1998

SENATE BILL

No. 1454

Introduced by Senator Leslie

(Coauthor: Senator Watson)

(Coauthors: Assembly Members Bowler, House, Kaloogian,
and Prenter)

February 2, 1998

An act to amend Sections 1786.2, 1786.10, 1786.12, 1786.16, 1786.18, 1786.20, 1786.24, 1786.26, 1786.30, 1786.40, and 1786.50 of, and to add Section 1786.11 to, the Civil Code, relating to investigative consumer reporting.

LEGISLATIVE COUNSEL'S DIGEST

SB 1454, as amended, Leslie. Investigative consumer reporting.

Existing law, as contained in the Investigative Consumer Reporting Agencies Act, regulates the preparation, disclosure, and use of investigative consumer reports.

Existing law defines an "investigative consumer report" as a report in which specified information on a consumer is obtained through personal interviews and defines an "investigative consumer reporting agency" as any person

who, for a fee, assembles employment or insurance information, or information relating to the hiring of dwelling units concerning consumers for 3rd parties for specified purposes.

This bill would redefine an "investigative consumer report" as a report in which specified consumer information is obtained by any means, *subject to an exception*, and an "investigative consumer reporting agency" as any person who, for a fee, assembles any information concerning consumers for 3rd parties.

Existing law generally provides that a person may not obtain an investigative consumer report with respect to a consumer unless the person discloses in writing to the consumer that the report will be made and provides other specified information.

This bill would require, as a further condition to obtaining an investigative consumer report, that the person certify to the agency that he or she (1) has made the required consumer disclosures and (2) will provide additional specified disclosures if requested by the consumer. The bill would also require an investigative consumer reporting agency that provides an investigative consumer report to a person other than the consumer to make a copy of that report available to the consumer, as specified, for at least 60 days after the date the report is provided to the other person.

Existing law provides that consumers have the right to visually inspect all files maintained by an investigative consumer reporting agency regarding that consumer, except medical information, as defined. Existing law also provides that consumers have the right to be informed by the user of consumer information of the reasons for any adverse action taken with respect to specified insurance due to information obtained from a person other than an investigative consumer reporting agency, except that the user may withhold medical information, as defined, until the consumer obtains written authorization from the consumer's physician.

This bill would delete both of these exceptions relating to medical information. It would also prohibit an investigative consumer reporting agency from furnishing an investigative

consumer report containing that defined medical information without the consumer's consent.

Existing law provides that investigative consumer reports may not include, among other things, any arrest records, unlawful detainer actions unless the lessor was the prevailing party, as specified, paid tax liens, or other specified items that antedate the report by more than 7 years.

This bill would revise the prohibition against inclusion of unlawful detainer actions and specify that information relating to an arrest, indictment, conviction, civil action, tax lien, or outstanding judgment may not be included in a report unless verified by the agency no more than 30 days prior to the date of the report, and adverse information obtained through a personal interview, as specified, may not be included in a report unless it is either verified by a 2nd party or the interviewee is the best source of the information.

Existing law gives consumers the right to dispute inaccurate information contained in an investigative consumer report and to bring an action to recover damages for violations of the act in an amount equal to the greater of actual damages or \$300.

This bill would add new procedures and notice requirements relating to the investigation of disputes by consumers and the deletion of information in a consumer's file that is determined to be inaccurate. The bill would also increase the minimum amount of damages recoverable by a consumer for violations of the act from \$300 to \$2,500.

Existing law specifies that reasonable charges may be imposed upon a consumer to receive a copy of an investigative consumer report relating to that consumer, unless the copy is requested after the taking of an adverse action against the consumer based on the report, as specified.

This bill would specify the amount of fee, if any, that may be charged to a consumer to receive a copy of an investigative consumer report or other disclosures relating to that consumer. The bill would require investigative consumer reporting agencies to provide a consumer with a copy of his or her investigative consumer report, free of charge, not more often than once a year, if the consumer is unemployed, is seeking employment, receives public welfare assistance, or

believes that his or her file contains inaccurate information due to fraud.

The bill would make other related changes.

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 1786.2 of the Civil Code is
2 amended to read:

3 1786.2. The following terms as used in this title have
4 the meaning expressed in this section:

5 (a) The term "person" means any individual,
6 partnership, corporation, limited liability company, trust,
7 estate, cooperative, association, government or
8 governmental subdivision or agency, or other entity. The
9 term "person" as used in this title shall not be construed
10 to require duplicative reporting by any individual,
11 corporation, trust, estate, cooperative, association,
12 government, or governmental subdivision or agency, or
13 other entity involved in the same transaction.

14 (b) The term "consumer" means a natural individual
15 who has made application to a person for employment
16 purposes, for insurance for personal, family, or household
17 purposes, or the hiring of a dwelling unit, as defined in
18 subdivision (c) of Section 1940.

19 (c) The term "investigative consumer report" means
20 a consumer report in which information on a consumer's
21 character, general reputation, personal characteristics, or
22 mode of living is obtained through any means. The term
23 does not include a consumer report or other compilation
24 of information that is limited to specific factual
25 information relating to a consumer's credit record or
26 manner of obtaining credit obtained directly from a
27 creditor of the consumer or from a consumer reporting
28 agency when that information was obtained directly from
29 a potential or existing creditor of the consumer or from
30 the consumer. *Notwithstanding the foregoing, for*
31 *transactions between investigative consumer reporting*
32 *agencies and insurance institutions, agents, or*

1 *insurance-support organizations subject to Article 6.6*
2 *(commencing with Section 791) of Chapter 1 of Part 2 of*
3 *Division 1 of the Insurance Code, the term "investigative*
4 *consumer report" shall have the meaning set forth in*
5 *subdivision (n) of Section 791.02 of the Insurance Code.*

6 (d) The term "investigative consumer reporting
7 agency" means any person who, for monetary fees or
8 dues, regularly engages in whole or in part in the practice
9 of assembling or evaluating information concerning
10 consumers for the purposes of furnishing investigative
11 consumer reports to third parties, but does not include
12 any governmental agency whose records are maintained
13 primarily for traffic safety, law enforcement, or licensing
14 purposes, or any licensed insurance agent, insurance
15 broker, or solicitor, insurer, or life insurance agent.

16 (e) The term "file," when used in connection with
17 information on any consumer, means all of the
18 information on that consumer recorded and retained by
19 an investigative consumer reporting agency regardless of
20 how the information is stored.

21 (f) The term "employment purposes," when used in
22 connection with an investigative consumer report, means
23 a report used for the purpose of evaluating a consumer for
24 employment, promotion, reassignment, or retention as
25 an employee.

26 (g) The term "medical information" means
27 information on a person's medical history or condition
28 obtained directly or indirectly from a licensed physician,
29 medical practitioner, hospital, clinic, or other medical or
30 medically related facility.

31 SEC. 2. Section 1786.10 of the Civil Code is amended
32 to read:

33 1786.10. (a) Every investigative consumer reporting
34 agency shall, upon request and proper identification of
35 any consumer, allow the consumer to visually inspect all
36 files maintained regarding the consumer at the time of
37 the request.

38 (b) All items of information shall be available for
39 inspection, except that the sources of information
40 acquired solely for use in preparing an investigative

1 consumer report and actually used for no other purpose
2 need not be disclosed. However, if an action is brought
3 under this title, those sources shall be available to the
4 consumer under appropriate discovery procedures in the
5 court in which the action is brought.

6 Nothing in this title shall be interpreted to mean that
7 investigative consumer reporting agencies are required
8 to divulge to consumers the sources of investigative
9 consumer reports except in appropriate discovery
10 procedures as outlined herein.

11 (c) The investigative consumer reporting agency shall
12 also identify the recipients of any investigative consumer
13 report on the consumer that the investigative consumer
14 reporting agency has furnished:

15 (1) For employment or insurance purposes within the
16 two-year period preceding the request.

17 (2) For any other purpose within the one-year period
18 preceding the request.

19 (d) The identification of a recipient under subdivision
20 (c) shall include the name of the recipient or, if
21 applicable, the trade name (written in full) under which
22 the recipient conducts business and, upon request of the
23 consumer, the address and telephone number of the
24 recipient.

25 (e) The investigative consumer reporting agency shall
26 also disclose the dates, original payees, and amounts of
27 any checks or charges upon which is based any adverse
28 characterization of the consumer, included in the file at
29 the time of the disclosure.

30 SEC. 3. Section 1786.11 is added to the Civil Code, to
31 read:

32 1786.11. Every investigative consumer reporting
33 agency that provides an investigative consumer report to
34 a person other than the consumer shall make a copy of
35 that report available, upon request and proper
36 identification, to the consumer for at least 60 days after
37 the date that the report is provided to the other person.

38 SEC. 4. Section 1786.12 of the Civil Code is amended
39 to read:

- 1 1786.12. An investigative consumer reporting agency
2 shall only furnish an investigative consumer report under
3 the following circumstances:
- 4 (a) In response to the order of a court having
5 jurisdiction to issue the order.
 - 6 (b) In compliance with a lawful subpoena issued by a
7 court of competent jurisdiction.
 - 8 (c) In accordance with the written instructions of the
9 consumer to whom it relates.
 - 10 (d) To a person that it has reason to believe:
 - 11 (1) Intends to use the information for employment
12 purposes; or
 - 13 (2) Intends to use the information serving as a factor
14 in determining a consumer's eligibility for insurance or
15 the rate for any insurance; or
 - 16 (3) Intends to use the information in connection with
17 a determination of the consumer's eligibility for a license
18 or other benefit granted by a governmental
19 instrumentality required by law to consider the
20 applicant's financial responsibility or status; or
 - 21 (4) Intends to use the information in connection with
22 an order of a court of competent jurisdiction to provide
23 support where the imposition or enforcement of the
24 order involves the consumer; or
 - 25 (5) Intends to use the information in connection with
26 the hiring of a dwelling unit, as defined in subdivision (c)
27 of Section 1940.
 - 28 (e) An investigative consumer reporting agency shall
29 not prepare or furnish an investigative consumer report
30 to a person described in subdivision (d) unless the agency
31 has received the certification under paragraph (4) of
32 subdivision (a) of Section 1786.16 from the person
33 requesting the report.
 - 34 (f) An investigative consumer reporting agency shall
35 not furnish an investigative consumer report to a person
36 described in subdivision (d) if that report contains
37 medical information about a consumer, unless the
38 consumer consents to the furnishing of the report.
- 39 SEC. 5. Section 1786.16 of the Civil Code is amended
40 to read:

1 1786.16. (a) Any person described in subdivision (d)
2 of Section 1786.12 shall not procure or cause to be
3 prepared an investigative consumer report unless the
4 following applicable conditions are met:

5 (1) If an investigative consumer report is sought in
6 connection with the underwriting of insurance, it shall be
7 clearly and accurately disclosed in writing at the time the
8 application form, medical form, binder, or similar
9 document is signed by the consumer that an investigative
10 consumer report regarding the consumer's character,
11 general reputation, personal characteristics, and mode of
12 living may be made. If no signed application form,
13 medical form, binder, or similar document is involved in
14 the underwriting transaction, the disclosure shall be
15 made to the consumer in writing and mailed or otherwise
16 delivered to the consumer not later than three days after
17 the report was first requested.

18 (2) If, at any time, an investigative consumer report is
19 sought for employment purposes other than promotion
20 or reassignment, the person procuring or causing the
21 report to be made shall, not later than three days after the
22 date on which the report was first requested, notify the
23 consumer in writing that an investigative consumer
24 report regarding the consumer's character, general
25 reputation, personal characteristics, and mode of living
26 will be made. This notification shall include the name of
27 the investigative consumer reporting agency conducting
28 the investigation and a summary of the provisions of
29 Section 1786.22.

30 (3) If an investigative consumer report is sought in
31 connection with the hiring of a dwelling unit, as defined
32 in subdivision (c) of Section 1940, the person procuring
33 or causing the request to be made shall, not later than
34 three days after the date on which the report was first
35 requested, notify the consumer in writing that an
36 investigative consumer report will be made regarding
37 the consumer's character, general reputation, personal
38 characteristics, and mode of living. The notification shall
39 also include the name and address of the investigative
40 consumer reporting agency that will prepare the report.

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

6 (b) Any person described in subdivision (d) of Section
7 1786.12 shall, upon written request made by the
8 consumer within a reasonable period of time after the
9 receipt by the consumer of the disclosure required by
10 subdivision (a), make a complete and accurate disclosure
11 of the nature and scope of the investigation requested.
12 This disclosure shall be made in writing and mailed or
13 otherwise delivered to the consumer not later than five
14 days after the date the request for the disclosure was
15 received from the consumer or the report was first
16 requested, whichever is later.

17 (c) The provisions of subdivision (a) shall not apply to
18 an investigative consumer report procured or caused to
19 be prepared by an employer if the purpose of the
20 employer is to determine whether to retain an employee
21 when there is a good faith belief that the employee is
22 engaged in any criminal activity likely to result in a loss
23 to the employer.

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

28 SEC. 6. Section 1786.18 of the Civil Code is amended
29 to read:

30 1786.18. (a) Except as authorized under subdivision
31 (b), no investigative consumer reporting agency shall
32 make or furnish any investigative consumer report
33 containing any of the following items of information:

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

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

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

EXHIBIT J

SENATE JUDICIARY COMMITTEE
Adam Schiff, Chairman
1997-98 Regular Session

SB 1454	S
Senator Leslie	B
As Amended April 27, 1998	
Hearing Date: May 5, 1998	1
Civil Code	4
DLM:lgp	5
	4

SUBJECT

Investigative Consumer Reports

DESCRIPTION

This bill would require that persons who use the services of investigative consumer reporting agencies must disclose that a report has been commissioned to any person who is the subject the report. It would require the agency to keep any information gathered for sixty days. It would also require the agency to disclose the name and address of any additional recipients of the consumer investigative report (such as any other employers, or merchants.)

The bill would also create a mechanism for resolving disputes as to the accuracy of information contained in investigative consumer reports. It would require resolution within 30 days of notice of the dispute. The bill would provide that investigative consumer agencies must consider "all relevant information provided by the consumer" in determining whether to alter a report.

Finally, this bill would increase penalties for violation, such as failing to notify a person when an investigative consumer report has been made on them. The bill would establish a cap on actual damages of two-thousand five-hundred dollars (\$2,500), up from the current cap of three-hundred dollars (\$300).

(This analysis reflects amendments to be offered in committee.)

BACKGROUND

The genesis for this bill is the increase in the number of employers using background checks on applicants as a way of minimizing potential legal and financial exposure. This trend in employment reflects a long-standing practice of the rental housing community. Investigative consumer reporting agencies fill the need for such information. An "investigative consumer report" is a

(more)

compilation of information collected on an individual applicant's character, habits, and reputation. Sources of information for these reports include interviews with family members, neighbors, associates, as well as court records and credit bureaus. It is closely related to a consumer credit report, however, unlike credit reports there is no notification given to a person that they are the subject of an investigative consumer report.

CHANGES TO EXISTING LAW

New Definitions

1. Existing law defines the term "investigative consumer report" as a consumer report in which...is obtained through personal interviews with neighbors, friends, or associates of the consumer reported on, or others with whom he or she is acquainted or who may have knowledge concerning any of these items of information.

This bill would define the term "investigative consumer report" as a consumer report in which information is *obtained through any means*.

2. Existing law excludes private investigators from the definition of "investigative consumer reporting agency."

This bill would define the term "investigative consumer reporting agency" to mean any person who furnishes investigative consumer reports to third parties for consideration. This definition would include private investigators.

Requirements for Consumer Investigative Reporting Agencies

3. Existing law requires that an investigative consumer reporting agency shall disclose the recipients of any investigative consumer report: (1) For employment or insurance purposes within the two-year period preceding the request. (2) For any other purpose within the six-month period preceding the request.

This bill would extend the reporting period in subsection 2 above ("for any other purpose") to within a one-year period preceding the request. It would require all disclosures to contain the name of the recipient or, if applicable, the trade name (written in full) under which the recipient conducts business, and their address and telephone number.

This bill would require a copy of any report be available to the consumer for at least 60 days after the date the report is provided to the other person.

This bill would require the investigative consumer reporting agency to also disclose the dates, original payees, and amounts of any checks or charges attributed to the subject.

Limitations on Use of Information Gathered and Use of Reports

4. Existing law provides that an investigative consumer reporting agency shall only furnish an investigative consumer report if the information is to be used for employment, insurance; or consumer's eligibility for a license; under an order of a court of competent jurisdiction; or in connection with the hiring of a dwelling unit.

This bill would:

- add a requirement that the investigative consumer reporting agency may not prepare or furnish an investigative consumer report unless the subject of the investigation is informed of the report.
- state that an investigative consumer reporting agency shall not furnish specified information that is a matter of public record unless the agency has verified the accuracy of the information.
- state that an investigative consumer reporting agency may not release adverse information that is obtained through a personal interview, unless either there is independent confirmation, or the person interviewed is the best possible source of the information.

Procedure for Contesting and Correcting Data in Reports

5. Existing law provides that if the completeness or accuracy of any item of information is disputed by a consumer the investigative consumer reporting agency shall within a reasonable period of time, without charge, reinvestigate and record the current status of the disputed information.

This bill would establish a mechanism for dispute resolution, to be completed within 30 days of receiving notice of a dispute regarding the completeness or accuracy of a report (detailed in Comment 4.)

Penalty for Violation

6. Existing law provides that any investigative consumer reporting agency or user of information that fails to comply with any requirement under this title is liable 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, three hundred dollars (\$300), whichever sum is greater...

This bill would raise the maximum amount allowed as actual damages from three hundred dollars (\$300) to two-thousand five-hundred dollars (\$2,500).

COMMENT

1. Statement of purpose: greater disclosure means greater accuracy

Supporters of this measure believe that this bill is an important step in protecting both the consumer and the subject of investigative consumer reports. The author recognizes that investigative consumer reports are a useful tool in selecting appropriate tenants, employees and insurance risks. These reports detail an applicant's mode of living, their reputation, their credit and criminal history, or involvement in civil law suit(s). This is all useful information, if true, in making the choice of whether to rent a home to a person, employ them, or extend them a personal insurance policy.

The information in these reports comes from personal interviews, as well as public documents. Often the information contained in these reports goes unverified. The author provided the committee with evidence of one man's problems caused by erroneous information contained in an investigative consumer report. Mr. Bronti Kelly had his wallet stolen, and his identity assumed by the thief. The thief was arrested numerous times under Mr. Kelly's name. For a period of three years Mr. Kelly (an Air Force reservist with a clean criminal history) was denied job after job, with no explanation. Finally, he was informed that an investigative consumer reporting agency had compiled a report on him, containing the criminal record of the thief who had stolen his wallet. This information was never verified by the agency, yet used by each company he interviewed with to deny him employment.

The author points out that under the current scheme of law, there is no notification to a subject that a report has been generated on them. The existing penalty of \$300 for false information contained in a report is not a sufficient incentive to insure accuracy. Consequently, there is no method to challenge or check the correctness of these reports. He adds that inaccurate reports obviously harm the potential renter, insured or employee; but they also harm landlords, insurance companies and employers, by denying them access to honest and productive persons. According to the author's office, the theme of this legislation is simple, yet will be effective in preventing reoccurrence of such situations as Mr. Kelly's, "disclosure, disclosure, disclosure."

2. Author's amendments

The author will amend the bill to raise the proposed cap upon actual damages under this section from \$1,000 to \$2,500, to mirror the cap on actual damages

in the sister provision of law dealing with credit reporting agencies. The cap under current law is three-hundred dollars (\$300). This amendment came in response to concerns voiced by the Western Center for Law and Poverty that the amount of any penalty should be a deterrent to landlords (and others) failing to notify subjects that an investigative report has been commissioned. He will also amend the bill to allow disclosure of the amount and payee of any disputed credit card charge(s) attributed to the subject person, along with the provision in the bill for disclosure of any disputed checks.

3. The bill deletes from existing law a reporting exemption for private investigators and reference to "medical information."

The author has made several other proposals to change the existing law. Key among these proposals are removing reference to "medical information" from this section of the code, and deleting the current exemption from the definition of "Consumer Investigative Reporting Agencies" for private investigators.

The author of this bill is also carrying legislation which addresses medical records and the appropriate requirements for release of such information. (SB 1382 [Leslie] which is currently pending before this committee.) He would move statutory references regarding medical information from this section to the Health and Safety Code and Civil Code Sections which deal specifically with medical information.

The author also proposes to amend the definition of Consumer Investigative Reporting Agencies, to reflect the important role private investigators (P.I.) play in the gathering and collecting of personal information used in consumer investigative reports. The current law exempts P.I.s from the definition of Consumer Investigative Reporting Agencies.

4. Dispute resolution process

This bill would establish a mechanism for dispute resolution, to be completed within 30 days of receiving notice of a dispute regarding the completeness or accuracy of a report, as follows:

- The agency shall notify any person who provided the information in dispute and promptly provide all relevant information regarding the dispute that is received by the agency from the consumer during the reinvestigation;
- The investigative consumer reporting agency shall review and consider all relevant information submitted by the consumer with respect to the disputed item of information;

- An investigative consumer reporting agency may terminate a reinvestigation if the investigative consumer reporting agency reasonably determines that the dispute is frivolous or irrelevant;
- Upon making a determination that a dispute is frivolous or irrelevant, the investigative consumer reporting agency shall notify the consumer of the specific reasons why it has determined that the consumer's dispute is frivolous or irrelevant and provide a description of any information required to investigate the disputed information;
- If a disputed item of information is found to be inaccurate, incomplete, or cannot be verified by the evidence submitted, the investigative consumer reporting agency shall promptly delete that information from the consumer's file or modify the information, and shall notify the consumer that the information has been deleted or modified;
- No information may be reinserted in a consumer's file after having been deleted pursuant to this section unless the person who furnished the information verifies that the information is complete and accurate;
- If any information deleted from a consumer's file is reinserted in the file, the investigative consumer reporting agency shall promptly notify the consumer of the reinsertion in writing that the disputed information has been reinserted, and the name, address, and telephone number of any furnisher of information contacted; and a notice that the consumer has the right to a reinvestigation of the information reinserted by the investigative consumer reporting agency and to add a statement to his or her file disputing the accuracy or completeness of the information;
- Following the deletion of information from a consumer's file pursuant to this section, or following the filing of a dispute the investigative consumer reporting agency shall furnish to all parties specified by the consumer notification that the item of information has been deleted or that the item of information is disputed. In the case of disputed information, the notification shall include the statement or summary of the dispute;
- Whenever a statement of dispute is filed, the investigative consumer reporting agency shall, in any subsequent investigative consumer report containing the information in question, clearly note that the information is disputed by the consumer and shall include in the report either the consumer's statement of dispute or a clear and accurate summary.

5. This bill is consistent with related state and federal consumer credit acts

In California, there are two separate acts which address consumer reports, one which applies to consumer credit reports, and one which deals with investigative consumer reports. In the credit reporting section of the law, there are a number of express disclosure rights subjects of these reports enjoy. For instance, within 30 days a creditor must notify the applicant of its action on the application; each applicant denied credit is entitled to a statement of reasons; an applicant may make a written demand on any person furnishing information to the reporter to correct any information which the applicant believes to be inaccurate; the applicant may require the consumer credit reporting agency to indicate on any subsequent reports issued during the dispute that the item or items of information are in dispute; if upon investigation the information is found to be inaccurate or incorrect, the consumer may require the consumer credit reporting agency to delete or correct the item or items of information.

The federal Fair Credit Reporting Act contains both the credit and investigative report concepts within a single statute. As recently amended, the federal law expressly allows states to enforce the information requirements within consumer credit reporting laws in existence prior to the enactment of the Consumer Credit Reporting Act of 1996, and those provisions of law which are not in conflict with the federal code. The drafters of this bill have attempted to mirror the federal language, so as to stay within the bounds of state authority to regulate consumer reports. As a result there does not appear to be any preemption issue raised by the bill.

Support: Western Center for Law and Poverty; California Rural Legal Assistance Foundation; Los Angeles Housing Law Project

Opposition: None Known

HISTORY

Source: Author

Related Pending Legislation: None Known

Prior Legislation: None Known

JAN RAYMOND

LEGISLATIVE | HISTORY & INTENT

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SENATE RULES COMMITTEE

SB 1454

Office of Senate Floor Analyses

1020 N Street, Suite 524

(916) 445-6614 Fax: (916) 327-4478

THIRD READING

Bill No: SB 1454
Author: Leslie (R) and Watson (D), et al
Amended: 5/12/98
Vote: 21

SENATE JUDICIARY COMMITTEE: 8-0, 5/5/98

AYES: Burton, Haynes, Leslie, Lockyer, O'Connell, Sher, Wright, Schiff

NOT VOTING: Calderon

SUBJECT: Investigative consumer reports

SOURCE: Author

DIGEST: This bill requires that persons who use the services of investigative consumer reporting agencies must disclose that a report has been commissioned to any person who is the subject of the report. It requires the agency to keep any information gathered for sixty days. It also requires the agency to disclose the name and address of any additional recipients of the consumer investigative report (i.e., any other employers or merchants).

This bill also creates a mechanism for resolving disputes as to the accuracy of information contained in investigative consumer reports. It requires resolution within 30 days of notice of the dispute. The bill provides that investigative consumer agencies must consider "all relevant information provided by the consumer" in determining whether to alter a report.

Finally, this bill increases penalties for violation (i.e., failing to notify a person when an investigative consumer report has been made on them). The

CONTINUED

bill establishes a cap on actual damages of \$2,500, up from the current cap of \$300.

ANALYSIS:

New Definitions

Existing law defines the term "investigative consumer report" as a consumer report in which...is obtained through personal interviews with neighbors, friends, or associates of the consumer reported on, or others with whom he or she is acquainted or who may have knowledge concerning any of these items of information.

This bill defines the term "investigative consumer report" as a consumer report in which information is obtained through any means.

Existing law excludes private investigators from the definition of "investigative consumer reporting agency."

This bill defines the term "investigative consumer reporting agency" to mean any person who furnishes investigative consumer reports to third parties for consideration. This definition would include private investigators.

Requirements for Consumer Investigative Reporting Agencies

Existing law requires that an investigative consumer reporting agency shall disclose the recipients of any investigative consumer report (1) for employment or insurance purposes within the two-year period preceding the request, and (2) for any other purpose within the six-month period preceding the request.

This bill extends the reporting period in subsection 2 above ("for any other purpose") to within a one-year period preceding the request. It requires all disclosures to contain the name of the recipient or, if applicable, the trade name (written in full) under which the recipient conducts business, and their address and telephone number.

This bill requires a copy of any report be available to the consumer for at least 60 days after the date the report is provided to the other person.

This bill requires the investigative consumer reporting agency to also disclose the dates, original payees, and amounts of any checks or charges attributed to the subject.

Limitations on Use of Information Gathered and Use of Reports

Existing law provides that an investigative consumer reporting agency shall only furnish an investigative consumer report if the information is to be used for employment, insurance; or consumer's eligibility for a license; under an order of a court of competent jurisdiction; or in connection with the hiring of a dwelling unit.

This bill:

1. Adds a requirement that the investigative consumer reporting agency may not prepare or furnish an investigative consumer report unless the subject of the investigation is informed of the report.
2. States that an investigative consumer reporting agency shall not furnish specified information that is a matter of public record unless the agency has verified the accuracy of the information.
3. States that an investigative consumer reporting agency may not release adverse information that is obtained through a personal interview, unless either there is independent confirmation, or the person interviewed is the best possible source of the information.

Procedure for Contesting and Correcting Data in Reports

Existing law provides that if the completeness or accuracy of any item of information is disputed by a consumer the investigative consumer reporting agency shall within a reasonable period of time, without charge, reinvestigate and record the current status of the disputed information.

This bill establishes a mechanism for dispute resolution, to be completed within 30 days of receiving notice of a dispute regarding the completeness or accuracy of a report, as follows:

1. The agency shall notify any person who provide the information in dispute and promptly provide all relevant information regarding the dispute that is received by the agency from the consumer during the reinvestigation.
2. The investigative consumer reporting agency shall review and consider all relevant information submitted by the consumer with respect to the disputed item of information.
3. An investigative consumer reporting agency may terminate a reinvestigation if the investigative consumer reporting agency reasonably determines that the dispute is frivolous or irrelevant.
4. Upon making a determination that a dispute is frivolous or irrelevant, the investigative consumer reporting agency shall notify the consumer of the specific reasons why it has determined that the consumer's dispute is frivolous or irrelevant and provide a description of any information required to investigate the disputed information..
5. If a disputed item of information is found to be inaccurate, incomplete, or cannot be verified by the evidence submitted, the investigative consumer reporting agency shall promptly delete that information from the consumer's file or modify the information, and shall notify the consumer that the information has been deleted or modified.
6. No information may be reinserted in a consumer's file after having been deleted pursuant to this section unless the person who furnished the information verifies that the information is complete and accurate;
7. If any information deleted from a consumer's file is reinserted in the file, the investigative consumer reporting agency shall promptly notify the consumer of the reinsertion in writing that the disputed information has been reinserted, and the name, address, and telephone number of any furnisher of information contacted; and a notice that the consumer has the right to a reinvestigation of the information reinserted by the investigative consumer reporting agency and to add a statement to his or her file disputing the accuracy or completeness of the information.

8. Following the deletion of information from a consumer's file pursuant to this section, or following the filing of a dispute the investigative consumer reporting agency shall furnish to all parties specified by the consumer notification that the item of information has been deleted or that the item of information is disputed. In the case of disputed information, the notification shall include the statement or summary of the dispute.
9. Whenever a statement of dispute is filed, the investigative consumer reporting agency shall, in any subsequent investigative consumer report containing the information in question, clearly note that the information is disputed by the consumer and shall include in the report either the consumer's statement of dispute or a clear and accurate summary.

Penalty for Violation

Existing law provides that any investigative consumer reporting agency or user of information that fails to comply with any requirement under this title is liable in an amount equal to the sum any actual damages sustained by the consumer as a result of the failure or, except in the case of class actions, \$300, whichever sum is greater.

This bill raises the maximum amount allowed as actual damages from \$300 to \$2,500.

Background

The genesis for this bill is the increase in the number of employers using background checks on applicants as a way of minimizing potential legal and financial exposure. This trend in employment reflects a long-standing practice of the rental housing community. Investigative consumer reporting agencies fill the need for such information. An "investigative consumer report" is a compilation of information collected on an individual applicant's character, habits, and reputation. Sources of information for these reports include interviews with family members, neighbors, associates, as well as court records and credit bureaus. It is closely related to a consumer credit report; however, unlike credit reports, there is no notification given to a person that they are the subject of an investigative consumer report.

FISCAL EFFECT: Appropriation: No Fiscal Com.: No Local: No

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SUPPORT: (Verified 5/12/98)

Western Center for Law and Poverty
California Rural Legal Assistance Foundation
Los Angeles Housing Law Project

ARGUMENTS IN SUPPORT: Supporters of this bill believe that it is an important step in protecting both the consumer and the subject of investigative consumer reports. The author recognizes that investigative consumer reports are a useful tool in selecting appropriate tenants, employees and insurance risks. These reports detail an applicant's mode of living, their reputation, their credit and criminal history, or involvement in civil law suit(s). This is all useful information, if true, in making the choice of whether to rent a home to a person, employ them, or extend them a personal insurance policy.

The information in these reports comes from personal interviews, as well as public documents. Often the information contained in these reports goes unverified. The author provided the committee with evidence of one man's problems caused by erroneous information contained in an investigative consumer report. Mr. Bronti Kelly had his wallet stolen, and his identity assumed by the thief. The thief was arrested numerous times under Mr. Kelly's name. For a period of three years Mr. Kelly (an Air Force reservist with a clean criminal history) was denied job after job, with no explanation. Finally, he was informed that an investigative consumer reporting agency had compiled a report on him, containing the criminal record of the thief who had stolen his wallet. This information was never verified by the agency, yet used by each company he interviewed with to deny him employment.

According to the author's office, under the current scheme of law, there is no notification to a subject that a report has been generated on them. The existing penalty of \$300 for false information contained in a report is not a sufficient incentive to insure accuracy. Consequently, there is no method to challenge or check the correctness of these reports. The author's office states that inaccurate reports obviously harm the potential renter, insured or employee; but they also harm landlords, insurance companies and employers, by denying them access to honest and productive persons. The author's office further states that the theme of this legislation is simple, yet

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will be effective in preventing reoccurrence of such situations as Mr. Kelly's, "disclosure, disclosure, disclosure."

RJG:cm 5/13/98 Senate Floor Analyses
SUPPORT/OPPOSITION: SEE ABOVE
**** END ****

SENATE THIRD READING
SB 1454 (Leslie)
As Amended June 18, 1998
Majority vote

SENATE VOTE: 36-0

CONSUMER PROTECTION 11-0

Ayes: Davis, Morrissey, Alquist,
Cedillo, Figueroa, Firestone,
Frusetta, Machado, Napolitano,
Strom-Martin, Brewer

SUMMARY: Modifies the regulations of investigative consumer reporting.
Specifically, this bill:

- 1) Prohibits an investigative consumer reporting agency from preparing or furnishing an investigative consumer report unless the subject of the investigation is informed of the report.
- 2) Requires that a copy of any report be available to the consumer for at least 60 days after the date the report is provided to the requesting entity.
- 3) Extends by six months, for a total of one year, the period for which investigative consumer reporting agencies must supply subjects of investigative reports with a record of all requests for reports for purposes other than employment or insurance screening.
- 4) Prohibits an investigative consumer reporting agency from furnishing specified information that is a matter of public record unless the agency has verified the accuracy of the information.
- 5) Prohibits an investigative consumer reporting agency from releasing adverse information obtained through a personal interview, unless there is independent confirmation of the information, or the person interviewed is the best possible source of the information.
- 6) Establishes a mechanism for resolving disputes over consumer investigative reports. Additionally, requires resolution within 30 days of notice of the dispute.
- 7) Requires investigative consumer reporting agencies to get the consent of the subject of an investigative report prior to accessing medical information.
- 8) Reduces the maximum reporting periods on bankruptcy information and other negative financial information from 14 and 10 years to 10 and seven years, respectively.
- 9) Revises the definition of the term investigative consumer report to mean a consumer report in which information is obtained through any means.
- 10) Revises the definition of the term investigative consumer reporting agency to mean any person who furnishes investigative consumer reports to

third parties for consideration, including private investigators.

- 11) Raises the maximum amount allowed as actual damages due to violations of the act from \$300 to \$2,500.
- 12) Deletes a reporting exemption for private investigators.

FISCAL EFFECT: No direct effect.

COMMENTS:

- 1) According to the author's office, the purpose of this bill is to protect individuals from inaccurate and false information contained in consumer investigative reports, which increasingly are used to determine employment, insurance and housing eligibility. This bill seeks to do this by providing consumer remedies such as requiring specified disclosures to consumers who are the subject of investigation, increasing penalties for violations, and establishing a mechanism for resolving disputes over report accuracy.

Supporters of this measure believe that this bill is an important step in protecting both the users (i.e., employers, landlords, insurance agencies) and the subjects of investigative consumer reports. These reports develop personal profiles of individuals by detailing their mode of living, their reputation, their credit and criminal histories, and involvement in civil law suit(s).

Supporters argue that under the current regulatory scheme there is no notification to a subject that a report has been generated on them and that the existing penalty of \$300 for false information is not a sufficient incentive to insure accuracy. Furthermore, the lack of a method to challenge or check the correctness of these reports further leaves consumers at a disadvantage.

- 2) The disclosure, right to review and correction, right of dispute, and penalties in this bill are modeled after the requirements based on issuers and users of consumer credit reports. For example, creditors are required to notify applicants of their actions on credit applications within 30 days of receiving an application. Additionally, the increase in actual damages collectable to \$2,500 mirrors the penalties in the law regulating credit reporting agencies.
- 3) According to the author's office, this bill has been drafted to mirror the language in the recently amended federal Fair Credit Reporting Act, so as to stay within the bounds of state authority to regulate consumer reports. As a result there does not appear to be any pre-emption issue raised by this bill.

Analysis prepared by: Sailaja Cherukuri / aconpro / (916) 319-2089

SENATE THIRD READING
SB 1454 (Leslie)
As Amended August 24, 1998
Majority vote

SENATE VOTE: 36-0

CONSUMER PROTECTION 8-0

Ayes: Davis, Alquist, Figueroa,
Firestone, Frusetta, Napolitano,
Strom-Martin, Brewer

SUMMARY: Modifies the regulations of investigative consumer reporting.
Specifically, this bill:

- 1) Prohibits an investigative consumer reporting agency from preparing or furnishing an investigative consumer report unless the subject of the investigation is informed of the report and a copy of the report is available to the consumer for at least 60 days after it was requested.
- 2) Extends by six months, for a total of one year, the period for which investigative consumer reporting agencies must supply subjects of investigative reports with a record of all requests for reports for purposes other than employment or insurance screening.
- 3) Prohibits an investigative consumer reporting agency from furnishing specified information that is a matter of public record unless the agency has verified the accuracy of the information.
- 4) Prohibits an investigative consumer reporting agency from releasing adverse information obtained through a personal interview, unless there is independent confirmation of the information, or the person interviewed is the best possible source of the information.
- 5) Establishes a mechanism for resolving disputes over consumer investigative reports. Additionally, requires resolution within 30 days of notice of the dispute.
- 6) Reduces the maximum reporting periods on bankruptcy information and other negative financial information from 14 and 10 years to 10 and seven years, respectively.

(A) 3

Provide that the maximum reporting periods on bankruptcy, other negative financial information, and criminal history do not apply when an investigative consumer report is used for life insurance policies of \$150,000 or more, employment screening for a position with an annual salary of \$75,000 or more, and rental of a dwelling unit with a monthly rent of \$2,000 or more.

- 8) Revises the definition of the term investigative consumer report to mean a consumer report in which information is obtained through any means. However, exempts reports used for insurance purposes from this definition and instead applies existing law's definition which means a report in which information is obtained through personal interviews only.

- 9) Raises the maximum amount allowed as actual damages due to violations of the act from \$300 to \$2,500.

FISCAL EFFECT: No direct effect.

COMMENTS:

- 1) According to the author's office, the purpose of the bill is to protect individuals from inaccurate and false information contained in consumer investigative reports, which increasingly are used to determine employment, insurance, and housing eligibility. The measure seeks to do this by providing subjects of these reports remedies to dispute inaccurate information. These remedies, which are modeled after the requirements for credit reports, include requiring specified disclosures to subjects of investigation, increasing penalties for violations, and establishing a mechanism for resolving disputes over report accuracy.

Consumer investigative reports develop personal profiles of individuals by detailing their mode of living, their reputation, their credit and criminal histories, and involvement in civil lawsuit(s). Supporters argue that under the current regulatory scheme there is no notification to a subject that a report has been generated on them and that the existing penalty of \$300 for false information is not a sufficient incentive to ensure accuracy.

- 2) Though the latest amendments to the bill granting exemptions to the restrictions on reporting adverse information are not a major change to existing law, they are a significant departure from the high level of consumer protection currently in the bill. It can be argued that the amendments, by allowing any adverse item, no matter how old, to be reported for transactions where large sums are involved, suggest that middle and upper income individuals should not be afforded the same level of privacy and consumer protection as lower income individuals.

In addition, it should be noted that federal law affords all tenants, regardless of income levels, the same level of protection on reporting of adverse information. Thus, the amendments are not consistent with the Federal Fair Credit Reporting Act, though they do stay within the bounds of state authority to regulate investigative consumer reports.

Supporters of the amendments argue that a greater level of scrutiny is necessary because of the risk associated with issuing an insurance policy of \$150,000, paying an employee an annual salary of \$75,000, or renting a \$2,000 apartment.

Analysis prepared by: Sailaja Cherukuri / aconpro / (916) 319-2089

FN 042954

SENATE RULES COMMITTEE

SB 1454

Office of Senate Floor Analyses

1020 N Street, Suite 524

(916) 445-6614 Fax: (916) 327-4478

UNFINISHED BUSINESS

Bill No: SB 1454
Author: Leslie (R), et al
Amended: 6/18/98
Vote: 21

SENATE JUDICIARY COMMITTEE: 8-0, 5/5/98

AYES: Burton, Haynes, Leslie, Lockyer, O'Connell, Sher, Wright, Schiff

NOT VOTING: Calderon

SENATE FLOOR: 36-0, 5/21/98 (Consent)

ASSEMBLY FLOOR: Not Available

SUBJECT: Investigative consumer reports

SOURCE: Author

DIGEST: This bill requires that persons who use the services of investigative consumer reporting agencies must disclose that a report has been commissioned to any person who is the subject of the report. It requires the agency to keep any information gathered for sixty days. It also requires the agency to disclose the name and address of any additional recipients of the consumer investigative report (i.e., any other employers or merchants).

This bill also creates a mechanism for resolving disputes as to the accuracy of information contained in investigative consumer reports. It requires resolution within 30 days of notice of the dispute. The bill provides that investigative consumer agencies must consider "all relevant information provided by the consumer" in determining whether to alter a report.

CONTINUED

Finally, this bill increases penalties for violation (i.e., failing to notify a person when an investigative consumer report has been made on them). The bill establishes a cap on actual damages of \$2,500, up from the current cap of \$300.

Assembly Amendments:

1. Defines "medical information" and requires the consent of the consumer to include same in an investigative report.
2. Clarifies public information that cannot be included in a report.
3. Provide that the maximum reporting periods on bankruptcy, other negative financial information, and criminal history do not apply when an investigative consumer report is used for life insurance policies of \$150,000 or more, employment screening for a position with an annual salary of \$75,000 or more, and rental of a dwelling unit with a monthly rent of \$2,000 or more.
4. Adds clarifying language relative to unlawful retainers.

ANALYSIS:

New Definitions

Existing law defines the term "investigative consumer report" as a consumer report in which...is obtained through personal interviews with neighbors, friends, or associates of the consumer reported on, or others with whom he or she is acquainted or who may have knowledge concerning any of these items of information.

This bill defines the term "investigative consumer report" as a consumer report in which information is obtained through any means.

Existing law excludes private investigators from the definition of "investigative consumer reporting agency."

This bill defines the term "investigative consumer reporting agency" to mean any person who furnishes investigative consumer reports to third

CONTINUED

parties for consideration. This definition would include private investigators.

This bill defines "medical information" to mean information on a person's medical history or condition obtained directly or indirectly from a licensed physician, medical practitioner, hospital, clinic or other medical or medically related facility.

Requirements for Consumer Investigative Reporting Agencies

Existing law requires that an investigative consumer reporting agency shall disclose the recipients of any investigative consumer report (1) for employment or insurance purposes within the two-year period preceding the request, and (2) for any other purpose within the six-month period preceding the request.

This bill extends the reporting period in subsection 2 above ("for any other purpose") to within a one-year period preceding the request. It requires all disclosures to contain the name of the recipient or, if applicable, the trade name (written in full) under which the recipient conducts business, and their address and telephone number.

This bill requires a copy of any report be available to the consumer for at least 60 days after the date the report is provided to the other person.

This bill requires the investigative consumer reporting agency to also disclose the dates, original payees, and amounts of any checks or charges attributed to the subject.

Limitations on Use of Information Gathered and Use of Reports

Existing law provides that an investigative consumer reporting agency shall only furnish an investigative consumer report if the information is to be used for employment, insurance; or consumer's eligibility for a license; under an order of a court of competent jurisdiction; or in connection with the hiring of a dwelling unit.

CONTINUED

This bill:

1. Adds a requirement that the investigative consumer reporting agency may not prepare or furnish an investigative consumer report unless the subject of the investigation is informed of the report.
2. States that an investigative consumer reporting agency shall not furnish specified information that is a matter of public record unless the agency has verified the accuracy of the information, specifically information that pertains (a) to bankruptcies, (b) specified suits that antedate the report by more than fourteen years, (c) unsatisfied judgments that antedate the report by more than ten years, and (d) unlawful detainer sections where the defendant was the prevailing party or where the action is resolved by settlement agreement.
3. States that an investigative consumer reporting agency may not release adverse information that is obtained through a personal interview, unless either there is independent confirmation, or the person interviewed is the best possible source of the information.
4. Prohibits an investigative consumer reporting agency from furnishing a report to a person if that report contains medical information about a consumer, unless the consumer consents to the furnishing of the report.

Procedure for Contesting and Correcting Data in Reports

Existing law provides that if the completeness or accuracy of any item of information is disputed by a consumer the investigative consumer reporting agency shall within a reasonable period of time, without charge, reinvestigate and record the current status of the disputed information.

This bill establishes a mechanism for dispute resolution, to be completed within 30 days of receiving notice of a dispute regarding the completeness or accuracy of a report, as follows:

1. The agency shall notify any person who provide the information in dispute and promptly provide all relevant information regarding the dispute that is received by the agency from the consumer during the reinvestigation.

CONTINUED

2. The investigative consumer reporting agency shall review and consider all relevant information submitted by the consumer with respect to the disputed item of information.
3. An investigative consumer reporting agency may terminate a reinvestigation if the investigative consumer reporting agency reasonably determines that the dispute is frivolous or irrelevant.
4. Upon making a determination that a dispute is frivolous or irrelevant, the investigative consumer reporting agency shall notify the consumer of the specific reasons why it has determined that the consumer's dispute is frivolous or irrelevant and provide a description of any information required to investigate the disputed information.
5. If a disputed item of information is found to be inaccurate, incomplete, or cannot be verified by the evidence submitted, the investigative consumer reporting agency shall promptly delete that information from the consumer's file or modify the information, and shall notify the consumer that the information has been deleted or modified.
6. No information may be reinserted in a consumer's file after having been deleted pursuant to this section unless the person who furnished the information verifies that the information is complete and accurate;
7. If any information deleted from a consumer's file is reinserted in the file, the investigative consumer reporting agency shall promptly notify the consumer of the reinsertion in writing that the disputed information has been reinserted, and the name, address, and telephone number of any furnisher of information contacted; and a notice that the consumer has the right to a reinvestigation of the information reinserted by the investigative consumer reporting agency and to add a statement to his or her file disputing the accuracy or completeness of the information.
8. Following the deletion of information from a consumer's file pursuant to this section, or following the filing of a dispute the investigative consumer reporting agency shall furnish to all parties specified by the consumer notification that the item of information has been deleted or that the item of information is disputed. In the case of disputed

CONTINUED

information, the notification shall include the statement or summary of the dispute.

9. Whenever a statement of dispute is filed, the investigative consumer reporting agency shall, in any subsequent investigative consumer report containing the information in question, clearly note that the information is disputed by the consumer and shall include in the report either the consumer's statement of dispute or a clear and accurate summary.

Penalty for Violation

Existing law provides that any investigative consumer reporting agency or user of information that fails to comply with any requirement under this title is liable in an amount equal to the sum any actual damages sustained by the consumer as a result of the failure or, except in the case of class actions, \$300, whichever sum is greater.

This bill raises the maximum amount allowed as actual damages from \$300 to \$2,500.

Background

The genesis for this bill is the increase in the number of employers using background checks on applicants as a way of minimizing potential legal and financial exposure. This trend in employment reflects a long-standing practice of the rental housing community. Investigative consumer reporting agencies fill the need for such information. An "investigative consumer report" is a compilation of information collected on an individual applicant's character, habits, and reputation. Sources of information for these reports include interviews with family members, neighbors, associates, as well as court records and credit bureaus. It is closely related to a consumer credit report; however, unlike credit reports, there is no notification given to a person that they are the subject of an investigative consumer report.

FISCAL EFFECT: Appropriation: No Fiscal Com.: No Local: No

SUPPORT: (Verified 7/2/98)

Western Center for Law and Poverty
California Rural Legal Assistance Foundation

CONTINUED

Los Angeles Housing Law Project

ARGUMENTS IN SUPPORT: Supporters of this bill believe that it is an important step in protecting both the consumer and the subject of investigative consumer reports. The author recognizes that investigative consumer reports are a useful tool in selecting appropriate tenants, employees and insurance risks. These reports detail an applicant's mode of living, their reputation, their credit and criminal history, or involvement in civil law suit(s). This is all useful information, if true, in making the choice of whether to rent a home to a person, employ them, or extend them a personal insurance policy.

The information in these reports comes from personal interviews, as well as public documents. Often the information contained in these reports goes unverified. The author provided the committee with evidence of one man's problems caused by erroneous information contained in an investigative consumer report. Mr. Bronti Kelly had his wallet stolen, and his identity assumed by the thief. The thief was arrested numerous times under Mr. Kelly's name. For a period of three years Mr. Kelly (an Air Force reservist with a clean criminal history) was denied job after job, with no explanation. Finally, he was informed that an investigative consumer reporting agency had compiled a report on him, containing the criminal record of the thief who had stolen his wallet. This information was never verified by the agency, yet used by each company he interviewed with to deny him employment.

According to the author's office, under the current scheme of law, there is no notification to a subject that a report has been generated on them. The existing penalty of \$300 for false information contained in a report is not a sufficient incentive to insure accuracy. Consequently, there is no method to challenge or check the correctness of these reports. The author's office states that inaccurate reports obviously harm the potential renter, insured or employee; but they also harm landlords, insurance companies and employers, by denying them access to honest and productive persons. The author's office further states that the theme of this legislation is simple, yet will be effective in preventing reoccurrence of such situations as Mr. Kelly's, "disclosure, disclosure, disclosure."

RJG:cm/ctl 8/28/98 Senate Floor Analyses

SUPPORT/OPPOSITION: SEE ABOVE

**** END ****

CALIFORNIA

**SENATE COMMITTEE ON JUDICIARY
Bill Lookyer, Chairman
1993-94 Regular Session**

SENATE VOTE 22-11

AB 272 (Areias)
As amended July 7
Hearing date: August 17, 1993
Civil Code 1786 ✓
ART:GML

INVESTIGATIVE CONSUMER REPORTING AGENCIES

HISTORY

Source: California Public Interest Research Group (CALPIRG)

Prior Legislation: None

SUPPORT: California Teamsters Public Affairs Council

Opposition: No known

Assembly Floor vote: Ayes 47 - Noes 28

KEY ISSUE

SHOULD AN INVESTIGATIVE CONSUMER REPORTING AGENCY THAT IS HIRED BY AN EMPLOYER TO INVESTIGATE A POTENTIAL EMPLOYEE, BE PROHIBITED FROM SOLICITING INFORMATION THAT WOULD CONSTITUTE DISCRIMINATION IF ASKED BY THE EMPLOYER?

PURPOSE

Existing law states that it is unlawful for an employer, unless based on a bona fide occupational qualification, to discriminate against an employee because of race, religious creed, color, national origin, ancestry, physical handicap, medical condition, marital status, or sex.

(More)

This bill would prohibit investigative consumer reporting agencies from making any inquiry in the preparation of investigative consumer reports to be used for employment purposes which, if made by an employer, would constitute an unlawful discriminatory practice.

This bill would also require that an employer notify a job applicant before hiring an agency to perform an investigation, and provide the applicant with a copy of the report if he or she requested it.

Existing law limits some types of information that may be included in investigative consumer reports as well as the length of time some information may be retained in a consumer's file, except when the report is to be used in the underwriting of life insurance involving more than \$100,000 in the employment of an individual of an annual salary of \$30,000 a year or more, or in the rental of a dwelling which exceeds \$1000 per month. Currently, information about a bankruptcy may be reported only up to 14 years after adjudication in cases other than these.

This bill would conform with the Consumer Credit Reporting Act by limiting the number of years a bankruptcy could remain on file in an investigative consumer report to 10 years after adjudication.

The purpose of this bill is to make it unlawful for an employer to indirectly engage in discriminatory hiring practices through an investigative consumer reporting agency.

COMMENT

1. Stated need for legislation

According to the sponsor, this bill combats the practice a growing number of employers have adopted, whereby they purchase a consumer investigative report from a consumer reporting firm in order to obtain information which would, if asked directly in an interview, be prohibited as discriminatory. The reporting agencies routinely gain information about a consumer by soliciting responses from friends and neighbors of the person.

To the extent that questions regarding race, religion, or disabilities are currently prohibited in job interviews, this bill would equally prohibit them in a consumer investigative report.

(More)

2. Background on agencies

The legal definition of an investigative consumer reporting agency is any person who, for monetary fees, assembles or evaluates employment or insurance information, or information related to the hiring of dwelling units, for the purpose of furnishing investigative consumer reports to third parties to be used with respect to consumers for employment, insurance, or hiring of dwelling units. (This is different than consumer credit reporting agencies which investigate consumer credit only.)

In practice, investigative consumer reporting agencies prepare subjective reports about the character, general reputation, personal characteristics, and lifestyle of consumers. The information in these reports is obtained by personal interviews (including telephone inquiries) with neighbors, friends, associates, and others.

In this way, potential employers, insurers, or landlords indirectly gain information about religion, mental and physical disabilities, medical conditions, and affiliations without making direct inquiries. Then they may use this hearsay information to make crucial decisions relating to the consumer.

3. Similar New York legislation

The problem of consumer reporting agencies recently gained notice when numerous job applicants complained about the types of oral inquiries made by Equifax, an investigative consumer reporting agency employed by Delta Airlines to investigate potential employees. Legislation similar to AB 272 is pending in New York, where the New York Attorney General has filed a suit against Equifax for discriminatory practices.

4. Types of questions prohibited

Under this bill, consumer reporting agencies would be prohibited from asking questions which could lead to discrimination on the basis of race, color, religion, sex, marital status, national origin, ancestry, familial status or mental or physical disability, but only in reports for employment purposes.

Investigative consumer reporting agencies would not be prohibited from making these sorts of inquiries for other purposes, such as housing and insurance. Landlords, insurance companies, and other users of investigative services could continue to circumvent anti-discrimination laws.

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The Fair Employment and Housing Act provides the same standards for housing and employment. It makes no sense to allow investigative consumer reporting agencies to continue making discriminatory inquiries for housing purposes when the same standards apply.

SHOULD NOT DISCRIMINATORY INQUIRIES BE PROHIBITED FOR USE IN ALL TYPES OF INVESTIGATIVE CONSUMER REPORTS, OR AT THE VERY LEAST, SHOULD NOT DISCRIMINATORY INQUIRIES BE PROHIBITED FOR USE IN REPORTS FOR HOUSING PURPOSES IN ADDITION TO REPORTS FOR EMPLOYMENT PURPOSES?

5. Notice to potential employees

Under this bill, before an employer could request an investigative consumer report for employment purposes, the employer would have to provide a written notice to the potential employee. On this written notice the potential employee would be able to check off a box to receive a copy of the report. If the potential employee desired a copy, the employer would be responsible for requesting an additional copy from the agency and providing it at no charge.

SHOULD NOT NOTICE TO THE CONSUMER BE REQUIRED BEFORE ANY INQUIRY IS MADE FOR ANY PURPOSE, OR AT THE VERY LEAST, BEFORE INQUIRIES ARE MADE FOR HOUSING PURPOSES IN ADDITION TO EMPLOYMENT PURPOSES?

Additionally, the bill provides that the user and the consumer shall be given copies of the report contemporaneously. However, since investigative consumer reports are subjective in nature, there is some concern that the consumer should be provided with a copy of the report prior to the user. In the past, consumers have been adversely affected when reports included inaccurate information. For instance, one employee lost his job after Equifax included a false drug charge in their investigative report. If the employee had received a copy of the report in advance, he could have proven the information inaccurate. Instead, he was forced to take the case to court.

SHOULD NOT CONSUMERS BE PROVIDED WITH COPIES OF INVESTIGATIVE CONSUMER REPORTS PRIOR TO USERS?

6. Salary requirement needs to be updated

This section of the Civil Code limits investigative consumer reporting agencies in the types of information they may include in reports. For instance, bankruptcies and unsatisfied judgments may only be reported for up to 10 years, and records

(More)

of arrests and indictments may not be reported. However, these limitations do not apply under special circumstances. One circumstance which makes these protective provisions inapplicable is if the individual is being investigated for a job with a salary of more than \$30,000.

When this legislation was enacted in 1975, salaries of \$30,000 or more were paid only to highly professional employees. According to the Department of Finance Consumer Price Index, a salary of \$30,000 in 1975 would be worth \$85,400 today. The intent of the legislature at the time was to allow for more thorough checks on higher paid workers. However, in 1993, a much larger percentage of the population currently earns more than \$30,000 per year. Since this salary figure has never been adjusted, many people who this law originally covered are no longer protected by these limitations.

SHOULD NOT THIS SALARY FIGURE BE UPDATED ACCORDING TO THE CONSUMER PRICE INDEX?

7. Bankruptcies

This bill would conform the laws governing investigative consumer reporting agencies to recent changes in the statutes regarding consumer credit reporting agencies. Currently, investigative consumer reporting agencies may not include in a report, information about bankruptcies which antedate the report by more than 14 years. This bill would change the length of time a bankruptcy could remain in a report to 10 years after adjudication, the same time period as consumer credit reporting agencies.

(More)

Date of Hearing: June 23, 1998

ASSEMBLY COMMITTEE ON CONSUMER PROTECTION,
GOVERNMENTAL EFFICIENCY, AND ECONOMIC DEVELOPMENT
Susan Davis, Chair

SB 1454 (Leslie) - As Amended: June 18, 1998

SUBJECT: Modifies the regulation of investigative consumer reporting

SUMMARY: Specifically, this bill:

- 1) Prohibits an investigative consumer reporting agency from preparing or furnishing an investigative consumer report unless the subject of the investigation is informed of the report.
- 2) Requires that a copy of any report be available to the consumer for at least 60 days after the date the report is provided to the requesting entity.
- 3) Extends by six months, for a total of one year, the period for which investigative consumer reporting agencies must supply subjects of investigative reports with a record of all requests for reports for purposes other than employment or insurance screening.
- 4) Prohibits an investigative consumer reporting agency from furnishing specified information that is a matter of public record unless the agency has verified the accuracy of the information.
- 5) Prohibits an investigative consumer reporting agency from releasing adverse information obtained through a personal interview, unless there is independent confirmation of the information, or the person interviewed is the best possible source of the information.
- 6) Establishes a mechanism for resolving disputes over consumer investigative reports. Additionally, requires resolution within 30 days of notice of the dispute.
- 7) Requires investigative consumer reporting agencies to get the consent of the subject of an investigative report prior to accessing medical information.
- 8) Reduces the maximum reporting periods on bankruptcy information and other negative financial information from 14 and 10 years to 10 and seven years, respectively.
- 9) Revises the definition of the term investigative consumer report to mean a consumer report in which information is obtained through any means.
- 10) Revises the definition of the term investigative consumer reporting agency to mean any person who furnishes investigative consumer reports to third parties for consideration, including private investigators.
- 11) Raises the maximum amount allowed as actual damages due to violations of the act from \$300 to \$2,500.

- 12) Deletes a reporting exemption for private investigators.

EXISTING LAW:

- 1) Provides that if the completeness or accuracy of any item of information is disputed by a subject of a report, the investigative consumer reporting agency shall within a reasonable period of time, without charge, re-investigate and record the current status of the disputed information.
- 2) Requires an investigative consumer reporting agency to disclose the recipients of any investigative consumer report for employment or insurance purposes within the two-year period preceding the request and for any other purpose within the six-month period preceding the request.
- 3) Provides that an investigative consumer reporting agency shall only furnish an investigative consumer report if the information is i) to be used for employment, insurance, licensure, or in connection with the hiring of a dwelling unit or ii) required by court order.
- 4) Provides that any investigative consumer reporting agency or user of information that fails to comply with any requirement under this title is liable for actual damages sustained by the subject of a report or \$300, whichever is greater.
- 5) Allows consumer investigative reporting agencies to report bankruptcy information that is up to 14 years old and other adverse financial information (unsatisfied judgments) that is up to 10 years old.
- 6) Defines the term investigative consumer report as a consumer report in which information is obtained through personal interviews with neighbors, friends, or associates of the consumer reported on, or others with whom he or she is acquainted or who may have knowledge concerning any of these items of information.
- 7) Excludes private investigators from the definition of investigative consumer reporting agency.

FISCAL EFFECT: No direct effect.

COMMENTS:

- 1) Measure Intended to Protect Consumers From Inaccurate Personal Profiles

According to the author's office, the purpose of the bill is to protect individuals from inaccurate and false information contained in consumer investigative reports, which increasingly are used to determine employment, insurance, and housing eligibility. The measure seeks to do this by strengthening consumers' rights to have only accurate information collected about them and providing remedies such as requiring specified disclosures to consumers who are the subject of investigation, increasing penalties for violations, and establishing a mechanism for resolving disputes over report accuracy.

Supporters of this measure believe that this bill is an important step in protecting both the users (employers, landlords, insurance agencies) and the subjects of investigative consumer reports. Investigative consumer reports often serve as a screening tool in selecting tenants, employees,

and insurance risks. These reports develop personal profiles of individuals by detailing their mode of living, their reputation, their credit and criminal history, or involvement in civil law suit(s).

The information in these reports comes from personal interviews and public documents. However, a problem arises when the information contained in these reports, which often is of a subjective nature, goes unverified, with a potentially devastating impact on an individual's life. For example, the author's office presents a case where an individual, who had his identity assumed by a thief, was unable to find employment for several years due to a erroneous report which labeled him a thief because it contained the criminal record of the individual who has stolen his wallet. This information was never verified by the investigative agency; yet was used by each company he interviewed with to deny him employment. However, the individual was never informed that an investigative consumer reporting agency had compiled a report on him and thus had no opportunity to defend his name.

Supporters argue that under the current regulatory scheme there is no notification to a subject that a report has been generated on them and that the existing penalty of \$300 for false information contained in a report is not a sufficient incentive to insure accuracy. Furthermore, the lack of a method to challenge or check the correctness of these reports further leaves consumers at a disadvantage.

2) Measure Modeled After State Credit Reporting Law

The disclosure, right to review and correction, right of dispute, and penalties in the bill are modeled after the requirements based on issuers and users of consumer credit reports. For example, creditors are required to notify applicants of their actions on credit applications within 30 days of receiving an application. Additionally, the increase in actual damages collectable to \$2,500 mirrors the penalties in the law regulating credit reporting agencies.

3) Measure Conforms with Federal Law

As recently amended, the federal Fair Credit Reporting Act allows states to enforce the information requirements within consumer credit reporting laws in existence prior to the enactment of the Consumer Credit Reporting Act of 1996, and those provisions of law which are not in conflict with the federal code. According to the author's office, the bill has been drafted to mirror the federal language, so as to stay within the bounds of state authority to regulate consumer reports. As a result there does not appear to be any pre-emption issue raised by the bill.

4) Investigative Reports Now Subject to Shorter Reporting Periods

Existing state and federal law (California Consumer Reporting Agencies Act and the Federal Fair Credit Reporting Act) contain maximum reporting periods for specified information. Specifically, these laws, which apply to credit reports, limit consumer reporting agencies to a maximum reporting period of 10 years on bankruptcy information and seven years on other negative financial information, such as unsatisfied judgments.

The most recent amendments to the bill apply the same reporting restrictions to investigative reports.

REGISTERED SUPPORT / OPPOSITION:

Support

Western Center for Law and Poverty
California Rural Legal Assistance Foundation
Los Angeles Housing Law Project

Opposition

None on file

Analysis prepared by: Sailaja Cherukuri / aconpro / (916) 319-2089

JAN RAYMOND

LEGISLATIVE | HISTORY & INTENT

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ENROLLED BILL REPORT

Business, Transportation and Housing Agency

DEPARTMENT Department of Financial Institutions	AUTHOR Leslie and five coauthors	BILL NO. SB 1454
SPONSOR None	RELATED BILLS	DATE LAST AMENDED August 24, 1998
SUBJECT Investigative consumer reporting		

1. SUMMARY:

This bill would make numerous changes to the Investigative Consumer Reporting Agencies Act.

2. ANALYSIS:

A. Policy:

Existing law defines an "investigative consumer report" to mean a consumer report in which information of the consumer's character, general reputation, personal characteristics, or mode of living is obtained through personal interviews. Existing law defines an "investigative consumer reporting agency" as any person, who for a fee, assembles any information concerning consumers for specified purposes.

This bill would redefine "investigative consumer report" to mean a report in which information on a consumer's character, general reputation, personal characteristics, or mode of living is obtained through any means. This bill defines "investigative consumer reporting agency" as any person, who for a fee, assembles information concerning consumers for 3rd parties.

This bill creates an exception to the definition of "investigative consumer report" for transactions between investigative consumer reporting agencies and insurance institutions, agents, or insurance-support organizations by having the meaning of "investigative consumer report" defined as found in Section 791.02 of the Insurance Code ("a consumer report or portion thereof in which information about a natural person's character, general reputation, personal characteristics or mode of living is obtained through personal interviews with the person's neighbors, friends, associates, acquaintances or others who may have knowledge concerning such items of information").

VOTE: ASSEMBLY FLOOR Aye <u> 7 </u> 3 No <u> 0 </u>	VOTE: SENATE FLOOR Aye <u> 3 </u> 6 No <u> 0 </u>
Policy Comte. <u> CP, GE & ED </u> Aye <u> 1 </u> 1 No <u> 0 </u>	Policy Comte. <u> Judiciary </u> Aye <u> 8 </u> No <u> 0 </u>
RECOMMENDATION:	
SIGN	
DEPARTMENT: <u> Walter Murray </u> DATE: <u> 9-5-98 </u>	AGENCY: <u> Blumfeld </u> DATE: <u> 9-4-98 </u>
<u> Jan L. Owen </u>	BY: _____ DATE: _____

Existing law provides that a person may not obtain an investigative consumer report with respect to a consumer unless the person discloses in writing to the consumer that the report will be made.

This bill would require as a further condition for obtaining an investigative consumer report, that the person obtaining the report certify that they have made the required consumer disclosures. The consumer reporting agency would also be required to make the report available to the consumer for at least 60 days after the report is provided to the other person.

This bill prohibits an investigative consumer reporting agency from furnishing an investigative consumer report, if that report contains medical information about a consumer, to a person that: 1) intends to use the information for employment purposes; 2) intends to use the information as a factor in determining a consumer's eligibility for insurance or the rate for insurance; 3) intends to use the information in determining the consumer's eligibility for a license or other benefit granted by a governmental agency; 4) intends to use the information in an order of a court to provide support where enforcement of the order involves the consumer; or 5) intends to use the information in connection with a rental consideration. However, the consumer may consent to the furnishing of such a report.

Existing law provides that investigative consumer reports may not include, among other things, bankruptcies that antedate the report by more than 10 years, and arrest records, indictment, complaints, conviction of a crime, suits, paid tax liens, accounts placed for collection, unsatisfied judgments and satisfied judgments that antedate the report by 7 years. This bill exempts from this prohibition investigative consumer reports used in the following transactions: underwriting of life insurance involving \$150,000 or more; employment of an individual at an annual salary that exceeds \$75,000; or the rental of a dwelling unit that exceeds \$2,000 per month.

This bill specifies that information relating to an arrest, indictment, conviction, civil action, tax lien or outstanding judgment may not be included in a report unless verified by the agency not more than thirty days prior to the date of the report, and adverse information obtained through a personal interview, may not be included unless verified by a second party or the interviewee is the best source of the information.

Existing law gives consumers the right to dispute inaccurate information contained in an investigative consumer report and bring an action to recover damages for violations of the act in an amount equal to the greater of actual damages or \$300.

This bill adds new procedures and notice requirements relating to the investigation of disputes by consumers and the deletion of information in a consumer's file that is determined to be inaccurate, and increases the minimum amount of damages recoverable by a consumer for violations of the act from \$300 to \$2,500.

Existing law provides that a reasonable fee may be charged to a consumer to receive a copy of the consumer investigative report.

This bill would specify the cost of such report not to exceed \$8, and provide a copy free of charge not more than once every year to a consumer who is unemployed, seeking employment, receives public welfare assistance, or believes their file contains inaccurate information due to fraud.

B. Fiscal:

None

3. SPONSOR:

None

4. PRO & CON:

A. Arguments in Support of the Bill:

This bill will protect individuals from inaccurate and false information contained in consumer investigative reports by providing consumer access to the reports generated, providing remedies to dispute inaccurate information, increasing penalties for violations, and establishing a mechanism for resolving disputes over report accuracy.

Permitting any adverse item to be reported for large transactions will provide a greater level of investigation commensurate with the risks associated with these transactions.

B. Arguments in Opposition to the Bill:

By allowing any adverse item, no matter how old, to be reported for transactions where large sums are involved, suggests that middle and upper income individuals should not be afforded the same level of privacy and consumer protection as lower income individuals.

5. RECOMMENDATION:

The Department of Financial institutions recommends that the Governor Sign this bill. The bill will protect individuals from inaccurate and false information contained in consumer investigative reports by providing consumer access to the reports generated, providing remedies to dispute inaccurate information, increasing penalties for violations, and establishing a mechanism for resolving disputes over report accuracy.

6. FOR FURTHER INFORMATION CONTACT:

Name	Jan Lynn Owen
Title	Deputy Commissioner
Office Phone Number	(916) 322-0282
Home Phone Number	(916) 455-8420
Pager	(800) 718-4864
Cell Phone	214-0404

NO ENROLLED BILL REPORT REQUIRED

TL:gtc

Business, Transportation & Housing Agency

DEPARTMENT CORPORATIONS	AUTHOR Leslie	BILL NO. SB 1454
SUBJECT Investigative Consumer Reporting		DATE LAST AMENDED August 24, 1998

No Concern.

Technical Bill. No program or fiscal changes to existing program. No analysis required. No recommendation on signature.

Bill as enrolled no longer within scope of responsibility or program of this Department.

Comments:

In general, SB 1454 makes various changes to the Investigative Consumer Reporting Agencies Act to strengthen consumers' rights by having only accurate information collected about them, providing enhanced remedies such as requiring specified disclosures to consumers who are the subject of investigation, increasing penalties for violations, and establishing a mechanism for resolving disputes over report accuracy.

Accordingly, this bill does not impact the Department of Corporations ("DOC") as the DOC does not administer the Investigative Consumer Reporting Agencies Act and the bill does not affect any of the laws administered by the DOC.

Deference is given to the State and Consumer Services Agency (e.g., Department of Consumer Affairs) for a recommendation on SB 1454.

Contact: Timothy L. Le Bas
 Title: Senior Corporations Counsel
 Phone No.: (916) 322-3977

DEPARTMENT DALE E. BONNER Commissioner of Corporations	DATE 9-2-98	AGENCY Campbell	DATE 9-4-98	BY:	DATE:
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Analyst Name: Tara Powers
Phone Number: 323-5450

STATE AND CONSUMER SERVICES AGENCY

NO ENROLLED BILL REPORT REQUIRED

DEPARTMENT CONSUMER AFFAIRS	AUTHOR Leslie	BILL NUMBER SB 1454
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- Technical bill - no program or fiscal changes to existing program. No analysis required. No recommendation on signature.
- Bill as enrolled no longer within scope of responsibility or program of this Department.
- Analysis not required of this bill. Not within the scope of responsibility of this department.

Existing law:

- Establishes requirements for investigative consumer reports and investigative consumer reporting agencies.

This bill would:

Make substantive and technical changes to that, such as:

- Changing the definition of "investigative consumer reports" from information on a consumer's character, general reputation, personal characteristics, or mode of living obtained from personal interviews with neighbors, friends, or associates of the consumer reported on, to information obtained through any means.
- Exempting insurance institutions from the law.
- Deleting a provision that prohibits consumers from viewing medical information contained in their investigative consumer reports.
- Requiring the person asking for the report to provide the consumer with specified disclosures.
- Reducing the maximum reporting periods for bankruptcy information from 14 years to 10 years, and for other negative financial information from 10 years to seven years, but providing that the maximum reporting periods on bankruptcy, other negative financial information, and criminal history do not apply when an investigative consumer report is used for life insurance policies of \$150,000 or more, employment of an individual who earns \$75,000 or more, or rental of a dwelling unit with a monthly rent of \$2,000 or more.

RECOMMENDATION

DEFER to the Department of Financial Institutions.

Refer to BT#

DEPARTMENT DIRECTOR

DATE

AGENCY SECRETARY

DATE

R. J. [Signature]

9/13/98

[Signature]

9/13/98

NEBR 98

- **Prohibiting investigative consumer reporting agencies from releasing adverse information obtained from an interview, unless there is independent confirmation of the information, or the person interviewed is the best source of information.**
- **Proscribe additional procedures for resolving disputes, and requiring resolution of these disputes within 30 days of the notice of the dispute.**
- **Increasing the minimum damages recoverable by a consumer (as an alternative for actual damages incurred) for a violation of the law from \$300 to \$2,500.**

The Department of Consumer Affairs has no concerns with SB 1454, and it has no impact on the Bureau of Security and Investigative Services. We DEFER to the Department of Financial Institutions, which is completing an enrolled bill report with a recommendation.

EXHIBIT K

2001 Cal. Legis. Serv. Ch. 354 (A.B. 655) (WEST)

CALIFORNIA 2001 LEGISLATIVE SERVICE
2001 Portion of 2001-2002 Regular Session

Additions are indicated by <<+ Text +>>; deletions by
<<- * * * ->>. Changes in tables are made but not highlighted.

CHAPTER 354

A.B. No. 655

CONSUMER PROTECTION—CREDITORS—PERSONAL IDENTIFICATION INFORMATION

AN ACT to amend Sections 1785.10, 1785.16, 1786, 1786.2, 1786.10, 1786.11, 1786.16, 1786.18, 1786.20, 1786.24, 1786.26, 1786.28, 1786.50, and 1786.52 of, to add Sections 1785.11.8, 1785.16.1, 1785.16.2, 1785.20.3, 1786. 29, and 1786.53 to, to add Title 1.81.3 (commencing with Section 1798.92) to Part 4 of Division 3 of, and to repeal Article 3 (commencing with Section 1786.40) of Title 1.6A of Part 4 of Division 3 of, the Civil Code, relating to personal identifying information.

[Filed with Secretary of State September 27, 2001.]

LEGISLATIVE COUNSEL'S DIGEST

AB 655, Wright. Personal identifying information: identity theft.

Existing law requires consumer credit report agencies to allow a consumer to elect to have his or her name removed from any list provided by the consumer credit reporting agencies for firm offers of credit that are not initiated by the consumer, as specified.

This bill would permit a consumer to specify, either verbally or in writing, that his or her name shall be removed from lists that a consumer credit reporting agency furnishes for credit card solicitations for a minimum of two years, and that consumer credit reporting agencies would be required to inform a consumer of this option, as specified.

Existing law provides a process by which a consumer may dispute the accuracy of information in a consumer credit report. Existing law requires a consumer credit reporting agency to promptly and permanently block certain information when a consumer provides a valid copy of a police report indicating that another person has unlawfully used the consumer's personal identifying information.

This bill additionally would require a consumer credit reporting agency to promptly and permanently block certain information when a consumer provides a valid copy of a Department of Motor Vehicles investigative report indicating that another person has unlawfully used the consumer's personal identifying information. The bill would set forth requirements regarding the unblocking of certain information by a consumer reporting agency after an allegation of identity theft by a consumer, and would permit a consumer reporting agency to disregard a consumer's version of disputed information, as specified. This bill would also require that a consumer credit reporting agency delete from a consumer credit report inquiries for credit reports that were initiated as the result of identity theft.

Existing law places certain requirements on users of consumer credit reports, including the right of the consumer to prohibit the use of information in a consumer's files in connection with credit transactions not initiated by the consumer.

This bill would require any person who uses a consumer credit report in connection with a credit transaction and who discovers that the address on the consumer credit report does not match the address of the consumer requesting or being offered credit to take reasonable steps to verify the accuracy of the consumer's address, as specified, and confirm that the

credit transaction is not the result of defined identity theft. This bill would create similar requirements for any person who uses a consumer credit report in connection with a credit transaction and who receives specified notification from a consumer credit reporting agency that information in the report has been blocked as the result of an identity theft. This bill would provide that a consumer damaged by a failure to fulfill the above described requirements would have a claim against the person using the report, as specified.

Existing law restricts the dissemination of certain types of personal identifying information by specific professions and businesses. Existing law also provides, generally, that a consumer is not liable on debt incurred by a 3rd party, and limits a consumer's liability on the unauthorized use of a credit card, as defined.

This bill would allow a person to bring a cause of action against a claimant to establish that the person is a victim of identity theft, as defined; or if the claimant has brought a cause of action to recover on its claim, the bill would allow the person to file a cross complaint to establish that the person is a victim of identity theft in connection with the claim. This bill would allow the victim to obtain a judgment that, among other things, declares the victim is not obligated on these claims, that declares void any security interests in the victim's property, that provides for an injunction restraining attempts to collect on these claims, that may include actual damages and equitable relief as the court deems appropriate, that may include a civil penalty up to \$30,000 and that awards reasonable attorney's fees and costs. This bill would allow the victim to join any person purporting to have a claim that the victim maintains arises from identity theft in the action regardless of whether those claims arise out of the same transaction or occurrence. The bill would also provide for continuing jurisdiction in these actions and the limitation on bringing actions or joining defendants with respect to the action.

Existing law regulates the activities of investigative consumer reporting agencies, as specified.

This bill would revise and recast various provisions governing the activities of investigative consumer reporting agencies. Among other things, it would expand the definition of "investigative consumer reporting agency," increase disclosure requirements, eliminate certain exemptions, increase penalties for violations, and would make related changes.

The bill would prohibit creditors from selling a consumer debt to a debt collector, except as specified, if the consumer's file with a consumer credit reporting agency is blocked or the creditor has reason to believe the consumer is a victim of identity theft. The bill would also prohibit persons who gather specified information on a consumer in lieu of using the services of an investigative consumer reporting agency to provide that information to the consumer.

This bill would incorporate additional changes in Section 1785.10 of the Civil Code proposed by AB 488 to become operative only if this bill and AB 488 are both enacted on or before January 1, 2002, each bill amends Section 1785.10 of the Civil Code, and this bill is enacted last.

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

SECTION 1. Section 1785.10 of the Civil Code is amended to read:

<< CA CIVIL § 1785.10 >>

1785.10. (a) Every consumer credit reporting agency shall, upon request and proper identification of any consumer, allow the consumer to visually inspect all files maintained regarding that consumer at the time of the request.

(b) Every consumer reporting agency, upon contact by a consumer by telephone, mail, or in person regarding information which may be contained in the agency files regarding that consumer, shall promptly advise the consumer of his or her rights under Sections <<+1785.11.8,+>> 1785.19<<+,+>> and 1785.19. 5, and of the obligation of the agency to provide disclosure of the files in person, by mail, or by telephone pursuant to Section 1785.15, including the obligation of the agency to provide a decoded written version of the file or a written copy of the file with an explanation of any code, including any credit score used, and the key factors, as defined in Section 1785.15.1, if the consumer so requests that copy. The disclosure shall be provided in the manner selected by the consumer, chosen from among any reasonable means available to the consumer credit reporting agency.

The agency shall determine the applicability of subdivision (1) of Section 1785.17 and, where applicable, the agency shall inform the consumer of the rights under that section.

(c) All information on a consumer in the files of a consumer credit reporting agency at the time of a request for inspection under subdivision (a), shall be available for inspection, including the names and addresses of the sources of information.

(d)(1) The consumer credit reporting agency shall also disclose the recipients of any consumer credit report on the consumer which the consumer credit reporting agency has furnished:

(A) For employment purposes within the two-year period preceding the request.

(B) For any other purpose within the 12-month period preceding the request.

(2) Disclosure of recipients of consumer credit reports for purposes of this subdivision shall include the name of the recipient or, if applicable, the fictitious business name under which the recipient does business disclosed in full. If requested by the consumer, the identification shall also include the address of the recipient.

(e) The consumer credit reporting agency shall also disclose a record of all inquiries received by the agency in the 12-month period preceding the request that identified the consumer in connection with a credit transaction which is not initiated by the consumer. This record of inquiries shall include the name of each recipient making an inquiry.

SEC. 1.5. Section 1785.10 of the Civil Code is amended to read:

<< CA CIVIL § 1785.10 >>

1785.10. (a) Every consumer credit reporting agency shall, upon request and proper identification of any consumer, allow the consumer to visually inspect all files maintained regarding that consumer at the time of the request.

(b) Every consumer reporting agency, upon contact by a consumer by telephone, mail, or in person regarding information which may be contained in the agency files regarding that consumer, shall promptly advise the consumer of his or her rights under Sections <<+1785.11.8,+>> 1785.19<<+,+>> and 1785.19. 5, and of the obligation of the agency to provide disclosure of the files in person, by mail, or by telephone pursuant to Section 1785.15, including the obligation of the agency to provide a decoded written version of the file or a written copy of the file with an explanation of any code, including any credit score used, and the key factors, as defined in Section 1785.15.1, if the consumer so requests that copy. The disclosure shall be provided in the manner selected by the consumer, chosen from among any reasonable means available to the consumer credit reporting agency.

The agency shall determine the applicability of subdivision (1) of Section 1785.17 and, where applicable, the agency shall inform the consumer of the rights under that section.

(c) All information on a consumer in the files of a consumer credit reporting agency at the time of a request for inspection under subdivision (a), shall be available for inspection, including the names<<+,+>> addresses <<.* * *->><<+and, if provided by +>> the sources of information<<+, the telephone numbers identified for customer service for the sources of information+>>.

(d)(1) The consumer credit reporting agency shall also disclose the recipients of any consumer credit report on the consumer which the consumer credit reporting agency has furnished:

(A) For employment purposes within the two-year period preceding the request.

(B) For any other purpose within the 12-month period preceding the request.

(2) Disclosure of recipients of consumer credit reports for purposes of this subdivision shall include the name of the recipient or, if applicable, the fictitious business name under which the recipient does business disclosed in full. <<.* * *->><<+T+>>he identification shall also include the address <<.* * *->><<+and, if provided by the recipient, the telephone number identified for customer service for+>> the recipient.

(e) The consumer credit reporting agency shall also disclose a record of all inquiries received by the agency in the 12-month period preceding the request that identified the consumer in connection with a credit transaction which is not initiated by the consumer. This record of inquiries shall include the name<<.* * *->><<+, address and, if provided by the recipient, the telephone number identified for customer service for+>> each recipient making an inquiry.

<<+(f) Any consumer credit reporting agency when it is subject to the provisions of Section 1785.22 is exempted from the requirements of subdivisions (c), (d), and (e), only with regard to the provision of the address and telephone number.+>>

<<+(g) Any consumer credit reporting agency, that provides a consumer credit report to another consumer credit reporting agency that procures the consumer credit report for the purpose of resale and is subject to Section 1785.22, is exempted from the requirements of subdivisions (d) and (e), only with regard to the provision of the address and telephone number regarding each prospective user to which the consumer credit report was sold.+>>

SEC. 2. Section 1785.11.8 is added to the Civil Code, to read:

<< CA CIVIL § 1785.11.8 >>

1785.11.8. A consumer may elect that his or her name shall be removed from any list that a consumer credit reporting agency furnishes for credit card solicitations, by notifying the consumer credit reporting agency, by telephone or in writing, pursuant to the notification system maintained by the consumer credit reporting agency pursuant to subdivision (d) of Section 1785.11. The election shall be effective for a minimum of two years, unless otherwise specified by the consumer.

SEC. 3. Section 1785.16 of the Civil Code is amended to read:

<< CA CIVIL § 1785.16 >>

1785.16. (a) If the completeness or accuracy of any item of information contained in his or her file is disputed by a consumer, and the dispute is conveyed directly to the consumer credit reporting agency by the consumer or user on behalf of the consumer, the consumer credit reporting agency shall within a reasonable period of time and without charge, reinvestigate and record the current status of the disputed information before the end of the 30-business-day period beginning on the date the agency receives notice of the dispute from the consumer or user, unless the consumer credit reporting agency has reasonable grounds to believe and determines that the dispute by the consumer is frivolous or irrelevant, including by reason of a failure of the consumer to provide sufficient information, as requested by the consumer credit reporting agency, to investigate the dispute. Unless the consumer credit reporting agency determines that the dispute is frivolous or irrelevant, before the end of the five-business-day period beginning on the date the consumer credit reporting agency receives notice of dispute under this section, the agency shall notify any person who provided information in dispute at the address and in the manner specified by the person. A consumer credit reporting agency may require that disputes by consumers be in writing.

(b) In conducting that reinvestigation the consumer credit reporting agency shall review and consider all relevant information submitted by the consumer with respect to the disputed item of information. If the consumer credit reporting agency determines that the dispute is frivolous or irrelevant, it shall notify the consumer by mail or, if authorized by the consumer for that purpose, by any other means available to the consumer credit reporting agency, within five business days after that determination is made that it is terminating its reinvestigation of the item of information. In this notification, the consumer credit reporting agency shall state the specific reasons why it has determined that the consumer's dispute is frivolous or irrelevant. If the disputed item of information is found to be inaccurate, missing, or can no longer be verified by the evidence submitted, the consumer credit reporting agency shall promptly add, correct, or delete that information from the consumer's file.

(c) No information may be reinserted in a consumer's file after having been deleted pursuant to this section unless the person who furnished the information certifies that the information is accurate. If any information deleted from a consumer's file is reinserted in the file, the consumer credit reporting agency shall promptly notify the consumer of the reinsertion in writing or, if authorized by the consumer for that purpose, by any other means available to the consumer credit reporting agency. As part of, or in addition to, this notice the consumer credit reporting agency shall, within five business days of reinserting the information, provide the consumer in writing (1) a statement that the disputed information has been reinserted, (2) a notice that the agency will provide to the consumer, within 15 days following a request, the name, address, and telephone number of any furnisher of information contacted or which contacted the consumer credit reporting agency in connection with the reinsertion, (3) the toll-free telephone number of the consumer credit reporting agency that the consumer can use to obtain this name, address, and telephone number, and (4) a notice that the consumer has the right to a reinvestigation of the information reinserted by the consumer credit reporting agency and to add a statement to his or her file disputing the accuracy or completeness of the information.

(d) A consumer credit reporting agency shall provide written notice to the consumer of the results of any reinvestigation under this subdivision, within five days of completion of the reinvestigation. The notice shall include (1) a statement that the reinvestigation is completed, (2) a consumer credit report that is based on the consumer's file as that file is revised as a result of the reinvestigation, (3) a description or indication of any changes made in the consumer credit report as a result of those revisions to the consumer's file and a description of any changes made or sought by the consumer that were not made and an explanation why they were not made, (4) a notice that, if requested by the consumer, a description of the procedure used to determine the accuracy and completeness of the information shall be provided to the consumer by the consumer credit reporting

agency, including the name, business address, and telephone number of any furnisher of information contacted in connection with that information, (5) a notice that the consumer has the right to add a statement to the consumer's file disputing the accuracy or completeness of the information, (6) a notice that the consumer has the right to request that the consumer credit reporting agency furnish notifications under subdivision (h), (7) a notice that the dispute will remain on file with the agency as long as the credit information is used, and (8) a statement about the details of the dispute will be furnished to any recipient as long as the credit information is retained in the agency's data base. A consumer credit reporting agency shall provide the notice pursuant to this subdivision respecting the procedure used to determine the accuracy and completeness of information, not later than 15 days after receiving a request from the consumer.

(e) The presence of information in the consumer's file that contradicts the contention of the consumer shall not, in and of itself, constitute reasonable grounds for believing the dispute is frivolous or irrelevant.

(f) If the consumer credit reporting agency determines that the dispute is frivolous or irrelevant, or if the reinvestigation does not resolve the dispute, or if the information is reinserted into the consumer's file pursuant to subdivision (c), the consumer may file a brief statement setting forth the nature of the dispute. The consumer credit reporting agency may limit these statements to not more than 100 words if it provides the consumer with assistance in writing a clear summary of the dispute.

(g) Whenever a statement of dispute is filed, the consumer credit reporting agency shall, in any subsequent consumer credit report containing the information in question, clearly note that the information is disputed by the consumer and shall include in the report either the consumer's statement or a clear and accurate summary thereof.

(h) Following the deletion of information from a consumer's file pursuant to this section, or following the filing of a statement of dispute pursuant to subdivision (f), the consumer credit reporting agency, at the request of the consumer, shall furnish notification that the item of information has been deleted or that the item of information is disputed. In the case of disputed information, the notification shall include the statement or summary of the dispute filed pursuant to subdivision (f). This notification shall be furnished to any person designated by the consumer who has, within two years prior to the deletion or the filing of the dispute, received a consumer credit report concerning the consumer for employment purposes, or who has, within 12 months of the deletion or the filing of the dispute, received a consumer credit report concerning the consumer for any other purpose, if these consumer credit reports contained the deleted or disputed information. The consumer credit reporting agency shall clearly and conspicuously disclose to the consumer his or her rights to make a request for this notification. The disclosure shall be made at or prior to the time the information is deleted pursuant to this section or the consumer's statement regarding the disputed information is received pursuant to subdivision (f).

(i) A consumer credit reporting agency shall maintain reasonable procedures to prevent the reappearance in a consumer's file and in consumer credit reports of information that has been deleted pursuant to this section and not reinserted pursuant to subdivision (c).

(j) If the consumer's dispute is resolved by deletion of the disputed information within three business days, beginning with the day the consumer credit reporting agency receives notice of the dispute in accordance with subdivision (a), and provided that verification thereof is provided to the consumer in writing within five business days following the deletion, then the consumer credit reporting agency shall be exempt from requirements for further action under subdivisions (d), (f), and (g).

(k) If a consumer submits to a credit reporting agency a copy of a valid police report<<+, or a valid investigative report made by a Department of Motor Vehicles investigator with peace officer status,+>> filed pursuant to Section 530.5 of the Penal Code, the consumer credit reporting agency shall promptly and permanently block reporting any information that the consumer alleges appears on his or her credit report as a result of a violation of Section 530.5 of the Penal Code so that the information cannot be reported. The consumer credit reporting agency shall promptly notify the furnisher of the information that the information has been so blocked. Furnishers of information and consumer credit reporting agencies shall ensure that information is unblocked only upon a preponderance of the evidence establishing the facts required under paragraph (1), (2), or (3). The permanently blocked information shall be unblocked only if: (1) the information was blocked due to <<+a material misrepresentation of fact by the consumer or+>> fraud, or (2) the consumer agrees that the blocked information, or portions of the blocked information, were blocked in error, or (3) the consumer knowingly obtained possession of goods, services, or moneys as a result of the blocked transaction or transactions or the consumer should have known that he or she obtained possession of goods, services, or moneys as a result of the blocked transaction or transactions. If blocked information is unblocked pursuant to this subdivision, the consumer shall be promptly notified in the same manner as consumers are notified of the reinsertion of information pursuant to subdivision (c). The prior presence of the blocked information in the consumer credit reporting agency's file on the consumer

is not evidence of whether the consumer knew or should have known that he or she obtained possession of any goods, services, or moneys. For the purposes of this subdivision, fraud may be demonstrated by circumstantial evidence. In unblocking information pursuant to this subdivision, furnishers and consumer credit reporting agencies shall be subject to their respective requirements pursuant to this title regarding the completeness and accuracy of information.

<<+(l) In unblocking information as described in subdivision (k), a consumer reporting agency shall comply with all requirements of this section and 15 U. S.C. Sec. 1681i relating to reinvestigating disputed information. In addition, a consumer reporting agency shall accept the consumer's version of the disputed information and correct or delete the disputed item when the consumer submits to the consumer reporting agency documentation obtained from the source of the item in dispute or from public records confirming that the report was inaccurate or incomplete, unless the consumer reporting agency, in the exercise of good faith and reasonable judgment, has substantial reason based on specific, verifiable facts to doubt the authenticity of the documentation submitted and notifies the consumer in writing of that decision, explaining its reasons for unblocking the information and setting forth the specific, verifiable facts on which the decision was based.+>>

<<+(m)+>> Any provision in a contract that prohibits the disclosure of a credit score by a person who makes or arranges loans or a consumer credit reporting agency is void. A lender shall not have liability under any contractual provision for disclosure of a credit score.

SEC. 4. Section 1785.16.1 is added to the Civil Code, to read:

<< CA CIVIL § 1785.16.1 >>

1785.16.1. A consumer credit reporting agency shall delete from a consumer credit report inquiries for credit reports based upon credit requests that the consumer credit reporting agency verifies were initiated as the result of identity theft, as defined in Section 1798.92.

SEC. 4.5. Section 1785.16.2 is added to the Civil Code, to read:

<< CA CIVIL § 1785.16.2 >>

1785.16.2. (a) No creditor may sell a consumer debt if the consumer's file with a consumer credit reporting agency is blocked with respect to that debt pursuant to subdivision (k) of Section 1785.16, or if the consumer has provided the creditor with sufficient information in writing that the consumer is not obligated to pay the debt because he or she is a victim of identity theft, as defined in subdivision (d) of Section 1798.92, for the creditor to have reasonable grounds to determine that consumer's statement of identity theft is not frivolous.

(b) Subdivision (a) does not apply to a creditor's sale of a debt to a subsidiary or affiliate of the creditor.

SEC. 5. Section 1785.20.3 is added to the Civil Code, to read:

<< CA CIVIL § 1785.20.3 >>

1785.20.3. (a) Any person who uses a consumer credit report in connection with a credit transaction, and who discovers that the address on the consumer credit report does not match the address of the consumer requesting or being offered credit, shall take reasonable steps to verify the accuracy of the consumer's address, and shall either communicate to consumer by telephone, or write the consumer, to confirm that the credit transaction is not the result of identity theft, as defined in Section 1798.90.

(b) Any person who uses a consumer credit report in connection with a credit transaction, and who receives a clearly identifiable notification, consisting of more than a tradeline, from a consumer credit reporting agency that information in the report has been blocked pursuant to Section 1785.16 as the result of an identity theft, shall not lend money or extend credit without taking reasonable steps to verify the consumer's identity and to confirm that the credit transaction is not the result of identity theft.

(c) Any consumer who suffers damages as a result of a violation of this section by any person may bring an action in a court of appropriate jurisdiction against that person to recover actual damages, court costs, attorney's fees, and punitive damages of not more than thirty thousand dollars (\$30,000) for each violation, as the court deems proper.

(d) As used in this section, "identity theft" has the meaning given in Section 1798.90.

SEC. 6. Section 1786 of the Civil Code is amended to read:

<< CA CIVIL § 1786 >>

1786. The Legislature finds and declares as follows:

(a) Investigative consumer reporting agencies have assumed a vital role in <<+collecting,+>> assembling<<+,+>> evaluating<<+, compiling, reporting, transmitting, transferring, or communicating+>> information on consumers for employment and insurance purposes, and for purposes relating to the hiring of dwelling units<<+, subpoenas and court orders, licensure, and other lawful purposes+>>.

(b) There is a need to insure that investigative consumer reporting agencies exercise their grave responsibilities with fairness, impartiality, and a respect for the consumer's right to privacy.

<<+(c) The crime of identity theft in this new computer era has exploded to become the fastest growing white collar crime in America.+>>

<<+(d) The unique nature of this crime means it can often go undetected for years without the victim being aware his identity has been misused.+>>

<<+(e) Because notice of identity theft is critical before the victim can take steps to stop and prosecute this crime, consumers are best protected if they are automatically given copies of any investigative consumer reports made on them.+>>

<<+(f)+>> It is the purpose of this title to require that investigative consumer reporting agencies adopt reasonable procedures for meeting the needs of commerce for employment, insurance information, and information relating to the hiring of dwelling units in a manner which is fair and equitable to the consumer, with regard to the confidentiality, accuracy, relevancy, and proper utilization of <<+the+>> information in accordance with the requirements of this title.

<<+(g)+>> The Legislature hereby intends to regulate investigative consumer reporting agencies pursuant to this title in a manner which will best protect the interests of the people of the State of California.

SEC. 7. Section 1786.2 of the Civil Code is amended to read:

<< CA CIVIL § 1786.2 >>

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.

(g) The term "medical information" means information on a person's medical history or condition obtained directly or indirectly from a licensed physician, medical practitioner, hospital, clinic, or other medical or medically related facility.

SEC. 8. Section 1786.10 of the Civil Code is amended to read:

<< CA CIVIL § 1786.10 >>

1786.10. (a) Every investigative consumer reporting agency shall, upon request and proper identification of any consumer, allow the consumer to visually inspect all files maintained regarding the consumer at the time of the request.

(b) All items of information shall be available for inspection, except that the sources of information<<+, other than public records and records from data bases available for sale,+>> acquired solely for use in preparing an investigative consumer report and actually used for no other purpose need not be disclosed. However, if an action is brought under this title, those sources shall be available to the consumer under appropriate discovery procedures in the court in which the action is brought.

Nothing in this title shall be interpreted to mean that investigative consumer reporting agencies are required to divulge to consumers the sources of investigative consumer reports except in appropriate discovery procedures as outlined herein.

(c) The investigative consumer reporting agency shall also identify the recipients of any investigative consumer report on the consumer that the investigative consumer reporting agency has furnished:

(1) For employment or insurance purposes within the <<+three-year+>> period preceding the request.

(2) For any other purpose within the <<+three-year+>> period preceding the request.

(d) The identification of a recipient under subdivision (c) shall include the name of the recipient or, if applicable, the trade name (written in full) under which the recipient conducts business and, upon request of the consumer, the address and telephone number of the recipient.

(e) The investigative consumer reporting agency shall also disclose the dates, original payees, and amounts of any checks or charges upon which is based any adverse characterization of the consumer, included in the file at the time of the disclosure.

SEC. 9. Section 1786.11 of the Civil Code is amended to read:

<< CA CIVIL § 1786.11 >>

1786.11. Every investigative consumer reporting agency that provides an investigative consumer report to a person other than the consumer shall make a copy of that report available, upon request and proper identification, to the consumer for at least <<-* * *->><<+three years+>> after the date that the report is provided to the other person.

SEC. 10. Section 1786.16 of the Civil Code is amended to read:

<< CA CIVIL § 1786.16 >>

1786.16. (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) If an investigative consumer report is sought in connection with the underwriting of insurance, it shall be clearly and accurately disclosed in writing at the time the application form, medical form, binder, or similar document is signed by the consumer that an investigative consumer report regarding the consumer's character, general reputation, personal characteristics, and mode of living may be made. If no signed application form, medical form, binder, or similar document is involved in the underwriting transaction, the disclosure shall be made to the consumer in writing and mailed or otherwise delivered to the consumer not later than three days after the report was first requested. <<+The disclosure shall include the name and address of any investigative consumer reporting agency conducting an investigation, plus the nature and scope of the investigation requested, and a summary of the provisions of Section 1786.22.+>>

(2) If, at any time, an investigative consumer report is sought for employment purposes other than <<-* * *->><<+suspicion of wrongdoing by the subject of the investigation+>>, the person procuring or causing the report to be made shall, not later than three days after the date on which the report was first requested, notify the consumer in writing that an investigative

consumer report regarding the consumer's character, general reputation, personal characteristics, and mode of living will be made. This notification shall include the name <<+and address+>> of the investigative consumer reporting agency conducting the investigation<<+, the nature and scope of the investigation requested,+>> and a summary of the provisions of Section 1786.22.

(3) If an investigative consumer report is sought in connection with the hiring of a dwelling unit, as defined in subdivision (c) of Section 1940, the person procuring or causing the request to be made shall, not later than three days after the date on which the report was first requested, notify the consumer in writing that an investigative consumer report will be made regarding the consumer's character, general reputation, personal characteristics, and mode of living. The notification shall also include the name and address of the investigative consumer reporting agency that will prepare the report <<+and a summary of the provisions of Section 1786.22+>>.

(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 regarding that consumer shall provide the consumer with a copy of the report and information on who issued the report and how to contact them, either at the time of the meeting or interview between the consumer and the person who requests an investigative consumer report regarding that consumer or within seven days of the date such person receives the report, whichever is earlier+>>.

(c) The provisions of subdivision (a) shall not apply to an investigative consumer report procured or caused to be prepared by an employer if the purpose of the employer is to determine whether to retain an employee when there is a good faith belief that the employee is engaged in any criminal activity likely to result in a loss to the employer.

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

SEC. 11. Section 1786.18 of the Civil Code is amended to read:

<< CA CIVIL § 1786.18 >>

1786.18. (a) Except as authorized under subdivision (b), no investigative consumer reporting agency shall make or furnish 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.

(d) An investigative consumer reporting agency shall not prepare or furnish an investigative consumer report on a consumer that contains information that is adverse to the interest of the consumer and that is obtained through a personal interview with a neighbor, friend, or associate of the consumer or with another person with whom the consumer is acquainted or who has knowledge of the item of information, unless either (1) the investigative consumer reporting agency has followed reasonable procedures to obtain confirmation of the information, from an additional source that has independent and direct knowledge of the information, or (2) the person interviewed is the best possible source of the information.

SEC. 12. Section 1786.20 of the Civil Code is amended to read:

<< CA CIVIL § 1786.20 >>

1786.20. (a) Every investigative consumer reporting agency shall maintain reasonable procedures designed to avoid violations of Section 1786.18 and to limit furnishing of investigative consumer reports for the purposes listed under Section 1786.12. These procedures shall require that prospective users of the information identify themselves, certify the purposes for which the information is sought and that the information will be used for no other purposes, and make the certifications described in paragraph (4) of subdivision (a) of Section 1786.16. From the effective date of this title, the investigative consumer reporting agency shall keep a record of the purposes for which information is sought, as stated by the user. Every investigative consumer reporting agency shall make a reasonable effort to verify the identity of a new prospective user and the uses certified by the prospective user prior to furnishing the user any investigative consumer reports. No investigative consumer reporting agency may furnish any investigative consumer reports to any person unless it has << * * * >> <<+a written agreement+>> that the investigative consumer reports will be used by that person <<+only+>> for purposes listed in Section 1786.12.

(b) Whenever an investigative consumer reporting agency prepares an investigative consumer report, it shall follow reasonable procedures to assure maximum possible accuracy of the information concerning the individual about whom the report relates. <<+An investigative consumer reporting agency shall retain the investigative consumer report for a period of three years.+>>

(c) An investigative consumer reporting agency shall not make an inquiry for the purpose of preparing an investigative consumer report on a consumer for employment purposes if the making of the inquiry by an employer or prospective employer of the consumer would violate any applicable federal or state equal employment opportunity law or regulation.

<<+(d) Any investigative consumer reporting agency that violates this section shall be liable to the consumer affected in an amount not less than twenty-five thousand dollars (\$25,000).+>>

SEC. 13. Section 1786.24 of the Civil Code is amended to read:

<< CA CIVIL § 1786.24 >>

1786.24. (a) If the completeness or accuracy of any item of information contained in his or her file is disputed by a consumer, and the dispute is conveyed directly to the investigative consumer reporting agency by the consumer, the investigative consumer reporting agency shall, without charge, reinvestigate and record the current status of the disputed information or delete the item from the file in accordance with subdivision (c), before the end of the 30-day period beginning on the date on which the agency receives the notice of the dispute from the consumer.

(b) The agency shall notify any person who provided information in dispute at the address and in the manner specified by that person. The notice shall include all relevant information regarding the dispute that the investigative consumer reporting agency has received from the consumer. The agency shall also promptly provide to the person who provided the information in dispute all relevant information regarding the dispute that is received by the agency from the consumer during the reinvestigation.

(c) In conducting a reinvestigation, the investigative consumer reporting agency shall review and consider all relevant information submitted by the consumer with respect to the disputed item of information.

(d) Notwithstanding subdivision (a), an investigative consumer reporting agency may terminate a reinvestigation of information disputed by a consumer if the investigative consumer reporting agency reasonably determines that the dispute is frivolous or irrelevant, including by reason of a failure by a consumer to provide sufficient information to investigate the

disputed information. Upon making a determination that a dispute is frivolous or irrelevant, the investigative consumer reporting agency shall notify the consumer, by mail or, if authorized by the consumer for that purpose, by any other means available to the agency. In this notification, the investigative consumer reporting agency shall state the specific reasons why it has determined that the consumer's dispute is frivolous or irrelevant and provide a description of any information required to investigate the disputed information, that may consist of a standardized form describing the general nature of the required information.

(e) If a reinvestigation is made and, after reinvestigation, the disputed item of information is found to be inaccurate, incomplete, or cannot be verified by the evidence submitted, the investigative consumer reporting agency shall promptly delete that information from the consumer's file or modify the information, as appropriate, based on the results of the reinvestigation, and shall notify the consumer that the information has been deleted or modified. <<+The consumer reporting agency shall also notify any and all sources from which the disputed information was obtained and inform them in writing of the reasons and results of the reinvestigation, and send a copy of this notification to the consumer.+>>

(f) No information may be reinserted in a consumer's file after having been deleted pursuant to this section unless the person who furnished the information verifies that the information is complete and accurate. If any information deleted from a consumer's file is reinserted in the file, the investigative consumer reporting agency shall promptly notify the consumer of the reinsertion in writing or, if authorized by the consumer for that purpose, by any other means available to the agency. As part of, or in addition to, this notice, the investigative consumer reporting agency shall provide to the consumer in writing (1) a statement that the disputed information has been reinserted, (2) the name, address, and telephone number of any furnisher of information contacted or that contacted the investigative consumer reporting agency in connection with the reinsertion, and the telephone number of the furnisher, if reasonably available, and (3) a notice that the consumer has the right to a reinvestigation of the information reinserted by the investigative consumer reporting agency and to add a statement to his or her file disputing the accuracy or completeness of the information.

(g) An investigative consumer reporting agency shall provide notice to the consumer of the results of any reinvestigation under this section by mail or, if authorized by the consumer for that purpose, by other means available to the agency. The notice shall include (1) a statement that the reinvestigation is completed, (2) an investigative consumer report that is based on the consumer's file as that file is revised as a result of the reinvestigation, (3) a description or indication of any changes made in the investigative consumer report as a result of those revisions to the consumer's file, (4) a notice that, if requested by the consumer, a description of the procedure used to determine the accuracy and completeness of the information shall be provided to the consumer by the investigative consumer reporting agency, including the name, business address, and telephone number of any furnisher of information contacted in connection with that information, (5) a notice that the consumer has the right to add a statement to the consumer's file disputing the accuracy or completeness of the information, and (6) a notice that the consumer has the right to request that the investigative consumer reporting agency furnish notifications under subdivision (k).

(h) The presence of information in the consumer's file that contradicts the contention of the consumer shall not, in and of itself, constitute reasonable grounds for believing the dispute is frivolous or irrelevant.

(i) If the investigative consumer reporting agency determines that the dispute is frivolous or irrelevant, or if the reinvestigation does not resolve the dispute, or if the information is reinserted into the consumer's file pursuant to subdivision (f), the consumer may file a brief statement setting forth the nature of the dispute. The investigative consumer reporting agency may limit these statements to not more than <<+500+>> words if it provides the consumer with assistance in writing a clear summary of the dispute.

(j) Whenever a statement of dispute is filed, the investigative consumer reporting agency shall, in any subsequent investigative consumer report containing the information in question, clearly note that the information is disputed by the consumer and shall include in the report either the consumer's statement or a clear and accurate summary thereof.

(k) Following the deletion of information from a consumer's file pursuant to this section, or following the filing of a dispute pursuant to subdivision (i), the investigative consumer reporting agency shall, at the request of the consumer, furnish notification that the item of information has been deleted or that the item of information is disputed. In the case of disputed information, the notification shall include the statement or summary of the dispute filed pursuant to subdivision (i). This notification shall be furnished to any person <<-* * *->>who has, within two years prior to the deletion or the filing of the dispute, received an investigative consumer report concerning the consumer for employment purposes, or who has, within one year of the deletion or the filing of the dispute, received an investigative consumer report concerning the consumer for any other purpose, if these investigative consumer reports contained the deleted or disputed information<<+, unless the consumer specifically requests in

writing, that this notification not be given to all persons or to any specified persons+>>. The investigative consumer reporting agency shall clearly and conspicuously disclose to the consumer his or her rights to make a request <<+that+>> this notification <<+not be made+>>.

(l) An investigative consumer reporting agency shall maintain reasonable procedures designed to prevent the reappearance in a consumer's file and in investigative consumer reports information that has been deleted pursuant to this section and not reinserted pursuant to subdivision (f).

(m) If the consumer's dispute is resolved by deletion of the disputed information within three business days, beginning with the day the investigative consumer reporting agency receives notice of the dispute in accordance with subdivision (a), the investigative consumer reporting agency shall be exempt from requirements for further action under subdivisions (g), (i), and (j), if the agency: (1) provides prompt notice of the deletion to the consumer by telephone, (2) provides written confirmation of the deletion and a copy of an investigative consumer report of the consumer that is based on the consumer's file after the deletion, and (3) includes, in the telephone notice or in a written notice that accompanies the confirmation and report, a statement of the consumer's right to request under subdivision (k) that the agency <<+not+>> furnish notifications under that subdivision.

(n) Any investigative consumer reporting agency that compiles and maintains files on consumers on a nationwide basis, as defined in the federal Fair Credit Reporting Act, as amended (15 U.S.C. Sec. 1681 et seq.), shall implement an automated system through which furnishers of information to that agency may report the results of a reinvestigation that finds incomplete or inaccurate information in a consumer's file to other investigative consumer reporting agencies.

(o) All actions to be taken by an investigative consumer reporting agency under this section are governed by the applicable time periods specified in Section 611 of the federal Fair Credit Reporting Act, as amended (15 U.S.C. Sec. 1681i).

SEC. 14. Section 1786.26 of the Civil Code is amended to read:

<< CA CIVIL § 1786.26 >>

1786.26. <<-* * *->><<+(a)+>> Except as otherwise provided in subdivision <<+(c)+>>, an investigative consumer reporting agency may charge a consumer a fee not exceeding eight dollars (\$8) for making disclosures to the consumer pursuant to Sections 1786.10, 1786.11, and 1786.22. Any charges shall be indicated to the consumer prior to disclosure.

<<+(b)+>> An investigative consumer reporting agency shall not impose any charge for providing notice to a consumer required under Section 1786.24<<+, furnishing an investigative consumer report pursuant to Section 1786.24,+>> or notifying a person pursuant to subdivision (k) of Section 1786.24 of the deletion of information that is found to be inaccurate or that cannot be verified.

<<+(c)+>> Upon the request of the consumer, an investigative consumer reporting agency shall make all disclosures pursuant to Section 1786.10 and 1786.22 once during any 12-month period without charge to that consumer if the consumer certifies in writing that he or she (1) is unemployed and intends to apply for employment in the 60-day period beginning on the date the certification is made, (2) is a recipient of public welfare assistance, or (3) has reason to believe that the file on the consumer at the investigative consumer reporting agency contains inaccurate information due to fraud.

<<+(d)+>> An investigative consumer reporting agency shall not impose any charge on a consumer for providing any notification or making any disclosure required by this title, except as authorized by this section.

SEC. 15. Section 1786.28 of the Civil Code is amended to read:

<< CA CIVIL § 1786.28 >>

1786.28. (a) Each investigative consumer reporting agency <<-* * *->><<+ that collects, assembles, evaluates,+>> compiles<<+,+>> reports<<+, transmits, transfers, or communicates+>> items of information concerning consumers which are matters of public record shall specify in any report containing public record information the source from which <<+this +>> information was obtained, including the particular court, if <<-* * *->><<+applicable+>>, and the date that <<+this+>> information was initially reported or publicized.

(b) A consumer reporting agency which furnishes a consumer report for employment purposes and which for that purpose compiles<<-* * *->><<+, collects, assembles, evaluates,+>> reports<<+, transmits, transfers, or communicates+>> items of information on consumers which are matters of public record and are likely to have an adverse effect upon a consumer's ability to obtain employment shall in addition maintain strict procedures designed to insure that whenever public record information

which is likely to have an adverse effect on a consumer's ability to obtain employment is reported it is complete and up to date. For purposes of this paragraph, items of public record relating to arrests, indictments, convictions, suits, tax liens, and outstanding judgments shall be considered up to date if the current public record status of the item at the time of the report is reported.

SEC. 16. Section 1786.29 is added to the Civil Code, to read:

<< CA CIVIL § 1786.29 >>

1786.29. An investigative consumer-reporting agency shall provide the following notices:

(a) As a cover sheet to any report, a notice in at least 16 point type that sets forth the following disclosures or warnings:

(1) The report does not guarantee the accuracy or truthfulness of the information as to the subject of the investigation, but only that it is accurately copied from public records. Evidence of identity theft may or may not be identified from this report.

(2) The recipient of this report shall give a copy of this report to the subject of the report.

(3) Failure to provide a copy of the report as required by law may expose you to liability as specified in Section 1786.50.

(b) An investigative consumer reporting agency shall provide a consumer seeking to obtain a copy of a report or making a request to review a file, a written notice in simple plain English and Spanish setting forth the terms and conditions of his or her right to receive all disclosures as provided in Section 1786.26.

<< Repealed: CA CIVIL pr. 1786.40 (a. hd.) >>

<< CA CIVIL § 1786.40 >>

SEC. 17. Article 3 (commencing with Section 1786.40) of Title 1.6A of Part 4 of Division 3 of the Civil Code is repealed.

SEC. 18. Section 1786.50 of the Civil Code is amended to read:

<< CA CIVIL § 1786.50 >>

1786.50. (a) <<+In addition to the penalty specified in Section 1786.20, a+>>ny 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 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.

SEC. 19. Section 1786.52 of the Civil Code is amended to read:

<< CA CIVIL § 1786.52 >>

1786.52. Nothing in this chapter shall in any way affect the right of any consumer to maintain an action against an investigative consumer reporting agency, a user of an investigative consumer report, or an informant for invasion of privacy or defamation.

An action to enforce any liability created under this title may be brought in any appropriate court of competent jurisdiction within two years from the date <<-* * *->><<+of discovery+>>.

(a) Any investigative consumer reporting agency or user of information against whom an action brought pursuant to Section 1681n or 1681o of Title 15 of the United States Code is pending shall not be subject to suit for the same act or omission under Section 1786.50.

(b) The entry of a final judgment against the investigative consumer reporting agency or user of information in an action brought pursuant to the provisions of Section 1681n or 1681o of Title 15 of the United States Code shall be a bar to the maintenance of any action based on the same act or omission which might be brought under this title.

SEC. 20. Section 1786.53 is added to the Civil Code, to read:

<< CA CIVIL § 1786.53 >>

1786.53. Any person who collects, assembles, evaluates, compiles, reports, transmits, transfers, or communicates information on a consumer's character, general reputation, personal characteristics, or mode of living for the purposes specified in subdivision (a) of Section 1786, in lieu of using the services of an investigative consumer reporting agency, shall provide that information to the consumer at the time of the meeting or interview with the consumer, or within seven days of the date the person obtains the information regarding the consumer, whichever is earlier.

<< CA CIVIL pr. 1798.92 (t. hd.) >>

SEC. 21. Title 1.81.3 (commencing with Section 1798.92) is added to Part 4 of Division 3 of the Civil Code, to read:

TITLE 1.81.3. IDENTITY THEFT

<< CA CIVIL § 1798.92 >>

1798.92. For the purposes of this title:

(a) "Claimant" means a person who has or purports to have a claim for money or an interest in property in connection with a transaction procured through identity theft.

(b) "Identity theft" means the unauthorized use of another person's personal identifying information to obtain credit, goods, services, money, or property.

(c) "Personal identifying information" means a person's name, address, telephone number, driver's license number, social security number, place of employment, employee identification number, mother's maiden name, demand deposit account number, savings account number, or credit card number.

(d) "Victim of identity theft" means a person who had his or her personal identifying information used without authorization by another to obtain credit, goods, services, money, or property, and did not use or possess the credit, goods, services, money, or property obtained by the identity theft, and filed a police report in this regard pursuant to Section 530.5 of the Penal Code.

<< CA CIVIL § 1798.93 >>

1798.93. (a) A person may bring an action against a claimant to establish that the person is a victim of identity theft in connection with the claimant's claim against that person. If the claimant has brought an action to recover on its claim against the person, the person may file a cross-complaint to establish that the person is a victim of identity theft in connection with the claimant's claim.

(b) A person shall establish that he or she is a victim of identity theft by a preponderance of the evidence.

(c) A person who proves that he or she is a victim of identity theft, as defined in Section 530.5 of the Penal Code, as to a particular claim, shall be entitled to a judgment providing all of the following, as appropriate:

(1) A declaration that he or she is not obligated to the claimant on that claim.

(2) A declaration that any security interest or other interest the claimant had purportedly obtained in the victim's property in connection with that claim is void and unenforceable.

(3) An injunction restraining the claimant from collecting or attempting to collect from the victim on that claim, from enforcing or attempting to enforce any security interest or other interest in the victim's property in connection with that claim, or from enforcing or executing on any judgment against the victim on that claim.

(4) If the victim has filed a cross-complaint against the claimant, the dismissal of any cause of action in the complaint filed by the claimant based on a claim which arose as a result of the identity theft.

(5) Actual damages, attorney's fees, and costs, and any equitable relief that the court deems appropriate. In order to recover actual damages or attorney's fees in an action or cross-complaint filed by a person alleging that he or she is a victim of identity

theft, the person shall show that he or she provided written notice to the claimant that a situation of identity theft might exist, including, upon written request of the claimant, a valid copy of the police report or the Department of Motor Vehicles investigative report promptly filed pursuant to Section 530.5 of the Penal Code at least 30 days prior to his or her filing of the action, or within his or her cross-complaint pursuant to this section.

(6) A civil penalty, in addition to any other damages, of up to thirty thousand dollars (\$30,000) if the victim establishes by clear and convincing evidence all of the following:

(A) That at least 30 days prior to filing an action or within the cross-complaint pursuant to this section, he or she provided written notice to the claimant at the address designated by the claimant for complaints related to credit reporting issues that a situation of identity theft might exist and explaining the basis for that belief.

(B) That the claimant failed to diligently investigate the victim's notification of a possible identity theft.

(C) That the claimant continued to pursue its claim against the victim after the claimant was presented with facts that were later held to entitle the victim to a judgment pursuant to this section.

<< CA CIVIL § 1798.94 >>

1798.94. An action or cross-complaint brought under this title that joins other claimants as defendants in the same action or cross-complaint shall be deemed to comply with Section 379 of the Code of Civil Procedure.

<< CA CIVIL § 1798.95 >>

1798.95. A court shall have continuing jurisdiction over an action or cross-complaint filed pursuant to this title in order to provide for the joinder of related causes of action based on the theft of the same person's identity and the joinder of further defendants based upon the theft of the same person's identity, regardless of whether a final judgment has been entered as to any defendant. The court's continuing jurisdiction shall terminate 10 years after filing of the original action unless the court, prior to that date, finds good cause to extend jurisdiction over the matter.

<< CA CIVIL § 1798.96 >>

1798.96. Any action brought pursuant to this title or any joinder of a defendant pursuant to Section 1798.82 may be brought within four years of the date the person who alleges that he or she is a victim of identity theft knew or, in the exercise of reasonable diligence, should have known of the existence of facts which would give rise to the bringing of the action or joinder of the defendant.

<< CA CIVIL § 1798.97 >>

1798.97. (a) This title does not apply to a transaction subject to Section 1747.10.

(b) Nothing in this title shall be construed to affect a claimant's rights and remedies against a person who perpetrates identity theft or against any person who used or possessed the credit, goods, services, or property obtained by identity theft.

(c) This title is cumulative to the rights and remedies provided under other laws.

SEC. 22. Section 1.5 of this bill incorporates amendments to Section 1785.10 of the Civil Code proposed by both this bill and AB 488. It shall only become operative if (1) both bills are enacted and become effective on or before January 1, 2002, (2) each bill amends Section 1785.10 of the Civil Code, and (3) this bill is enacted after AB 488, in which case Section 1 of this bill shall not become operative.

CA LEGIS 354 (2001)

EXHIBIT L

In the Supreme Court of the State of California

EILEEN CONNOR,

Plaintiff and Appellant,

v.

FIRST STUDENT, INC., et al.,

Defendants and Respondents.

Case No. S229428

Second Appellate District, Division Four, Case No. B256075
Los Angeles County Superior Court, Case No. JCCP 4624
Honorable John S. Wiley, Judge

**AMICUS BRIEF OF THE ATTORNEY GENERAL IN SUPPORT OF
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INTRODUCTION AND STATEMENT OF INTEREST

Consumer reporting agencies and the reports they prepare are unavoidable facts of modern life for millions of California consumers. Once used primarily to determine a consumer's creditworthiness when seeking a loan, the information reported by these agencies today is increasingly used not just by lenders, but also by employers, landlords, and insurers. Now, negative information in a consumer report means that the consumer might be fired, never hired, go uninsured, or be unable to find a place to live. While these reports can have a significant impact on consumers' lives, they often contain wrong information, primarily due to identity theft and reporting agency error.

To protect consumers from the potentially devastating effects of mistakes in consumer reports, the California Legislature enacted, and has twice expanded, the Investigative Consumer Reporting Agencies Act (ICRAA). The Act regulates investigative consumer reports and the agencies that prepare those reports for use by employers, insurers, or landlords. Among other things, it requires agencies to ensure the accuracy of each report they compile, and mandates disclosure to consumers to allow them to discover and correct errors that may, through no fault of their own, prevent them from getting a job, insurance, or an apartment. The ICRAA complements the protections of the Consumer Credit Reporting Agencies Act (CCRAA), which regulates credit reporting agencies and consumer credit reports used to determine a consumer's creditworthiness.

The ICRAA's consumer protections are clearly stated in the Act. All employers, landlords, or insurers who commission investigative consumer reports, as well as the reporting agencies that compile them, can easily determine the scope of the ICRAA and comply with its requirements. Where a consumer report triggers the protections of both the ICRAA and the CCRAA, the entity who orders the report can—and must—comply with

both acts by meeting the stricter disclosure requirements of the ICRAA.¹ California consumers are entitled to the full protection of both laws.

The Attorney General, as the State's chief law enforcement officer, is responsible for enforcing state law, including laws regulating consumer reporting agencies. The Attorney General's Office regularly receives consumer complaints regarding both identity theft and errors in consumer reports—which have been especially apparent in the Attorney General's efforts to remediate foster youth credit reports. The ICRAA provides vital protections for consumers in these circumstances—protections the Legislature intended them to have—and gives law enforcement a tool to regulate consumer reporting agencies and a means of discovering criminal identity theft. The Attorney General has an interest in ensuring that the ICRAA is properly construed and upheld against unwarranted challenges to its constitutionality. Attorney General Kamala D. Harris submits this amicus curiae brief pursuant to California Rules of Court, rule 8.520(f), presenting additional arguments in support of plaintiff regarding the importance and constitutionality of the Investigative Consumer Reporting Agencies Act.

ARGUMENT

The Attorney General agrees with plaintiff that this Court should affirm the decision of the Court of Appeal and joins her argument regarding the constitutionality of the ICRAA. (See Answer Brief on the Merits of Plaintiff and Appellant, filed Feb. 19, 2016 ["Answer Br."], at pp. 14-30.) The Attorney General writes separately to provide the Court with additional

¹ As Defendants discuss in their opening brief, the disclosure requirements of the ICRAA are more comprehensive than the disclosure requirements of the CCRAA. (First Student, Inc. and First Transit, Inc.'s Opening Brief on the Merits, filed Jan. 20, 2016 ["Opening Br."], at pp. 15-16.)

context on the crucial consumer protections provided by the ICRAA and the constitutionality of that Act.

I. THE INVESTIGATIVE CONSUMER REPORTING AGENCIES ACT PROVIDES CRUCIAL PROTECTIONS TO CONSUMERS

A. Inaccurate Investigative Consumer Reporting Hurts Consumers

Investigative consumer reporting agencies play a “vital role” and exercise “grave responsibilities” in decision-making that impacts fundamental aspects of a consumer’s life and livelihood. (Civ. Code, § 1786, subs. (a), (b)².) Mistakes in investigative consumer reports can have “a potentially devastating impact on an individual’s life.” (Assem. Com. On Consumer Protection, Governmental Efficiency, and Economic Development, Hearing on Sen. Bill No. 1454 (1997-1998 Reg. Sess.) June 23, 1998, p. 3 [attached to Plaintiff and Appellant Eileen Connor’s Motion for Judicial Notice (“Plaintiff’s MJN”) as Exh. JJ]³.) False information “can plague a victim for years, impeding his or her ability to find or keep a job or obtain other services” (Sen. Jud. Com., Analysis of Assem. Bill No. 655 (2001-2002 Reg. Sess.) as amended Aug. 20, 2001, p. 9.)

For example, errors in investigative consumer reports can impact a consumer’s access to housing. In the case of Ms. Quida Johnson, a consumer reporting agency “erroneously identified her as having been

² All statutory references in this brief are to the California Civil Code unless otherwise noted.

³ The legislative history documents cited in this brief constitute “published” legislative bills, enrolled bill reports, and committee and floor analyses. Judicial notice of these documents is unnecessary. (See *Sharon S. v. Superior Court (Annette F)* (2003) 31 Cal.4th 417, 440, fn.18 [73 P.3d 554]; *Quelimane Company Inc. v. Stewart Title Guaranty Co.* (1998) 19 Cal.4th 26, 46, fn.9 [960 P.2d 513].) For the Court’s ease of reference and convenience, however, the Attorney General provides cross-citations to Plaintiff and Appellant’s Motion for Judicial Notice, where available.

involved in two unlawful detainers, based solely on the similarity of her name and the name of the defendant in the unlawful detainer actions,” even though her address did not match the address of the individual reportedly involved in the eviction actions. (*Cisneros v. U.D. Registry, Inc.* (1995) 39 Cal.App.4th 548, 573-575 [46 Cal.Rptr.2d 233].) Without verifying or even checking the information, the agency reported both evictions to the landlord considering Ms. Johnson’s application for subsidized housing. (*Id.* at p. 573.)

Errors in investigative reports can also cost consumers jobs. The Senate Judiciary Committee noted the case of Mr. Bronti Kelly, who suffered an extended period of unemployment due to mistakes in an investigative report: For three years, Mr. Kelly “was denied job after job, with no explanation.” (See Sen. Jud. Com., Analysis of Sen. Bill No. 1454 (1997-1998 Reg. Sess.) as amended April 27, 1998, p. 4 [attached to Plaintiff’s MJN as Exh. J].) He finally learned that an investigative reporting agency had compiled a report on him, containing the criminal record of a thief who had stolen his wallet. “This information was never verified by the agency, yet used by each company he interviewed with to deny him employment.” (*Ibid.*)

B. Consumer Reports Often Contain Errors Through No Fault of the Consumer and Without the Consumer’s Knowledge

The devastating impact of an inaccurate investigative consumer report is especially unjust given that, in most cases, the consumer is not the source of the mistakes. Inaccurate information appears in these reports generally due to identity theft and reporting agency errors. Often, the consumer is unaware of the inaccurate information, which compounds the harm.

Identity theft occurs when a criminal takes personal information, such as a consumer’s name, Social Security number, or financial account

number, and uses it for unlawful purposes such as opening new credit accounts, taking out loans, or committing crimes (and generating criminal records in the consumer's name). As the Legislature recognized when it amended the ICRAA in 2001, "[t]he crime of identity theft in this new computer era has exploded to become the fastest growing white collar crime in America." (Civ. Code, § 1786, subd. (c).) The Legislature estimated that there would be "600,000 to 800,000 victims of this crime nationwide in 2001." (Dept. Consumer Affairs, Enrolled Bill Rep. on Assem. Bill No. 655 (2001-2002 Reg. Sess.) Sept. 17, 2001, p. 3.) Thirteen years later, that number had increased thirty fold; in 2014, there were an estimated 17,600,000 victims of identity theft nationwide. (U.S. Bureau of Justice Statistics, Victims of Identity Theft, 2014 (Sept. 2015) p. 1 at <<http://www.bjs.gov/content/pub/pdf/vit14.pdf>> [as of April 21, 2016] ["2014 BJS Report"]⁴.) That accounts for 7% of all U.S. residents age 16 or older, resulting in one identity theft victim every 1.8 seconds. (*Ibid.*)

Identity theft can be catastrophic for its victims. It "can interfere with a victim's ability to obtain or keep employment, buy insurance, or even rent an apartment." (Sen. Jud. Com., Analysis of Assem. Bill No. 655 (2001-2002 Reg. Sess.) as amended Aug. 20, 2001, p. 1.) Identity theft is often difficult to remedy, with victims spending an estimated 175 hours, on average, to restore their identities and repair their consumer reports. (Dept. Consumer Affairs, Enrolled Bill Rep. on Assem. Bill No. 655 (2001-2002 Reg. Sess.) Sept. 17, 2001, p. 3.) Identity theft is also expensive. In 2014,

⁴ Under Evidence Code § 452, the Court may take judicial notice of "[o]fficial acts of the legislative, executive, and judicial departments of the United States and of any state of the United States." (Cal. Evid. Code § 452(c).) "Official acts include records, reports, and orders of administrative agencies." (*Rodas v. Spiegel* (2001) 87 Cal.App.4th 513, 518 [104 Cal.Rptr.2d 439].)

the majority of the 17.6 million victims reported a direct financial loss as a result of identity theft, with an average loss of \$1,343. (2014 BJS Report, at p. 6.) That year, identity theft resulted in a cumulative loss of \$15.4 billion—\$28,538 each minute. (*Id.* at p. 7.) Disturbingly, “the unique nature of this crime means it can often go undetected for years without the victim being aware his identity has been misused.” (Civ. Code, § 1786, subd. (d).) During this time, victims’ identities continue to be misused, their records are further damaged, and their financial losses mount.

Inaccuracies in consumer reports due to identity theft present a significant enough problem that when the Legislature amended the ICRAA in 2001, it required agencies to provide a disclaimer on the first page of every investigative consumer report “setting forth that the report does not guarantee the accuracy or truthfulness of the information as to the subject of the investigation, but only that it is accurately copied from public records, and information generated as a result of identity theft . . . may be inaccurately associated with the consumer who is the subject of the report.” (Civ. Code, § 1786.29, subd. (a).)⁵

Identity theft, however, is not the only source of inaccurate information in consumer reports. Reporting agencies themselves routinely make mistakes and include wrong information about consumers in their reports. A 2012 Federal Trade Commission study of 1,001 randomly selected consumers found that more than 26% of respondents identified potentially material errors in one or more of their consumer reports. (Federal Trade Commission, Report to Congress Under Section 319 of the Fair and Accurate Credit Transactions Act of 2003 (2015) p. i at

⁵ The very existence of this provision confirms that the Legislature intended the ICRAA to apply to reports containing public record information, contrary to Defendants’ suggestion. (See Opening Br. at pp. 41-44.)

<<https://www.ftc.gov/system/files/documents/reports/section-319-fair-accurate-credit-transactions-act-2003-sixth-interim-final-report-federal-trade/150121factareport.pdf>> [as of April 21, 2016].)

The impact of inaccurate information in investigative consumer reports is often compounded because the consumer “remains completely in the dark about the root of the problem.” (Sen. Jud. Com., Analysis of Assem. Bill No. 655 (2001-2002 Reg. Sess.) as amended Aug. 20, 2001, p. 9.) Unlike the well-known use of credit reports by banks and other lenders, many consumers are unaware that investigative consumer reports are routinely used to make decisions regarding jobs, housing, and insurance. As the Legislature acknowledged, “Many employers, insurance agencies, and apartment managers conduct background checks through private investigative consumer reporting agencies (ICRAs) and turn down applicants with bad reports without telling them why. As a result, victims may face months or years of frustration in finding a job, or may fail to obtain insurance or a place to live, without realizing that credit reports falsely portraying them as deadbeats or criminals are the source of the problem.” (*Id.* at pp. 1-2.)

C. By Mandating Disclosure to Consumers, the ICRAA Helps Ensure Accuracy of Investigative Reports

To help protect consumers from harm arising from identity theft and reporting agency errors, both of California’s consumer reporting statutes—the ICRAA and the CCRAA—require agencies to “adopt reasonable procedures for meeting the needs of commerce . . . in a manner which is fair and equitable to the consumer with regard to the confidentiality, accuracy, relevancy and proper utilization of the information. . .” (Civ. Code, § 1786, subd. (b); § 1785.1, subd. (d).) These procedures allow the consumer to examine and dispute the accuracy of information in their files,

and limit the circumstances in which agencies may furnish reports to the creditors, employers, landlords, and insurers that request them.

The ICRAA requires more disclosure than the CCRAA because many consumers are not aware of the routine use of investigative consumer reports and it is much more difficult for consumers to access investigative consumer reports about themselves than it is to access consumer credit reports: Federal law requires the three major credit reporting agencies to maintain a centralized website, AnnualCreditReport.com, where consumers can get copies of their consumer credit reports and dispute any errors they find before applying for credit. (See 15 U.S.C. § 1681j, subd. (a).) In this way, consumers can ensure that their credit applications will not be unfairly denied, delayed, or otherwise hampered by inaccurate information.⁶ But there are hundreds of reporting agencies that provide investigative consumer reports, and there is no central location where consumers can access those reports. Absent the ICRAA, a consumer would have no ability to discover which one of these myriad reporting agencies an insurer, landlord, or employer might use, what kind of information that agency reports, or what records the agency has regarding the consumer.

The ICRAA ensures that a job, insurance, or housing applicant finds out that an investigative report has been ordered, and from which reporting agency. The ICRAA requires an employer, insurer, or landlord to identify

⁶ In fact, the Federal Trade Commission recommends this procedure: “Consumers concerned that their credit reports may contain errors should continue to examine their credit reports regularly through the use of <https://www.annualcreditreport.com> . . .” (Federal Trade Commission, Report to Congress Under Section 319 of the Fair and Accurate Credit Transactions Act of 2003 (2012) p. 64 at <<https://www.ftc.gov/sites/default/files/documents/reports/section-319-fair-and-accurate-credit-transactions-act-2003-fifth-interim-federal-trade-commission/130211factareport.pdf>> [as of April 21, 2016].)

the name and address of the agency used, describe the nature and scope of the investigation requested, explain the applicant's right to review the agency's files and information about the applicant, and give the applicant an opportunity to request a copy of the actual report the employer, insurer, or landlord will see. (Civ. Code, § 1786.16.) An employer ordering an investigative report for employment purposes must also disclose the agency's website and telephone number, and may not procure the report until the applicant has authorized it in writing. (Civ. Code, § 1786.16, subd. (a)(2).) Further, the ICRAA requires the reporting agency itself to provide a copy of investigative reports to the consumer upon request. (Civ. Code, § 1786.11.) Each investigative consumer reporting agency must also allow a consumer to view any files it has concerning that consumer, and provide a written explanation of any coded information. (Civ. Code, §§ 1786.10, 1786.22.) To ensure proper and timely disclosure to consumers, the ICRAA prohibits investigative reporting agencies from even preparing a consumer report until the employer, insurer, or landlord certifies it has made the required disclosures to the consumer and the consumer has been informed of the report. (Civ. Code, § 1786.12, subd. (e).)⁷

⁷ The ICRAA explicitly does not impact the ability of government agencies to run background checks for law enforcement or licensing purposes. (See Civ. Code § 1786.2(d) [stating that the term "investigative consumer reporting agency" "does not include any governmental agency whose records are maintained primarily for traffic safety, law enforcement, or licensing purposes. . ."].) For example, the California Department of Motor Vehicles requires each school bus driver to have a valid school bus driver certificate issued by the California Highway Patrol, which the driver can obtain only by passing a fingerprint-based criminal background check. (See Cal. Veh. Code § 12517, subd. (a)(2) [requiring certificate]; Cal. Veh. Code § 12517.3, subd. (a)(1) ["An applicant for an original certificate to drive a schoolbus [or] school pupil activity bus . . . shall be fingerprinted by
(continued...)

Violation of any of these disclosure provisions subjects an investigative reporting agency—or a landlord, employer, or insurer ordering a report—to potentially significant penalties. The ICRAA establishes a minimum recovery of \$10,000 for any consumer harmed by an agency’s or a user’s violation of its disclosure requirements. (Civ. Code, § 1786.50, subd. (a).) The ICRAA also allows the court to award punitive damages for willful or grossly negligent violation of the statute. (Civ. Code, § 1786.50, subd. (b).) These penalties are intentionally serious: prior penalties were simply “not a sufficient incentive to insure accuracy.” (Sen. Jud. Com., Analysis of Sen. Bill No. 1454 (1997-1998 Reg. Sess.) as amended April 27, 1998, p. 4 [attached to Plaintiff’s MJN as Exh. J].)

By mandating “disclosure, disclosure, disclosure[,]” and bolstering its disclosure requirements with significant potential penalties, the ICRAA “strengthen[s] consumers’ rights to have only accurate information collected about them,” and helps consumers protect themselves. (Sen.

(...continued)

the Department of the California Highway Patrol. . .”]; Cal. Veh. Code, § 12517.4, subd. (b) [“A temporary driver certificate shall be issued by the Department of the California Highway Patrol after an applicant has cleared a criminal history background check by the Department of Justice. . .”]; Cal. Veh. Code, § 12517.4, subd. (c) [“A permanent driver’s certificate shall be issued by the department after an applicant has passed all tests and met all applicable provisions of this code.”].) Such certificates are “valid for a maximum of five years,” at which point a school bus driver must re-apply and re-submit to the fingerprint-based criminal background check. (Cal. Veh. Code, § 12517.4, subd.(c).) Further, the California Department of Motor Vehicles “may suspend or revoke a schoolbus [or] school pupil activity bus [certificate] . . . if any of the following causes apply to the applicant or certificate holder,” which may be discovered through ongoing criminal record review by the Department of Justice: conviction of a felony; commission of an act of moral turpitude; dismissal for a cause related to transportation safety; or conviction of an offense related to the use, sale, or possession of narcotics or dangerous drugs. (See Cal. Veh. Code, § 13370, subd. (b).)

Rules Com., Off. of Sen. Floor Analyses, Bill Analysis, Senate Bill No. 1454 (1997-1998 Reg. Sess.), as amended June 18, 1998, at p. 7; Assem. Com. On Consumer Protection, Governmental Efficiency, and Economic Development, Hearing on Sen. Bill No. 1454 (1997-1998 Reg. Sess.) June 23, 1998, at p. 2 [both attached to Plaintiff's MJN as Exh. J].)

The ICRAA's disclosure requirements afford victims of identity theft a better chance to catch the crime early. Because notice of identity theft is "critical" to the victim's ability to stop and prosecute the crime, the Legislature declared that "consumers are best protected if they are automatically given copies of any investigative consumer reports made on them." (Civ. Code, § 1786, subd. (e).) The disclosure requirements also help a job, insurance, or housing applicant discover inaccuracies in her file that might impact her application, and allow her to address inaccuracies timely and directly with the reporting agency and the employer, insurer, or landlord. As the Legislature explained, "greater disclosure means greater accuracy." (Sen. Jud. Com., Analysis of Sen. Bill No. 1454 (1997-1998 Reg. Sess.) as amended April 27, 1998, p. 4 [attached to Plaintiff's MJN as Exh. J].) The ICRAA's disclosure requirements thereby help to minimize occurrences in which an applicant is denied a job, insurance, or a place to live based upon wrong information of which she was completely unaware.

The ICRAA, then, enables consumers to ensure the accuracy of reports about them, to safeguard their privacy, and to discover and protect themselves from identity theft. The Act also provides the Attorney General and county and local prosecutors an important tool both to ensure that investigative reporting agencies fulfill their legal obligations to California consumers, and to identify and prosecute perpetrators of identity theft.

The Legislature added the ICRAA's stricter disclosure requirements and penalties in 1998 and 2001 specifically to "protect individuals from inaccurate and false information contained in consumer investigative

The first part of the document discusses the importance of maintaining accurate records of all transactions. It emphasizes that every entry should be supported by a valid receipt or invoice. This not only helps in tracking expenses but also ensures compliance with tax regulations. The document further outlines the process of reconciling bank statements with the company's ledger to identify any discrepancies. It stresses the need for regular audits to prevent errors and fraud. The second part of the document provides a detailed breakdown of the company's financial performance over the last quarter. It includes a comparison of actual results against budgeted figures and identifies key areas of variance. The document concludes with a summary of the overall financial health and a list of recommendations for future periods.

The following table summarizes the key financial metrics for the quarter. It shows a steady increase in revenue, which is a positive indicator for the company's growth. However, there is a notable increase in operating expenses, which has led to a decrease in net profit. The document suggests that the company should focus on reducing costs in the areas of marketing and research and development to improve its bottom line. Additionally, it recommends that the company should continue to invest in new technologies to stay competitive in the market. The document also highlights the importance of maintaining a strong relationship with the bank and ensuring that all financial obligations are met on time.

reports, which increasingly are used to determine employment, insurance and housing eligibility.” (Sen. Rules Com., Off. of Sen. Floor Analyses, 3d reading of Sen. Bill No. 1454 (1997-1998 Reg. Sess.) as amended Aug. 24, 1998, p. 2 [attached to Plaintiff’s MJN as Exh. J].) According to the *Ortiz* court, the Legislature’s 1998 revisions to the statute made it unconstitutional. (*Ortiz v. Lyon Management Group, Inc.* (2007) 157 Cal.App.4th 604, 619 [69 Cal.Rptr.3d 66].) But it would be a perverse—and wrong—result if by progressively and intentionally “expand[ing] the rights and protections afforded to consumers who are the subject of investigations,” the Legislature actually rendered all of the ICRAA’s crucial consumer protections invalid. (Sen. Rules Com., Off. of Sen. Floor Analyses, 3d reading of Assem. Bill No. 655 (2001-2002 Reg. Sess.) as amended Aug. 28, 2001, p. 1.)

II. THE INVESTIGATIVE CONSUMER REPORTING AGENCIES ACT IS CONSTITUTIONAL

A statute is not unconstitutionally vague where it “give[s] the person of ordinary intelligence a reasonable opportunity to know what is prohibited, so that he may act accordingly.” (*Grayned v. City of Rockford* (1972) 408 U.S. 104, 108 [92 S.Ct. 2294, 33 L.Ed.2d 222].) “[E]conomic regulation” of the type at issue in this case “is subject to a less strict vagueness test because its subject matter is often more narrow, and because businesses, which face economic demands to plan behavior carefully, can be expected to consult relevant legislation in advance of action.” (*Village of Hoffman Estates v. Flipside, Hoffman Estates, Inc.* (1982) 455 U.S. 489, 498-499 [102 S.Ct. 1186, 71 L.Ed.2d 362] [applying a less strict vagueness test to a licensing and marketing ordinance that “simply regulates business behavior”].) (See also *Papachristou v. City of Jacksonville* (1972) 405 U.S. 156, 162 [92 S.Ct. 839, 31 L.Ed.2d 110] [noting in dictum that “greater

leeway is allowed” regarding fair notice for “regulatory statutes governing business activities”].)

The ICRAA is not vague under these standards. The Act clearly sets out its scope, and adequately informs reporting agencies, employers, landlords, and insurers of the consequences for not following the law. There is no “void for overlap” standard, and the ICRAA is not rendered vague or unconstitutional merely because its scope partially overlaps with the CCRAA.

A. The ICRAA Clearly Sets Out its Scope, Requirements, and Penalties

Agencies and potential users of investigative reports (i.e., employers, landlords, and insurers) can determine whether a particular consumer report is subject to the ICRAA through a simple two-step inquiry.

Step One: What is the purpose of the report? If the employer, insurer, or landlord plans to commission a report about a consumer in order to evaluate the consumer’s application for employment, insurance, or rental housing, then the ICRAA may apply and the user should proceed to step two. (Civ. Code, § 1786.2, subd. (b) [a “consumer” within the meaning of the ICRAA is an individual “who has made application to a person for employment purposes, for insurance . . . or the hiring of a dwelling unit . . .”].)

Step Two: What information is sought in the report? If the employer, insurer, or landlord ordering the report (i.e., the user) seeks only factual information relating to the consumer’s credit record that has been obtained directly from a creditor, credit reporting agency, or the consumer herself, then the user need not comply with the ICRAA. The ICRAA expressly excludes reports consisting solely of this type of information. (Civ. Code § 1786.2, subd. (c).) If, however, the user seeks—and, therefore, the report will contain—any other information, obtained by any means,

then the user must comply with the ICRAA before ordering the report. (See, e.g., Civ. Code, § 1786.18 [explicitly regulating certain items of information that may be compiled in investigative consumer reports, including: bankruptcies, lawsuits, judgments, unlawful detainer actions, tax liens, accounts placed for collection, arrest records, indictments, convictions, and “[a]ny other adverse information”].)

If the purpose and information sought by the employer, landlord, or insurer are both covered by the ICRAA, the user must—before ordering the report—disclose to the consumer, in writing: (a) that an investigative consumer report may be obtained; (b) the permissible purpose of such report; (c) that the report may include information about the consumer’s character, general reputation, personal characteristics, and mode of living; (d) the name, address, and telephone number of the investigative consumer reporting agency preparing the report; and (e) the nature and scope of the investigation requested. (Civ. Code, § 1786.16, subd. (a).) If the report is sought for employment purposes, then the consumer must specifically authorize its procurement. (Civ. Code, § 1786.16, subd. (a)(2)(C).)

Defendants accurately identify each of these disclosure requirements in their opening brief. (See Opening Br. at p. 16.) Defendants also accurately explain the penalties for violation of the ICRAA disclosure provisions. (*Id.* at p. 17.) Defendants’ ability to understand and accurately interpret the law demonstrates that the ICRAA provides businesses with a “reasonable opportunity to know what is prohibited, so that [they] may act accordingly.” (*Grayned v. City of Rockford, supra*, 408 U.S. at p. 108.)

B. Overlap with the Consumer Credit Reporting Agencies Act Does not Make the Investigative Consumer Reporting Agencies Act Vague

It is possible that an employer, landlord, or insurer ordering a consumer report may be required to comply with both the ICRAA and the

CCRAA⁸, but that does not make either statute vague. As Plaintiff points out, “[t]here is no ‘void for overlap’ rule.”⁹ (Answer Br. at pp. 15, 20-30.) To the contrary, where two statutes overlap in their coverage, a regulated party is expected to know and follow the requirements of both statutes, even if that means applying a higher standard to its conduct. (See, e.g., *Powell v. U.S. Cartridge Co.* (1950) 339 U.S. 497, 519 [70 S.Ct. 755, 94 L.Ed. 1017].) Only if it is impossible to do so (i.e., a party cannot comply with one statute without violating the other), is this overlap problematic.

For example, in *Powell v. U.S. Cartridge Co.*, *supra*, 339 U.S. 497, the Supreme Court considered the applicability of overlapping wage requirements in the Walsh-Healey Act and the Fair Labor Standards Act (FLSA). When plaintiff employees sued for alleged FLSA wage violations, defendant contractors denied liability, claiming that because they operated under the Walsh-Healey Act, which contained specific employee wage requirements, the FLSA wage requirements could not also apply. (*Id.* at p. 519.) The Supreme Court disagreed, finding that “[t]he applicability of the Walsh-Healey Act to the contracts before us [] does not preclude the application of the Fair Labor Standards Act to employees under the same contracts.” (*Id.* at pp. 519-520.) While defendants had met the wage requirements of the Walsh-Healey Act, they had not met the wage requirements of the FLSA, and the Court declined to absolve defendants

⁸ For example, an employment background report may contain both factual information relating to the consumer’s credit record that was obtained directly from a creditor, which falls within the CCRAA’s scope, and information about a consumer’s criminal record, which falls within the ICRAA’s scope. In that situation, the user who orders such report would be required to follow the requirements of both the ICRAA and the CCRAA.

⁹ Plaintiff also aptly demonstrates that there is no indication the Legislature intended the ICRAA and the CCRAA to be exclusive. (Answer Br. at pp. 6-10, 21-24.)

from “determining, in each instance, the respective wage requirements under each Act and then applying the higher requirement as satisfying both.” (*Id.* at p. 519; see also *Pacific Palisades Bowl Mobile Estates, LLC v. City of Los Angeles* (2012) 55 Cal.4th 783, 805 [288 P.3d 717] [finding that defendant developer could be subject to three overlapping statutes regulating the same development—the government code defendant claimed exempted it from requirements of other statutes could be construed to require specific hearings “*in addition to the procedures and hearings required by other state laws*”]; *Sanchez v. Swissport, Inc.* (2013) 213 Cal.App.4th 1331, 1335, 1341 [153 Cal.Rptr.3d 367] [even though defendant employer complied with Pregnancy Disability Leave Law, it could still be held liable for failing to comply with potentially more comprehensive pregnancy-related leave requirements under the Fair Employment and Housing Act]; *Natural Resources Defense Council, Inc. v. Arcata Nat. Corp.* (1976) 59 Cal.App.3d 959, 965 [131 Cal.Rptr. 172] [timber harvester who complied with requirements of Forest Practice Act must still meet additional requirements for same project under California Environmental Quality Act because the two statutes “supplement each other and . . . must be harmonized”].)

It is not impossible for a user to determine the disclosure requirements of both the ICRAA and the CCRAA. Nor is it impossible for a user to comply with the disclosure requirements of both the ICRAA and the CCRAA. Therefore, users of consumer reports must comply with both by meeting the ICRAA’s stricter disclosure requirements where that Act applies to the user’s conduct.

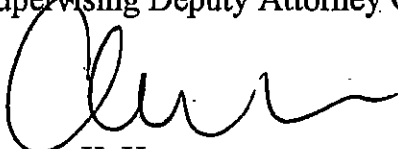
CONCLUSION

The Court should affirm the decision of the Second District Court of Appeal.

Dated: April 26, 2016

Respectfully submitted,

KAMALA D. HARRIS
Attorney General of California
NICKLAS A. AKERS
Senior Assistant Attorney General
MICHELE VAN GELDEREN
Supervising Deputy Attorney General



ALICIA K. HANCOCK
Deputy Attorney General
Attorneys for Amicus Curiae
Attorney General of California

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CERTIFICATE OF COMPLIANCE

I certify that the attached **AMICUS BRIEF OF THE ATTORNEY
GENERAL IN SUPPORT OF PLAINTIFF AND APPELLANT
EILEEN CONNOR** uses a 13 point Times New Roman font and contains
4,142 words.

Dated: April 26, 2016

KAMALA D. HARRIS
Attorney General of California

A handwritten signature in black ink, appearing to read 'Alicia K. Hancock', written in a cursive style.

ALICIA K. HANCOCK
Deputy Attorney General
Attorneys for Amicus Curiae
Attorney General of California

DECLARATION OF SERVICE BY U.S. MAIL

Case Name: **EILEEN CONNOR V. FIRST STUDENT, INC., ET AL.**

Case No.: S229428

I declare:

I am employed in the Office of the Attorney General, which is the office of a member of the California State Bar, at which member's direction this service is made. I am 18 years of age or older and not a party to this matter; my business address is 300 South Spring Street, Suite 1702, Los Angeles, CA 90013.

On April 26, 2016, I served the attached:

AMICUS BRIEF OF THE ATTORNEY GENERAL IN SUPPORT OF PLAINTIFF AND APPELLANT

by placing a true copy thereof enclosed in a sealed envelope with postage thereon fully prepaid, in the United States Mail at Los Angeles, California, addressed as follows:

[PLEASE SEE ATTACHED SERVICE LIST]

I declare under penalty of perjury under the laws of the State of California the foregoing is true and correct and that this declaration was executed on April 26, 2016, at Los Angeles, California.

Edwina Roan-Tuyay
Declarant


Signature

SERVICE LIST

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Inc.*

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Central Civil West Courthouse
600 Commonwealth Avenue
Los Angeles, CA 90005

Clerk, Court of Appeals
Second District Division Four
300 S. Spring Street, 2nd Floor, North Tower
Los Angeles, CA 90013

EXHIBIT M

CONFIDENTIAL SETTLEMENT AGREEMENT AND RELEASE

SUPERIOR COURT OF CALIFORNIA, COUNTY OF ORANGE

Alexander, et al., vs. Equifax Inc. (Lead Case)

CASE NUMBER: 30-2018-00995472

Lead Case and Related Cases assigned to

Hon. William Claster, Dept. CX-104

SETTLEMENT AGREEMENT AND RELEASE

CONFIDENTIAL SETTLEMENT AGREEMENT AND RELEASE

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CONFIDENTIAL SETTLEMENT AGREEMENT AND RELEASE

EXHIBITS

- EXHIBIT 1: LIST OF RELATED ACTIONS**
- EXHIBIT 2: LIST OF INDIVIDUALS WHO RETAINED PLAINTIFFS' COUNSEL RELATED TO THE CYBERSECURITY INCIDENT BUT WHO ARE NOT PLAINTIFFS IN THE LEAD CASE OR THE RELATED CASES**
- EXHIBIT 3: ALLOCATION METHOD**
- EXHIBIT 4: FORM OF DISMISSAL WITH PREJUDICE**

CONFIDENTIAL SETTLEMENT AGREEMENT AND RELEASE

This Settlement Agreement and Release (“Settlement Agreement”) is made by and between Plaintiffs (as hereinafter defined) and Equifax Inc. (collectively, the “Parties”). This Settlement Agreement fully and finally compromises and settles any and all Claims (as hereinafter defined) that are, were, or could have been asserted (a) in the litigation styled, *Alexander, et al. vs. Equifax Inc.*, Case No. 30-2018-00995472-CU-BT-CJC, Orange County, California Superior Court (Lead Case) and each of the Related Cases listed in Exhibit 1 to this Settlement Agreement, and (b) by the additional individuals listed in Exhibit 2 to this Settlement Agreement, which individuals have retained Jeffrey Wilens of the Lakeshore Law Center to represent them in yet-unfiled lawsuits related to the Cybersecurity Incident (as hereinafter defined).

RECITALS

- 1.1 In a series of announcements beginning in September 2017, Equifax Inc. announced that it had been the victim of a criminal cyberattack on its computer systems in which the attacker(s) gained unauthorized access to the personal information of approximately 147 million U.S. individuals.
- 1.2 After announcement of the Cybersecurity Incident, *Alexander, et al. vs. Equifax Inc.*, Case No. 30-2018-00995472-CU-BT-CJC, Orange County, California Superior Court (Lead Case) and each of the Related Cases listed in Exhibit 1 to this Settlement Agreement were filed against Equifax alleging it had failed to properly protect personal information in accordance with its duties, had inadequate data security, and improperly delayed notifying potentially impacted individuals of the Cybersecurity Incident. Plaintiffs’ Counsel (as defined below) represent the plaintiffs in the Lead Case and the Related Cases.
- 1.3 Additional individuals listed in Exhibit 2 to this Settlement Agreement retained Plaintiffs’ Counsel to represent them in yet-unfiled cases related to the Cybersecurity Incident.

CONFIDENTIAL SETTLEMENT AGREEMENT AND RELEASE

- 1.4 Plaintiffs' Counsel has investigated the facts relating to the Cybersecurity Incident and has researched the applicable law with respect to Plaintiffs' claims against Equifax and the potential defenses thereto.
- 1.5 The Parties conducted preliminary settlement discussions and agreed to engage in an in-person mediation session with the Honorable Carl West (ret.) serving as mediator. In the ensuing months, the Parties exchanged information bearing on settlement and confidential mediation statements outlining their respective positions on legal and factual matters impacting settlement.
- 1.6 Judge West facilitated a pre-mediation conference on July 1, 2019 and an in-person, full-day mediation session on July 11, 2019. This mediation session resulted in the Parties executing a binding term sheet, to be superseded by this Settlement Agreement.
- 1.7 Based on the above, Plaintiffs have concluded that the terms and conditions of this Settlement Agreement are fair, reasonable, and adequate and are in their best interests, and have agreed to settle the Claims pursuant to the terms and provisions of this Settlement Agreement.
- 1.8 Equifax denies any wrongdoing whatsoever, and this Settlement Agreement shall in no event be construed or deemed to be evidence of, or an admission or concession on the part of, Equifax with respect to any claim of any fault or liability or wrongdoing or damage whatsoever, or any infirmity in the defenses that Equifax has asserted or would assert.
- 1.9 It is the intention of the Parties to resolve the Claims on the terms and conditions set forth below.

NOW, THEREFORE, in consideration of the promises, covenants, and agreements herein described and for other good

CONFIDENTIAL SETTLEMENT AGREEMENT AND RELEASE

and valuable consideration acknowledged by the Parties to be satisfactory and adequate, and intending to be legally bound, the Parties do hereby mutually agree, as follows:

DEFINITIONS

- 2.1 As used in this Settlement Agreement, the following terms shall have the meanings indicated. Terms not defined in this Section shall have the meaning ascribed to them elsewhere in the Settlement Agreement.
- 2.2 “Actions” means the litigation styled, *Alexander, et al. vs. Equifax Inc.*, Case No. 30-2018-00995472-CU-BT-CJC, Orange County, California Superior Court (Lead Case) and each of the Related Cases listed in Exhibit 1 to this Settlement Agreement.
- 2.3 “Affiliate” means, with respect to any Entity, any other Entity that directly or indirectly controls or is controlled by, or is under common control with, such Entity. For purposes of this definition, “control” when used with respect to any Entity means an ownership interest of at least twenty-five percent (25%) and/or the power to direct the management and policies of such Entity, directly or indirectly, whether through the ownership of voting securities, by contract, or otherwise.
- 2.4 “Claims” means any claims, liabilities, rights, demands, suits, obligations, damages, including but not limited to consequential damages, losses or costs, punitive damages, attorneys’ fees and costs, action or causes of action, penalties, remedies, of every kind or description—whether known or Unknown (as the term “Unknown Claims” is defined herein), suspected or unsuspected, asserted or unasserted, liquidated or unliquidated, legal, administrative, statutory, or equitable—that relate to or arise from the Cybersecurity Incident or the facts alleged in the Actions.

CONFIDENTIAL SETTLEMENT AGREEMENT AND RELEASE

- 2.5 “Court” means the Superior Court of California, County of Orange.
- 2.6 “Cybersecurity Incident” means the data breach announced by Equifax Inc. on or about September 7, 2017.
- 2.7 “Effective Date” means 90 days after the date that Plaintiffs’ Counsel approves in writing the form and content of the Settlement Agreement, which shall be no sooner than the date he receives a PDF final copy of the Agreement from Equifax.
- 2.8 “Entity” means any corporation, partnership, limited liability company, association, trust, or other organization of any type.
- 2.9 “Equifax” means the defendant in the Actions, Equifax Inc.
- 2.10 “*In re Equifax MDL settlement*” means the proposed class action settlement that is the subject of the July 22, 2019 Order Directing Notice entered by the Honorable Thomas W. Thrash in the multidistrict litigation styled *In re: Equifax, Inc. Customer Data Security Breach Litigation*, Case No. 1:17-md-2800-TWT (N.D. Ga.).
- 2.11 “Lead Case” means *Alexander, et al. vs. Equifax Inc.*, Case No. 30-2018-00995472-CU-BT-CJC, Orange County, California Superior Court.
- 2.12 “Parent” means, with respect to any Entity, any other Entity that owns or controls, directly or indirectly, at least a majority of the securities or other interests that have by their terms ordinary voting power to elect a majority of the board of directors, or a majority of others performing similar function, of such Entity.
- 2.13 “Parties” means Plaintiffs and Equifax.
- 2.14 “Plaintiffs” means (a) all individuals named as plaintiffs in the litigation styled, *Alexander, et al. vs. Equifax Inc.*, Case No. 30-

CONFIDENTIAL SETTLEMENT AGREEMENT AND RELEASE

2018-00995472-CU-BT-CJC, Orange County, California Superior Court (Lead Case) and each of the Related Cases listed in Exhibit 1 to this Settlement Agreement; and (b) the additional individuals who have retained Plaintiffs' Counsel to represent them in yet-unfiled lawsuits related to the Cybersecurity Incident, which individuals are listed in Exhibit 2 to this Settlement Agreement.

- 2.15 "Plaintiffs' Counsel" means Jeffrey Wilens and the Lakeshore Law Center, in addition to any other counsel with whom either has in any way associated for purposes related to the Actions or recruitment of individuals to serve as plaintiffs in yet-unfiled actions.
- 2.16 "Related Cases" means each of the cases listed in Exhibit 1 to this Settlement Agreement.
- 2.17 "Settlement" means the settlement of the Claims by and between the Parties, and the terms thereof as stated in this Settlement Agreement.
- 2.18 "Settlement Administrator" means Kurtzman Carson Consultants LLC.
- 2.19 "Settlement Agreement" means this Settlement Agreement and Release. The terms of the Settlement Agreement are set forth herein, including the Exhibits hereto.
- 2.20 "Subsidiary" means, with respect to any Entity, any other Entity of which the first Entity owns or controls, directly or indirectly, at least a majority of the securities or other interests that have by their terms ordinary voting power to elect a majority of the board of directors, or others performing similar functions, of the other Entity.
- 2.21 "Successor" means, with respect to a natural person, that person's heirs, successors, and assigns, and, with respect to an

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CONFIDENTIAL SETTLEMENT AGREEMENT AND RELEASE

Entity, any other Entity that through merger, buyout, assignment, or any other means or transaction, acquires all of the first Entity's duties, rights, obligations, shares, debts, or assets.

- 2.22 "Unknown Claims" means any and all Claims that any Plaintiff does not know or suspect to exist in his or her favor as of the Effective Date and which, if known by him or her, might have affected his or her decision(s) with respect to the Settlement. With respect to any and all Claims, the Parties stipulate and agree that upon the Effective Date, Plaintiffs shall have waived any and all provisions, rights, and benefits conferred by any law of any state or territory of the United States, the District of Columbia, or principle of common law or otherwise, which is similar, comparable, or equivalent to Cal. Civ. Code § 1542, which provides:

A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS THAT THE CREDITOR OR RELEASING PARTY DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE, AND THAT, IF KNOWN BY HIM OR HER, WOULD HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR OR RELEASED PARTY.

Plaintiffs by operation of law shall be deemed to have acknowledged, that the inclusion of "Unknown Claims" in the definition of Claims was separately bargained for and was a key element of the Settlement Agreement.

SETTLEMENT AMOUNT AND ALLOCATION METHOD

- 3.1 The Parties agree to settle the Claims against Equifax, and all other disputes between them that could have been asserted against Equifax, for a one-time, lump-sum amount of two

CONFIDENTIAL SETTLEMENT AGREEMENT AND RELEASE

million five hundred thousand US dollars (\$2,500,000.00) (“Settlement Amount”), subject to the conditions below. Notwithstanding any other provision of this Settlement Agreement, the Settlement Amount will be reduced as follows according to the number of Plaintiffs who do not execute the Settlement Agreement within 90 days of the date that Plaintiffs’ Counsel approves in writing the form and content of the Settlement Agreement, with any reduction in the Settlement Amount to revert back to Equifax:

- (a) \$992 per Plaintiff if fewer than 20 Plaintiffs do not execute the Settlement Agreement;
- (b) \$1,272 per Plaintiff (\$300 reduction in Settlement Amount per non-executing Plaintiff) if 20-55 Plaintiffs do not execute the Settlement Agreement; and
- (c) \$1,572 per Plaintiff (\$580 reduction in Settlement Amount per non-executing Plaintiff) if 56 or more Plaintiffs do not execute the Settlement Agreement.

3.2 The Settlement Amount shall be inclusive of attorney’s fees for Plaintiffs’ Counsel. Equifax shall have no responsibility for, interest in, or liability whatsoever with respect to, any allocation of attorneys’ fees, costs, and expenses to or by Plaintiffs’ Counsel in connection with the Settlement.

3.3 Within 3 (three) days of the Effective Date, Plaintiffs’ Counsel shall furnish Equifax with an electronic spreadsheet detailing for each Plaintiff who has executed the Settlement Agreement:

- (a) first and last name;
- (b) complete mailing address;
- (c) the Action that includes Plaintiff or that he/she is listed in Exhibit 2 to this Settlement Agreement.

CONFIDENTIAL SETTLEMENT AGREEMENT AND RELEASE

Plaintiffs' Counsel shall separately furnish a list of any Plaintiffs who have not executed the Settlement Agreement as of the Effective Date.

- 3.4 If at least 1,510 Plaintiffs do not execute the Settlement Agreement by the Effective Date, Equifax shall have the option and sole discretion to withdraw from the Settlement Agreement and thereby render the Settlement Agreement null and void as to all Parties. That option must be exercised within 10 days of the Effective Date or it is waived.
- 3.5 Except as otherwise provided herein, in the event of a withdrawal pursuant to Section 3.6 of this Settlement Agreement, the Parties shall be deemed to have reverted to their respective statuses immediately prior to the execution of this Settlement Agreement and, except as otherwise expressly provided, the Parties shall proceed in all respects as if this Settlement Agreement and any related orders had not been contemplated. In addition, the Parties agree that in the event of a withdrawal pursuant to Section 3.6, this Settlement Agreement shall become null and void, and the fact of this Settlement shall not be used or cited by any person or entity for any purposes.
- 3.6 In the absence of a withdrawal pursuant to Section 3.6 of this Settlement Agreement, the Settlement shall be administered as follows:
- (a) Equifax shall furnish the Settlement Administrator with a copy of the Settlement Agreement approved by the Parties and the electronic spreadsheet referred to in Section 3.3.
 - (b) Unless otherwise specified by Equifax or Plaintiffs' Counsel, the Settlement Administrator shall update

CONFIDENTIAL SETTLEMENT AGREEMENT AND RELEASE

Plaintiffs' addresses using the National Change of Address System ("NCOA").

- (c) The Settlement Administrator will obtain a taxpayer identification number and open a bank account for receipt from Equifax of the portion of the Settlement Amount allocated to Plaintiffs who have executed the Settlement Agreement by the Effective Date.
- (d) The Settlement Administrator shall issue payment to Plaintiffs who have executed the Settlement Agreement by the Effective Date in accordance with the Allocation Method in Exhibit 3.
- (e) The Settlement Administrator shall promptly notify the Parties of the issue date for each payment to Plaintiffs who have executed the Settlement Agreement.
- (f) Equifax shall issue payment to Plaintiffs' Counsel in accordance with the Allocation Method in Exhibit 3.

3.7 Equifax shall have no involvement in, or liability whatsoever for, the method by which the Settlement Amount is allocated among Plaintiffs or as between any Plaintiff and Plaintiffs' Counsel.

CREDIT MONITORING

- 4.1 In the absence of a withdrawal pursuant to Section 3.6 of this Settlement Agreement, Equifax will provide, at no charge, a one-year subscription to Equifax Credit Watch Gold to any Plaintiff who has executed the Settlement Agreement by the Effective Date and enrolls in this product offering.
- 4.2 Instructions for enrollment in Equifax Credit Watch Gold, including a unique pin number, will appear on the check stub that Plaintiffs receive from the Settlement Administrator.

CONFIDENTIAL SETTLEMENT AGREEMENT AND RELEASE

IN RE EQUIFAX SETTLEMENT OPT OUTS

- 5.1 As of the Effective Date, Plaintiffs who have executed this Settlement Agreement:
- 5.1.1 agree to, and shall have been deemed to have, validly opted out of the *In re Equifax* Settlement regardless of whether the Effective Date occurs after the opt-out deadline specified in the *In re Equifax* Settlement Agreement and Release; and
 - 5.1.2 shall not receive any of the benefits available to the class pursuant to the *In re Equifax* Settlement, including, but not limited to, cash compensation, credit monitoring, and identity restoration services.
- 5.2 Any claims for benefits of any kind in the *In re Equifax* Settlement by Plaintiffs who shall have been deemed to have validly opted out of the *In re Equifax* Settlement shall be rejected by the duly appointed claims administrator in that matter.

RELEASES

- 6.1 As of the Effective Date, all Plaintiffs, on behalf of themselves, their heirs, assigns, executors, administrators, predecessors, and Successors, and any other person purporting to claim on their behalf, hereby expressly, generally, absolutely and unconditionally release and discharge any and all Claims against Equifax and its current, former, and future Affiliates, Parents, Subsidiaries, representatives, officers, agents, directors, employees, insurers, Successors, assigns, and attorneys, arising out of the allegations set forth in the Actions or that could have been asserted in the Actions, except for claims relating to the enforcement of the Settlement or this Settlement Agreement.

CONFIDENTIAL SETTLEMENT AGREEMENT AND RELEASE

- 6.2 As of the Effective Date, Equifax and its representatives, officers, agents, directors, Affiliates, Successors, Subsidiaries, Parents, employees, insurers, and attorneys absolutely and unconditionally release and discharge Plaintiffs and Plaintiffs' Counsel from any claims that arise out of or relate in any way to the institution, prosecution, or settlement of the claims against Equifax, except for claims relating to the enforcement of the Settlement or this Settlement Agreement.
- 6.3 The Parties understand that if the facts upon which this Settlement Agreement is based are found hereafter to be different from the facts now believed to be true, each Party expressly assumes the risk of such possible difference in facts, and agrees that this Settlement Agreement, including the releases contained herein, shall remain effective notwithstanding such difference in facts. The Parties agree that in entering this Settlement Agreement, it is understood and agreed that each Party relies wholly upon its own judgment, belief, and knowledge and that each Party does not rely on inducements, promises, or representations made by anyone other than those embodied herein.
- 6.4 Notwithstanding any other provision of this Settlement Agreement (including, without limitation, this Section), nothing in this Settlement Agreement shall be deemed to in any way impair, limit, or preclude the Parties' rights to enforce any provision of this Settlement Agreement, or any court order implementing this Settlement Agreement, in a manner consistent with the terms of this Settlement Agreement.
- 6.5 Plaintiffs agree not to sue, make a demand in arbitration, or otherwise pursue any claim in any legal or administrative forum against Equifax or its Affiliates, Parents, Subsidiaries, representatives, officers, agents, directors, employees, insurers, Successors, assigns, and attorneys at any date in the future related in any way to the Cybersecurity Incident.

CONFIDENTIAL SETTLEMENT AGREEMENT AND RELEASE

CONFIDENTIALITY

- 7.1 Plaintiffs and Plaintiffs' Counsel agree not to disclose or cause to be disclosed, directly or indirectly, to any other person, other than Plaintiffs' legal or financial advisors and Plaintiffs' Counsel's website administrator, or as required by law or in any motion or action to enforce this Settlement Agreement, any information whatsoever regarding the Settlement Agreement, including but not limited to any information regarding the amount of, terms of, or circumstances underlying the Settlement Agreement, provided that nothing in this Settlement Agreement shall be deemed to prohibit Plaintiffs' Counsel from responding to any inquiries during selection process for leadership positions in any mass or class actions, with the existence of the Actions and a statement that they were resolved as specified in Section 7.2.
- 7.2 If inquiries are made of Plaintiffs or Plaintiffs' Counsel about the Claims and/or the Actions that are the subject of the Settlement Agreement, they shall respond only by indicating that the Actions and/or the Claims "have been resolved."
- 7.3 Plaintiffs and Plaintiffs' Counsel agree not to make any representation whatsoever regarding the fact of the Settlement or the Settlement Agreement on the website, <https://www.lakeshorelaw.org>, or any other website or social media, including, but not limited to, Twitter, Facebook, Instagram, LinkedIn, Google+, and YouTube, provided that nothing in this Settlement Agreement shall be deemed to prohibit Plaintiffs' Counsel from communicating with Plaintiffs concerning the Settlement using any method of his choosing that may reasonably be assumed to be private..
- 7.4 Plaintiffs shall give Equifax reasonable notice of any court-ordered or other required disclosure of the Settlement Agreement to permit Equifax to object to any such disclosure.

CONFIDENTIAL SETTLEMENT AGREEMENT AND RELEASE

NO ADMISSION OF WRONGDOING

- 8.1 This Settlement Agreement, whether or not consummated, any communications and negotiations relating to this Settlement Agreement or the Settlement, and any proceedings taken pursuant to this Settlement Agreement:
- 8.1.1 Shall not be offered or received against Equifax as evidence of, or construed as or deemed to be evidence of, any presumption, concession, or admission by Equifax with respect to the truth of any fact alleged by any Plaintiff or the validity of any Claim, or the deficiency of any defense that has been or could have been asserted in the Actions or in any litigation, or of any liability, negligence, fault, breach of duty, or wrongdoing of Equifax;
 - 8.1.2 Shall not be offered or received against Equifax as evidence of a presumption, concession, or admission of any fault, misrepresentation or omission with respect to any statement or written document approved or made by Equifax;
 - 8.1.3 Shall not be offered or received against Equifax as evidence of a presumption, concession, or admission with respect to any liability, negligence, fault, breach of duty, or wrongdoing, or in any way referred to for any other reason as against Equifax, in any other civil, criminal or administrative action or proceeding, other than such proceedings as may be necessary to effectuate the provisions of this Settlement Agreement;
 - 8.1.4 Shall not be construed against Equifax as an admission or concession that the consideration to be given hereunder represents the amount that could be or would have been recovered after trial; and

CONFIDENTIAL SETTLEMENT AGREEMENT AND RELEASE

8.1.5 Shall not be construed as or received in evidence as an admission, concession or presumption against Plaintiffs that any of their claims are without merit, or that any defenses asserted by Equifax have any merit, or that damages recoverable under the Actions would not have exceeded the Settlement Amount.

REPRESENTATIONS OF THE PARTIES

9.1 Each Party represents that (i) such Party has full legal right, power and authority to enter into and perform this Settlement Agreement, (ii) the execution and delivery of this Settlement Agreement by such Party and the consummation by such Party of the transactions contemplated by this Settlement Agreement have been duly authorized by such Party, (iii) this Settlement Agreement constitutes a valid, binding, and enforceable agreement, and (iv) no consent or approval of any person or entity is necessary for such Party to enter into this Settlement Agreement.

REPRESENTATIONS OF PLAINTIFFS' COUNSEL

10.1 Other than those clients listed in Exhibit 2 to this Settlement Agreement, Plaintiffs' Counsel is not presently aware of, and does not intend to solicit, other clients who would assert claims related in any way to the Cybersecurity Incident.

10.2 Plaintiffs' Counsel represents that he has removed from the website, <https://www.lakeshorelaw.org>, all links and information concerning the Cybersecurity Incident, including any capability for individuals to provide information related to, or retain him as counsel in connection with, the Cybersecurity Incident.

CONFIDENTIAL SETTLEMENT AGREEMENT AND RELEASE

NON-DISPARAGEMENT

- 11.1 Plaintiffs and Plaintiffs' Counsel agree not to disparage or make negative statements about Equifax, its officers, directors, or employees regarding the Cybersecurity Incident in any print or electronic forum or media.

NOTICE

- 12.1 All notices to Plaintiffs or Plaintiffs' Counsel provided for in this Settlement Agreement or otherwise shall be sent by e-mail and First Class mail to the following:

Jeffrey Wilens
LAKESHORE LAW
CENTER
18340 Yorba Linda
Blvd
Suite 107-610
Yorba Linda, CA
92886-4058
714-854-7205
jeff@lakeshorelaw.org

- 12.2 All notices to Equifax or counsel for Equifax provided for in this Settlement Agreement or otherwise shall be sent by e-mail or First Class mail to the following:

CONFIDENTIAL SETTLEMENT AGREEMENT AND RELEASE

S. Stewart Haskins II KING & SPALDING LLP 1180 Peachtree Street, N.E. Atlanta, GA 30309 404-572-4600 shaskins@kslaw.com	Christie Cardon KING & SPALDING LLP 1100 Louisiana Suite 4000 Houston, TX 77030 713-276-7410 ccardon@kslaw.com	Steve Park KING & SPALDING LLP 633 W. Fifth Street Suite 1600 Los Angeles, CA 90071 213-443-4355 spark@kslaw.com
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- 12.3 The notice recipients and addresses designated in this Section may be changed by written notice to the Parties.

DISMISSALS WITH PREJUDICE

- 13.1 The Parties shall coordinate to advise the Court in which the Actions are pending of the Settlement and seek an abeyance of further proceedings pending filing the requests for dismissal contemplated in Section 13.2.
- 13.2 Within 15 days of notification from the Settlement Administrator under Section 3.6(e) of this Settlement Agreement that all payments have issued to Plaintiffs who have executed the Settlement Agreement, Plaintiffs' Counsel shall cause to be filed requests for dismissal with prejudice in the form attached as Exhibit 4 to this Settlement Agreement or such other papers as are necessary to dismiss with prejudice and finally resolve the Actions as to all Plaintiffs who have executed the Settlement Agreement. This provision does not apply to any Plaintiff who has not executed the Settlement Agreement.

CONFIDENTIAL SETTLEMENT AGREEMENT AND RELEASE

ENFORCEMENT OF SETTLEMENT AGREEMENT

- 14.1 In any action to enforce the terms of the Settlement Agreement, including any action to recover damages for violations of any of its provisions, the prevailing party shall be entitled to recover its reasonable attorneys' fees and disbursements in addition to costs of suit.

MISCELLANEOUS PROVISIONS

- 15.1 No Assignment or Transfer. The Parties warrant and represent that they have not made or suffered to be made any assignment or transfer of any right, claim, demand or cause of action covered by this Settlement Agreement, and that they are the sole and absolute legal and equitable owners of all thereof.
- 15.2 Further Steps. The Parties agree that they each shall undertake any required steps to effectuate the purposes and intent of this Settlement Agreement.
- 15.3 Representation by Counsel. Plaintiffs and Equifax represent and warrant that they have been represented by, and have consulted with, the counsel of their choice regarding the provisions, obligations, rights, risks, and legal effects of this Settlement Agreement and have been given the opportunity to review independently this Settlement Agreement with such legal counsel and agree to the particular language of the provisions herein.
- 15.4 Contractual Agreement. The Parties understand and agree that all terms of this Settlement Agreement, including the Exhibits hereto, are contractual and are not a mere recital, and each signatory warrants that he or she is competent and possesses the full and complete authority to execute and covenant to this Settlement Agreement on behalf of the Party that he or she represents.

CONFIDENTIAL SETTLEMENT AGREEMENT AND RELEASE

- 15.5 Integration. This Settlement Agreement constitutes the entire agreement among the Parties and no representations, warranties or inducements have been made to any Party concerning this Settlement Agreement other than the representations, warranties and covenants contained and memorialized herein.
- 15.6 Drafting. The Parties agree that no single Party shall be deemed to have drafted this Settlement Agreement, or any portion thereof, for purpose of the invocation of the doctrine of *contra proferentem*. This Settlement Agreement is a collaborative effort of the Parties and their counsel.
- 15.7 Modification or Amendment. This Settlement Agreement may not be modified or amended, nor may any of its provisions be waived, except by a writing signed by the Parties who executed this Settlement Agreement or their successors-in-interest.
- 15.8 Waiver. The failure of a Party hereto to insist upon strict performance of any provision of this Settlement Agreement shall not be deemed a waiver of such Party's rights or remedies or a waiver by such Party of any default by another Party in the performance or compliance of any of the terms of this Settlement Agreement. In addition, the waiver by one Party of any breach of this Settlement Agreement by any other Party shall not be deemed a waiver of any other prior or subsequent breach of this Settlement Agreement.
- 15.9 Severability. Should any part, term, or provision of this Settlement Agreement be declared or determined by any court or tribunal to be illegal or invalid, the Parties agree that the Court may modify such provision to the extent necessary to make it valid, legal, and enforceable. In any event, such provision shall be separable and shall not limit or affect the validity, legality, or enforceability of any other provision hereunder.

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- 15.10 Successors. This Settlement Agreement shall be binding upon and inure to the benefit of the heirs, Successors and assigns of the Parties thereto.
- 15.11 Survival. The Parties agree that the terms set forth in this Settlement Agreement shall survive the signing of this Settlement Agreement.
- 15.12 Governing Law. All terms and conditions of this Settlement Agreement shall be governed by and interpreted according to the laws of the State of California, without reference to its conflict of law provisions.
- 15.13 Interpretation.
- 15.13.1 Definitions apply to the singular and plural forms of each term defined.
- 15.13.2 Definitions apply to the masculine, feminine, and neuter genders of each term defined.
- 15.13.3 Whenever the words “include,” “includes,” or “including” are used in this Settlement Agreement, they shall not be limiting but rather shall be deemed to be followed by the words “without limitation.”
- 15.14 No Precedential Value. The Parties agree and acknowledge that this Settlement Agreement carries no precedential value.
- 15.15 Retention of Jurisdiction. The consummation of the Settlement as embodied in this Settlement Agreement shall be under the authority of the Court, and the Court shall retain jurisdiction over the Settlement and the Parties for the purpose of enforcing the terms of this Settlement Agreement.
- 15.16 Headings. Any headings contained herein are for informational purposes only and do not constitute a substantive part of this Settlement Agreement. In the event of a dispute concerning the

CONFIDENTIAL SETTLEMENT AGREEMENT AND RELEASE

terms and conditions of this Settlement Agreement, the headings shall be disregarded.

15.17 Exhibits. The Exhibits to this Settlement Agreement are expressly incorporated by reference and made part of the terms and conditions set forth herein.

15.18 Counterparts. This Settlement Agreement may be executed in writing or electronically in one or more counterparts. Plaintiffs' form of execution shall read as follows:

I, _____, confirm I have read the entire Settlement Agreement posted at this link [URL of secure website] and agree to each of the terms set forth therein, including, but not limited to, the Settlement Amount and Allocation Method and the confidentiality and non-disparagement provisions. I understand that in executing the Settlement Agreement I agree to, and am deemed to have validly, opted out of the *In re Equifax* MDL settlement, and that I shall not receive any of the benefits available to the class pursuant to the *In re Equifax* MDL settlement.

All executed counterparts and each of them shall be deemed to be one and the same instrument provided that counsel for the Parties to this Settlement Agreement shall exchange among themselves original signed counterparts.

15.19 Facsimile and Electronic Mail. Transmission of a signed Settlement Agreement by facsimile or electronic mail shall constitute receipt of an original signed Settlement Agreement by mail.

CONFIDENTIAL SETTLEMENT AGREEMENT AND RELEASE

IN WITNESS WHEREOF, the Parties and Plaintiffs' Counsel have caused this Settlement Agreement to be duly executed by themselves or by their duly authorized representatives:

Equifax Inc.

Name:

Title:

Date:

PLAINTIFFS' COUNSEL

Name: Jeffrey Wilens

Firm: Lakeshore Law Center

Date:

(Plaintiffs' signatures on page 24)

CONFIDENTIAL SETTLEMENT AGREEMENT AND RELEASE

I, _____, confirm I have read the entire Settlement Agreement posted at this link [URL of secure website] and agree to each of the terms set forth therein, including, but not limited to, the Settlement Amount and Allocation Method and the confidentiality and non-disparagement provisions. I understand that in executing the Settlement Agreement I agree to, and am deemed to have validly, opted out of the *In re Equifax* MDL settlement, and that I shall not receive any of the benefits available to the class pursuant to the *In re Equifax* MDL settlement.

Plaintiff: _____

(printed name): _____

Date: _____

CONFIDENTIAL SETTLEMENT AGREEMENT AND RELEASE

EXHIBIT 1

RELATED CASES

30-2018-00974349, <i>Breveard, et al. v. Equifax Inc.</i>	30-2018-00975969, <i>Blood, et al. v. Equifax Inc.</i>
30-2018-00978628, <i>Berry, et al. v. Equifax Inc.</i>	30-2018-00978783, <i>Bell, et al. v. Equifax Inc.</i>
30-2018-00980458, <i>Acheronti, et al. v. Equifax Inc.</i>	30-2018-00982853, <i>Anderson, et al. v. Equifax Inc.</i>
30-2018-00986497, <i>Andruss, et al. v. Equifax Inc.</i>	30-2018-00987546, <i>Abdelrazzaq, et al. v. Equifax Inc.</i>
30-2018-00993046, <i>Almazan, et al. v. Equifax Inc.</i>	30-2018-00993530, <i>Aguilar, et al. v. Equifax Inc.</i>
30-2018-00994034, <i>Alarcon, et al. v. Equifax Inc.</i>	30-2018-00994092, <i>Ambroise, et al. v. Equifax Inc.</i>
30-2018-00995446, <i>Anderson-Ballard, et al. v. Equifax Inc.</i>	30-2018-00995447, <i>Aguilera, et al. v. Equifax Inc.</i>

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30-2018-00995456, *Baiza, et al. v. Equifax Inc.*

30-2018-00997490, *Ashley, et al. v. Equifax Inc.*

30-2018-00997859, *Abbott, et al. v. Equifax Inc.*

30-2018-01003040, *Acantilado, et al. v. Equifax Inc.*

30-2018-01004929, *Allen, et al. v. Equifax Inc.*

30-2018-01004939, *Aleridge, et al. v. Equifax Inc.*

30-2018-01026233, *Ali, et al. v. Equifax Inc.*

30-2017-00958700, *Acosta-Smith, et al. v. Equifax Inc.*

30-2018-00996734, *Andrews, et al. v. Equifax Inc.*

30-2018-00997727, *Acevez, et al. v. Equifax Inc.*

30-2018-00997920, *Carter, et al. v. Equifax Inc.*

30-2018-01003042, *Asprion, et al. v. Equifax Inc.*

30-2018-01004930, *Baldeon, et al. v. Equifax Inc.*

30-2018-01013202, *Aldana, et al. v. Equifax Inc.*

30-2017-00955982, *Abramson, et al. v. Equifax Inc.*

CONFIDENTIAL SETTLEMENT AGREEMENT AND RELEASE

EXHIBIT 2

LIST OF INDIVIDUALS WHO RETAINED PLAINTIFFS' COUNSEL RELATED TO THE CYBERSECURITY INCIDENT BUT WHO ARE NOT PLAINTIFFS IN THE LEAD CASE OR THE RELATED CASES

(Page 1 of 3)

First Name	Middle Name	Last Name	Date of birth
Gabrielle	Eden	Aguirre	1992-03-18
Khalid		Ali	1989-12-06
Marisol		Alvarez	1972-11-06
Marcos	Leonardo	Antiles	1974-05-01
Asya		Apatyan	1980-01-02
Zuly	Elena	Arguello	1980-10-13
Nicole		Austin	1985-08-25
Luis		Barreda	1983-05-18
Yesica	Lorena	Barrientos	1984-09-04
Gerald	Mack	Bell Jr	1970-01-24
Claire	Camille	Boggus	1980-11-18
Ron		Butler	1981-01-30
Christopher		Cabell	1971-03-19
Miguel	Clay	Camacho	1981-09-12
Jacqueline		Castro	1962-06-15
John	Joseph	Colagrande	1965-10-13
Grisel		Crissman	1976-01-21
Ebony	D	Dancer	1982-07-18
Frank	Uy	Dayrit	1989-07-13
Nicole	Michelle	Dicharry	1985-06-16
Perry	Lee	Dorsey Jr	1979-02-04
Megan	M	Dulcich	1983-01-28
Shianne	Marie	Durham	1982-05-12
Vanessa		Gandara	1985-11-16
Michael	Brian	Gatewood	1990-03-05
Jennifer		Grant	1956-02-18
Latasha		Gray	1982-11-17
Shonda	A	Greenbyrd	1969-03-08
Caroline	Marie	Griffin	1982-02-17
Sandra	Noemi	Gutierrez	1972-06-28
Sheron	D	Harrison	1983-03-25

CONFIDENTIAL SETTLEMENT AGREEMENT AND RELEASE

EXHIBIT 2

LIST OF INDIVIDUALS WHO RETAINED PLAINTIFFS' COUNSEL RELATED TO THE CYBERSECURITY INCIDENT BUT WHO ARE NOT PLAINTIFFS IN THE LEAD CASE OR THE RELATED CASES

(Page 2 of 3)

Elisha		Havenhill	1965-07-06
Glenda	Michal	Hernandez	1978-02-15
Jerry		Ho	1978-03-08
Furainne		Jean Baptiste	1972-07-02
Kymorea		Johnson	1976-11-20
Noah	M	Johnson	1989-08-18
Brittany	Nicole	Jones	1987-07-18
Anna		Khachatryan	1974-08-10
Christina	M	Kilburg	1988-09-24
Matthew	Lawrence	Kreitzer	1966-10-20
Maxwell		Kriestorac	1997-06-27
Dylan	A	Krumm	1997-06-03
Mark	Steven	Kueny	1956-08-18
Glindon		Lamerson	1987-07-01
Jacqueline		Laprevotte	1983-03-20
Jay	Matthew	Larson	1968-01-11
Martinique		Lazenby	1990-05-09
William	A	Lewis	1969-01-22
Lyntrice		Mayes	1971-07-23
Tpring	Breane	McMillon	1988-10-29
Christina		Mendez	1983-08-07
Flora	Marie	Merriweather	1975-11-07
Mervat	L	Mikhail	1951-05-17
Josephine	Rose	Miles	1978-09-09
Lucy	G	Mochizuki	1954-03-30
Fu-jen	Caroline	Pan	1994-02-18
Aliaya	T	Parker-wright	1975-11-23
Emiko	Katharine	Phillips Munoz	1974-08-29
Mike	M.	Pirouzian	1937-03-18
Lisa	Lenora	Richardson	1960-11-28
Roberto		Rosales Hernandez	1972-03-01
Anna	Lee	Ross	1981-06-21

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EXHIBIT 2

LIST OF INDIVIDUALS WHO RETAINED PLAINTIFFS' COUNSEL RELATED TO THE CYBERSECURITY INCIDENT BUT WHO ARE NOT PLAINTIFFS IN THE LEAD CASE OR THE RELATED CASES

(Page 3 of 3)

Manvel		Sanasaryan	1963-06-01
Socheata		Sek	1984-10-26
Anna		Selverian	1978-01-03
Lonzell	Raynard	Shells	1985-11-30
Karine		Simityan	1963-09-20
Stacy	R	Sinclair	1972-03-07
David	Walter	Smith	1950-08-14
Hayden	Gifford	Smith	1972-01-15
Megan		Smith	1993-04-14
Annette	Marie	Spears	1961-05-09
Michael		Taylor	1949-06-24
Jonathan	Edward Neils	Teaff	1981-10-22
Sonia		Terriquez	1970-01-08
Alicia	Catalina	Valenzuela	1961-10-15
Michael	T	Velasquez	1980-08-21
Joseph	Reyes	Venegas	1981-03-09
Robert	Andre	Villegas	1984-07-31
Markisha	Charmell	Ward	1981-12-12
Elijah	J	Wells	1986-06-03
Derrick	Fitzgerald	Williams	1965-01-11
Kacey	Marie	Williams	1980-02-24
Melvin		Williams	1962-01-09
Stephanie	Ann	Williams	1968-10-07
April	Margret	Works	1977-07-06
Aileen	Noval	Yambao-cooper	1979-12-11
Stephanie		Yell	1987-08-04
Samantha		Zimlich	1990-04-12

CONFIDENTIAL SETTLEMENT AGREEMENT AND RELEASE

EXHIBIT 3

ALLOCATION METHOD FOR SETTLEMENT AMOUNT

Payment by Equifax:

- 1) nine hundred twenty-two thousand seven hundred twenty US dollars (\$922,720) payable to Lakeshore Law Center as attorney's fees and expenses, which amount shall be subject to reduction in accordance with the provisions of Section 3.1 of this Settlement Agreement; payment to issue between January 6, 2020 and January 10, 2020;

Payment by Settlement Administrator:

- 2) nine hundred ninety-two US dollars (\$992) per Plaintiff who has executed the Settlement Agreement in two equal installment checks as follows:
 - a. Check 1 of 2 for four hundred ninety-six US dollars (\$496): on or before December 31, 2019; and
 - b. Check 2 of 2 for four hundred ninety-six US dollars (\$496): between January 1, 2020 and January 31, 2020.

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EXHIBIT 4

FORM OF DISMISSAL WITH PREJUDICE