

CA Bills Signed into Law

As previously noted, the California Legislature has passed two **bills that have now been signed into law** by Governor Gray Davis; AB 1068 (passed 08/22/2002) and AB 2868 (passed 08/22/2002). These laws go into effect immediately.

Assembly Bill 1068 - Personal Information

1) There were several changes to §1785.16.2 and §1785.20.3 which only impact the "selling of consumer debt" and the use of a consumer report in connection with approval for "credit".

2) §1786.16(a)(2) Conditions precedent to preparation of report - Notice & Disclosure

Currently, the consumer must be notified in writing within three days of when the report was first requested. This notification shall include the identification of the investigative agency, the nature and scope of the investigation, and a summary of §1786.22 (Time and manner of supplying information).

Under the new law, a person seeking the investigative report may request such only after the following apply:

- i) The permissible purpose under which the report is requested is identified;
- ii) A clear and conspicuous written disclosure is made to the consumer at **any time prior** to the procurement of the report in a document that **solely consists** of...
 - a notice that the investigative report will be obtained;
 - the permissible purpose under which the report is being ordered;
 - that the report may include information on the consumer's character, general reputation, personal characteristics, and mode of living;
 - the identification of the investigative agency producing the report with name address and telephone number; and
 - the nature and scope of the investigation including a summary of §1786.22 (Time and manner of supplying information).
- iii) The consumer has authorized in writing the procurement of the investigative report.

The person procuring the report shall certify to the investigative agency that the applicable disclosures have been made and the above requirements have been met.

3) §1786.16(b) Conditions precedent to preparation of report - Copy of report

Currently, any person who procures an investigative consumer report shall provide the consumer with a copy of that report, identifying who issued the report and how to contact the reporting agency. The copy is to be provided either at the time of the meeting or interview or within seven-days of the user receiving the report.

Under the new law, the user must "provide a means by which the consumer may indicate on a written form by means of a box to check" that they wish to receive a copy of the report. If the consumer checks this box, the recipient of the report (a/k/a user) "shall send a copy of the report to the consumer within three business days of the date that the report is provided to the recipient." This requirement may be contracted to another party/entity. The notice to request a copy of the report may be contained on either the disclosure form or a separate consent form. The copy of the report provided to the consumer shall contain the name, address, and telephone number of the agency who issued the report.

Furthermore a new section 1786.40 is added requiring that the consumer be advised of any ADVERSE action taken against the consumer resulting from a consumer report and shall identify to the consumer the reporting agency supplying the report.

4) §1786.53 Disclosure requirement when investigative consumer reporting agency not used

Currently, any person who collects, compiles, or produces a report containing information on a consumer's character, general reputation, personal characteristics, or mode of living in lieu of using an investigative consumer reporting agency must provide the consumer with a copy of the report either at the time of meeting or interview or within seven days of the date that the person obtains the information.

Under the new law, a copy of the report compiled or produce by a user in lieu of using an investigative consumer reporting agency must provide a copy of the report to the consumer pursuant to the following:

- Any user who compiles or produces a report shall provide a copy of the related public record information to the consumer within seven-days after receipt of the information regardless of whether such information was received in a written or oral format.
- Any user who compiles or produces a report shall provide on a written form an opportunity for the consumer to waive his or her right to receive a copy of the public record information.
- If the person obtains public record information for the purpose of conducting an investigation for suspicion of wrongdoing or misconduct by the subject of the investigation, the person may withhold the information until the investigation is completed. Upon completion, the person shall provide a copy of the public record as noted above.
- If the person takes any adverse action the person shall provide a copy of the public record regardless of whether the consumer waived his/her right.
- The information provided pursuant to this section need only be provided to the subject of the report on one occasion.

Assembly Bill 2868 - Personal Information

1) Existing laws relating to defamation, slander, and libel are amended to authorize current or former employers to answer whether or not the employer would rehire a current or former employee. This includes communications concerning job performance or qualifications of an applicant for employment.

2) Copies of consumer reports shall be made available to the Consumer, upon request and proper identification, for at least two years after the date that the report was provided to the User of the report.

3) These amendments provide for an exemption to Section 1786.18 (Contents of Reports - Time Limits) for employers who are required by government regulatory agencies to check records that are limited (bankruptcies, satisfied judgements, unlawful detainer, paid tax liens, etc.) by this section from being reported.

4) §1786.20(a) Maintenance of reporting procedures; Violations; Liability

The following was added to this section:

"The investigative consumer reporting agency may assume that the purpose for which a user seeks information remains the same as that which a user has previously stated. The investigative consumer reporting agency shall inform the user that the user is obligated to notify the agency of any change in the purpose for which the information will be used."

In addition, the required time limit that a reporting agency is required to maintain copies of an investigative consumer report was extended from 2 years to 3 years.

5) §1786.24 Disputed information

Previously, anytime a report was found to contain disputed information which resulted in that information being deleted by the reporting agency, the agency was required to send an updated report to all individuals receiving that disputed information within the previous two years. The amendments alter this requirement and will only require notification to be made to those users specifically designated by the consumer within the previous two years who had received the disputed information. This right to request notification must be clearly disclosed by the reporting agency to the consumer.

###