

AMENDED IN SENATE APRIL 22, 2002

AMENDED IN SENATE AUGUST 20, 2001

CALIFORNIA LEGISLATURE—2001–02 REGULAR SESSION

**ASSEMBLY BILL**

**No. 1068**

**Introduced by Assembly Member Papan Wright**

February 23, 2001

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~~An act to amend Section 17403.5 of the Financial Code, relating to escrow agents. An act to amend Sections 1785.16.2, 1785.20.3, 1786.16, 1786.29, and 1786.53 of, and to add Sections 1786.40 and 1786.55 to, the Civil Code, relating to investigative consumer reports, and declaring the urgency thereof, to take effect immediately.~~

LEGISLATIVE COUNSEL'S DIGEST

AB 1068, as amended, ~~Papan Wright. Escrow agents: inspections and examinations~~ *Investigative consumer reports.*

*(1) The Consumer Credit Reporting Agencies Act regulates consumer credit reporting agencies and the manner in which these agencies assemble and evaluate consumer credit information, as specified. Existing law prohibits the sale of a consumer debt if the file of the consumer is blocked, as specified, or if the consumer provides in writing that the debt is not his or her obligation due to identity theft. Existing law exempts from those prohibitions the sale of a debt to a subsidiary or affiliate of the creditor.*

*This bill would revise and recast those provisions, and define the term "debt collector." The bill would additionally require, for continual exemption from those prohibitions, that a subsidiary or affiliate not take any action to collect on the debt.*

(2) Existing law establishes a process by which any person who uses a consumer credit report in connection with a credit transaction is required to verify the address of the consumer, confirm that the transaction is not the result of identity theft, and verify the identity of the consumer, under specified circumstances.

This bill would delete those provisions and establish a different process by which any person who uses a consumer credit report in connection with the approval of credit based on an application for an extension of credit is required to make verifications and confirmations, under specified circumstances. The bill would require that a creditor provide written notice to a victim of identity theft of his or her rights, pursuant to specified provisions. The bill would exempt certain entities, as specified, from certain notice requirements.

(3) Existing law requires that a person that procures or causes to be prepared an investigative consumer report in connection with the underwriting of insurance or for employment purposes other than suspicion of wrongdoing must meet specified conditions, including, but not limited to, the name and address of the agency conducting the investigation, the nature and scope of the investigation, and information on consumer inspection.

This bill would impose further requirements on a person that requests a report for employment purposes other than suspicion of wrongdoing or misconduct, as specified.

(4) Existing law requires an investigative consumer reporting agency to attach notices as cover sheets to any report, in at least 16-point type, setting forth disclosures and warnings, as specified, and to send a copy to the subject of the report.

This bill would require those notices to be placed on the first page of an investigative consumer report in 12-point boldface type, including a notice providing that information generated as a result of identity theft, including evidence of criminal activity, may be inaccurately associated with the subject of the report. The bill would also delete the copy requirement.

(5) Existing law permits an investigative consumer reporting agency to prepare an investigative consumer report for various purposes and entities.

This bill would provide that if an investigative consumer report results in the denial of a specified insurance policy or the increase of the hiring of a dwelling unit, the user of the report is to notify the consumer



of that adverse action and the name and address of the agency that made the report.

(6) Existing law provides that any person that collects consumer information, without the services of an investigative consumer reporting agency, provide that information to the consumer, as specified.

This bill would instead require that any person, in any manner, that collects consumer information that constitute matters of public record, as defined, to provide that information to the consumer, as specified. The bill would require that any person prior to taking adverse action in response to that information give the consumer notice, as specified.

(7) Existing law requires an employer to make employee personnel records available for review, with specified exceptions, and permits an employer to obtain employee information without the use of an investigative consumer reporting agency.

This bill would declare that those provisions are unaffected by the bill.

(8) This bill would declare that it is to take effect immediately as an urgency statute.

~~The Escrow Law provides for licensing and regulation of escrow agents, including Internet escrow agents, by the Commissioner of Corporations. Existing law requires the commissioner to conduct an inspection and examination every other calendar year of all books and records of every person, except as specified, acting as an escrow agent.~~

~~This bill would require the commissioner, to the extent feasible, to integrate and use an Internet escrow agent's electronic records in the course of this inspection and examination.~~

Vote: majority <sup>2</sup>/<sub>3</sub>. Appropriation: no. Fiscal committee: yes- no. State-mandated local program: no.

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

1    ~~SECTION 1. Section 17403.5 of the Financial Code is~~  
2    ~~SECTION 1. Section 1785.16.2 of the Civil Code is amended~~  
3    ~~to read:~~  
4    ~~1785.16.2. (a) No creditor may sell a consumer debt if the~~  
5    ~~consumer's file with a consumer credit reporting agency is~~  
6    ~~blocked with respect to that debt pursuant to subdivision (k) of~~  
7    ~~Section 1785.16, or if the consumer has provided the creditor with~~  
8    ~~sufficient information in writing that the consumer is not obligated~~



1 to pay the debt because he or she is a victim of identity theft, as  
2 defined in subdivision (d) of Section 1798.92, for the creditor to  
3 have reasonable grounds to determine that consumer's statement  
4 of identity theft is not frivolous.

5 ~~(b) Subdivision (a) does not apply to a creditor's sale of a debt  
6 to a subsidiary or affiliate of the creditor. (a) No creditor may sell  
7 a consumer debt to a debt collector, as defined in 15 U.S.C. Sec.  
8 1692a, if the consumer is a victim of identity theft, as defined in  
9 Section 1798.2, and with respect to that debt, the creditor has  
10 received notice pursuant to subdivision (k) of Section 1785.16.~~

11 ~~(b) Subdivision (a) does not apply to a creditor's sale of a debt  
12 to a subsidiary or affiliate of the creditor, if, with respect to that  
13 debt, the subsidiary or affiliate does not take any action to collect  
14 the debt.~~

15 ~~(c) For the purposes of this section, the requirement in 15  
16 U.S.C. Sec. 1692a, that a person must use an instrumentality of  
17 interstate commerce or the mails in the collection of any debt to be  
18 considered a debt collector, does not apply.~~

19 *SEC. 2. Section 1785.20.3 of the Civil Code is amended to*  
20 *read:*

21 1785.20.3. ~~(a) Any person who uses a consumer credit report  
22 in connection with a credit transaction, and who discovers that the  
23 address on the consumer credit report does not match the address  
24 of the consumer requesting or being offered credit, shall take  
25 reasonable steps to verify the accuracy of the consumer's address,  
26 and shall either communicate to consumer by telephone, or write  
27 the consumer, to confirm that the credit transaction is not the result  
28 of identity theft, as defined in Section 1798.90.~~

29 ~~(b) Any person who uses a consumer credit report in  
30 connection with a credit transaction, and who receives a clearly  
31 identifiable notification, consisting of more than a tradeline, from  
32 a consumer credit reporting agency that information in the report  
33 has been blocked pursuant to Section 1785.16 as the result of an  
34 identity theft, shall not lend money or extend credit without taking  
35 reasonable steps to verify the consumer's identity and to confirm  
36 that the credit transaction is not the result of identity theft. (a) Any  
37 person who uses a consumer credit report in connection with the  
38 approval of credit based on an application for an extension of  
39 credit, and who discovers that the address on the credit application  
40 does not match, within a reasonable degree of certainty, the~~



1 address or addresses listed, if any, on the consumer credit report,  
2 shall take reasonable steps to verify the accuracy of the address  
3 provided on the application to confirm that the extension of credit  
4 is not the result of identity theft, as defined in Section 1798.92.

5 (b) Any person who uses a consumer credit report in connection  
6 with the approval of credit based on an application for an  
7 extension of credit, and who has received notification pursuant to  
8 subdivision (k) of Section 1785.16 that the applicant has been a  
9 victim of identity theft, as defined in Section 1798.92, may not lend  
10 money or extend credit without taking reasonable steps to verify  
11 the consumer's identity and confirm that the application for an  
12 extension of credit is not the result of identity theft.

13 (c) Any consumer who suffers damages as a result of a violation  
14 of this section by any person may bring an action in a court of  
15 appropriate jurisdiction against that person to recover actual  
16 damages, court costs, attorney's fees, and punitive damages of not  
17 more than thirty thousand dollars (\$30,000) for each violation, as  
18 the court deems proper.

19 (d) As used in this section, "identity theft" has the meaning  
20 given in Section ~~1798.90~~ 1798.92.

21 (e) For the purposes of this section, "extension of credit" does  
22 not include an increase in an existing open-end credit plan, as  
23 defined in Regulation Z of the Federal Reserve System (12 C.F.R.  
24 226.2), or any change to or review of an existing credit account.

25 (f) If a consumer provides initial written notice to a creditor  
26 that he or she is a victim of identity theft, as defined in subdivision  
27 (d) of Section 1798.92, the creditor shall provide written notice to  
28 the consumer of his or her rights under subdivision (k) of Section  
29 1785.16.

30 (g) The provisions of subdivisions (k) and (l) of Section 1785.16  
31 do not apply to a consumer credit reporting agency that acts only  
32 as a reseller of credit information by assembling and merging  
33 information contained in the database of another consumer credit  
34 reporting agency or the databases of multiple consumer credit  
35 reporting agencies, and does not maintain a permanent database  
36 of credit information from which new credit reports are produced.

37 SEC. 3. Section 1786.16 of the Civil Code is amended to read:

38 1786.16. (a) Any person described in subdivision (d) of  
39 Section 1786.12 shall not procure or cause to be prepared an



1 investigative consumer report unless the following applicable  
2 conditions are met:

3 (1) If an investigative consumer report is sought in connection  
4 with the underwriting of insurance, it shall be clearly and  
5 accurately disclosed in writing at the time the application form,  
6 medical form, binder, or similar document is signed by the  
7 consumer that an investigative consumer report regarding the  
8 consumer's character, general reputation, personal characteristics,  
9 and mode of living may be made. If no signed application form,  
10 medical form, binder, or similar document is involved in the  
11 underwriting transaction, the disclosure shall be made to the  
12 consumer in writing and mailed or otherwise delivered to the  
13 consumer not later than three days after the report was first  
14 requested. The disclosure shall include the name and address of  
15 any investigative consumer reporting agency conducting an  
16 investigation, plus the nature and scope of the investigation  
17 requested, and a summary of the provisions of Section 1786.22.

18 (2) If, at any time, an investigative consumer report is sought  
19 for employment purposes other than suspicion of wrongdoing *or*  
20 *misconduct* by the subject of the investigation, the person  
21 procuring or causing the report to be made shall, *prior to*  
22 *requesting the report or* not later than three days after the date on  
23 which the report was first requested, notify the consumer in  
24 writing that an investigative consumer report regarding the  
25 consumer's character, general reputation, personal characteristics,  
26 and mode of living ~~will~~ *may* be made. This notification shall  
27 include the name and address of the investigative consumer  
28 reporting agency conducting the investigation, the nature and  
29 scope of the investigation requested, and a summary of the  
30 provisions of Section 1786.22. *The person requesting the*  
31 *investigative consumer report may not procure the report, or cause*  
32 *the report to be made, with respect to any consumer, unless:*

33 (A) *The person procuring or causing the report to be made has*  
34 *a permissible purpose, as defined in Section 1786.12.*

35 (B) *The person procuring or causing the report to be made*  
36 *provides a clear and conspicuous disclosure in writing to the*  
37 *consumer at any time before the report is procured or caused to be*  
38 *made, or not later than three days after the date on which the report*  
39 *was first requested, in a document that consists solely of the*  
40 *disclosure, that:*



1 (i) An investigative consumer report may be obtained.

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

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

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

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

12 (C) The consumer has authorized in writing the procurement of  
13 the report on the disclosure form.

14 (3) If an investigative consumer report is sought in connection  
15 with the hiring of a dwelling unit, as defined in subdivision (c) of  
16 Section 1940, the person procuring or causing the request to be  
17 made shall, not later than three days after the date on which the  
18 report was first requested, notify the consumer in writing that an  
19 investigative consumer report will be made regarding the  
20 consumer's character, general reputation, personal characteristics,  
21 and mode of living. The notification shall also include the name  
22 and address of the investigative consumer reporting agency that  
23 will prepare the report and a summary of the provisions of Section  
24 1786.22.

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

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

33 (b) Any person described in subdivision (d) of Section 1786.12  
34 who requests an investigative consumer report ~~regarding that~~  
35 ~~consumer shall provide the consumer with a copy of the report and~~  
36 ~~information on who issued the report and how to contact them;~~  
37 ~~either at the time of the meeting or interview between the~~  
38 ~~consumer and the person who requests an investigative consumer~~  
39 ~~report regarding that consumer or within seven days of the date~~  
40 ~~such person receives the report, whichever is earlier, in~~



1 accordance with subdivision (a), regarding that consumer, shall do  
2 the following:

3 (i) Provide the consumer a means by which the consumer may  
4 indicate on a written form, by means of a box to check, that the  
5 consumer either wishes or does not wish to request a copy of any  
6 report that is prepared. If the consumer requests a copy of the  
7 report, the person requesting the report shall request that the  
8 person preparing the report provide a copy to the consumer. If the  
9 report is requested by the consumer, the person who prepared the  
10 report must send the report to the consumer within three business  
11 days of the date that the report is provided to the person who  
12 requested the report. The notice to request the report may be  
13 contained on either the disclosure form, as required by subdivision  
14 (a), or a separate consent form. The copy of the report shall  
15 contain the name, address, and telephone number of the person  
16 who issued the report and how to contact them.

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

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

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

29 *SEC. 4. Section 1786.29 of the Civil Code is amended to read:*

30 1786.29. An investigative ~~consumer-reporting~~ consumer  
31 reporting agency shall provide the following notices *on the first*  
32 *page of an investigative consumer report:*

33 (a) ~~As a cover sheet to any report, a~~ A notice in at least 16-point  
34 12-point boldface type ~~that sets~~ setting forth that the following  
35 disclosures or warnings:

36 ~~(1) The report does not guarantee the accuracy or truthfulness~~  
37 of the information as to the subject of the investigation, but only  
38 that it is accurately copied from public records, *and information*  
39 *generated as a result of identity theft, including evidence of*  
40 *criminal activity, may be inaccurately associated with the*



1 consumer who is the subject of the report. ~~Evidence of identity~~  
2 ~~theft may or may not be identified from this report.~~

3 (2) ~~The recipient of this report shall give a copy of this report~~  
4 ~~to the subject of the report.~~

5 (3) ~~Failure to provide a copy of the report as required by law~~  
6 ~~may expose you to liability as specified in Section 1786.50.~~

7 (b) An investigative consumer reporting agency shall provide  
8 a consumer seeking to obtain a copy of a report or making a request  
9 to review a file, a written notice in simple, plain English and  
10 Spanish setting forth the terms and conditions of his or her right  
11 to receive all disclosures as provided in Section 1786.26.

12 SEC. 5. Section 1786.40 is added to the Civil Code, to read:

13 1786.40. (a) Whenever insurance for personal, family, or  
14 household purposes, employment, or the hiring of a dwelling unit  
15 involving a consumer is denied or the charge for that insurance or  
16 the hiring of a dwelling unit is increased either wholly or partly  
17 because of information contained in an investigative consumer  
18 report from an investigative consumer reporting agency, the user  
19 of the investigative consumer report shall so advise the consumer  
20 against whom the adverse action has been taken and supply the  
21 name and address of the investigative consumer reporting agency  
22 making the report.

23 (b) Whenever insurance for personal, family, or household  
24 purposes involving a consumer is denied or the charge for that  
25 insurance is increased either wholly or in part because of  
26 information obtained from a person other than an investigative  
27 consumer reporting agency, the consumer, or another person  
28 related to the consumer and acting on the consumer's behalf and  
29 bearing upon the consumer's general reputation, personal  
30 characteristics or mode of living, the user of the information shall,  
31 within a reasonable period of time, and upon the consumer's  
32 written request for the reasons for the adverse action received  
33 within 60 days after learning of the adverse action, disclose the  
34 nature and substance of the information to the consumer. The user  
35 of the information shall clearly and accurately disclose to the  
36 consumer his or her right to make this written request at the time  
37 the adverse action is communicated to the consumer.

38 SEC. 6. Section 1786.53 of the Civil Code is amended to read:

39 1786.53. (a) Any person who collects, assembles, evaluates,  
40 compiles, reports, transmits, transfers, or communicates



1 information on a consumer's character, general reputation,  
2 personal characteristics, or mode of living for the purposes  
3 specified in subdivision (a) of Section 1786, ~~in lieu of using which~~  
4 ~~are matters of public record regardless of whether the information~~  
5 ~~is obtained by the person directly, indirectly, or through the use of~~  
6 the services of an investigative consumer reporting agency, shall  
7 provide that information to the consumer at the time of the meeting  
8 or interview with the consumer, or within seven days of the date  
9 the person obtains the information regarding the consumer;  
10 ~~whichever is earlier.~~

11 *For purposes of this section, "public records" means records*  
12 *related to an arrest, indictment, conviction, civil judicial action,*  
13 *tax lien, or outstanding judgment.*

14 *(b) Before taking any adverse action based in whole or in part*  
15 *on the information described in subdivision (a), the person*  
16 *intending to take the adverse action shall provide to the consumer*  
17 *to whom the information relates notice, pursuant to subdivision (a)*  
18 *of Section 1786.40.*

19 *(c) If an employer obtains public records directly, indirectly, or*  
20 *through the use of the services of an investigative consumer*  
21 *reporting agency for the purpose of conducting an investigation*  
22 *for suspicion of wrongdoing or misconduct by the subject of the*  
23 *investigation, only subdivision (b) shall apply.*

24 *SEC. 7. Section 1786.55 is added to the Civil Code, to read:*

25 *1786.55. Nothing in this chapter is intended to modify Section*  
26 *1198.5 of the Labor Code or existing law concerning information*  
27 *obtained by an employer without the use of the services of an*  
28 *investigative consumer reporting agency for employment*  
29 *reference checks, credential verifications, or employee*  
30 *investigations, except as provided in Section 1786.53. This section*  
31 *does not constitute a change in, but is declaratory of, existing law*  
32 *relating to investigative consumer reports.*

33 *SEC. 8. This act is an urgency statute necessary for the*  
34 *immediate preservation of the public peace, health, or safety*  
35 *within the meaning of Article IV of the Constitution and shall go*  
36 *into immediate effect. The facts constituting the necessity are:*

37 *In order to clarify confusion over the operational provisions of*  
38 *Chapter 354 of the Statutes of 2001, and further protect consumer*  
39 *interests in relation to credit information and identity theft, it is*  
40 *necessary that this act take immediate effect.*



1 amended to read:

2 ~~17403.5. (a) All records required by this chapter may be~~  
3 ~~retained by an Internet escrow agent and provided to the~~  
4 ~~commissioner in electronic format.~~

5 ~~(b) All transfers by an Internet escrow agent between trust~~  
6 ~~accounts and interest-bearing accounts, and between escrow~~  
7 ~~accounts, may be made electronically.~~

8 ~~(c) A statement of account may be delivered by an Internet~~  
9 ~~escrow agent to a customer by electronic mail or via the Internet,~~  
10 ~~unless otherwise requested by the customer.~~

11 ~~(d) The commissioner shall, to the extent feasible, integrate and~~  
12 ~~use the Internet escrow agent's electronic records in the course of~~  
13 ~~the inspection and examination provided in Section 17405.~~

