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AMENDED IN SENATE APRIL 22, 2002  
AMENDED IN SENATE AUGUST 20, 2001

CALIFORNIA LEGISLATURE—2001–02 REGULAR SESSION

**ASSEMBLY BILL**

**No. 1068**

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**Introduced by Assembly Member Wright**

February 23, 2001

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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, Wright. 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 *to* 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~~ *or prepares an investigative consumer report, as specified, unless the report is procured or caused to be prepared by an employer for employment purposes other than* ~~due to~~ 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~~ *constitutes* matters of public record, as defined, to provide that information *on no more than one occasion* to the consumer *in the form of a copy of the public records and notice*, as specified. The bill would require that any person prior to taking adverse action in response to that information give the consumer *a copy of the public records and notice*, as specified. *The bill would also require employers to provide specified information on any job application form, or any other written form, to allow a consumer to waive his or her right to receive that copy.*

(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. *Existing law generally provides that attorney-client communications and attorney work product are privileged, with exceptions.*

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

(8) *This bill would provide that the requirement that a creditor is to provide written notice to a consumer identified as a victim of identity theft of his or her rights is to become operative 90 days after the effective date of this measure.*

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

Vote: <sup>2</sup>/<sub>3</sub>. 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 1785.16.2 of the Civil Code is amended
- 2 to read:
- 3 1785.16.2. (a) No creditor may sell a consumer debt to a debt
- 4 collector, as defined in 15 U.S.C. Sec. 1692a, if the consumer is



1 a victim of identity theft, as defined in Section 1798.2, and with  
2 respect to that debt, the creditor has received notice pursuant to  
3 subdivision (k) of Section 1785.16.

4 (b) Subdivision (a) does not apply to a creditor's sale of a debt  
5 to a subsidiary or affiliate of the creditor, if, with respect to that  
6 debt, the subsidiary or affiliate does not take any action to collect  
7 the debt.

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

12 SEC. 2. Section 1785.20.3 of the Civil Code is amended to  
13 read:

14 1785.20.3. (a) Any person who uses a consumer credit report  
15 in connection with the approval of credit based on an application  
16 for an extension of credit, and who discovers that the address on  
17 the credit application does not match, within a reasonable degree  
18 of certainty, the address or addresses listed, if any, on the consumer  
19 credit report, shall take reasonable steps to verify the accuracy of  
20 the address provided on the application to confirm that the  
21 extension of credit is not the result of identity theft, as defined in  
22 Section 1798.92.

23 (b) Any person who uses a consumer credit report in  
24 connection with the approval of credit based on an application for  
25 an extension of credit, and who has received notification pursuant  
26 to subdivision (k) of Section 1785.16 that the applicant has been  
27 a victim of identity theft, as defined in Section 1798.92, may not  
28 lend money or extend credit without taking reasonable steps to  
29 verify the consumer's identity and confirm that the application for  
30 an extension of credit is not the result of identity theft.

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

37 (d) As used in this section, "identity theft" has the meaning  
38 given in *subdivision (b)* of Section 1798.92.

39 (e) For the purposes of this section, "extension of credit" does  
40 not include an increase in an existing open-end credit plan, as



1 defined in Regulation Z of the Federal Reserve System (12 C.F.R.  
2 226.2), or any change to or review of an existing credit account.

3 (f) If a consumer provides initial written notice to a creditor that  
4 he or she is a victim of identity theft, as defined in subdivision (d)  
5 of Section 1798.92, the creditor shall provide written notice to the  
6 consumer of his or her rights under subdivision (k) of Section  
7 1785.16.

8 (g) The provisions of subdivisions (k) and (l) of Section  
9 1785.16 do not apply to a consumer credit reporting agency that  
10 acts only as a reseller of credit information by assembling and  
11 merging information contained in the database of another  
12 consumer credit reporting agency or the databases of multiple  
13 consumer credit reporting agencies, and does not maintain a  
14 permanent database of credit information from which new credit  
15 reports are produced.

16 SEC. 3. Section 1786.16 of the Civil Code is amended to read:  
17 1786.16. (a) Any person described in subdivision (d) of  
18 Section 1786.12 shall not procure or cause to be prepared an  
19 investigative consumer report unless the following applicable  
20 conditions are met:

21 (1) If an investigative consumer report is sought in connection  
22 with the underwriting of insurance, it shall be clearly and  
23 accurately disclosed in writing at the time the application form,  
24 medical form, binder, or similar document is signed by the  
25 consumer that an investigative consumer report regarding the  
26 consumer's character, general reputation, personal characteristics,  
27 and mode of living may be made. If no signed application form,  
28 medical form, binder, or similar document is involved in the  
29 underwriting transaction, the disclosure shall be made to the  
30 consumer in writing and mailed or otherwise delivered to the  
31 consumer not later than three days after the report was first  
32 requested. The disclosure shall include the name and address of  
33 any investigative consumer reporting agency conducting an  
34 investigation, plus the nature and scope of the investigation  
35 requested, and a summary of the provisions of Section 1786.22.

36 (2) If, at any time, an investigative consumer report is sought  
37 for employment purposes other than suspicion of wrongdoing or  
38 misconduct by the subject of the investigation, the person  
39 procuring or causing the report to be made shall, prior to  
40 requesting the report or not later than three days after the date on



1 which the report was first requested, notify the consumer in  
2 writing that an investigative consumer report regarding the  
3 consumer's character, general reputation, personal characteristics,  
4 and mode of living may be made. This notification shall include  
5 the name and address of the investigative consumer reporting  
6 agency conducting the investigation, the nature and scope of the  
7 investigation requested, and a summary of the provisions of  
8 Section 1786.22. The person requesting the investigative  
9 consumer report may not procure the report, or cause the report to  
10 be made, with respect to any consumer, unless:

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

13 (B) The person procuring or causing the report to be made  
14 provides a clear and conspicuous disclosure in writing to the  
15 consumer at any time before the report is procured or caused to be  
16 made, or not later than three days after the date on which the report  
17 was first requested, in a document that consists solely of the  
18 disclosure, that:

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

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

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

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

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

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

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



1 will prepare the report and a summary of the provisions of Section  
2 1786.22.

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

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

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

14 (i) Provide the consumer a means by which the consumer may  
15 indicate on a written form, by means of a box to check, that the  
16 consumer either wishes or does not wish to request a copy of any  
17 report that is prepared. If the consumer requests a copy of the  
18 report, the person requesting the report shall request that the  
19 person preparing the report provide a copy to the consumer. ~~If the~~  
20 ~~report is requested by the consumer, the consumer, or provide a~~  
21 ~~copy themselves. The person who prepared the report must, or the~~  
22 ~~recipient of the report, shall send the report to the consumer within~~  
23 ~~three business days of the date that the report is provided to the~~  
24 ~~person who requested the report. The notice to request the report~~  
25 ~~may be contained on either the disclosure form, as required by~~  
26 ~~subdivision (a), or a separate consent form. The copy of the report~~  
27 ~~shall contain the name, address, and telephone number of the~~  
28 ~~person who issued the report and how to contact them.~~

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

31 ~~(c) The provisions of subdivision (a) shall Subdivisions (a) and~~  
32 ~~(b) do not apply to an investigative consumer report procured or~~  
33 ~~caused to be prepared by an employer if the purpose of the~~  
34 ~~employer is to determine whether to retain an employee when~~  
35 ~~there is a good faith belief that the employee is engaged in any~~  
36 ~~criminal activity likely to result in a loss to the employer. by an~~  
37 ~~employer, if the report is sought for employment purposes due to~~  
38 ~~suspicion held by an employer of wrongdoing or misconduct by the~~  
39 ~~subject of the investigation.~~



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

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

6 1786.29. An investigative consumer reporting agency shall  
7 provide the following notices on the first page of an investigative  
8 consumer report:

9 (a) A notice in at least 12-point boldface type setting forth that  
10 the report does not guarantee the accuracy or truthfulness of the  
11 information as to the subject of the investigation, but only that it  
12 is accurately copied from public records, and information  
13 generated as a result of identity theft, including evidence of  
14 criminal activity, may be inaccurately associated with the  
15 consumer who is the subject of the report.

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

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

22 1786.40. (a) Whenever insurance for personal, family, or  
23 household purposes, employment, or the hiring of a dwelling unit  
24 involving a consumer is denied, or the charge for that insurance  
25 or the hiring of a dwelling unit is increased either wholly or partly  
26 because of information contained in an investigative consumer  
27 report from an investigative consumer reporting agency, the user  
28 of the investigative consumer report shall so advise the consumer  
29 against whom the adverse action has been taken and supply the  
30 name and address of the investigative consumer reporting agency  
31 making the report.

32 (b) Whenever insurance for personal, family, or household  
33 purposes involving a consumer is denied or the charge for that  
34 insurance is increased, either wholly or in part because of  
35 information obtained from a person other than an investigative  
36 consumer reporting agency, the consumer, or another person  
37 related to the consumer and acting on the consumer's behalf and  
38 bearing upon the consumer's general reputation, personal  
39 characteristics, or mode of living, the user of the information shall,  
40 within a reasonable period of time, and upon the consumer's



1 written request for the reasons for the adverse action received  
2 within 60 days after learning of the adverse action, disclose the  
3 nature and substance of the information to the consumer. The user  
4 of the information shall clearly and accurately disclose to the  
5 consumer his or her right to make this written request at the time  
6 the adverse action is communicated to the consumer.

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

8 1786.53. (a) Any person who collects, assembles, evaluates,  
9 compiles, reports, transmits, transfers, or communicates  
10 information on a consumer's character, general reputation,  
11 personal characteristics, or mode of living, for the purposes  
12 specified in subdivision (a) of Section 1786, which are matters of  
13 public record regardless of whether the information is obtained by  
14 the person directly, indirectly, or through the use of the services of  
15 an investigative consumer reporting agency, shall or indirectly,  
16 shall provide that information to the consumer at the time of the  
17 meeting or interview with the consumer, or within seven days of  
18 the date the person obtains the information regarding the consumer  
19 pursuant to subdivision (b).

20 For purposes of this section, "public section":

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

24 (2) "Public records" means records related to documenting an  
25 arrest, indictment, conviction, civil judicial action, tax lien, or  
26 outstanding judgment.

27 (b) Before taking any adverse action based in whole or in part  
28 on the information described in subdivision (a), the person  
29 intending to take the adverse action shall provide to the consumer  
30 to whom the information relates notice, pursuant to subdivision (a)  
31 of Section 1786.40: a copy of the public records on which the  
32 action is based, and notice pursuant to subdivision (a) of Section  
33 1786.40.

34 An employer shall provide on any job application form, or any  
35 other written form, a box that, if checked by the consumer, permits  
36 the consumer to waive his or her right to receive a copy of any  
37 public record obtained pursuant to this section. If the consumer  
38 does not waive this right, that copy is to be provided no later than  
39 seven days after the date the person obtains the information on the  
40 consumer.



1 (c) If an employer obtains public records directly; *or* indirectly,  
 2 ~~or through the use of the services of an investigative consumer~~  
 3 ~~reporting agency~~ for the purpose of conducting an investigation  
 4 for suspicion of wrongdoing or misconduct by the subject of the  
 5 investigation, only subdivision (b) shall apply.

6 (d) *Nothing in subdivision (a) or (b) requires an employer to*  
 7 *provide the same information to any consumer on more than one*  
 8 *occasion.*

9 SEC. 7. Section 1786.55 is added to the Civil Code, to read:  
 10 1786.55. Nothing in this chapter is intended to modify  
 11 Section 1198.5 of the Labor Code or existing law concerning  
 12 information obtained by an employer without the use of the  
 13 services of an investigative consumer reporting agency for  
 14 employment reference checks, *background investigations,*  
 15 *credential verifications,* or employee investigations, except as  
 16 provided in Section 1786.53. *Nothing in this chapter is intended*  
 17 *to change or supersede existing law related to privileged*  
 18 *attorney-client communications or attorney work product, or*  
 19 *require the production or disclosure of that information.* This  
 20 section does not constitute a change in, but is declaratory of,  
 21 existing law relating to investigative consumer reports.

22 SEC. 8. *The changes made by this act to subdivision (f) of*  
 23 *Section 1785.20.3 of the Civil Code shall become operative 90*  
 24 *days after the effective date of this act.*

25 SEC. 9. This act is an urgency statute necessary for the  
 26 immediate preservation of the public peace, health, or safety  
 27 within the meaning of Article IV of the Constitution and shall go  
 28 into immediate effect. The facts constituting the necessity are:

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

