

Assembly Bill No. 1068

CHAPTER 1030

An act to amend Sections 1785.16.2, 1785.20.3, 1786.16, 1786.24, 1786.29, and 1786.53 of, and to add Sections 1786.40, 1786.55, and 1786.60 to, the Civil Code, relating to personal information, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor September 28, 2002. Filed with Secretary of State September 28, 2002.]

LEGISLATIVE COUNSEL'S DIGEST

AB 1068, Wright. Personal information.

(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 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. The bill would also exclude from these provisions a United States Army or Air Force post office address or a United States Fleet post office address.

(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 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 the recipient of an investigative consumer report, as specified, unless the report is procured or caused to be prepared by an employer for employment purposes due to suspicion of wrongdoing or misconduct.

(4) Existing law establishes a process by which a consumer may dispute the accuracy of information in a consumer credit report. Existing law requires an investigative consumer reporting agency to make reinvestigations, as specified, and, if information is deleted or modified, to notify the appropriate source from which the disputed information was obtained and the consumer.

This bill would provide that notification to the consumer need not provide the identity of the source of the disputed information.

(5) 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.

(6) 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.

(7) 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 that collects or receives consumer information for employment purposes that constitute matters of public record, as defined, to provide that information on no more than one occasion to the consumer in a specified form. 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 record. The bill would also require that person to provide specified information on any job application form, or any other written form, to permit a consumer to waive his or her right to receive that information, except as specified.

(8) Existing law requires an employer to make employee personnel records available for review, with specified exceptions, and permits an employer or employment agency 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 these provisions are unaffected by the bill.

(9) Existing law prohibits any person or entity, not including a state or local agency, as of July 1, 2002, from using an individual's social security number in certain ways, including posting it publicly or requiring it for access to products or services.

This bill would exempt any financial institution from that prohibition until July 1, 2003, for specified purposes.

(10) 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.

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

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

SECTION 1. Section 1785.16.2 of the Civil Code is amended to read:

1785.16.2. (a) No creditor may sell a consumer debt to a debt collector, as defined in 15 U.S.C. Sec. 1692a, if the consumer is a victim of identity theft, as defined in Section 1798.2, and with respect to that debt, the creditor has received notice pursuant to subdivision (k) of Section 1785.16.

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

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

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

1785.20.3. (a) Any person who uses a consumer credit report in connection with the approval of credit based on an application for an



extension of credit, and who discovers that the address on the credit application does not match, within a reasonable degree of certainty, the address or addresses listed, if any, on the consumer credit report, shall take reasonable steps to verify the accuracy of the address provided on the application to confirm that the extension of credit is not the result of identity theft, as defined in Section 1798.92.

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

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

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

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

(h) This section does not apply if one of the addresses at issue is a United States Army or Air Force post office address or a United States Fleet post office address.

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

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 or misconduct by the subject of the investigation, the person seeking the investigative consumer report may procure the report, or cause the report to be made, only if all of the following apply:

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

(B) The person procuring or causing the report to be made provides a clear and conspicuous disclosure in writing to the consumer at any time before the report is procured or caused to be made in a document that consists solely of the disclosure, that:

(i) An investigative consumer report may be obtained.

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

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

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

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

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

(3) 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, in accordance with subdivision (a) regarding that consumer, shall do the following:

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

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

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

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

SEC. 4. Section 1786.24 of the Civil Code is amended to read:

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. In accordance with subdivision (b) of Section 1786.10, the copy of the notification sent to the consumer need not reveal the identity of the source of information, unless otherwise required by law.



(f) No information may be reinserted in the file of a consumer 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 the file of a consumer 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 file of a



consumer 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) If 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 statement of the consumer or a clear and accurate summary thereof.

(k) Following the deletion of information from the file of a consumer 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 the file of a consumer and in investigative consumer reports information that has been deleted pursuant to this section and not reinserted pursuant to subdivision (f).

(m) If the the dispute of a consumer 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 is 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 file of a consumer 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 the file of a consumer 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. 5. Section 1786.29 of the Civil Code is amended to read:

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

(a) A notice in at least 12-point boldface type 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, including evidence of criminal activity, may be inaccurately associated with the consumer who is the subject of the report.

(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.

SEC. 6. Section 1786.40 is added to the Civil Code, to read:

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

(b) 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 bearing upon the consumer's general reputation, personal characteristics, or mode of



living, that was 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, 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. 7. Section 1786.53 of the Civil Code is amended to read:

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

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

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

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

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

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

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



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

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

SEC. 8. Section 1786.55 is added to the Civil Code, to read:

1786.55. Nothing in this chapter is intended to modify Section 1198.5 of the Labor Code or existing law concerning information obtained by an employer or employment agency without the use of the services of an investigative consumer reporting agency for employment reference checks, background investigations, credential verifications, or employee investigations, except as provided in Section 1786.53. Nothing in this chapter is intended to change or supersede existing law related to privileged attorney-client communications or attorney work product, or require the production or disclosure of that information.

SEC. 9. Section 1786.60 is added to the Civil Code, to read:

1786.60. Notwithstanding subdivision (a) of Section 1798.85, prior to July 1, 2003, any financial institution may print the social security number of an individual on any account statement or similar document mailed to that individual, if the social security number is provided in connection with a transaction governed by the rules of the National Automated Clearing House Association, or a transaction initiated by a federal governmental entity through an automated clearing house network.

SEC. 10. The changes made by this act to subdivision (f) of Section 1785.20.3 of the Civil Code shall become operative 90 days after the effective date of this act.

SEC. 11. This act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within the meaning of Article IV of the Constitution and shall go into immediate effect. The facts constituting the necessity are:

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

