

## Assembly Bill No. 2868

### CHAPTER 1029

An act to amend Sections 47, 1786.11, 1786.18, 1786.20, 1786.24, and 1786.50 of, and to add Section 1785.16.3 to the Civil Code, relating to personal information reporting, 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 2868, Wright. Personal information reporting.

(1) Existing law relating to defamation provides that libel is a false and unprivileged written publication that injures the reputation, and that slander is a false and unprivileged publication, orally uttered, that injures the reputation, as specified. Existing law makes privileged, and therefore protected from the threat of civil action, certain publications and communications, including those communications regarding job performance and qualifications, as specified.

This bill would revise the provisions concerning the privileged character of communications regarding job performance and qualifications to specify their application to applicants for employment and to authorize a current or former employer, or the employer's agent, to answer whether or not the employer would rehire a current or former employee.

(2) Existing law establishes 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 information in specified instances, and establishes requirements for unblocking information after an allegation of identity theft.

This bill would exclude from these provisions a consumer reporting agency that acts only as a reseller of credit information, as specified, and that does not maintain a permanent database of credit information from which new credit reports are produced.

(3) Existing law requires an investigative consumer reporting agency to keep a copy of an investigative consumer report for at least 3 years.

This bill would reduce the period of time the report must be made available to the consumer to 2 years after the report is provided.

(4) Existing law prohibits an investigative consumer reporting agency from making or furnishing an investigative consumer report

containing specified items of information, except where the report is used in the underwriting of life insurance, as specified.

This bill would provide an additional exception to the above-described prohibition on specified items of information when an employer is explicitly required by a governmental regulatory agency to check for records that investigative consumer reports are prohibited from containing when the employer is reviewing a consumer's qualification for employment.

(5) Existing law requires an investigative consumer reporting agency to require that prospective users of information identify themselves and to certify the purposes for which the information sought will be used. Existing law further requires an investigative consumer reporting agency to keep a record of the purposes for which information is sought. Existing law provides that an investigative consumer reporting agency that violates these and other specified provisions is liable to the affected consumer for not less than \$25,000, in addition to liability for actual damages or \$10,000, whichever is greater, as specified, reasonable attorneys' fees, costs of the action, and punitive damages, in the discretion of the court, when the violation is willful or grossly negligent.

This bill would permit an investigative consumer reporting agency to assume that the purpose for which a user seeks information remains the same as that which a user has previously stated. The bill would require the investigative consumer reporting agency to inform the user that the user is obligated to notify the agency of any change in the purpose for which information will be used. The bill would also limit the liability of an investigative consumer reporting agency as described above, to an amount not less than \$25,000, reasonable attorneys' fees, and the costs of the action, as specified.

(6) Existing law requires an investigative consumer reporting agency to promptly notify a consumer, as specified, when information deleted from a consumer's file is reinserted, and requires the agency to provide a notice to the consumer stating that the consumer has a right to a reinvestigation of the information and to add a statement to the file, as specified.

This bill would provide an exception to the notice regarding reinvestigation of the information and the right to add a statement when the reinsertion results from the resolution of a prior dispute, and was made at the request of, or with the prior approval of, the consumer.

(7) Existing law requires an investigative consumer reporting agency to provide certain notices to specified parties who have received, in the prior 2 years, an investigative consumer report regarding a consumer when information is deleted from a consumer's file or following the



filing of a specified dispute regarding the information, unless the consumer explicitly requests this notification not be given.

This bill would provide that the notifications described above be furnished, instead, to any person specifically designated by the consumer.

(8) 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 47 of the Civil Code is amended to read:

47. A privileged publication or broadcast is one made:

(a) In the proper discharge of an official duty.

(b) In any (1) legislative proceeding, (2) judicial proceeding, (3) in any other official proceeding authorized by law, or (4) in the initiation or course of any other proceeding authorized by law and reviewable pursuant to Chapter 2 (commencing with Section 1084) of Title 1 of Part 3 of the Code of Civil Procedure, except as follows:

(1) An allegation or averment contained in any pleading or affidavit filed in an action for marital dissolution or legal separation made of or concerning a person by or against whom no affirmative relief is prayed in the action shall not be a privileged publication or broadcast as to the person making the allegation or averment within the meaning of this section unless the pleading is verified or affidavit sworn to, and is made without malice, by one having reasonable and probable cause for believing the truth of the allegation or averment and unless the allegation or averment is material and relevant to the issues in the action.

(2) This subdivision does not make privileged any communication made in furtherance of an act of intentional destruction or alteration of physical evidence undertaken for the purpose of depriving a party to litigation of the use of that evidence, whether or not the content of the communication is the subject of a subsequent publication or broadcast which is privileged pursuant to this section. As used in this paragraph, “physical evidence” means evidence specified in Section 250 of the Evidence Code or evidence that is property of any type specified in Section 2031 of the Code of Civil Procedure.

(3) This subdivision does not make privileged any communication made in a judicial proceeding knowingly concealing the existence of an insurance policy or policies.

(4) A recorded *lis pendens* is not a privileged publication unless it identifies an action previously filed with a court of competent jurisdiction which affects the title or right of possession of real property, as authorized or required by law.



(c) In a communication, without malice, to a person interested therein, (1) by one who is also interested, or (2) by one who stands in such a relation to the person interested as to afford a reasonable ground for supposing the motive for the communication to be innocent, or (3) who is requested by the person interested to give the information. This subdivision applies to and includes a communication concerning the job performance or qualifications of an applicant for employment, based upon credible evidence, made without malice, by a current or former employer of the applicant to, and upon request of, one whom the employer reasonably believes is a prospective employer of the applicant. This subdivision authorizes a current or former employer, or the employer's agent, to answer whether or not the employer would rehire a current or former employee. This subdivision shall not apply to a communication concerning the speech or activities of an applicant for employment if the speech or activities are constitutionally protected, or otherwise protected by Section 527.3 of the Code of Civil Procedure or any other provision of law.

(d) (1) By a fair and true report in, or a communication to, a public journal, of (A) a judicial, (B) legislative, or (C) other public official proceeding, or (D) of anything said in the course thereof, or (E) of a verified charge or complaint made by any person to a public official, upon which complaint a warrant has been issued.

(2) Nothing in paragraph (1) shall make privileged any communication to a public journal that does any of the following:

(A) Violates Rule 5-120 of the State Bar Rules of Professional Conduct.

(B) Breaches a court order.

(C) Violates any requirement of confidentiality imposed by law.

(e) By a fair and true report of (1) the proceedings of a public meeting, if the meeting was lawfully convened for a lawful purpose and open to the public, or (2) the publication of the matter complained of was for the public benefit.

SEC. 2. Section 1785.16.3 is added to the Civil Code, to read:

1785.16.3. The provisions of subdivisions (k) and (l) of Section 1785.16 do not apply to a consumer reporting agency that acts only as a reseller of credit information by assembling and merging information contained in the database of another consumer reporting agency or agencies, and that does not maintain a permanent database of credit information from which new credit reports are produced.

SEC. 3. Section 1786.11 of the Civil Code is amended to read:

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 two years after the date that the report is provided to the other person.

SEC. 4. Section 1786.18 of the Civil Code is amended to read:

1786.18. (a) Except as authorized under subdivision (b), an investigative consumer reporting agency may not 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 either of the following circumstances:

(1) If the investigative consumer report is 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.

(2) If the investigative consumer report is to be used by an employer who is explicitly required by a governmental regulatory agency to check for records that are prohibited by subdivision (a) when the employer is reviewing a consumer's qualification for employment.

(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. 5. Section 1786.20 of the Civil Code is amended to read:

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. 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 information will be used. 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 two years after the report is provided.

(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). In the case of a successful action to enforce liability under this section, a court may award the costs of the action together with reasonable attorney's fees as determined by the court.

SEC. 6. 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.

(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, except when the reinsertion results from the resolution of a prior dispute, and was made at the request of, or with the prior approval of, the consumer.

(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, 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. 7. Section 1786.50 of the Civil Code is amended to read:

1786.50. (a) An investigative consumer reporting agency or user of information that fails to comply with any requirement under this title, except for the requirements of Section 1786.20, 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. 8. 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.

