BILL NUMBER: AB 22 ENROLLED

BILL TEXT

PASSED THE SENATE SEPTEMBER 8, 2011

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AMENDED IN ASSEMBLY MAY 12, 2011

AMENDED IN ASSEMBLY MARCH 8, 2011

INTRODUCED BY Assembly Member Mendoza

(Coauthors: Assembly Members Allen, Davis, and Huffman)

DECEMBER 6, 2010

An act to amend Section 1785.20.5 of the Civil Code, and to add

Chapter 3.6 (commencing with Section 1024.5) to Part 2 of Division 2

of the Labor Code, relating to employment.

LEGISLATIVE COUNSEL'S DIGEST

AB 22, Mendoza. Employment: credit reports.

The federal Fair Credit Reporting Act (FCRA) and the state

Consumer Credit Reporting Agencies Act define and regulate consumer

credit reports and authorize the use of consumer credit reports for

employment purposes, pursuant to specified requirements. The FCRA

provides that it does not preempt state law, except as specifically

provided or to the extent that state laws are inconsistent with its

provisions.

Existing federal and state law specify the procedures that an

employer is required to follow before requesting a report and if

adverse action is taken based on the report. Existing federal law

provides that, subject to certain exceptions, an employer may not

procure a report or cause one to be procured for employment purposes,

unless prior disclosure of the procurement is made to the consumer

and the consumer authorizes the procurement, as specified. Existing

federal law further requires, subject to certain exceptions, an

employer, before taking any adverse action based on the report, to

provide the consumer with a copy of the report and a written

description of certain rights of the consumer.

Under existing state law, an employer may request a credit report

for employment purposes so long as he or she provides prior written

notice of the request to the person for whom the report is sought.

Existing state law also requires that the written notice inform the

person for whom the consumer credit report is sought that a report

will be used and of the source of the report and contain space for

the person to request a copy of the report. Existing state law

further requires an employer, whenever he or she bases an adverse

employment decision on information contained in a consumer credit

report, to advise the person for whom the report was sought that an

adverse action was taken based upon information contained in the

report and provide the person with the name and address of the

consumer credit agency making the report. A consumer who suffers

damages resulting from a violation of these state law provisions may

bring a court action to recover monetary damages, as specified, but

no person is liable for the violation if he or she shows reasonable

procedures were maintained to assure compliance with the provisions,

as specified.

This bill would prohibit an employer or prospective employer, with

the exception of certain financial institutions, from obtaining a

consumer credit report, as defined, for employment purposes unless

the position of the person for whom the report is sought is (1) a

position in the state Department of Justice, (2) a managerial

position, as defined, (3) that of a sworn peace officer or other law

enforcement position, (4) a position for which the information

contained in the report is required by law to be disclosed or

obtained, (5) a position that involves regular access to specified

personal information for any purpose other than the routine

solicitation and processing of credit card applications in a retail

establishment, (6) a position in which the person is or would be a

named signatory on the employer's bank or credit card account, or

authorized to transfer money or enter into financial contracts on the

employer's behalf, (7) a position that involves access to

confidential or proprietary information, as specified, or (8) a

position that involves regular access to $10,000 or more of cash, as

specified.

This bill would also require the written notice informing the

person for whom a consumer credit report is sought for employment

purposes to also inform the person of the specific reason for

obtaining the report, as specified.

THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

SECTION 1. Section 1785.20.5 of the Civil Code is amended to read:

1785.20.5. (a) Prior to requesting a consumer credit report for

employment purposes, the user of the report shall provide written

notice to the person involved. The notice shall inform the person

that a report will be used, and shall identify the specific basis

under subdivision (a) of Section 1024.5 of the Labor Code for use of

the report. The notice shall also inform the person of the source of

the report, and shall contain a box that the person may check off to

receive a copy of the credit report. If the consumer indicates that

he or she wishes to receive a copy of the report, the user shall

request that a copy be provided to the person when the user requests

its copy from the credit reporting agency. The report to the user and

to the subject person shall be provided contemporaneously and at no

charge to the subject person.

(b) Whenever employment involving a consumer is denied either

wholly or partly because of information contained in a consumer

credit report from a consumer credit reporting agency, the user of

the consumer credit report shall so advise the consumer against whom

the adverse action has been taken and supply the name and address or

addresses of the consumer credit reporting agency making the report.

No person shall be held liable for any violation of this section if

he or she shows by a preponderance of the evidence that, at the time

of the alleged violation, he or she maintained reasonable procedures

to assure compliance with this section.

SEC. 2. Chapter 3.6 (commencing with Section 1024.5) is added to

Part 2 of Division 2 of the Labor Code, to read:

CHAPTER 3.6. EMPLOYER USE OF CONSUMER CREDIT REPORTS

1024.5. (a) An employer or prospective employer shall not use a

consumer credit report for employment purposes unless the position of

the person for whom the report is sought is any of the following:

(1) A managerial position.

(2) A position in the state Department of Justice.

(3) That of a sworn peace officer or other law enforcement

position.

(4) A position for which the information contained in the report

is required by law to be disclosed or obtained.

(5) A position that involves regular access, for any purpose other

than the routine solicitation and processing of credit card

applications in a retail establishment, to all of the following types

of information of any one person:

(A) Bank or credit card account information.

(B) Social security number.

(C) Date of birth.

(6) A position in which the person is, or would be, any of the

following:

(A) A named signatory on the bank or credit card account of the

employer.

(B) Authorized to transfer money on behalf of the employer.

(C) Authorized to enter into financial contracts on behalf of the

employer.

(7) A position that involves access to confidential or proprietary

information, including a formula, pattern, compilation, program,

device, method, technique, process or trade secret that (i) derives

independent economic value, actual or potential, from not being

generally known to, and not being readily ascertainable by proper

means by, other persons who may obtain economic value from the

disclosure or use of the information, and (ii) is the subject of an

effort that is reasonable under the circumstances to maintain secrecy

of the information.

(8) A position that involves regular access to cash totaling ten

thousand dollars ($10,000) or more of the employer, a customer, or

client, during the workday.

(b) This section does not apply to a person or business subject to

Sections 6801 to 6809, inclusive, of Title 15 of the United States

Code and state and federal statutes or regulations implementing those

sections if the person or business is subject to compliance

oversight by a state or federal regulatory agency with respect to

those laws.

(c) The following definitions apply to this section:

(1) "Consumer credit report" has the same meaning as defined in

subdivision (c) of Section 1785.3 of the Civil Code, but does not

include a report that (A) verifies income or employment, and (B) does

not include credit-related information, such as credit history,

credit score, or credit record.

(2) "Managerial position" means an employee covered by the

executive exemption set forth in subparagraph (1) of paragraph (A) of

Section 1 of Wage Order 4 of the Industrial Welfare Commission (8

Cal. Code Regs. 11040).