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| Summary of New CA laws passed September 2003 (amending AB 655) | |
| 1786.2 (c) The term "investigative consumer report" means a consumer report in which information on a consumer's character, general reputation, personal characteristics, or mode of living is obtained through any means. | CA does not differentiate between CR and ICR as in FCRA |
| 1786.2 (d) The term "investigative consumer reporting agency" means any person who, for monetary fees or dues, engages in whole or in part in the practice of collecting, assembling, evaluating, compiling, reporting, transmitting, transferring, or communicating information concerning consumers for the purposes of furnishing investigative consumer reports to third parties, | Much broader definition-in FCRA, A CRA only regulates "assembling or evaluating." Folks who put together databases may be covered in CA |
| Civil Code 1886.16 | |
| 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: | In Ca, no three-day rule. 1. CF FCRA section 606 (a)(1) where for an investigative CR can made in writing or mailed within 3 days after requested CA does not differentiate between consumer report and investigative consumer report |
| (A) The person procuring or causing the report to be made has a permissible purpose, as defined in Section 1786.12. | Same as in FCRA |
| (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: | Repeats federal separate disclosure rule |
| (i) An investigative consumer report may be obtained. | That was a change from the original wording where it said a report will be obtained-raised some issues about the timing-that was resolved in the correction in 1068 |
| ii) The permissible purpose of the report is identified. | Similar to FCRA section 604 |
| (iii) The disclosure may include information on the consumer's character, general reputation, personal | 1. KEY-under feral law, only need this for an ICR 2. In CA, there is no longer a difference be CR |

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| <p>characteristics, and mode of living.</p> | <p>and ICR, so this language needs to be in all CA forms</p> <p>3. Under federal law, FTC staff letter has indicated could eliminate language inapplicable. (Willner March 25, 1999)</p> <p>Not in CA apparently</p> |
| <p>(iv) Identifies the name, address, and telephone number of the investigative consumer reporting agency conducting the investigation.</p> | <p>CA has always differed from FCRA in requiring the identity from CRA-this adds phone number (added 1068)</p> |
| <p>(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.</p> | <p>CRITICAL-the CA rules are broader than the federal rules</p> |
| <p>(C) The consumer has authorized in writing the procurement of the report.</p> | <p>1. Added in 1068-CA never actually required written authorization BUT, CA now different than the other 49 states since it would appear that any re-investigation retention, promotion or reassignment needs a NEW consent!!!</p> <p>3. Trying to get that changed</p> |
| <p>(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).</p> | <p>1. CRITICAL-The CA certification requirements are different than the FCRA</p> <p>2. To fully comply with CA law, a firm needed to get new certification in Jan/Feb of 2002 AND since this law changed in Sept 2002, and a new certification was required from each client.</p> |
| <p>(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).</p> | <p>Disclosure duties</p> |
| <p>(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</p> | <p>Check-off box!!</p> |

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| <p>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.</p> | |
| <p>(2) Comply with Section 1786.40, if the taking of adverse action is a consideration.</p> | <p>CA version of adverse action</p> |
| <p>(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.</p> | <p>This is where CA has repealed the VAIL letter- but still a federal issue</p> |

Other sections

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| <p>Civil Code 1786.18</p> | |
| <p>1786.18 (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</p> | <ol style="list-style-type: none"> 1. CA flat seven year rule 2. 2. Old CA rule was seven years unless person made over \$30,000 3. FCRA effective Nov 1998 changed rules so no limit on convictions 4. CA effective 1/199 went to the old federal rule of seven years unless made over &75,000 5. AB 655 then went to a flat seven year rule 6. 6 timing is important-freedom from custody is the key 7. Parole of probating does not extend 8. Not always easy to tell when free from custody |

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| <p>reported pending pronouncement of judgment on the particular subject matter of those records.</p> | |
| <p>(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.</p> | <p>Exception for Banks, or perhaps hospitals, etc</p> |
| <p>Civil Code 1786.20</p> | |
| <p>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. <u>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.</u> Every investigative consumer reporting agency shall make a reasonable effort to verify the identity of a new prospective user and the uses certified by</p> | <p>1. Similar to FCRA EXCEPT: . 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. <u>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.</u></p> <p>CRA needs to advise CA client that if they change the purpose, they must notify CRA</p> |

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| <p>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.</p> | |
| <p>(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.</p> | <p>CA 2 year rule</p> <p>CF FCRA rule that gives consumer the right to have a CRA send revised report to anyone who wanted for employment purposes in he last 2 years (FCRA section 611)</p> |
| <p>(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.</p> | <p>Reason why important— CALI is trying to Amend</p> |
| <p>Civil Code 1786.22</p> | |
| <p>1786.22. (a) An investigative consumer reporting agency shall supply files and information required under Section 1786.10 during normal business hours and on reasonable notice.</p> | <p>Important-must be part of the CA disclosure</p> |
| <p>Civil Code 1786.29</p> | |
| <p>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</p> | <p>12 point rule</p> |

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| <p>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.</p> | |
| <p>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.</p> | <p>CRA needs Spanish form if consumer makes a request for information</p> |
| <p>Civil Code 1786.50</p> | |
| <p>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:</p> <p>(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.</p> <p>(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.</p> <p>(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.</p> | <p>\$10,000 rule-question if it needs actual damages</p> |

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| Civil Code 1786.53. | |
| <p>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:</p> | <p>This is what got employers all upset. Original version effective Jan 1 to September 28, 2002 required all materials even references to be turned over. Now limited to public records.</p> |
| Civil Code 1786.55 | |
| <p>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.</p> | <p>Clarification</p> |
| <p>1785 et seq. Credit reports</p> | <p>Elaborate new scheme-but main issue is that a consumer may freeze their own credit report.</p> |

D. Special CA rules for Consumer Disclosures

1786.22. (a) An investigative consumer reporting agency shall supply files and information required under Section 1786.10 during normal business hours and on reasonable notice.

(b) Files maintained on a consumer shall be made available for the consumer's visual inspection, as follows:

(1) In person, if he appears in person and furnishes proper identification. A copy of his file shall also be available to the consumer for a fee not to exceed the actual costs of duplication services provided.

(2) By certified mail, if he makes a written request, with proper identification, for copies to be sent to a specified addressee. Investigative consumer reporting agencies complying with requests for certified mailings under this section shall not be liable for disclosures to third parties caused by mishandling of mail after such mailings leave the investigative consumer reporting agencies.

(3) A summary of all information contained in files on a consumer and required to be provided by Section 1786.10 shall be provided by telephone, if the consumer has made a written request, with proper identification for telephone disclosure, and the toll charge, if any, for the telephone call is prepaid by or charged directly to the consumer.

(c) The term "proper identification" as used in subdivision (b) shall mean that information generally deemed sufficient to identify a person. Such information includes documents such as a valid driver's license, social security account number, military identification card, and credit cards. Only if the consumer is unable to reasonably identify himself with the information described above, may an investigative consumer reporting agency require additional information concerning the consumer's employment and personal or family history in order to verify his identity.

(d) The investigative consumer reporting agency shall provide trained personnel to explain to the consumer any information furnished him pursuant to Section 1786.10.

(e) The investigative consumer reporting agency shall provide a written explanation of any coded information contained in files maintained on a consumer. This written explanation shall be distributed whenever a file is provided to a consumer for visual inspection as required under Section 1786.22.

(f) The consumer shall be permitted to be accompanied by one other person of his choosing, who shall furnish reasonable identification.

An investigative consumer reporting agency may require the consumer to furnish a written statement granting permission to the consumer reporting agency to discuss the consumer's file in such person's presence.