

AB1068 and AB2868

Background Checks

Effective: Immediate

AB2868

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

AB1068

This bill clarified language from an earlier bill to specifically state that an employer is not required to share information with an applicant or employee that is not "public record" – (such as references from former employers.) Public records include:

1. Bankruptcies that, from the date of adjudication, antedate the report by no 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 no more than seven years.
3. Unsatisfied judgments that, from the date of entry, antedate the report by no 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 no more than seven years.
6. Accounts placed for collection or charged to profit and loss that antedate the report by no 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 no 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. 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.

In addition to clarifying the language of the background check legislation implemented earlier this year, there are some changes required in the background check forms used

for obtaining and report and forms used if an adverse employment action is anticipated. If an adverse employment action is anticipated, a copy of the public record must be provided with an “adverse report notice” regardless of whether or not the applicant/employee waived his/her right to receive a copy.

Only one copy of the notice is required per occasion.

Both Bills

The individual must be provided with a consent form that contains a check box – indicating whether or not he/she wants a copy of the background report. A copy of the report must be provided within three business days after it is received regardless of whether the information is received in writing or orally. The copy can be sent by the Investigative consumer agency conducting the background check if the employer makes arrangements for the agency to do so.

If an employer conducts a background investigation on public records for suspicion of wrongdoing or misconduct, the employer is not required to provide advance notice of the investigation and other related notifications required for routine background checks. Upon completion of an investigation, the employer must provide a copy of the public record to the individual unless the individual waives his/her right to a copy.

Using a Third Party

Where an employer uses a third party to obtain a background report, the report may be provided only:

1. If the employer has provided a clear and conspicuous written disclosure to the individual prior to the time the report is requested and on a document that consists solely of the disclosure; and
2. The disclosure states that an investigative consumer report may be obtained;
3. The purpose of obtaining the report is identified;
4. A statement notes the fact that the disclosure may include information on the individuals’ character, general reputation, personal characteristics and mode of living.
5. The disclosure identifies the name, address and telephone number of the investigative consumer reporting agency conducting the investigation; and
6. If the individual is notified in writing of the nature and scope of the investigation requested – including a summary Section 1786.22 of the Civil Code.*

The investigative consumer reporting agency may assume that the purpose for which an employer seeks information remains the same as that which an employer has previously stated. The investigative consumer reporting agency shall inform the employer that the employer is obligated to notify the agency of any change in the purpose for which information will be used

*Section 1786.22 of the Civil Code requires that the following information be communicated to the individual:

1. With proper identification, consumer files are available for visual inspection or a summary of file contents may be provided over the telephone.
2. Trained personnel are provided to explain the content of files
3. A written explanation of coded information in files

Background Check Limitations

Criminal record searches are limited to seven years prior to the date of request. However, if an employer is required by a government rule or agency to investigate further back, such searches will be permitted.