

AMENDED IN SENATE JULY 15, 2010  
AMENDED IN SENATE APRIL 8, 2010  
AMENDED IN SENATE SEPTEMBER 2, 2009  
AMENDED IN SENATE AUGUST 17, 2009  
AMENDED IN ASSEMBLY JUNE 1, 2009  
AMENDED IN ASSEMBLY APRIL 22, 2009  
AMENDED IN ASSEMBLY APRIL 2, 2009

CALIFORNIA LEGISLATURE—2009–10 REGULAR SESSION

## **ASSEMBLY BILL**

**No. 482**

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**Introduced by Assembly Member Mendoza**

February 24, 2009

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An act to add Chapter 3.6 (commencing with Section 1024.5) to Part 3 of Division 2 of the Labor Code, relating to employment.

### LEGISLATIVE COUNSEL'S DIGEST

AB 482, as amended, 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. Under existing law, an employer may request

a credit report for employment purposes so long as he or she provides written notice of the request to the person for whom the report is sought. Existing law requires that the written notice inform the person for whom the consumer credit report was sought of the source of the report and contain space for the person to request a copy of the report. Existing 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.

This bill would prohibit an employer, with the exception of certain financial institutions, from obtaining a consumer credit report for employment purposes unless the information is (1) substantially job-related, meaning that the position of the person for whom the report is sought has access to money, other assets, *or trade secrets* or *other* confidential information, and (2) the position of the person for whom the report is sought is a position in the state Department of Justice, a managerial position, that of a sworn peace officer or other law enforcement position, or a position for which the information contained in the report is required to be disclosed by law or to be obtained by the employer.

Vote: majority. Appropriation: no. Fiscal committee: yes.  
State-mandated local program: no.

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

- 1     SECTION 1. *The Legislature hereby finds and declares the*
- 2     *following:*
- 3     (a) *California's unemployment rate of 12.4 percent is higher*
- 4     *than the national average, and is affecting approximately 2.3*
- 5     *million residents.*
- 6     (b) *The Society for Human Resource Management has reported*
- 7     *that as many as 60 percent of employers rely on the use of*
- 8     *consumer credit reports in preemployment hiring considerations.*
- 9     *According to a study conducted by the United States Governmental*
- 10    *Accountability Office, as late as in 2005, nearly 80 percent of*
- 11    *consumer credit reports contained erroneous information.*
- 12    (c) *The employers' use of consumer credit reports, which often*
- 13    *contain erroneous information about a job applicant's credit*

1 *history, poses a barrier to employment for many individuals.*  
2 *Further, even assuming the credit report contains accurate*  
3 *information regarding an individual's credit history, there is little*  
4 *evidence that credit information is indicative of whether the*  
5 *individual would successfully perform his or her job duties. This*  
6 *is particularly true in the current economic crisis, where many*  
7 *individuals have lost their jobs and subsequently their homes,*  
8 *resulting in a credit report containing potentially negative*  
9 *information.*

10 *(d) It is the intent of the Legislature in enacting this measure*  
11 *to lower barriers to employment to those individuals who have*  
12 *been impacted by the current economic crisis and are struggling*  
13 *to find work. Further, the Legislature intends to afford flexibility*  
14 *to employers to utilize consumer credit reports in instances where*  
15 *such use is substantially related to the job duties of the position*  
16 *applied for.*

17 **SECTION 1.**

18 **SEC. 2.** Chapter 3.6 (commencing with Section 1024.5) is  
19 added to Part 3 of Division 2 of the Labor Code, to read:

20  
21 **CHAPTER 3.6. EMPLOYER USE OF CONSUMER CREDIT REPORTS**  
22

23 **1024.5.** (a) An employer shall not use a consumer credit report  
24 for employment purposes unless the following criteria are satisfied:

25 (1) The information contained in the report is substantially  
26 job-related, meaning that the position of the person for whom the  
27 report is sought has access to money, other assets, or *trade secrets*  
28 *or other* confidential information.

29 (2) The position of the person for whom the report is sought is  
30 any of the following:

31 (A) A managerial position.

32 (B) A position in the state Department of Justice.

33 (C) That of a sworn peace officer or other law enforcement  
34 position.

35 (D) A position for which the information contained in the report  
36 is required to be disclosed by law or to be obtained by the  
37 employer.

38 (b) This section does not apply to a person or business subject  
39 to Sections 6801 to 6809, inclusive, of Title 15 of the United States  
40 Code and state and federal statutes or regulations implementing

1 those sections if the person or business is subject to compliance  
2 oversight by a state or federal regulatory agency with respect to  
3 those laws.

4 (c) *For the purposes of this section, “trade secret” has the same*  
5 *meaning as defined in subdivision (d) of Section 3426.1 of the Civil*  
6 *Code.*