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*CALPIRG*

**SENATE COMMITTEE ON JUDICIARY  
Bill Lockyer, Chairman  
1993-94 Regular Session**

*SENATE VOTE 22-11*

AB 272 (Areias)  
As amended July 7  
Hearing date: August 17, 1993  
Civil Code 1786  
ART:GML

**INVESTIGATIVE CONSUMER REPORTING AGENCIES**

**HISTORY**

Source: California Public Interest Research Group (CALPIRG)

Prior Legislation: None

SUPPORT: California Teamsters Public Affairs Council

Opposition: No known

Assembly Floor vote: Ayes 47 - Noes 28

**KEY ISSUE**

SHOULD AN INVESTIGATIVE CONSUMER REPORTING AGENCY THAT IS HIRED BY AN EMPLOYER TO INVESTIGATE A POTENTIAL EMPLOYEE, BE PROHIBITED FROM SOLICITING INFORMATION THAT WOULD CONSTITUTE DISCRIMINATION IF ASKED BY THE EMPLOYER?

**PURPOSE**

Existing law states that it is unlawful for an employer, unless based on a bona fide occupational qualification, to discriminate against an employee because of race, religious creed, color, national origin, ancestry, physical handicap, medical condition, marital status, or sex.

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This bill would prohibit investigative consumer reporting agencies from making any inquiry in the preparation of investigative consumer reports to be used for employment purposes which, if made by an employer, would constitute an unlawful discriminatory practice.

This bill would also require that an employer notify a job applicant before hiring an agency to perform an investigation, and provide the applicant with a copy of the report if he or she requested it.

Existing law limits some types of information that may be included in investigative consumer reports as well as the length of time some information may be retained in a consumer's file, except when the report is to be used in the underwriting of life insurance involving more than \$100,000 in the employment of an individual of an annual salary of \$30,000 a year or more, or in the rental of a dwelling which exceeds \$1000 per month. Currently, information about a bankruptcy may be reported only up to 14 years after adjudication in cases other than these.

This bill would conform with the Consumer Credit Reporting Act by limiting the number of years a bankruptcy could remain on file in an investigative consumer report to 10 years after adjudication.

The purpose of this bill is to make it unlawful for an employer to indirectly engage in discriminatory hiring practices through an investigative consumer reporting agency.

#### COMMENT

##### 1. Stated need for legislation

According to the sponsor, this bill combats the practice a growing number of employers have adopted, whereby they purchase a consumer investigative report from a consumer reporting firm in order to obtain information which would, if asked directly in an interview, be prohibited as discriminatory. The reporting agencies routinely gain information about a consumer by soliciting responses from friends and neighbors of the person.

To the extent that questions regarding race, religion, or disabilities are currently prohibited in job interviews, this bill would equally prohibit them in a consumer investigative report.

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2. Background on agencies

The legal definition of an investigative consumer reporting agency is any person who, for monetary fees, assembles or evaluates employment or insurance information, or information related to the hiring of dwelling units, for the purpose of furnishing investigative consumer reports to third parties to be used with respect to consumers for employment, insurance, or hiring of dwelling units. (This is different than consumer credit reporting agencies which investigate consumer credit only.)

In practice, investigative consumer reporting agencies prepare subjective reports about the character, general reputation, personal characteristics, and lifestyle of consumers. The information in these reports is obtained by personal interviews (including telephone inquiries) with neighbors, friends, associates, and others.

In this way, potential employers, insurers, or landlords indirectly gain information about religion, mental and physical disabilities, medical conditions, and affiliations without making direct inquiries. Then they may use this hearsay information to make crucial decisions relating to the consumer.

3. Similar New York legislation

The problem of consumer reporting agencies recently gained notice when numerous job applicants complained about the types of oral inquiries made by Equifax, an investigative consumer reporting agency employed by Delta Airlines to investigate potential employees. Legislation similar to AB 272 is pending in New York, where the New York Attorney General has filed a suit against Equifax for discriminatory practices.

4. Types of questions prohibited

Under this bill, consumer reporting agencies would be prohibited from asking questions which could lead to discrimination on the basis of race, color, religion, sex, marital status, national origin, ancestry, familial status or mental or physical disability, but only in reports for employment purposes.

Investigative consumer reporting agencies would not be prohibited from making these sorts of inquiries for other purposes, such as housing and insurance. Landlords, insurance companies, and other users of investigative services could continue to circumvent anti-discrimination laws.

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The Fair Employment and Housing Act provides the same standards for housing and employment. It makes no sense to allow investigative consumer reporting agencies to continue making discriminatory inquiries for housing purposes when the same standards apply.

SHOULD NOT DISCRIMINATORY INQUIRIES BE PROHIBITED FOR USE IN ALL TYPES OF INVESTIGATIVE CONSUMER REPORTS, OR AT THE VERY LEAST, SHOULD NOT DISCRIMINATORY INQUIRIES BE PROHIBITED FOR USE IN REPORTS FOR HOUSING PURPOSES IN ADDITION TO REPORTS FOR EMPLOYMENT PURPOSES?

5. Notice to potential employees

Under this bill, before an employer could request an investigative consumer report for employment purposes, the employer would have to provide a written notice to the potential employee. On this written notice the potential employee would be able to check off a box to receive a copy of the report. If the potential employee desired a copy, the employer would be responsible for requesting an additional copy from the agency and providing it at no charge.

SHOULD NOT NOTICE TO THE CONSUMER BE REQUIRED BEFORE ANY INQUIRY IS MADE FOR ANY PURPOSE, OR AT THE VERY LEAST, BEFORE INQUIRIES ARE MADE FOR HOUSING PURPOSES IN ADDITION TO EMPLOYMENT PURPOSES?

Additionally, the bill provides that the user and the consumer shall be given copies of the report contemporaneously. However, since investigative consumer reports are subjective in nature, there is some concern that the consumer should be provided with a copy of the report prior to the user. In the past, consumers have been adversely affected when reports included inaccurate information. For instance, one employee lost his job after Equifax included a false drug charge in their investigative report. If the employee had received a copy of the report in advance, he could have proven the information inaccurate. Instead, he was forced to take the case to court.

SHOULD NOT CONSUMERS BE PROVIDED WITH COPIES OF INVESTIGATIVE CONSUMER REPORTS PRIOR TO USERS?

6. Salary requirement needs to be updated

This section of the Civil Code limits investigative consumer reporting agencies in the types of information they may include in reports. For instance, bankruptcies and unsatisfied judgments may only be reported for up to 10 years, and records

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of arrests and indictments may not be reported. However, these limitations do not apply under special circumstances. One circumstance which makes these protective provisions inapplicable is if the individual is being investigated for a job with a salary of more than \$30,000.

When this legislation was enacted in 1975, salaries of \$30,000 or more were paid only to highly professional employees. According to the Department of Finance Consumer Price Index, a salary of \$30,000 in 1975 would be worth \$85,400 today. The intent of the legislature at the time was to allow for more thorough checks on higher paid workers. However, in 1993, a much larger percentage of the population currently earns more than \$30,000 per year. Since this salary figure has never been adjusted, many people who this law originally covered are no longer protected by these limitations.

SHOULD NOT THIS SALARY FIGURE BE UPDATED ACCORDING TO THE CONSUMER PRICE INDEX?

7. Bankruptcies

This bill would conform the laws governing investigative consumer reporting agencies to recent changes in the statutes regarding consumer credit reporting agencies. Currently, investigative consumer reporting agencies may not include in a report, information about bankruptcies which antedate the report by more than 14 years. This bill would change the length of time a bankruptcy could remain in a report to 10 years after adjudication, the same time period as consumer credit reporting agencies.

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