

State Restrictions on Consumer Reporting Agencies

California (*Enacted October 1, 2002*)

CA Civil Code (Investigative Consumer Reporting Agencies Act) – 1786 et seq.

Under the federal Fair Credit Reporting Act (FCRA), most of the background screening reports we provide are considered “consumer” reports, while under the California Investigative Consumer Reporting Agencies Act (ICRA), Cal. Civil Code §1786 et seq., they are classified as investigative consumer reports. It should be noted these requirements are placed only on California employers who hire California residents to work in the state of California.

1786.16(2) – Disclosure

If an investigative consumer report is sought for employment purposes other than suspicion of wrongdoing or misconduct by the subject of the investigative consumer report, disclosure must be made in advance of ordering the report and should state that an Investigative Consumer Report may be ordered, identifying the permissible purpose for the report. The disclosure must indicate the Investigative Consumer Report may include information on the consumer's character, general reputation, personal characteristics, and mode of living and define the nature and scope of the investigation requested. The name, address, and telephone number of the investigative consumer reporting agency conducting the investigation must be included. The consumer must authorize in writing the procurement of the report on the disclosure form.

1786.16 (5) (b) (1) – Copy of Report

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 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, 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.

1786.18.7 – Conviction Records

A consumer credit reporting agency shall not report records of arrest, indictment, information, misdemeanor complaint, or conviction of a crime that, from the date of disposition, release, or parole, antedates the report by seven years. These items of information shall no longer be reported if it is learned in the case of a conviction that a full pardon has been granted or in the case of an arrest, indictment, information, or misdemeanor complaint a conviction did not result. However, this provision is exempt if the 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 OR 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 when the employer is reviewing a consumer's qualification for employment.

1786.29– Cover Sheet to Report

A 12 pt. bold statement on the first page of each investigative consumer report must indicate that the report does not guarantee the accuracy or truthfulness of the information as to the subject of the report but 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 subject of the report. The name, address and telephone number of the CRA must be on the report.

1786.53 – Reports Compiled by Employer

The same obligation for an employer to furnish a copy of the investigative consumer report exists even when you compile background information without using the services of an investigative consumer reporting agency.

Colorado (*Enacted January 1, 1996*)

CRS 12-14.3-105.3

No CRA may report records of arrest, indictment, or conviction of crime, which from date of disposition, release, or parole, antedate the report by more than seven years.

Exception: If salary will be equal to \$75,000 or more, the 7-year restriction does not apply.

Kansas (*Enacted January 1, 1974*)

KS 50-704

No CRA may report records of arrest, indictment, or conviction of crime, which from date of disposition, release, or parole, antedate the report by more than seven years.

Exception: If salary will be equal to \$20,000 or more, the 7-year restriction does not apply.

Kentucky (*Enacted July 15, 1980*)

KRS 367.310

No consumer reporting agency shall maintain any information in its files relating to any charge in a criminal case, in any court of this Commonwealth, unless the charge has resulted in a conviction.

Maryland (*Enacted 1976*)

Code of MD 14-1203

No CRA may report records of arrest, indictment, or conviction of crime, which from date of disposition, release, or parole, antedate the report by more than seven years.

Exception: If salary will be equal to \$20,000 or more, the 7-year restriction does not apply.

Code MD 19-1907

Information contained in pre-employment background verifications for adult dependent care providers may not be used for any purpose other than that for which it was disseminated; or be redisseminated.

Massachusetts (*Enacted 1974*)

MGL/93-52

No CRA may report records of arrest, indictment, or conviction of crime, which from date of disposition, release, or parole, antedate the report by more than seven years.

Exception: If salary will be equal to \$20,000 or more, the 7-year restriction does not apply.

Minnesota *(Enacted 1993)*

M.S. §13C.02

Employers must provide a check box on the FCRA disclosure that the applicant may return to the employer to receive a copy of the consumer report. The employer is responsible for notifying the consumer reporting agency of the consumer's request and the report must be sent to the consumer by the CRA within 24 hours of providing it to the employer. The report must be accompanied by the statement of the consumer's right to dispute and correct any errors.

Montana *(Enacted 1975)*

MCA 31-3-112

No CRA may report records of arrest, indictment, or conviction of crime, which from date of disposition, release, or parole, antedate the report by more than seven years. No exception for employment purposes.

Nevada *(Enacted 1993)*

NRS 598C.150

Reporting agencies are to purge from their files, reports of criminal proceedings which precede the report by more than 7 years.

Note: Definition of "consumer report" is specific to credit reports although definition of "reporting agency" is not limited to credit.

New Hampshire *(Enacted August 29, 1971)*

HRS 359-B: 5

No CRA may report records of arrest, indictment, or conviction of crime, which from date of disposition, release, or parole, antedate the report by more than seven years.

Exception: If salary will be equal to \$20,000 or more, the 7-year restriction does not apply.

New Mexico *(Enacted 1969)*

NM Statute 56-3-6

"Credit bureaus" cannot report arrests and indictments pending trial, or **convictions** of crimes, after seven years from date of release or parole. Such items cannot be reported if at any time it is learned that after a conviction a full pardon has been granted or after an arrest or indictment a conviction did not result.

Note: "Credit bureau" is defined as "Any business engaged in furnishing credit information about consumers".

New York (*Enacted 1977*)

FCRA, Article 25 Section 380-j

Prohibited Information (a) No consumer reporting agency shall report or maintain in the file on a consumer, information relative to an arrest or a criminal charge unless there has been a criminal conviction for such offense, or unless such charges are still pending.

(b) A CRA can report information about a detention of an individual by a retail establishment if the individual has admitted wrongdoing, has received notice that the information will be reported to a CRA and may be further reported to a retail establishment for employment purposes.

(f) No CRA may make any consumer report containing records of convictions which, from date of disposition, release, or parole, antedate the report by more than seven years. Exception: If salary is reasonably expected to be \$25K or more, the 7-year restriction does not apply.

Oklahoma (*Enacted November 1, 2000*)

24 O.S. § 147

Prior to requesting a consumer report for employment purposes, the requestor or user of the consumer report shall provide written notice to the person who is the subject of the consumer report that a consumer report will be used and the notice shall contain a box that the consumer may check to receive a copy of the consumer report. If the consumer requests a copy of the report, the user of the consumer report shall request that a copy be provided to the consumer when the user of the consumer report requests its copy from the credit reporting agency. The report sent to the consumer shall be provided at no charge to the consumer.

Texas (*Enacted October 1, 1997 – Not applicable*)

Business & Commerce Code, Chapter 20, §20.05

No CRA may report "records of arrest, indictment, or conviction of crime, which from date of disposition, release, or parole, antedate the report by more than seven years. Exception: If salary will be equal to \$75,000 or more, the 7-year restriction does not apply.

Washington (*Enacted 1993*)

RCW 19.182.040

No CRA may report "records of arrest, indictment, or **conviction** of a crime, which from the date of disposition, release, or parole, antedate the report by more than seven years.

Exception: If salary will be equal to \$20,000 or more, the 7-year restriction does not apply.