

Changes in California Law – New Background Investigation Compliance Rules

Effective January 1, 2002 the California Investigative Consumer Reporting Agencies Act (ICRA), California Civil Code §1786 et seq., has been amended. What does this mean for your company?

Employers Must Now Notify Current Employees That a Background Check is Being Conducted

In the past employers only needed to give notice that a background screening report was to be done pre-hire. Now employers who wish to conduct background investigations on current employees for promotion or reassignment must notify the employee in writing within three days of ordering the report that a background check will be performed. The notification must contain the name and address of the investigating agency, the nature and scope of the information to be obtained as well as a summary of the employee's rights to obtain information from the consumer reporting agency (CRA). The employer must also certify to the investigative consumer reporting agency (ICRA) that it has made these required disclosures to the employee before the reporting agency may release any report.

Employers Do Not Have to Notify Employees of Investigations Involving Suspicion of Misconduct

This law has been amended by the State of California to include information regarding investigating current employees who are being investigated for suspicion of wrongdoing. Employers are NOT required to notify these employees prior to an investigation.

Employer's Obligation to Furnish Copies of the Report

Employers are required to furnish a copy of the background screening report to all applicants and employees regardless of whether or not the person is hired. The employer must provide this information, along with who issued the report and how to contact them, either at the time of the interview or within seven days from when the employer receives the report, whichever is earlier.

Employers may contract with their ICRA (BackTrack) to furnish copies of the reports to the applicants. BackTrack will only provide copies of the background screening reports to the applicants with the written authorization of the client. If you wish for BackTrack to furnish the reports to your applicants, please contact our office in writing to request this service. There will be an administrative fee of \$3.00 assessed for each applicant for this service.

Federal Law Still Applies

In addition to the amended California statute, employers should not forget the applicable federal regulations under the Fair Credit Reporting Act (FCRA). Under the FCRA, an employer is obligated to notify an employee or applicant in writing, separate from the job application itself, that it may be seeking an investigative consumer report. Additionally, the employer is required to obtain written authorization from the applicant or employee before obtaining the report.

Summary

In order to now comply with state and federal laws concerning consumer investigations, the California employer must:

- Notify an employee or applicant in writing, separate from the job application itself, that the employer may be seeking an investigative consumer report.
- Obtain written authorization from the applicant or employee before obtaining the report.
- Within three days of ordering the report, inform the applicant or employee that he will be the subject of a consumer investigation, the name and address of the consumer reporting agency, the nature and scope of the investigation, and a summary of the consumer's rights under the law (unless the employer has a good faith belief the employee has engaged in misconduct).
- Provide the employee or applicant with a copy of the report along with the name and address of the investigating agency no later than seven days from the date the employer receives the report.

Full text of the California Investigative Consumer Reporting Agencies Act (ICRA), California Civil Code §1786 et seq. may be viewed at <http://www.leginfo.ca.gov/calaw.html>.

If you have any questions regarding these changes, please contact BackTrack's Compliance Department at 1-800-991-9694 ext. 268.



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California Bills 655, 1068 and 2868

California has enacted new legislation as of September 28, 2002 regarding pre-employment screening reports. The changes are as follows:

1. What do I, as an employer, need to do to be in compliance?

The changes to the law require a person "procuring a report or causing it to be prepared" (i.e., the employer) to provide a box to check on a written form (either a separate form or the one the employer has the consumer sign authorizing the procurement of such a report) which indicates the consumer wishes to receive a copy of any report that is prepared. Section 1786.16(b)(1).

2. How should this be accomplished?

The box should include the following verbiage: "Check this box if you wish to receive a copy of the background check report." The statute does not dictate where the statement and box should be, the typeface that needs to be used or any other method of distinction. BackTrack has modified its release form to reflect this change, so if you are using the BackTrack release, you are in compliance (see attached). If you are using your own release, this will need to be added.

3. Who is obligated to return the completed report to the applicant?

The person procuring it (i.e., the employer) is obligated and must do so within 3 days of receiving it. However, the law does state that the Consumer Reporting Agency (CRA) may provide a copy of the report to the applicant. If your company wishes for BackTrack to do this, you must notify BackTrack, your Consumer Reporting Agency (CRA), in writing via mail, email (bti@backtracker.com) or fax. We will send the completed report to the address provided to BackTrack by the applicant. There will be a processing fee of \$3.00 assessed to our clients for each report we send to their applicants. If we do not receive written notice from your company, BackTrack **will not** send the completed reports to the applicants.

4. What kind of release must be used?

This is where a significant change has occurred. California did not require written consent before, only notice that a consumer report was being requested. Now, like the FCRA, California **requires** written consent. More importantly, California requires written consent every time a consumer report is sought. The FCRA allows one consent form to be signed which can cover all reports. (However, keep in mind, the new statute does not require the employer to provide the consumer with a copy of the report if it is being sought due to suspicions of wrongdoing on the employee's part.)

This disclosure, similar to the FCRA disclosure, must be separate from any application or handbook. The written disclosure and consent must contain the following information:

- a. The fact that an investigative consumer report may be obtained;
- b. Identification of the permissible purpose for obtaining the report, i.e., for employment purposes;
- c. An indication that the report may include information on the consumer's character, general reputation, personal characteristics, and mode of living;
- d. The name, address, and telephone number of the CRA;
- e. A description of the nature and scope of the investigation requested, and providing the consumer with a summary of his or her right to view the information compiled by the CRA; and
- f. A statement that the consumer must authorize in writing the procurement of the report on this form.

Once again, those clients who are using the BackTrack release form are in compliance with this guideline. However, if you are using your own release, it must now be a separate document and contain the above information.

5. How else does this law affect me?

Under the new California law, if an employer denies employment "either wholly or partly" because of information in the report, the employer is obligated to notify the consumer of that fact and provide him or her the name and address of the CRA. There are very specific provisions and obligations with respect to a CRA's duty when a consumer disputes information in the report.

The new statute also requires the CRA to receive a commitment from the employer that the employer has made the applicable disclosures to the consumer and will comply with the law. The BackTrack Client User Agreement does state that the client agrees to comply with the law.

6. What can now be included in a pre-employment background screening report?

With respect to what a report can contain, the law added that records of arrest, indictment, information, misdemeanor complaint, or conviction of a crime that, from the date of disposition, release, or parole which antedate the report by more than 7 years cannot be reported. If a conviction occurred and a full pardon is granted, or in the case of an arrest, indictment, information, or misdemeanor complaint a conviction did not result, the information cannot be reported (unless it is a situation where the person is waiting for a judgment in an arrest, indictment, etc.) In addition, the new Bill states that generally a CRA cannot report information that is a matter of public record and that relates to an arrest, indictment, conviction, civil judicial action, tax lien, or an outstanding judgment, unless the CRA has verified the accuracy of the information during the 30-day period ending on the date on which the report is furnished. These items are considered up to date if the current public record status of the item at the time of the report is reported.

7. What does BackTrack need to do to be in compliance?

A CRA must provide the following notices on the first page of an investigative consumer report:

A. A notice in 12-point bold typeface which states 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 the 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.

B. A CRA must also provide a consumer seeking 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 right to receive all disclosures, as outlined in Section 1786.26.

If you have any questions regarding these changes, you may either contact your legal department or BackTrack's Compliance Department. If you wish to have additional copies of the BackTrack release, either visit our website at www.backtracker.com to download them, or contact our office at 800-991-9694.