



Publisher of Consumer Reports

California Identity Theft Laws Likely to be Preempted by H.R. 2622

Laws that clearly would be preempted if H.R. 2622 is enacted

Free monthly credit reports for identity theft victims

Free monthly credit reports for identity theft victims. Upon request, up to 12 free copies to a victim of his or her credit file within 12 months of the date of the police report. California Civil Code § 1785.15.3(b) [Preempted by H.R. 2622, § 202, FCRA § 605(i) 15 U.S.C. § 1681c(i)(1)(C), requiring two free copies of the credit file for consumers who place a fraud alert.]

Credit report can be corrected with a police report

If the victim submits police report to a credit bureau listing the fraudulent accounts, the credit bureau must promptly and permanently block the information about those accounts and inform the credit grantors that the information has been removed. A decision to unblock must defer to documentation the consumer provides from the source or from public records, unless the credit reporting agency has substantial reason based on specific, verifiable facts to doubt the documentation provided by the consumer. California Civil Code § 1785.16(k). [Preempted by H.R. 2622, § 205, FCRA § 605(i), 15 U.S.C. § 1681c(i), and by renewal of 15 U.S.C. § 1681t(b)(1)(E)]

Fraud alert

Credit bureau must place fraud alert within five business days of receipt of the request from the consumer. California Civil Code §§ 1785.11.1. Effective January 1, 2004, civil penalty of \$2,500 plus attorneys fees for failure to place the alert. California Civil Code § 1785.11.1(k), SB 602, text of new bills is available at www.leginfo.co.gov. [Preempted by H.R. 2622, § 202, FCRA § 602(i) 15 U.S.C. § 1681c(i), which does not state the time in which the fraud alert must be placed.]

Truncation of credit card number on transaction slip

No more than the last 5 digits of a credit card number may be printed on electronic receipts. California Civil Code § 1747.9 (In effect for machines placed in use on or after January 1, 2001. Effective January 1, 2004 for machines in use

before Jan. 1, 2001.) [Preempted by H.R. 2622, § 203, FCRA § 605(k), 15 U.S.C. §1681c(k), which imposes a similar requirement for existing machines starting three years after enactment.]

Contact information must be included in credit report

Credit report must contain names, addresses, and if provided, phone numbers for customer service, of those who furnished information from the credit report. California Civil Code § 1785.10(c) [Preempted by renewal of 15 U.S.C. § 1681t(b)(i)(E)]

Right to remove name

Consumer has right to remove name from credit card solicitation lists furnished by the credit bureau for two years. California Civil Code § 1785.11.8 [Preempted by renewal of 15 U.S.C. § 1681t(b)(1)(A)]

Statement of consumer rights from credit bureau

Credit bureau must give consumers a statement of statutory rights with respect to credit reporting. California Civil Code § 1785.15.3 [Preempted by H.R. 2622, § 204, FCRA § 609(d), 15 U.S.C. § 1681g(d)]

Laws probably preempted under H.R. 2622

Creditor must verify a change of address on a mailed solicitation

Where credit is offered by mail, requirement to mail the extension of credit to the same address as the solicitation unless the creditor verifies any address change by contacting the consumer. California Civil Code § 1785.14(a)(3) [Probably preempted by H.R. 2622, § 201, FCRA § 605(g), 15 U.S.C. § 1681c(g), requiring reasonable procedures to ascertain validity of address only for a short time after a change of address on an existing account; not discussing solicitations for new accounts. Probably also preempted as to federally chartered financial institutions by “red flag” guidelines H.R. 2622, § 206, FCRA § 605(j), 15 U.S.C. § 2682c(j)]

User of a credit report must verify that there was no ID theft where address is mismatched

User of a credit report must verify that a requested extension of credit is not an instance of identity theft where the address on the application does not match the address on the credit report. Civil Code § 1785.20.3 [Probably preempted by H.R. 2622, § 201, FCRA § 605(g), 15 U.S.C. § 1681c(g), requiring reasonable

procedures to ascertain validity of address only for a short time after a change of address on an existing account; no requirement for new accounts. Probably also preempted as to federally chartered financial institutions by “red flag” guidelines section of H.R. 2622, § 206, FCRA § 605(j), 15 U.S.C. § 1681c(j)]

Address verification by credit card issuer

Credit card issuer must verify address if either an application for credit shows a different address than the address on the preapproved offer, or if a request for an additional credit card is made within 10 days of a request for a change of address. California Civil Code § 1747.06 [Probably preempted by H.R. 2622, § 201, FCRA § 605(g), 15 U.S.C. § 1681c(g), requiring reasonable procedures to ascertain validity of address only for a short time after a change of address on an existing account; no requirements for new accounts. Probably also preempted as to federally chartered financial institutions by “red flag” guidelines H.R. 2622, § 206, FCRA § 605(j), 15 U.S.C. § 2682c(j)]

No forwarding of instant loan checks

Requirement that “instant loan checks” be mailed in envelope that does not indicate a negotiable instrument is enclosed and that is marked “do not forward.” Requirement that a live check of this type expire after 30 days. California Financial Code § 22342 [Probably preempted as to federally chartered financial institutions by “red flag” guidelines section of H.R. 2622, § 206, FCRA § 605(j), 15 U.S.C. § 1681c(j)]

Laws where preemption status is unclear

Security freeze

Credit bureau must enable consumer to establish a “freeze,” prohibiting the credit bureau from giving report to anyone without the consumer’s consent. California Civil Code §§ 1785.11.2 (effective Jan. 1, 2003). Effective January 1, 2004, a credit reporting agency cannot charge more than \$10 to place or remove the freeze, or \$12 to temporarily lift the freeze. California Civil Code § 1785.11.2(m), SB 602. [Since the federal bill does not address or provide for a security freeze, preemption status is unclear.]

Credit reporting agency must match information

Where prospective user of a consumer report is a retail seller and intends to issue credit in person to a consumer who applied in person, credit reporting agency must match at least three categories of information. California Civil Code § 1785.14(a)(1)

Credit reporting agency must get certification of identification from retailer

Credit reporting agency doesn't meet requirement to take reasonable steps to verify the identity of user of a credit report where the prospective user of a consumer report is a retail seller and intends to issue credit in person to a consumer who applied in person, unless the retail seller certifies in writing to the credit reporting agency that the seller instructs employees to inspect photo identification at the time of application. California Civil Code § 1785.14(a)(2)

More workable statute of limitations for consumers

Consumers may sue within two years from discovery of the violation, but for non-willful violations, not more than seven years after the occurrence of the violation. California Civil Code § 1785.33

Some other California laws probably are not preempted by H.R. 2622

Penal Code definitions of the crime and certain crime victim's rights in the Penal Code, social security number protection, disclosure of breach of data security, restrictions on birth and death certificates, destruction of records law, and a few other California laws probably are not preempted by H.R. 2622.

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