

## **California Investigative Privacy Laws**

### The Federal FCRA and it's Interrelation with California ICRAA

California has its own version of the FCRA which are titled the Consumer Credit Reporting Agencies Act, Civil Code Section 1785 et al, (CCRAA), and the Investigative Consumer Reporting agencies Act, Civil Code Section 1786 et al, (ICRAA). These acts can be found in the California Civil Code. Our concern, in this document, deals mostly with the ICRAA.

Since the ICRAA was enacted before September 30, 1996, it supercedes the FCRA in any clause which is more restrictive than the FCRA. Under the ICRAA a consumer is given greater protections than the FCRA and these protections must be followed.

### **FCRA vs. ICRAA**

The California Investigative Consumer Reporting Agencies Act (ICRAA) has a number clauses which are stricter than the FCRA and must be followed.

One clause is in regard to criminal records. The ICRAA, section 1786.18 (as well as Labor Code Section 432.7), only allows the reporting of criminal CONVICTIONS, and limits the conviction information to seven years from the date of disposition, release or parole. This is regardless of the subjects anticipated salary (The general 7 year limitations under the FCRA do not apply to employee's whose salary is \$75,000.00 or more.)

Additionally, under Civil Code Section 1786.2 (c), the definition of an "investigative consumer report" (as opposed to just a consumer report) is expanded to include information obtained ... through "any means." This means that a public records check which would be a "consumer report" under the FCRA is considered an "investigative consumer report" under the ICRAA and carries the requirements attached to ICR's.

Civil Code Section 1786.16 requires that applicants be notified in writing "of the nature and scope of the investigation requested," and be provided "a summary of the provisions of (their rights) section 1786.22

There are other clauses under California Law which also add greater restrictions and/or requirements to a pre-employment screening.

### **California Labor Code Section 432.7(a) specifically prohibits employers from using arrest records when making employment decisions.**

There is an exception for certain arrest records when the applicant is applying for work at a health care facility and would have access to patients, drugs or medication.

Furthermore, California law limits the consideration of any misdemeanor conviction information in cases where probation has been successfully completed or otherwise discharged and the case has been judicially dismissed when making employment decisions.

Additionally, California law (Labor Code 432.8) also limits the reporting of convictions for sections 11357 (b) or (c) of the Health & Safety code, and 11360(b), 11364, 11365, & 11550 H&S, as they relate to the possession, use, influence, paraphernalia, or presence during use of Marijuana, to two (2) years from the date of conviction.

In plain English Labor Code 432.8 is translated to: 11357(b) – Possession of less than 28.5 grams (1 oz.) of Marijuana, 11357(c) – Possession of less than 1 oz. of Marijuana, 11360(c) [it now is probably 11360(b) as the latest print does not have a (c) subsection] – Transportation/Sale of less than 28.5 grams (1 oz.) of Marijuana, 11364 – Possession of Marijuana Pipe, 11356 – Being present in a place where Marijuana is being smoked, and 11550 – Under the influence of Marijuana.

## **EMPLOYMENT APPLICATIONS**

With respect to employment applications, Labor Code Section 431, states, “if an employee or applicant is required to sign an application for employment, the employer shall file in the office of the Division of Labor Standards Enforcement a copy of the form of such application.