

Date of Hearing: April 4, 2016

ASSEMBLY COMMITTEE ON BANKING AND FINANCE

Matthew Dababneh, Chair

AB 1723 (Dodd) – As Introduced January 28, 2016

SUBJECT: Debt collection

SUMMARY: Requires a debt collector that has reported adverse information about a debtor to a consumer credit reporting agency (CCRA), upon receipt of a police report and written statement by a debtor in which the debtor claims to be a victim of identity theft, to notify the CCRA that the account is disputed and initiate a review within 10 business days. Specifically, **this bill:**

- 1) Provides that a debt collector shall send notice of its determination to the debtor no later than 10 business days after concluding the review.
- 2) Specifies that if the debt collector has furnished adverse information to a CCRA the debt collector shall notify the CCRA to delete the information no later than 10 business day after making its determination.
- 3) Provides that a creditor shall not pursue further collections, or sell a consumer debt once debt collection activities have been terminated based upon the debtor's claim of identity theft.

EXISTING LAW: Provides under Section 1788.18 of the Civil Code:

- 1) Upon receipt from a debtor all of the following, a debt collector shall cease collection activities until completion of a review as specified:
 - a) A copy of a police report filed by the debtor alleging that the debtor is the victim of an identity theft crime, including, but not limited to, a violation of Section 530.5 of the Penal Code, for the specific debt being collected by the debt collector.
 - b) The debtor's written statement that the debtor claims to be the victim of identity theft with respect to the specific debt being collected by the debt collector.
- 2) The written statement shall consist of any of the following:
 - a) A Federal Trade Commission's Affidavit of Identity Theft.
 - b) A written statement that contains the content of the Identity Theft Victim's Fraudulent Account Information Request offered to the public by the California Office of Privacy Protection.
 - c) A written statement that certifies that the representations are true, correct, and contain no material omissions of fact to the best knowledge and belief of the person submitting the certification. The statement shall contain or be accompanied by the following, to the extent that an item listed below is relevant to the debtor's allegation of identity theft with respect to the debt in question.
 - d) A statement that the debtor is a victim of identity theft.

- e) A copy of the debtor's driver's license or identification card, as issued by the state.
 - f) Any other identification document that supports the statement of identity theft.
 - g) Specific facts supporting the claim of identity theft, if available.
 - h) Any explanation showing that the debtor did not incur the debt.
 - i) Any available correspondence disputing the debt after transaction information has been provided to the debtor.
 - j) Documentation of the residence of the debtor at the time of the alleged debt. This may include copies of bills and statements, such as utility bills, tax statements, or other statements from businesses sent to the debtor, showing that the debtor lived at another residence at the time the debt was incurred.
 - k) A telephone number for contacting the debtor concerning any additional information or questions, or direction that further communications to the debtor be in writing only, with the mailing address specified in the statement.
 - l) To the extent the debtor has information concerning who may have incurred the debt, the identification of any person whom the debtor believes is responsible.
 - m) An express statement that the debtor did not authorize the use of the debtor's name or personal information for incurring the debt.
- 3) After receipt of the complete statement and information described the debt collector shall review and consider all of the information provided by the debtor and other information available to the debt collector in its file or from the creditor.
- 4) The debt collector may recommence debt collection activities only upon making a good faith determination that the information does not establish that the debtor is not responsible for the specific debt in question. The debt collector shall notify the debtor in writing of that determination and the basis for that determination before proceeding with any further collection activities. The debt collector's determination shall be based on all of the information provided by the debtor and other information available to the debt collector in its file or from the creditor.
- 5) No inference or presumption that the debt is valid or invalid, or that the debtor is liable or not liable for the debt, shall arise if the debt collector decides after the review described in subdivision (d) to cease or recommence the debt collection activities. The exercise or nonexercise of rights under this section is not a waiver of any other right or defense of the debtor or debt collector.
- 6) A debt collector who ceases collection activities under this section and does not recommence those collection activities shall do all of the following:

- a) If the debt collector has furnished adverse information to a consumer credit reporting agency, notify the agency to delete that information.
 - b) Notify the creditor that debt collection activities have been terminated based upon the debtor's claim of identity theft.
- 7) A debt collector who has possession of documents that the debtor is entitled to request from a creditor pursuant to Section 530.8 of the Penal Code is authorized to provide those documents to the debtor.
- 8) A "debtor" means a natural person, firm, association, organization, partnership, business trust, company, corporation, or limited liability company from which a debt collector seeks to collect a debt that is due and owing or alleged to be due and owing from the person or entity. The remedies provided by this title shall apply equally to violations of this section.

FISCAL EFFECT: None

COMMENTS:

Existing law does not include prescribed time frames for debt collectors to investigate or provide notice of investigations concerning accounts connected to identity theft. Creditors are also not prevented from selling a disputed debt even with notification that a CCRA has blocked reporting of the debt because it resulted from identity theft. Often, the crime of identity theft takes months to detect and by that time a fraudulent account or charge may already be in the collections process.

AB 1723 requires debt collectors when informed by a debtor that a debt is the result of fraud or identity theft to engage in necessary due diligence to make a determination of whether the debt actually belongs to the debtor. It also requires that within 10 days of receiving information from the debtor that the debt is disputed the debt collector must notify a CCRA that the debt is disputed and send the debtor notice of its determination no later than 10 business days after concluding its review.

Need for the bill.

According to information provided by the author's office AB 1723 is necessary for the following reasons:

Identity theft is a critical issue for many California consumers. Identity thieves can do many things in a victim's name, including opening new credit accounts, taking out auto loans, and even file faulty insurance claims for medical services. The debts incurred often end up in debt collection, and victims of identity theft may be repeatedly contacted by debt collectors and have adverse information reported on their credit reports as a result of the identity theft.

Identity theft does not discriminate. Identity theft occurs every 2.5 seconds, every day. There were 12.7 million U.S. adult victims in 2014, or 4% of U.S. adults, including over a 1.5 million Californians. The Bureau of Justice Statistics reported a total of \$24.7 billion worth of financial losses due to personal identity theft in 2012.

Today, many victims become aware of the crime, months later, when their accounts go into collection. Many consumers who submit a dispute to a debt collector often find that their dispute goes into a “black hole.” Many victims never hear back from the debt collector, and it may take many months for the fraudulent account to be removed from the victims’ credit reports. This delay causes even greater damage to a victim’s credit which can prevent him or her from obtaining consumer and home loans. In addition, victims suffer needless stress endlessly trying to stop unwarranted collection.

Consumers need more certainty and information in the process of resolving disputed debts when the disputes result from identity theft. AB 1723 would establish reasonable timeframes for debt collectors to initiate investigations, update or delete adverse information on the consumer’s credit report, and respond to consumers regarding the outcome of their investigation.

According to the Javelin Strategy & Research "2015 Identity Fraud Report", released in March 2015 there were 12.7 million U.S. adult victims in 2014, or nearly one victim every 2.5 seconds. That figure represents 4% of U.S. adults, including over a 1.5 million Californians. The number of victims declined slightly from 13.1 million in 2013.

Identity theft is also expensive. The total cost of identity theft to victims and businesses in 2014 was \$16 million, down from \$18 million in 2013. The decrease continues to be the result of a greater share of fraud involving existing credit/debit card accounts, which is less costly than other forms of identity theft.

REGISTERED SUPPORT / OPPOSITION:

Support

Attorney General Kamala Harris
Consumer Attorneys of California
Encore Capital Group

Opposition

None on file.

Analysis Prepared by: Mark Farouk / B. & F. / (916) 319-3081