

Date of Hearing: April 15, 2021

ASSEMBLY COMMITTEE ON BANKING AND FINANCE

Timothy Grayson, Chair

AB 430 (Grayson) – As Amended April 6, 2021

SUBJECT: Debt collection: identity theft

SUMMARY: Modifies identity theft-related provisions in the Civil Code and Penal Code to allow an identity theft victim to use a Federal Trade Commission (FTC) identity theft report in lieu of a police report when that victim seeks a stoppage of debt collections, a civil judgment, or information about an authorized account opening.

Specifically, **this bill:**

- 1) Amends the Rosenthal Fair Debt Collections Practices Act (Rosenthal Act) to allow a debtor to provide a debt collector a copy of the FTC identity theft report rather than a police report as part of the process to require the debt collector to cease collection.
- 2) Modifies the definition of “victim of identity theft” in Civil Code provisions authorizing a victim to obtain a civil judgment establishing they are not the person liable for specified debts to include a person who has submitted a FTC identity theft report. A victim may also provide a valid copy of the FTC identity theft report in their effort to recover actual damages or attorney’s fees.
- 3) Allows an identity theft victim to provide an entity with whom an account was opened in an unauthorized manner a copy of the FTC identity theft report as part of the process to require the entity to provide specified information related to that unauthorized activity.

EXISTING STATE LAW:

- 1) Regulates the collection of consumer debt under the Rosenthal Act, which generally prohibits deceptive, dishonest, unfair, and unreasonable debt collection practices by debt collectors and regulates the form and content of communications by debt collectors to debtors and others (Title 1.6C of Part 4 of Division 3 of the Civil Code, Sec.1788 et seq.).
- 2) Requires a debt collector to cease collection activities upon completing a review of a police report filed by the debtor, the debtor’s written statement claiming to be a victim of identity theft (Civil Code Sec. 1788.18).
- 3) Allows a victim of identity theft to obtain a civil judgment establishing that he or she is not the person liable for specified debts incurred as a result of the theft, enjoining attempts to collect on such debts from the victim, and awarding damages, civil penalties and attorneys’ fees for collection actions when the victim gave written notice of the judgment to the creditor that his or her identity had been stolen (Civil Code Sec. 1798.92).
- 4) Authorizes a person to receive information relating to an application or account that was filed with any person or entity by an unauthorized person upon presenting the person or entity with which the application was filed or the account was opened a copy of a police report and identifying information, as specified (Penal Code Sec. 530.8).

EXISTING FEDERAL LAW:

- 1) Federal law provides the Fair Credit Reporting Act (FCRA) that regulates the collection, dissemination, and use of consumer credit information (15 U.S.C. Section 1681 et seq.).
- 2) Pursuant to FCRA, requires a consumer reporting agency to block the reporting of any information in the file of a consumer that the consumer identifies as information that resulted from an alleged identity theft (15 U.S.C. Section 1681c-2).

FISCAL EFFECT: Unknown. This bill is keyed fiscal by Legislative Counsel.

COMMENTS:

1) PURPOSE

According to the author:

AB 430 allows a victim of identity theft to submit a FTC identity theft report as sufficient for making a claim of identity theft related to a particular debt. When the victim of identity theft submits the Identity Theft Report, they are reporting the crime to the FTC, a federal law enforcement agency. Similar to when a police report is filed, the victim of identity theft is legally obligated to tell the truth to the best of their knowledge, and subject to criminal penalties if they do not. That makes the Identity Theft Report a powerful form of evidence.

Allowing the Identity Theft Report in lieu of a police report balances the sensitive needs of victims and allows them recourse when their identity is used to incur fraudulent debt. It also frees local police to focus on public safety. Nothing in this bill prevents a victim from obtaining a police report but simply allows victims to use additional evidence when a police report may not be feasible.

2) BACKGROUND

Identity theft can take on different forms but is generally defined as a fraud that is committed using a person's identity information without that person's authority. Some of the most common types of identity theft include using someone else's information to claim a tax refund, obtaining medical care using someone else's health insurance, or using someone else's information to claim government benefits.

Identity theft cases have risen sharply since the start of the COVID-19 pandemic. In 2020, the FTC received approximately 1.4 million reports of identity theft, nearly double from the number of 2019 reports.¹ This increase was due in part to identity thieves targeting expanded safety net benefits enacted as a way to help curb the economic harm from the pandemic, and FTC received approximately 494,000 complaints about government benefits fraud compared to just 12,900 in 2019.

¹ <https://www.ftc.gov/news-events/press-releases/2021/02/new-data-shows-ftc-received-2-2-million-fraud-reports-consumers>

Identity theft can have a severe and long-lasting repercussions for victims. FTC's *Identity Theft: Aftermath* survey shows the extent to which victims endure significant and long-term fiscal, financial, and emotional harm as a result of identity theft.² Victims often cannot obtain housing, employment, or medical service, and they report ongoing issues with stress and emotional health. Moreover, this survey also reveals just how frustrating it can be for victims to resolve identity theft issues with government agencies and other institutions. In the 2018 survey, 46% of victims were dissatisfied with their financial institutions, 43.1% were dissatisfied with credit reporting agencies, and 42.8% were dissatisfied with the FTC itself.

Many victims endure an arduous and bureaucratic process to recover from identity theft, but for its part the FTC has, in recent years, prioritized making it less burdensome for victims to start the recovery process. FTC's dedicated website – identitytheft.gov – uses a victim's reported information to develop a "personal recovery plan," which creates a step-by-step plan to resolve the problematic ripple effects from identity theft. The website also offers pre-filled letters and forms that victims can use to send to merchants and banks.

More importantly, the FTC in 2017 modified how victims could report instances of identity theft to begin the work of clearing an account and relevant credit records. Originally, a victim had to include a police report in their report to the FTC, a requirement that often was burdensome and insufficient because of the variation of police reports across jurisdictions and incomplete information. Under this simplified system, the victim can submit the Identity Theft Report in place of a police report under the theory that this report is akin to a police report since the victim is legally obligated to tell the truth. The FTC describes the report as follows:

In most cases, you can use your Identity Theft Report in place of a police report to clear your account and credit records of transactions that resulted from the identity theft. That's because when you use IdentityTheft.gov, you're reporting the crime to the Federal Trade Commission, a federal law enforcement agency. Just like when you file a police report, you're legally obligated to tell the truth to the best of your knowledge, and subject to criminal penalties if you don't. That makes your Identity Theft Report powerful evidence that you're telling the truth.³

3) RECENT AMENDMENTS

The author recently amended this bill to replace references to Identity Theft Affidavit, now considered to be an outdated concept, and to make other clarifying changes. These changes help align the bill with AB 3364 (Committee on Judiciary), Chapter 36, Statutes of 2020, discussed in the next section.

4) RELATED LEGISLATION

SB 373 (Min), of the 2020-21 Legislative Session, prohibits a debt collector from collecting a consumer debt if the consumer provides documentation, including a FTC identity theft report, that the abuse is the result of economic abuse.

² <https://www.idtheftcenter.org/identity-theft-aftermath-study/>

³ <https://www.consumer.ftc.gov/blog/2017/04/most-id-theft-victims-dont-need-police-report>

AB 3364 (Committee on Judiciary), Chapter 36, Statutes of 2020, made technical changes to the Fair Debts Collection Act to replace references to the outdated Affidavit of Identity Theft to a reference of “identity theft report published by the Federal Trade Commission.”

REGISTERED SUPPORT / OPPOSITION:

Support

California Low-Income Consumer Coalition (Sponsor)

Opposition

None

Analysis Prepared by: Luke Reidenbach / B. & F. / (916) 319-3081