



Regulatory Compliance Bulletin

November 4, 2021

AB 430 - Debt Collection: Identity Theft

AB 430, a new law regarding debt collection and identity theft, was chaptered on September 23, 2021. This new law will require creditors, debt collectors, and debt buyers to accept the Federal Trade Commission (FTC) identity theft report as sufficient for making a claim of identity theft.

Existing law under the Rosenthal Fair Debt Collection Practices Actⁱ provides that if a debt collector is attempting to collect a debt from a debtor and the debtor provides the debt collector with specified information in writing alleging that the debt is the result of an identity theft crime, then the debt collector must cease collection activities while it conducts a review of whether the debtor is responsible for the debt in question. In addition, existing law also requires that a debtor must provide a copy of a police report and a written statement claiming to be a victim of identity theft with respect to the specific debt.

Under current law, the Identity Theft Lawⁱⁱ defines a victim of identity theft as a person who had their personal identifying information used without authorization by another to obtain credit, goods, services, money, or property and did not use or possess these things and filed a police report. (1798.92 (d))

AB 430 will add to this identity theft victim definition to also include someone who has submitted an FTC identity theft report or a filed police report.

AB 430 also makes changes to current law by allowing a victim of identity theft to submit an FTC identity theft report as a sufficient claim of identity theft related to a particular debt. Specifically, this new law will require that when a debt collector is attempting to collect a debt from a debtor, the debtor can provide either a copy of an FTC identity theft report completed and signed by the debtor or a police report filed by the debtor alleging that the debtor is the victim of an identity theft crime, along with a 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, upon receipt of which the debt collector must cease collection activities until completion of a review of whether the debtor is responsible for the debt in questionⁱⁱⁱ.

AB 430 will also add an FTC identity theft report to the list of items that an individual claiming identity theft must show the court to serve and file a motion to set aside a default or default judgment and for leave to defend the action if a service of summons has not resulted in actual notice

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to a person in time to defend an action brought by a debt buyer.^{iv}

In addition, in any action or cross complaint by an individual against a claimant to establish that the person is a victim of identity theft in connection with the claimant's claim against that person, an FTC identity theft report filed at least 30 days before filing the action will be added to the written notice requirements that had to be provided to a claimant to recover damages, attorney's fees and costs, and any equitable relief.^v

Lastly, AB 430 requires that a copy of a signed and submitted FTC identity theft

ⁱ Cal. Civil Code § 1788.18.

ⁱⁱ Cal. Civil Code § 1798.92 (d).

ⁱⁱⁱ Cal. Civil Code § 1788.18 (a).

report be added to the list of items required to be presented by an individual to an entity with which an application was filed or an account was opened by an unauthorized person so that individual can obtain access to information related to the application or account.^{vi}

The information contained in this CBA Regulatory Compliance Bulletin is not intended to constitute, and should not be received as, legal advice. Please consult with your counsel for more detailed information applicable to your institution.

^{iv} Cal. Civil Code § 1788.61 (a)

^v Cal. Civil Code § 1798.93 (c) (5)

^{vi} Cal. Penal Code § 530.8 (d) (1)