New Bill Strengthens Debtor Protections

A new California bill just signed into law, AB 1723 titled the “Identity Theft Resolution Act,” strengthens protections for debtors and purported debtors who may be victims of identity theft.

The Current Law

Currently under Civil Code\(^1\) section 1785.16.2 a creditor may not sell a consumer debt if it receives notice under Section 1785.16(k) that the debtor has notified a credit reporting agency that the debtor is a victim of identity theft.

Under Section 1788.18 a debt collector who is in possession of specified information\(^2\) that the debtor may be a victim of identity theft may not collect the debt.

1 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.

2 The specified information is the following:

(a) 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.

(b) The written statement described in paragraph (2) of subdivision (a) shall consist of any of the following:

(1) A Federal Trade Commission’s Affidavit of Identity Theft.

(2) 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.

(3) 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. A person submitting the certification who declares as true any material matter pursuant to this subdivision that he or she knows to be false is guilty of a misdemeanor. 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:

(A) A statement that the debtor is a victim of identity theft.

(B) A copy of the debtor’s driver’s license or identification card, as issued by the state.

(C) Any other identification document that supports the statement of identity theft.

(D) Specific facts supporting the claim of identity theft, if available.

(E) Any explanation showing that the debtor did not incur the debt.

(F) Any available correspondence disputing the debt after transaction information has been provided to the debtor.

(G) 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.

(H) 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.

(I) 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.

(J) An express statement that the debtor did not authorize the use of the debtor’s name or personal information for incurring the debt.

(K) The certification required pursuant to this paragraph shall be sufficient if it is in substantially the following form [dated and signed]:

“I certify the representations made are true, correct, and contain no material omissions of fact.”
theft is required to cease collection activities until it completes a review. Then it is required to notify the debtor in writing of its determination, explain it, and may recommence collection activities only after failing to conclude that the debtor is not responsible (yes, a double negative is used).

A debt collector that does not recommence collection activities pursuant to this section must, if it had furnished adverse information to a consumer credit reporting agency, notify the agency to delete that information and notify the creditor that it is no longer pursuing collection.

AB 1723 imposes the following additional requirements to the foregoing:

- a creditor may not sell a consumer debt if it receives a notice from a debt collector that it has ceased collection activities because of a determination of identity theft (see last bullet point)

- a debt collector now has 10 business days to initiate its review of the debtor’s claim of identity theft after receiving the specified information under Section 1788.18 (see footnote)

- if the debt collector furnished adverse information about the debtor to a consumer credit reporting agency, it now has 10 business days after receipt of the specified information to notify the consumer credit reporting agency that the account is disputed

- the debt collector now has 10 business days to send the notice of its determination (about the debtor’s claim of identity theft) to the debtor

- the debt collector has 10 business days to notify the credit reporting agency to delete adverse information after making the determination not to recommence collection activities

- the debt collector has 10 business days to notify the creditor that it is no longer pursuing collection after making the determination not to do so.

The effective date of AB 1723 is January 1, 2017. Alex Alanis is CBA’s lead lobbyist on the bill.

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