

**SENATE JUDICIARY COMMITTEE**  
**Senator Thomas Umberg, Chair**  
**2021-2022 Regular Session**

AB 430 (Grayson)  
Version: April 21, 2021  
Hearing Date: June 22, 2021  
Fiscal: No  
Urgency: No  
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**SUBJECT**

Debt collection: identity theft

**DIGEST**

This bill modifies the documentation requirements involved in various statutes that provide civil protections for victims of identity theft. The bill replaces obsolete references to a Federal Trade Commission Affidavit of Identity Theft.

**EXECUTIVE SUMMARY**

Existing state law provides various mechanisms for beginning to address the consequences of identity theft. Generally, these statutes require, or allow a creditor or debt collector to require, a police report in order to clear the consumer's name or cease collection on fraudulently created debts.

The Federal Trade Commission (FTC) has established an online portal for consumers to report identity theft and to create personal recovery plans. After collecting all of the relevant details, the identity theft reporting tool requires the consumer to sign under penalty of perjury that the information is true and correct. The form makes clear that "knowingly making any false statements to the government may violate federal, state, or local criminal statutes, and may result in a fine, imprisonment, or both."

For certain groups, particularly victims of intimate partner or elder abuse, securing a police report can be daunting and problematic from a policy perspective. This bill allows for consumers affected by identity theft to also utilize FTC identity theft reports in order to invoke the protections of existing law and support their efforts to undo the damage inflicted by identity theft. This bill is co-sponsored by the California Low-Income Consumer Coalition and the Public Law Center. It is supported by the Consumer Attorneys of California and Encore Capital Group. There is no known opposition. This bill passed out of the Senate Banking and Financial Institutions Committee on a 9 to 0 vote.

**PROPOSED CHANGES TO THE LAW**

Existing law:

- 1) Establishes the Rosenthal Fair Debt Collection Practices Act (“Rosenthal Act”) with the purpose to prohibit debt collectors from engaging in unfair or deceptive acts or practices in the collection of consumer debts and to require debtors to act fairly in entering into and honoring such debts. (Civ. Code § 1788 et seq.)
- 2) Requires a debt collector to cease collection activities until completion of a specified review upon receipt from a debtor of both of the following:
  - a) a copy of a police report filed by the debtor alleging that the debtor is the victim of an identity theft crime for the specific debt being collected by the debt collector; and
  - b) a 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, as specified. (Civ. Code § 1788.18.)
- 3) Requires a debt collector, upon receipt of the above information, to notify a consumer credit reporting agency to which it has furnished adverse information that the account is disputed, and initiate a review considering all of the information provided by the debtor and other information available to the debt collector in its file or from the creditor. 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. (Civ. Code § 1788.18(d).)
- 4) Requires a debt collector who ceases collection activities and does not recommence those collection activities to 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; and
  - b) notify the creditor that debt collection activities have been terminated based upon the debtor’s claim of identity theft. (Civ. Code § 1788.18(g).)
- 5) Establishes the California Consumer Credit Reporting Agencies Act (Civ. Code § 1785.1 et seq.) The act prohibits creditors from selling a consumer debt to a debt collector if the consumer is a victim of identity theft, as defined, and with respect to that debt, the creditor has received notice pursuant to subdivision (k) of Section 1785.16 or paragraph (2) of subdivision (g) of Section 1788.18 of the Civil Code. (Civ. Code § 1785.16.2(a).)
- 6) Establishes, under federal law, the Federal Fair Credit Reporting Act (15 U.S.C. § 1681 et seq.). The act requires consumer reporting agencies to block information

resulting from identity theft and to make specified notifications to the furnishers of such information. (15 U.S.C. § 1681c-2.)

- 7) Authorizes a victim of identity theft to obtain a civil judgment establishing that they are 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 their identity had been stolen, as provided. (Civ. Code § 1798.93 (Section 1798.93).)
- 8) Requires a victim, in order to recover actual damages or attorney's fees in the above action, to provide, upon request, a valid copy of a police report or Department of Motor Vehicles investigative report promptly filed pursuant to Section 530.5 of the Penal Code at least 30 days prior to filing. (Civ. Code § 1798.93(c)(5).)
- 9) Defines "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 the credit, goods, services, money, or property obtained by the identity theft, and filed a police report in this regard pursuant to Section 530.5 of the Penal Code. (Civ. Code § 1798.92(d).)
- 10) Provides the right to obtain from companies documents used to open accounts or to apply for loans in the victim's name by unauthorized persons. The victim must provide the person or entity with which the application was filed or the account was opened a copy of a police report. (Penal Code § 530.8.)

This bill:

- 1) Amends the Rosenthal Act to authorize 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 activities until completion of the review. It makes clear that a debt collector cannot require a police report, but that a police report continues to suffice.
- 2) Provides that the furnishing of an FTC identity theft report is also sufficient to meet the documentation requirement for being awarded actual damages and fees in the civil action authorized pursuant to Section 1798.93. It amends the relevant definition of "victim of identity theft" to include a victim that has submitted an FTC identity theft report.
- 3) Provides that an identity theft victim is authorized to provide an entity with whom an account was opened or an application was submitted in an

unauthorized manner a copy of the FTC identity theft report as part of the documentation process to require the entity to provide specified information related to that unauthorized activity.

- 4) Replaces references to the obsolete FTC Affidavit of Identity Theft with FTC identity theft report.

### COMMENTS

#### 1. The incidence and consequences of identity theft

According to the Federal Trade Commission's (FTC) "Consumer Sentinel Network Data Book 2020," people filed more reports about identity theft, in its various forms, than any other complaint.<sup>1</sup> Nationwide, identity theft has dramatically increased. Ten years ago, the FTC reported a little over 250,000 identity theft complaints. That number jumped to 650,523 in 2019. However, last year alone, the FTC received 1,387,615 such reports from consumers – a doubling of the total in just one year. California accounted for 147,382 of those identity theft reports – more than any other state. For every 100,000 people in California, there were 373 identity theft complaints.

Identity theft victims' information can be misused in numerous ways. One of the most common is the creation of new accounts, including credit card, utility, or wireless telephone accounts. But, victims' information can also be used in other, equally nefarious ways. Once identity thieves have a consumer's personal information, they can drain bank accounts, run up charges on various accounts, get medical treatment on a consumer's health insurance, take out auto loans, or even file a tax return and get a consumer's refund. In some extreme cases, a thief might even give the consumer's name to the police during an arrest, generating false criminal records.

#### 2. Providing flexibility for victims of identity theft

Existing law provides various civil protections for victims of identity theft. One problem identified is that many of these laws can require documentation that proves problematic for certain groups of victims. This bill provides some flexibility in the documentation requirements by allowing victims to invoke these protections with the FTC's identity theft report that is signed under penalty of perjury.

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<sup>1</sup> Federal Trade Commission, *Consumer Sentinel Network Data Book 2020* (February 2021) [https://www.ftc.gov/system/files/documents/reports/consumer-sentinel-network-data-book-2020/csn\\_annual\\_data\\_book\\_2020.pdf](https://www.ftc.gov/system/files/documents/reports/consumer-sentinel-network-data-book-2020/csn_annual_data_book_2020.pdf) [as of June 6, 2021].

*a. Rosenthal Fair Debt Collection Practices Act*

In 2003, the Legislature passed AB 1294 (Wiggins, Ch. 287, Stats. 2003), which amended the Rosenthal Act and enacted Section 1788.18 of the Civil Code. The statute requires a debt collector to stop collecting a consumer's debt if an alleged debtor provides the collector with specified information showing that the debtor is a victim of identity theft, including a police report and written statement from the victim. AB 1723 (Dodd, Ch. 376, Stats. 2016) updated the statute to specify that a debt collector shall initiate its review of an account within 10 business days of receiving certain information that a consumer has become the victim of identity theft and that the debt being collected is not the responsibility of the consumer. It requires the debt collector to notify, within 10 business days, any consumer credit reporting agency to which the debt collector furnished adverse information pertaining to a creditor's account that the account is disputed, and requires the debt collector to send notice of its determination to the debtor no later than 10 business days after concluding the review.

This bill again updates Section 1788.18. It requires the cessation of debt collection activities upon receipt of a copy of an FTC identity theft report, completed and signed by the debtor, rather than these protections only being triggered upon receipt of a police report. A consumer can still choose to provide a police report in lieu of the FTC report, but a debt collector cannot require the police report.

*b. Other Civil Code protections*

Section 1798.92 et seq. of the Civil Code, provides that if a person seeks to collect on a claim arising from identity theft, that the victim of identity theft may sue that person in order to establish that the victim is not obligated on the claim, and to enjoin further collection activity. "Victim of identity theft," for purposes of this law, is defined as "a person who had his or her personal identifying information used without authorization by another to obtain credit, goods, services, money, or property, and did not use or possess the credit, goods, services, money, or property obtained by the identity theft, and filed a police report in this regard pursuant to Section 530.5 of the Penal Code." (Civ. Code § 1798.92.)

This bill updates this law by amending the definition of "victim of identity theft" to allow for the provision of an FTC identity theft report in lieu of the police report. In order to recover damages in any action pursuant to this law, the victim currently can be required to show a police report upon request of the claimant. This bill allows a victim to satisfy this requirement with either the police report or an FTC report. It again makes clear that a creditor cannot require a police report.

*c. Section 530.8 of the Penal Code*

Existing law also provides a process, pursuant to Section 530.8 of the Penal Code, for a victim of identity theft to obtain documents and information used to open an account in the victim's name from the relevant company, as well as receive a record of transactions or charges associated with the application or account. Currently a victim must present a copy of a police report to invoke these rights. This bill provides that a copy of a signed and submitted FTC identity theft report also suffices.

*d. Clarifying amendments*

The intent of the provisions of the bill that prohibit a debt collector or claimant from requiring a police report are intended to ensure that a valid FTC identity theft report is sufficient on its own. In order to make that intent completely clear, the author has agreed to the following amendments that clarify the operation of these provisions:

Amendments

On page 3, in line 12, after “not” insert: “also”

On page 3, in line 12, strike out “copy of the police report.” and insert: “police report if the debtor submits an FTC identity theft report.”

On page 9, in lines 23 and 24, strike out “also provide, but the creditor shall not require,” and insert: “provide”

On page 9, in line 26, after the comma insert: “at least 30 days”

On page 9, in line 27, after the period insert: “For the purposes of this paragraph, if the person submits an FTC identity theft report, the claimant shall not also require a DMV or police report.”

3. The importance of providing flexibility for victims of identity theft

The California Low-Income Consumer Coalition, the sponsor of this bill, makes the case for the bill and why the flexibility in documentation is particularly important:

As Californians continue to struggle in the COVID-related recession, it is increasingly clear that financial insecurity is a leading obstacle to safety for survivors of intimate partner abuse and elder abuse. Coerced and fraudulent debt is a widespread problem (52% of survivors report experiencing it) and these debts are significant. A harm-doer incurs an average of \$15,936 of debt in a survivor’s name without their knowledge or consent each year and at least 42% of survivors experience damaged credit as a result of these debts.

Despite increased personal efforts and access to protective measures, identity theft continues to be a particularly difficult problem for vulnerable groups. Creditors and collectors require extensive documentation of identity theft, which consumers often do not have. Considering that identity theft happens more and more frequently online and in ways where a consumer is unable to obtain physical evidence, and that police departments are not always willing to accept a report of identity theft, the FTC Identity Theft Report can be a particularly powerful tool.

AB 430 bill would make it mandatory for creditors/debt collectors/debt buyers to accept the FTC Identity Theft Report as sufficient for making a claim of identity theft related to a particular debt. The Identity Theft Report is signed under penalty of perjury, and arguably is more comprehensive and thorough than a police report or the Identity Theft report form that the creditor/collector usually requests the consumer complete.

The author explains the particular concern with allowing creditors or other claimants to require police reports of certain groups, particularly those facing violence in their own homes:

For many, speaking to law enforcement about the sensitive and sometimes dangerous situations that they may be facing at home in order to obtain the required police report to cease collection activities presents difficulties. AB 430 is a common sense measure that balances the sensitive needs of victims by allowing them to submit a FTC Identity Theft Report in lieu of a police report. And provides them recourse when their identity is used to incur fraudulent debt.

Encore Capital Group, a financial services company, writes in support:

We have an account with over 4.8 million California consumers, and given the widespread reality of identity theft, it is critical that consumers who are victims of identity theft are able to quickly put a halt to any collection attempts that are a result of identity theft.

For many years, it has been Encore's practice to accept either a FTC affidavit of fraud or a police report as valid proof from a consumer that they have been a victim of identity theft. We are pleased to support a change in the law codifying this approach, as we believe it is a more flexible approach for consumers who have had their identity stolen. This consumer-focused legislation will provide prompt relief for victims of identity theft, and it will raise debt collection industry standards.

Ultimately, we believe that AB 430 will set in place standards that will help victims of identity theft quickly clear move on from a difficult situation.

### **SUPPORT**

California Low-Income Consumer Coalition (co-sponsor)  
Public Law Center (co-sponsor)  
Consumer Attorneys of California  
Encore Capital Group

### **OPPOSITION**

None known

### **RELATED LEGISLATION**

Pending Legislation: SB 373 (Min, 2021) prohibits a debt collector from collecting a consumer debt if the consumer provides documentation to the debt collector that the debt, or any portion of the debt, is the result of economic abuse, as defined. Among the list of acceptable documentation is an FTC identity theft report. This bill is currently in the Senate Banking and Financial Institutions Committee.

#### Prior Legislation:

AB 3364 (Assembly Committee on Judiciary, Ch. 36, Stats. 2020) replaced a reference to the FTC "Affidavit of Identity Theft" in the Rosenthal Act with FTC "identity theft report."

AB 1723 (Dodd, Ch. 376, Stats. 2016) *See* Comment 2.

AB 1294 (Wiggins, Ch. 287, Stats. 2003) *See* Comment 2.

### **PRIOR VOTES:**

Senate Banking and Financial Institutions Committee (Ayes 9, Noes 0)  
Assembly Floor (Ayes 77, Noes 0)  
Assembly Judiciary Committee (Ayes 10, Noes 0)  
Assembly Banking and Finance Committee (Ayes 12, Noes 0)

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