

AMENDED IN ASSEMBLY MARCH 28, 2016

CALIFORNIA LEGISLATURE—2015–16 REGULAR SESSION

**ASSEMBLY BILL**

**No. 1723**

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**Introduced by Assembly Member Dodd**  
**(Coauthors: Assembly Members Brough, Chávez, Lackey, and Mullin)**  
**(Coauthor: Senator Hertzberg)**

January 28, 2016

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An act to amend Section 1788.18 of the Civil Code, relating to debt collection.

LEGISLATIVE COUNSEL'S DIGEST

AB 1723, as amended, Dodd. Debt collection.

Existing law requires a debt collector that receives a copy of a police report filed by the debtor alleging that the debtor is the victim of an identity theft crime and a written statement in which the debtor claims to be the victim of identity theft to cease collection activities until completion of a review. Existing law requires the debt collector to review and consider all of the information provided by the debtor and other available information and authorizes the debt collector to 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.

This bill, *the Identity Theft Resolution Act*, would require the debt collector, upon receipt of the police report and written statement described above, if it furnished adverse information about the debtor to a consumer credit reporting agency, to notify the consumer credit reporting agency that the account is ~~disputed as subject to identity theft or fraud~~, *disputed*, and initiate a review, as specified, within 10 business days. The bill would require the debt collector to send notice of its

determination to the debtor no later than 10 business days after concluding the review. The bill would require a debt collector that does not recommence collection activities under these provisions to notify the creditor, no later than 10 business days after making its determination, and if it furnished adverse information to a consumer credit reporting agency, to notify the agency to delete that information no later than 10 business days after making its determination. The bill would also prohibit a creditor from pursuing further collections on the debt or selling *the* debt to a debt collector, if the creditor has received notice that debt collector has terminated debt collection activities, as described above.

Vote: majority. Appropriation: no. Fiscal committee: no.  
State-mandated local program: no.

*The people of the State of California do enact as follows:*

- 1     SECTION 1. This act shall be known, and may be cited, as  
2     the Identity Theft Resolution Act.  
3     ~~SECTION 1.~~  
4     SEC. 2. Section 1788.18 of the Civil Code is amended to read:  
5     1788.18. (a) Upon receipt from a debtor of all of the following,  
6     a debt collector shall cease collection activities until completion  
7     of the review provided in subdivision (d):  
8     (1) A copy of a police report filed by the debtor alleging that  
9     the debtor is the victim of an identity theft crime, including, but  
10    not limited to, a violation of Section 530.5 of the Penal Code, for  
11    the specific debt being collected by the debt collector.  
12    (2) The debtor's written statement that the debtor claims to be  
13    the victim of identity theft with respect to the specific debt being  
14    collected by the debt collector.  
15    (b) The written statement described in paragraph (2) of  
16    subdivision (a) shall consist of any of the following:  
17    (1) A Federal Trade Commission's Affidavit of Identity Theft.  
18    (2) A written statement that contains the content of the Identity  
19    Theft Victim's Fraudulent Account Information Request offered  
20    to the public by the California Office of Privacy Protection.  
21    (3) A written statement that certifies that the representations are  
22    true, correct, and contain no material omissions of fact to the best  
23    knowledge and belief of the person submitting the certification.  
24    A person submitting the certification who declares as true any

1 material matter pursuant to this subdivision that he or she knows  
2 to be false is guilty of a misdemeanor. The statement shall contain  
3 or be accompanied by the following, to the extent that an item  
4 listed below is relevant to the debtor's allegation of identity theft  
5 with respect to the debt in question:

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

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

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

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

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

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

17 (G) Documentation of the residence of the debtor at the time of  
18 the alleged debt. This may include copies of bills and statements,  
19 such as utility bills, tax statements, or other statements from  
20 businesses sent to the debtor, showing that the debtor lived at  
21 another residence at the time the debt was incurred.

22 (H) A telephone number for contacting the debtor concerning  
23 any additional information or questions, or direction that further  
24 communications to the debtor be in writing only, with the mailing  
25 address specified in the statement.

26 (I) To the extent the debtor has information concerning who  
27 may have incurred the debt, the identification of any person whom  
28 the debtor believes is responsible.

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

32 (K) The certification required pursuant to this paragraph shall  
33 be sufficient if it is in substantially the following form:

1 “I certify the representations made are true, correct, and  
2 contain no material omissions of fact.

3 \_\_\_\_\_  
4 (Date and Place)

\_\_\_\_\_”  
(Signature)

5  
6 (c) If a debtor notifies a debt collector orally that he or she is a  
7 victim of identity theft, the debt collector shall notify the debtor,  
8 orally or in writing, that the debtor’s claim must be in writing. If  
9 a debtor notifies a debt collector in writing that he or she is a victim  
10 of identity theft, but omits information required pursuant to  
11 subdivision (a) or, if applicable, the certification required pursuant  
12 to paragraph (3) of subdivision (b), if the debt collector does not  
13 cease collection activities, the debt collector shall provide written  
14 notice to the debtor of the additional information that is required,  
15 or the certification required pursuant to paragraph (3) of  
16 subdivision (b), as applicable, or send the debtor a copy of the  
17 Federal Trade Commission’s Affidavit of Identity Theft form.

18 (d) Within 10 business days of receiving the complete statement  
19 and information described in subdivision (a), the debt collector  
20 shall, if it furnished adverse information about the debtor to a  
21 consumer credit reporting agency, notify the consumer credit  
22 reporting agency that the account is ~~disputed as subject to identity~~  
23 ~~theft or fraud~~, *disputed*, and initiate a review considering all of the  
24 information provided by the debtor and other information available  
25 to the debt collector in its file or from the creditor. The debt  
26 collector shall send notice of its determination to the debtor no  
27 later than 10 business days after concluding the review. The debt  
28 collector may recommence debt collection activities only upon  
29 making a good faith determination that the information does not  
30 establish that the debtor is not responsible for the specific debt in  
31 question. The debt collector’s determination shall be made in a  
32 manner consistent with the provisions of subsection (1) of Section  
33 1692 of Title 15 of the United States Code, as incorporated by  
34 Section 1788.17 of this code. The debt collector shall notify the  
35 debtor in writing of that determination and the basis for that  
36 determination before proceeding with any further collection  
37 activities. The debt collector’s determination shall be based on all  
38 of the information provided by the debtor and other information  
39 available to the debt collector in its file or from the creditor.

1 (e) No inference or presumption that the debt is valid or invalid,  
2 or that the debtor is liable or not liable for the debt, shall arise if  
3 the debt collector decides after the review described in subdivision  
4 (d) to cease or recommence the debt collection activities. The  
5 exercise or nonexercise of rights under this section is not a waiver  
6 of any other right or defense of the debtor or debt collector.

7 (f) The statement and supporting documents that comply with  
8 subdivision (a) may also satisfy, to the extent those documents  
9 meet the requirements of, the notice requirement of paragraph (5)  
10 of subdivision (c) of Section 1798.93.

11 (g) A debt collector who ceases collection activities under this  
12 section and does not recommence those collection activities shall  
13 do all of the following:

14 (1) If the debt collector has furnished adverse information to a  
15 consumer credit reporting agency, notify the agency to delete that  
16 information no later than 10 business days after making its  
17 determination.

18 (2) Notify the creditor no later than 10 business days after  
19 making its determination that debt collection activities have been  
20 terminated based upon the debtor's claim of identity theft.

21 ~~(3)~~  
22 (h) Upon receipt of the notification described in paragraph ~~(2)~~,  
23 ~~(2) of subdivision (g)~~, the creditor shall not pursue further  
24 collections on, or sell, a consumer debt if the consumer is a victim  
25 of an identity theft crime, including, but not limited to, a violation  
26 of Section 530.5 of the Penal Code: *debt*.

27 ~~(h)~~  
28 (i) A debt collector who has possession of documents that the  
29 debtor is entitled to request from a creditor pursuant to Section  
30 530.8 of the Penal Code is authorized to provide those documents  
31 to the debtor.

32 ~~(i)~~  
33 (j) Notwithstanding subdivision (h) of Section 1788.2, for the  
34 purposes of this section, "debtor" means a natural person, firm,  
35 association, organization, partnership, business trust, company,  
36 corporation, or limited liability company from which a debt  
37 collector seeks to collect a debt that is due and owing or alleged  
38 to be due and owing from the person or entity. The remedies

1 provided by this title shall apply equally to violations of this  
2 section.

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