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CALIFORNIA LEGISLATURE—2015–16 REGULAR SESSION

ASSEMBLY BILL

No. 1723

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

January 28, 2016

An act to amend Sections 1785.16.2 and 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, 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 selling a consumer debt to a debt collector if the creditor has received notice that the 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 the
- 2 Identity Theft Resolution Act.
- 3 SEC. 2. Section 1785.16.2 of the Civil Code is amended to
- 4 read:
- 5 1785.16.2. (a) No creditor may sell a consumer debt to a debt
- 6 collector, as defined in 15 U.S.C. Sec. 1692a, if the consumer is
- 7 a victim of identity theft, as defined in Section 1798.2, and with
- 8 respect to that debt, the creditor has received notice pursuant to
- 9 subdivision (k) of Section ~~1758.16~~ 1785.16 or paragraph (2) of
- 10 subdivision (g) of Section 1788.18.
- 11 (b) Subdivision (a) does not apply to a creditor’s sale of a debt
- 12 to a subsidiary or affiliate of the creditor, if, with respect to that
- 13 debt, the subsidiary or affiliate does not take any action to collect
- 14 the debt.
- 15 (c) For the purposes of this section, the requirement in 15 U.S.C.
- 16 Sec. 1692a, that a person must use an instrumentality of interstate
- 17 commerce or the mails in the collection of any debt to be
- 18 considered a debt collector, does not apply.

1 SEC. 3. Section 1788.18 of the Civil Code is amended to read:
2 1788.18. (a) Upon receipt from a debtor of all of the following,
3 a debt collector shall cease collection activities until completion
4 of the review provided in subdivision (d):

5 (1) A copy of a police report filed by the debtor alleging that
6 the debtor is the victim of an identity theft crime, including, but
7 not limited to, a violation of Section 530.5 of the Penal Code, for
8 the specific debt being collected by the debt collector.

9 (2) The debtor's written statement that the debtor claims to be
10 the victim of identity theft with respect to the specific debt being
11 collected by the debt collector.

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

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

15 (2) A written statement that contains the content of the Identity
16 Theft Victim's Fraudulent Account Information Request offered
17 to the public by the California Office of Privacy Protection.

18 (3) A written statement that certifies that the representations are
19 true, correct, and contain no material omissions of fact to the best
20 knowledge and belief of the person submitting the certification.
21 A person submitting the certification who declares as true any
22 material matter pursuant to this subdivision that he or she knows
23 to be false is guilty of a misdemeanor. The statement shall contain
24 or be accompanied by the following, to the extent that an item
25 listed below is relevant to the debtor's allegation of identity theft
26 with respect to the debt in question:

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

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

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

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

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

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

38 (G) Documentation of the residence of the debtor at the time of
39 the alleged debt. This may include copies of bills and statements,
40 such as utility bills, tax statements, or other statements from

1 businesses sent to the debtor, showing that the debtor lived at
2 another residence at the time the debt was incurred.

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

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

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

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

15
16 “I certify the representations made are true, correct, and
17 contain no material omissions of fact.
18 _____ ”
19 (Date and Place) (Signature)

20
21 (c) If a debtor notifies a debt collector orally that he or she is a
22 victim of identity theft, the debt collector shall notify the debtor,
23 orally or in writing, that the debtor’s claim must be in writing. If
24 a debtor notifies a debt collector in writing that he or she is a victim
25 of identity theft, but omits information required pursuant to
26 subdivision (a) or, if applicable, the certification required pursuant
27 to paragraph (3) of subdivision (b), if the debt collector does not
28 cease collection activities, the debt collector shall provide written
29 notice to the debtor of the additional information that is required,
30 or the certification required pursuant to paragraph (3) of
31 subdivision (b), as applicable, or send the debtor a copy of the
32 Federal Trade Commission’s Affidavit of Identity Theft form.

33 (d) Within 10 business days of receiving the complete statement
34 and information described in subdivision (a), the debt collector
35 shall, if it furnished adverse information about the debtor to a
36 consumer credit reporting agency, notify the consumer credit
37 reporting agency that the account is disputed, and initiate a review
38 considering all of the information provided by the debtor and other
39 information available to the debt collector in its file or from the
40 creditor. The debt collector shall send notice of its determination

1 to the debtor no later than 10 business days after concluding the
2 review. The debt collector may recommence debt collection
3 activities only upon making a good faith determination that the
4 information does not establish that the debtor is not responsible
5 for the specific debt in question. The debt collector’s determination
6 shall be made in a manner consistent with the provisions of
7 subsection (1) of Section 1692 of Title 15 of the United States
8 Code, as incorporated by Section 1788.17 of this code. The debt
9 collector shall notify the debtor in writing of that determination
10 and the basis for that determination before proceeding with any
11 further collection activities. The debt collector’s determination
12 shall be based on all of the information provided by the debtor and
13 other information available to the debt collector in its file or from
14 the creditor.

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

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

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

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

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

35 (h) A debt collector who has possession of documents that the
36 debtor is entitled to request from a creditor pursuant to Section
37 530.8 of the Penal Code is authorized to provide those documents
38 to the debtor.

39 (i) Notwithstanding subdivision (h) of Section 1788.2, for the
40 purposes of this section, “debtor” means a natural person, firm,

1 association, organization, partnership, business trust, company,
2 corporation, or limited liability company from which a debt
3 collector seeks to collect a debt that is due and owing or alleged
4 to be due and owing from the person or entity. The remedies
5 provided by this title shall apply equally to violations of this
6 section.

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