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Identity Theft Triggers Stricter Processing Standards for Credit Applications in California

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Code Section Affected
Civil Code § 1785.20.3 (amended).
AB 1610 (Pavley); 2003 STAT. Ch. 41.

I. INTRODUCTION

The Federal Trade Commission ("FTC") reported that identity theft was the largest contributing factor in a seventy-three percent increase in consumer fraud complaints in 2002.[1] Amongst the states, California suffered the second highest number of reported cases of identity theft.[2] When processing credit applications in California, credit granting firms frequently ignore discrepancies in personal information provided by credit applicants.[3] As a result, identity thieves, armed solely with stolen social security numbers, have been able to illegally secure credit.[4]

In 2001, the California Legislature began to address this problem by passing Chapter 354.[5] Chapter 354 required creditors to take reasonable steps to verify the accuracy of the applicant's address if it did not match the address supplied on the credit report.[6] However, the 2001 reforms did little to address discrepancies between personal information listed on credit reports and credit applications.[7] In response to these concerns, Assemblymember Fran Pavley authored Chapter 41, which requires verification of a credit applicant's first name, last name, and social security number.[8]

II. EXISTING LAW

In 2001, California passed Chapter 354, requiring consumer creditors to take reasonable steps to verify the accuracy of an applicant's address when the addresses

1. SENATE JUDICIARY COMMITTEE, COMMITTEE ANALYSIS OF AB 1610, at 1 (June 17, 2003).
2. *Id.*
3. *Id.* at 2.
4. *Id.*
5. *Id.* at 1; *see* CAL. CIV. CODE §§ 1785.10-1785.40 (West 1998 & Supp. 2004) (codifying California's policies regarding identity theft).
6. SENATE JUDICIARY COMMITTEE, COMMITTEE ANALYSIS OF AB 1610, at 1 (June 17, 2003).
7. *See id.* at 3 (discussing the inadequacies of the 2001 information verification requirements).
8. *Id.*

on the credit application and the credit report do not match.[9] Additionally, creditors must confirm that the discrepancy is not the result of identity theft.[10]

Creditors are prohibited from extending credit or lending money if the creditors are on notice that the applicant has been a victim of identity theft.[11] This prohibition is lifted if the creditors take reasonable steps to confirm both the consumer's identity and the validity of the credit transaction.[12]

Existing tort law provides identity theft victims with remedies against creditors engaged in unreasonable business practices.[13] Identity theft victims also have statutory remedies including recovery of "actual damages, court costs, attorney's fees, and punitive damages" up to thirty thousand dollars per violation.[14]

California Civil Code section 1798.92 codifies the definition of identity theft.[15] Identity theft is the "unauthorized use of another person's personal identifying information to obtain credit, goods, services, money, or property."[16] Personal identifying information includes "a person's name, address, telephone number, driver's license number, social security number, place of employment, employee identification number, mother's maiden name, demand deposit account number, savings account number, or credit card number."[17] In order to qualify as a victim of identity theft, a person must satisfy three criteria.[18] First, the person must have "had his or her personal identifying information used without authorization by another."[19] Second, the victim may not use or possess the credit or other items obtained through the identity theft.[20] Third, the identity theft victim must file a related police report pursuant to California Penal Code section 530.5.[21]

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9. CAL. CIV. CODE § 1785.20.3(a) (West Supp. 2004).

10. *Id.*

11. *Id.* § 1785.20.3(b).

12. *Id.*

13. *See* SENATE JUDICIARY COMMITTEE, COMMITTEE ANALYSIS OF AB 1610, at 3 (June 17, 2003) (explaining that although damages under a tort theory against a defendant creditor are available to identity theft victims, AB 1610 identity theft victims have access to additional statutory remedies. These statutory remedies include attorney fees and possible punitive damages).

14. CAL. CIV. CODE § 1785.20.3(c) (West Supp. 2003).

15. *Id.* § 1798.92 (West Supp. 2004).

16. *Id.* § 1798.92(b).

17. *Id.* § 1798.92(c).

18. *Id.* § 1798.92(d).

19. *Id.*

20. *Id.*

21. *Id.*; *see also* CAL. PENAL CODE § 530.5 (West 1999 & Supp. 2004) (establishing criminal penalties for a person who obtains personal information of another person and uses this information for any unlawful purpose).

III. CHAPTER 41

Chapter 41 amends section 1785.20.3 of the Civil Code to require creditors to verify that the consumer's last name, address, and social security number listed on the credit application correspond to the information on the credit report.[22] If these items do not match to a "reasonable degree of certainty," creditors must take precautions to verify the accuracy of the information provided on the application.[23] It is the creditors' responsibility to substantiate that an extension of credit, in light of the discrepancy of information, would not be the result of identity theft.[24]

Upon receiving notice from an identity theft victim, creditors are prohibited from extending credit for an application without first taking affirmative "reasonable steps" to assure that any "extension of credit is not the product of identity theft."[25] Once the identity theft victim notifies a creditor that an identity theft has occurred, the creditor must notify the victim of his or her rights under California Civil Code section 1785.16(k).[26]

Two categories of creditors are exempt from Chapter 41 requirements.[27] The first category includes reporting agencies that assemble or merge information from databases designed for multiple consumer credit reporting agencies rather than maintain permanent databases.[28] Chapter 41 also exempts applications that contain addresses from United States Army, Air Force, or United States Fleet post office addresses.[29]

IV. ANALYSIS OF CHAPTER 41

Chapter 41 expands the categories of information that creditors must verify in the event of discrepancies between a credit application and an applicant's credit report.[30] Retailer credit reporting agencies previously were required to match "at least three categories" of information prior to issuing a credit report.[31] Now, all creditors must verify an applicant's social security number and name.[32]

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22. CAL. CIV. CODE § 1785.20.3(a) (amended by Chapter 41).

23. *Id.*

24. *Id.*

25. *Id.* § 1785.20.3(b); *see also id.* § 1785.16(k) (West 1998 & Supp. 2004) (establishing the notice requirements).

26. *Id.* § 1785.20.3(f) (West Supp. 2003).

27. *Id.* § 1785.20.3(g).

28. *Id.*

29. *Id.*

30. SENATE JUDICIARY COMMITTEE, COMMITTEE ANALYSIS OF AB 1610, at 3 (June 17, 2003).

31. CAL. CIV. CODE § 1785.14(a)(1) (West 1998 & Supp. 2004) (detailing the requirements for retail credit issuers).

32. SENATE JUDICIARY COMMITTEE, COMMITTEE ANALYSIS OF AB 1610, at 1 (June 17, 2003); *see* CAL. CIV. CODE §§ 1785.20.3(a) (defining the previous verification requirements).

Existing tort law provides remedies to individuals harmed by the unreasonable business practices of creditors.[33] Under tort law, the Chapter 41 requirement that creditors take reasonable steps to verify the information on credit applications to a "reasonable degree of certainty" has little impact.[34] From a tort theory perspective, the language in Chapter 41 does not create any additional legal duties for creditors.[35] Under a tort action, identity theft victims are required to bring an action for negligent extension of credit within two years of the negligent act.[36]

In addition to tort claims, Chapter 41 provides identity theft victims with the opportunity to sue creditors for statutory remedies.[37] Unlike the tort remedy, Chapter 41 allows an injured plaintiff to recover court costs and attorney fees.[38] Furthermore, the statutory remedies include punitive damages from $100 to $30,000 per violation if the creditor's violation is willful.[39] Finally, the statute of limitations is more flexible under Chapter 41 than under a tort cause of action.[40] Unlike a tort action, which measures the two-year statute of limitations from the date of the violation, Chapter 41 measures the two-year statute of limitations from the date the plaintiff discovers the violation.[41] However, under Chapter 41, a plaintiff must file his or her complaint no later than seven years after the date of the violation.[42] In a suit against a credit agency in an identity theft action, the statute of limitations for a Chapter 41 statutory cause of action is five years longer than the statute of limitations for a tort cause of action.[43]

V. CONCLUSION

Under Chapter 41, if a creditor discovers a discrepancy between the application and the credit report regarding the applicant's first or last name, social security, or address, the creditor must take precautions to confirm to a reasonable certainty that the information provided on the application is accurate.[44] In the event that the creditor does not take reasonable precautions to verify this information and credit is extended as a result of identity theft, the identity theft victim may pursue a

33. SENATE JUDICIARY COMMITTEE, COMMITTEE ANALYSIS OF AB 1610, at 3 (June 17, 2003).

34. *Id.*

35. *Id.*

36. *See id.* (measuring the statute of limitations from the occurrence of the negligent act).

37. *Id.*

38. CAL. CIV. CODE § 1785.20.3(c) (West Supp. 2003).

39. *See id.* (describing the availability of punitive damages. The statute authorizes the court with discretion to determine the amount of punitive damages awarded); SENATE JUDICIARY COMMITTEE, COMMITTEE ANALYSIS OF AB 1610, at 3 (June 17, 2003) (listing the range for punitive damages for willful violations).

40. CAL. CIV. CODE § 1785.0.3(c) (West Supp. 2003).

41. *Id.*

42. *Id.*

43. *See id.* (extending the statute of limitations from two to seven years in some cases).

44. CAL. CIV. CODE § 1785.20.3(a) (amended by Chapter 41).

statutory remedy against the creditor.[45] Under a Chapter 41 statutory action, an identity theft victim may recover actual damages, court costs, attorney fees, and, in some instances, punitive damages.[46] Finally, Chapter 41 measures the statute of limitations from the date that the plaintiff discovers the violation up to seven years from the date of the violation.[47] Chapter 41 represents a minimal extension of protection for consumers under the existing credit statutes; however, the penalty for creditor violations under Chapter 41 may be significant.

45. *Id.* § 1785.20.3 (West Supp. 2003).

46. *Id.*

47. *See* SENATE JUDICIARY COMMITTEE, COMMITTEE ANALYSIS OF AB 1610, at 3 (June 17, 2003) (describing the range of penalties applicable to creditor violators).

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