McGeorge Law Review

Volume 29 | Issue 3 Article 13

1-1-1998

Crimes

University of the Pacific, McGeorge School of Law

Identity Theft On The Rise: Will the Real John Doe Please Step Forward?

Maria Ramirez-Palafox

Code Sections Affected
Civil Code §§ 1785.14, 1785.16, 1785.30, 1785.31, 1785.33 (amended);
Penal Code § 530.5 (new).
AB 156 (Murray); 1997 STAT. Ch. 768

Have you checked your credit lately? Is someone pretending to be you, spending money borrowed against your name? If you think it can't happen to you, think again, because it can easily happen to anyone.[1] This phenomenon is called "Identity Theft,"[2] and it is one of the fastest growing consumer credit crimes affecting an unknown number of consumers every year.[3]

It happened to Jane X who discovered that the women in charge of her payroll used her personal information to run up hundreds of dollars of debt at a department store.[4] Jane X went to the police for help, but like many others, was denied assistance.[5] Although the loss was devastating to her personal finances, Jane X's case

---

1. *See* Ramon G. McLeod, *New Thieves Prey On Your Very Name / Identity Bandit Can Wreak Credit Havoc*, S.F. CHRON., Apr. 7, 1997, at A1 (describing how identity theft can happen to anyone without that victim ever knowing); Ken Leiser, *Theft of Identity Growing Rapidly Victims Often Face a Credit Nightmare*, SAN DIEGO UNION-TRIB., Jan. 24, 1997, at A3 (recognizing that identity theft can happen to anyone due to the new technological era which identifies everyone as a number in database systems from doctor's offices to universities. Being a number makes identity theft easier because a thief can access an array of information about you with only your name and social security number); Lisa Fickenscher, *Credit Industry Strains to Stem Tide of Identity Theft Series*, AM. BANKER, Oct. 24, 1996, at 1 (explaining that if well-educated professional are susceptible to identity theft, then so is everyone else because it is expected that professionals know how to use the laws to protect themselves).

2. *See* Neil Munro, *Federal Reserve Board Eyes Online Privacy Rules*, WASH. TECH., Jan. 23, 1997 (defining "identity theft" as "gathering enough personal information about a person, such as their name, birthday, and social security number, in order to apply for credit cards in the victim's name").

3. *See* Jennifer Kingson Bloom, *Alleged Spree Highlights Danger of Identity Theft*, AM. BANKER, June 3, 1997, at 1 (acknowledging that losses by credit card companies from identity fraud are a small but growing problem. MasterCard International said their losses quadrupled within a year, but this was still less then 1% of their total fraud losses of over 498 million dollars); Leiser, *supra* note 1, at A3 (stating that identity theft is a rapidly growing problem); McLeod, *supra* note 1, at A1 (stating that since the crime of identity theft is new, there are no present statistics as to the amount of consumers effected).

4. *See* CALIFORNIA PUBLIC INTEREST RESEARCH GROUP, THEFT OF IDENTITY: THE CONSUMER X-FILES, 1996 REPORT 3-5 (copy on file with *McGeorge Law Review*) [hereinafter CalPIRG Report] (recounting how Jane X discovered her identity was stolen after receiving a call from Lerner's Department store informing her that she owed hundreds of dollars in debt).

5. *See id.* (reporting Jane X was told her case would never be investigated because it was not as important as a murder, and that she was informed that her case was transferred to Los Angeles and that the police would not pursue the case unless the retail store pressed charges).

was not considered important because she lost only a small amount of money.[6] In addition, the police department lacked the available officers to assist her and other victims in investigating credit fraud matters.[7] Many victims of credit fraud are turned away from police stations because they are not seen as the "victim."[8] In order to be considered a victim, you need to have lost a substantial amount of money as a result of the fraud, such as losses most commonly sustained by department stores or businesses.[9] Jane X was not seen as a victim because she only lost fifty dollars, the deductible charge incurred by her credit card company.[10]

Although Jane did not lose a lot of money immediately, she did suffer extreme emotional stress, and lost time and money attempting to clear her credit history.[11] In rectifying this situation consumers spend their time contacting credit agencies, writing letters which need to be notarized, taking time off work in order to meet with credit agency investigators, and spending personal time worrying about their future and their loss of good credit.[12] Even after all of the time lost, money spent, and constant worrying, it is not certain that the victims will ever be able to clear every fraud transaction on their report.[13] Other victims suffer from heart attacks or stress because of the financial problems they face, in addition to the hassle they must go through attempting to clear an otherwise spotless credit history.[14]

It is even more devastating when a consumer loses future opportunities due to a bad credit report.[15] One may be denied a loan for a new home or car, or may even be denied a high paying job.[16] Take, for example, Denise Patterson who could not pass a security background check for a job with the United States Government because of her bad credit report.[17] Ms. Patterson's bad credit began when a relative

6. *Id.* at 4-5.

7. *Id.*

8. *See* McLeod, *supra* note 1, at A1 (rationalizing that police are not taking cases because they see the financial institutions as the victim rather than the person whose credit has been destroyed).

9. *Id.*; *see* Leiser, *supra* note 1, at A3 (suggesting the real victims are the businesses who grant credit).

10. *See* McLeod, *supra* note 1, at A1 (verifying that federal law limits liability of victims to no more then fifty dollars).

11. CalPIRG Report, *supra* note 4, at 4.

12. *See* McLeod, *supra* note 1, at A1 (explaining that consumers lose money due to expensive phone calls, legal expenses, and time off from work because it can take months or years before a credit history can be cleared); Brigid McMenanmin, *Invasion of the Credit Snatchers*, FORBES, Aug. 26, 1996, at 256 (illustrating that a couple had to call credit issuers for over a year and were made to feel as crooks when they discovered someone had stolen their identities and opened fraudulent accounts).

13. *See* McLeod, *supra* note 1, at A1 (explaining that consumers have to work very hard, many times for several months, trying to clear their credit reports, and that some are unable to clear all of the fraudulent transactions).

14. *See id.* at A3 (acknowledging that Joe Gutierrez suffered a heart attack after a thief stole his identity and opened twenty fraudulent accounts).

15. CalPIRG Report, *supra* note 4, at 6-7.

16. *See id.* (recounting that while working in Japan, Ms. Patterson was informed her security clearance was suspended because of her debts).

17. *See id.* (detailing that Ms. Patterson received a job offer upon leaving the Army, but due to her credit history, was later denied the job and as a result she lost both her apartment and employment).

used her personal information to open five accounts while Ms. Patterson was out of the country as a member of the armed forces.[18] The United States Army threatened to dishonorably discharge Ms. Patterson because of her bad credit.[19] Fortunately, a congressman who represented Ms. Patterson helped her retain her position.[20]

I. INADEQUATE PROCEDURES

The rapid growth of identity theft results from the ease in which people can commit the crime and the low risk of being apprehended and prosecuted.[21] Identity theft is common and easy to commit because credit reporting agencies employ inadequate procedures and regulations to protect consumers.[22] Instead of the procedures helping, many mistakes are being found in consumer's actual credit files.[23] These errors can cause devastating problems when the consumer is denied credit to purchase a car or home.[24]

The California Legislature promulgated the Consumer Credit Reporting Agencies Act[25] in 1975 in order to protect the consumers from "identity theft."[26] This act required agencies to adopt reasonable procedures for conducting business.[27] However, the procedures implemented do not protect the consumer adequately, and identity theft remains a problem.[28]

18. *See id.* (discovering a relative opened accounts in her name, Ms. Patterson was forced to pay all her debts in order to solve the problem and stay in the Army).

19. *Id.* at 6-7.

20. *Id.*

21. *See* ASSEMBLY COMMITTEE ON BANKING AND FINANCE, COMMITTEE ANALYSIS OF AB 156, at 2 (Apr. 7, 1997) (noting that the incidence of identity theft is growing because it is easy to steal one's identity); McLeod, *supra* note 1, at A1 (indicating that law enforcement will not investigate the crime, and if there is an investigation, there is a lack of severe punishment for identity theft).

22. *See* ASSEMBLY COMMITTEE ON BANKING AND FINANCE, COMMITTEE ANALYSIS OF AB 156, at 2 (Apr. 7, 1997) (stating that current procedures used by credit agencies are ineffective because they are based on outdated technologies for matching consumer identification); *see also* SENATE COMMITTEE ON PUBLIC SAFETY, COMMITTEE ANALYSIS OF AB 156, at 4 (July 15, 1997) (stating that the "California Consumer Reporting Agencies Act, enacted in 1975, was based on antiquated technologies, and is now more then 20 years old").

23. *See* SENATE COMMITTEE ON PUBLIC SAFETY, COMMITTEE ANALYSIS OF AB 156, at 5 (July 15, 1997) (reporting that errors in consumer files were not minor errors, but included mismerged files and stranger's information on files).

24. *Id.* (stating that the errors found in over half of the existing credit reports are egregious enough to prevent purchases of homes and cars, in turn causing business losses due to decreased sales).

25. 1975 Cal. Stat. ch 1271, sec. 1, at 3369-77 (West) (enacting CAL. CIV. CODE Div. 3, Part 4, Title 1.6).

26. 1975 Cal. Stat. ch 1271, sec. 1, at 3369-77 (West) (enacting CAL. CIV. CODE Div. 3, Part 4, Title 1.6); *see* ASSEMBLY COMMITTEE ON BANKING AND FINANCE, COMMITTEE ANALYSIS OF AB 156, at 2 (Apr. 7, 1997) (explaining that laws were enacted in 1975 to protect consumers from identity theft).

27. 1975 Cal. Stat. ch 1271, sec. 1, at 3369-77 (West) (enacting CAL. CIV. CODE Div. 3, Part 4, Title 1.6).

28. *See* ASSEMBLY COMMITTEE ON CONSUMER PROTECTION, COMMITTEE ANALYSIS OF SB 930, at 3 (July 8, 1997) (citing statistics which demonstrate that identity theft has doubled in Los Angeles and that MasterCard has seen an increase of 10% in identity theft).

One problem with the current procedures is the common use of the mother's maiden name to provide security clearance on accounts.[29] Another is the limited requirement that credit agencies only issue credit reports when it pertains to credit transactions, court cases, employment purposes, insurance claims, housing, and other "legitimate business needs."[30] These procedures are insufficient because they fail to prevent identity theft by criminals who gain access to these reports by posing as an employer or apartment manager.[31] Other problems occur at department stores, car dealerships, and banks all of which have easily accessible databases that contain consumer credit information.[32] These databases are subject to abuse by employers, employees, or others who might have access to the terminals and knowledge of the password.[33]

Steven M. Shaw had his identity stolen from an accessible database.[34] An employee working at a used car dealership had unlimited access to a credit database terminal and searched for someone with his same name.[35] The employee located Mr. Shaw's credit history and began opening accounts and charging more than a thousand dollars.[36] The employee continued to open and use the fraudulent accounts enlarging the fraud by monitoring Mr. Shaw's credit report.[37]

Although credit information can be easily accessed through terminals and over the telephone, it is not the only way your identity can be stolen. Identity theft occurs when your wallet is lost, when "dumpster divers"[38] obtain your preapproved credit solicitations received in the mail, or when your name, address, and social security number listed on bills or junk mail are collected by strangers.[39]

But what procedures are considered adequate to stop identity theft? After investigation into this problem, The California Public Research Group recommended various amendments to California's past Consumer Act which needed to

---

29. *See* ASSEMBLY COMMITTEE ON BANKING AND FINANCING, COMMITTEE ANALYSIS OF AB 156, at 1 (Apr. 17, 1997) (listing which categories can be included to match person identification, but specifically stating that a mother's maiden name may not be used).

30. *See* ASSEMBLY COMMITTEE ON BANKING AND FINANCE, COMMITTEE ANALYSIS OF SB 930, at 3 (July 14, 1997) (specifying the circumstances in which credit reporting agencies may issue credit reports); CAL. CIV. CODE § 1785.11 (West 1997) (listing circumstances which consumer credit reporting agencies can furnish credit reports).

31. *See* CalPIRG Report, *supra* note 4, at 17 (affirming that "in many cases someone posing as an employer or claiming to have some other 'legitimate business need' has been able to gain access to credit files").

32. *Id.* at 18.

33. *Id.*

34. *See* David A. Szwak, *Theft of Identity: Data Rape*, COLO. LAW., Jan., 1995, at 23 (telling the story of Steven Shaw who had his identity stolen by a used car salesman).

35. *Id.*

36. *Id.*

37. *Id.*

38. *See* McLeod, *supra* note 1, at A1 (defining "dumpster diving" as "wrongdoers taking your credit card offers, bank statements, and utility bills from trash bins").

39. *See id.* at A1 (listing the four ways identity theft occurs:Purse or wallet snatching, mail theft, "dumpster diving," or insider access to information).

be adopted.[40] These recommendations included the imposition of civil liability on creditors, a requirement that notice be given to consumers when a report is requested, a plan to improve dispute resolution procedures, and a requirement to provide free credit reports.[41] The California Public Interest Research Group believes these amendments, among others, would be adequate to protect victims and stop identity theft if enforced together.[42]

II. CHAPTER 768

Authored by Assembly Member Kevin Murray, Chapter 768 makes "identity theft" a crime.[43] Under Chapter 768, police must investigate identity fraud and issue reports so that victims may submit them to the credit reporting agencies for investigation.[44] Although this will not completely stop identity theft because of the difficulty in catching the criminal,[45] victims will find it easier to gain relief and assistance after discovering the fraud.[46]

Chapter 768 was also enacted to further prevent identity theft by requiring credit agencies to adopt more protective procedures.[47] "Retail sellers"[48] who issue credit cards must now provide credit reporting agencies with three categories of personal information regarding the consumer, not including the mother's maiden name.[49] If credit is being issued in person, the retailer must also certify that their employees check a photographic identification of consumers seeking to open a credit account. As for mail solicitations, Chapter 768 now mandates that all credit cards be mailed back to the same address from which they were previously sent in order to deter the incentive of mail theft.[50]

Another new procedure requires agencies to "promptly and permanently block" all information that is allegedly incorrect when a police report is issued pursuant to Penal Code section 530.5.[51] This information will not be unblocked unless it was originally blocked due to error, fraud, or if it can be proven that the consumer

40. CalPIRG Report, *supra* note 4, at 28-37.
41. *Id.*
42. *Id.* at 28. *But see id.* at 28 (noting also that none of these amendments alone will adequately protect victims).
43. CAL. PENAL CODE § 530.5 (enacted by Chapter 768).
44. CAL. CIV. CODE § 1785.16(k) (enacted by Chapter 768).
45. *See* SENATE FLOOR, ANALYSIS OF AB 156, at 2 (Aug 11, 1997) (explaining that Chapter 768 was introduced to force credit reporting agencies to conduct thorough investigations and to provide consumers with rights and remedies as victims of a crime).
46. *Id.*
47. *See id.* at 2 (explaining Chapter 768 was enacted to "clarify existing state law").
48. *See* CAL. CIV. CODE § 1802.3 (West 1997) (defining "retail seller" as "a person engaged in the business of selling goods or furnishing service to retail buyers").
49. *Id.* § 1785.14(a)(1) (amended by Chapter 768).
50. *Id.*
51. *Id.* § 1785.16(k) (enacted by Chapter 768).

possess goods which he alleges were purchased by a criminal.[52] With the enactment of this new procedure, consumers will now have the assurance that wrong information will not reappear on their reports as it did prior to Chapter 768, when many problems existed due to the wrong information appearing on consumers' reports or incorrect information not being deleted when later inquiries were made.[53]

III. CONCLUSION

"The epidemic of identity theft jeopardizes the financial well being of tens of millions of consumers, if left unchecked, it threatens the basis of our credit economy."[54] Frustration with current regulations and the rapid rise of identity theft have caused the Legislature to react.[55] The Legislature's introduction of new procedures to prevent identity theft will help consumers clean up their credit reports and find relief against the perpetrators.[56]

In an ideal world, identity theft would be prevented entirely. Solutions are continually being explored to solve the problem, but due to the lack of technology none have been implemented.[57] Although the credit agencies argue against implementing the provisions enacted by Chapter 768 because they will lose money, the agencies are already losing billions of dollars due to the current lack of adequate procedures to safeguard consumers from identity theft.[58] Currently, credit agencies pass their losses from identity theft onto consumers through higher interest rates and annual fees.[59] If the agencies change procedures in order to try and reduce the loss of debt from fraud, they will be able to keep their higher interest rates and use the excess money to pay for the implementation to stop identity theft. Most consumers would be willing to pay extra for obtaining adequate protection.

---

52. *Id.*

53. *See* SENATE COMMITTEE ON PUBLIC SAFETY, COMMITTEE ANALYSIS OF AB 156, at 4 (July 15, 1997) (stating that credit agencies had retailers conduct the investigation, and that they accepted their results); *see also* Szwak, *supra* note 35, at 23 (stating that in Mr. Shaw's case, after credit reporting agencies investigated and deleted all fraud transactions, the false data continued to reappear on his report).

54. SENATE COMMITTEE ON PUBLIC SAFETY, COMMITTEE ANALYSIS OF AB 156, at 4 (July 15, 1997).

55. *See* SENATE RULES COMMITTEE, COMMITTEE ANALYSIS OF AB 156, at 2 (Aug. 29, 1997) (explaining that the "purpose of the bill is to help consumers, credit issuers, and law enforcement cope with the recent and flourishing crime of identity theft").

56. *Id.*

57. *See* Lisa Fickenscher, *Credit Industry Strains to Stem Tide of Identity Theft Series*, AM. BANKER, Oct. 24, 1996, at 1 (reporting that an engineer has plans for a system which would have a photo of the owner of the credit card appear on a computer screen in order to identify the right consumer).

58. *See id.* (reporting that MasterCard has reported losses of $1.85 million in eight months, an increase over the $345,072 reported in 1995).

59. *See* McMenamin, *supra* note 12, at 256 (noting that credit issuers pass their losses on to consumers through higher interest rates).