

Date of Hearing: May 5, 2025

ASSEMBLY COMMITTEE ON BANKING AND FINANCE

Avelino Valencia, Chair

AB 1166 (Valencia) – As Introduced February 21, 2025

SUBJECT: Fair Debt Settlement Practices Act

SUMMARY: Extends the Fair Debt Settlement Act to commercial financing to prohibit debt settlement companies from engaging in specified practices or acts and to authorize a harmed commercial financing recipient to bring a civil action against the provider by debt settlement companies.

Specifically, **this bill:**

- 1) Defines new terms and revises existing terms as follows:
 - a) “Commercial financing” means an accounts receivable purchase transaction, including factoring, asset-based lending transaction, commercial loan, commercial open-end credit plan, or lease financing transaction intended by the recipient for use primarily for other than personal, family, or household purposes.
 - b) “Commercial financing recipient” means a person who receives commercial financing in an amount equal to or less than five hundred thousand dollars (\$500,000) and who is responsible for repaying that debt.
 - c) Amends “Debt settlement services,” “Settlement account,” and “creditor” to include “commercial financing recipient.”
 - d) Revises the definition of “Debt” by deleting money owed from a “natural person to another person and incurred primarily for personal, family, or household purposes” and replaces it with consumer or commercial financial recipient to another person.
- 2) Requires a debt settlement provider to provide specified disclosures to a “commercial financing recipient” along with an unsigned copy of the proposed written contract within three calendar days prior to execution. Disclosures include:
 - a) Information that there is no guarantee that a particular debt or all debt will be reduced or eliminated and that the consumer is still required to pay all bills unless the creditor states otherwise.
 - b) Each contract must list each debt to be serviced, the estimated time it will take the consumer to complete the contract’s required payments, and the method the provider will use to calculate charges and fees.
 - c) Failure to pay debt may result in levying the commercial financial recipient’s bank account and credit score.
 - d) Canceling the debt settlement contract may be done at any time without penalty and may count as income under federal tax requiring the payment of taxes on the amount forgiven or reduced debt.

- 3) Requires contracts between a commercial financing recipient and a debt settlement provider to include: (a) the estimated time to accumulate settlement funds; (b) the method for calculating charges and fees; (c) the provider's name, mailing address, and telephone number; and (d) a prohibition on requiring agreement with any other party.

Prohibits a debt settlement provider from communicating with any of a consumer's or commercial financing recipient's creditors until five calendar days after full execution of a contract for debt settlement services.

- 4) Prohibits a debt settlement provider and a payment processor from engaging in unfair, abusive, or deceptive acts or practices, which includes but is not limited to offering to lend money or credit, or purchase an enrolled debt. Providers may not charge fees until at least one debt is renegotiated and approved by the commercial financing recipient, a payment is made under the settlement, and the fee is proportionate to the total debt or based on a consistent percentage of the amount saved.
- 5) Allows a commercial financing recipient may cancel a debt settlement contract at any time without penalty by written, electronic, or oral notice. Notice is effective immediately if electronic or oral, upon receipt if by certified mail, or seven days after mailing if noncertified. Upon cancellation, the debt settlement provider must cancel the contract, notify the payment processor, instruct the closure of the settlement account and return of funds, and provide a detailed accounting and copies of creditor communications within three business days. The payment processor must return the account balance within seven days and provide an accounting within 10 business days.
- 6) Requires a debt settlement provider to promptly transmit the following to the consumer or commercial financing recipient, by mail or electronic means reasonably calculated to ensure receipt of any notice of a lawsuit concerning an enrolled debt received from a third party; and any settlement agreement negotiated on behalf of the consumer or commercial financing recipient.
- 7) This title does not apply to attorneys and law firms retained for (a) legal representation in debt litigation involving a commercial financing recipient; (b) debt settlement services pursuant to retainer for non-consumer or commercial debt collection matters; or (c) legal matters primarily unrelated to debt settlement.
- 8) Authorizes a commercial financing recipient who suffers damage as a result of a provider may bring a civil action against the provider. The commercial financing recipient may be awarded civil penalties between \$1,000 and \$5,000 per violation, reasonable attorney's fees and costs, and injunctive relief. Any action taken must commence within four years after either the last payment by, or on behalf of, the commercial financing recipient pursuant to the contract or the date on which the commercial financing recipient discovered the facts given rise to the claim.

EXISTING LAW:

- 1) Regulates the collection of consumer and covered commercial debt under the Rosenthal Act, which generally prohibits deceptive, dishonest, unfair, and unreasonable debt collection

practices by debt collectors and regulates the form and content of communications by debt collectors to debtors and others. (Title 1.6C of Part 4 of Division 3 of the Civil Code, Section 1788 et seq.)

- 2) Provides the Check Sellers, Bill Payers, and Proraters Law, administered by the Department of Financial Protection and Innovation (DFPI), which requires a prorater to be licensed and subject to provisions of the Proraters Law, as specified (Financial Code Section 12000 et seq.).
- 3) Provides the California Consumer Financial Protection Law (CCFPL), which authorizes DFPI to require covered persons to register with the department (Financial Code Section 90000 et seq.).
- 4) Provides the Debt Collection Licensing Act (DCLA) that prohibits a person from engaging in the business of the collection of consumer debt without a license and requires the Department of Financial Protection and Innovation to administer the licensing program. (Division 25 of the Financial Code, Section 100000 et seq.)

EXISTING FEDERAL LAW

- 1) Establishes the Fair Debt Collection Practices Act in 1977 to protect consumers from abusive, unfair, or deceptive practices by debt collection agencies. (15 U.S.C. §§ 1692 et seq.).

FISCAL EFFECT: This bill is keyed non-fiscal.

COMMENTS:

- 1) Purpose. According to the author:

Assembly Bill (AB) 1166 would protect small business, the beating heart of the California economy, from predatory practices by extending the Fair Debt Settlement Practices Act to commercial financing. By creating parity in the industry, we can ensure that we are safeguarding what makes California such a vibrant and strong environment for business

- 2) Background: Debt Laws

Various federal and state laws establish consumer protections related to debt collection and purchasing. With limited exceptions, these laws generally do not cover commercial debt. These consumer-centered statutes include:

- a) Federal Fair Debt Collection Practices Act (FDCPA). The FDCPA was established in 1977 to protect consumers from debt collection agencies' abusive, unfair, or deceptive practices. In addition, federal law protects reputable debt collectors from unfair competition and encourages consistent state action to protect consumers from abuses in debt collection. The Dodd-Frank Act granted rulemaking authority under the FDCPA to the Consumer Financial Protection Bureau (CFPB) and, for entities under its jurisdiction, granted authority to the CFPB to supervise and enforce compliance with the FDCPA. ¹

¹ https://files.consumerfinance.gov/f/documents/102012_cfpb_fair-debt-collections-practices-act-fdcpa_procedures.pdf

Violations of the FDCPA are enforceable through a private right of action, a class action, or administrative action. Under the FDCPA, a debt collector must send a written validation letter to a debtor containing information such as the amount of debt and the name of the creditor to whom the debt is owed.

- b) Fair Debt Settlement Practices Act. AB 1405 (Wicks, 2021) establishes requirements and prohibitions related to debt collection business practices and provides consumers with enforcement remedies if they are harmed by a violation of the law as found in AB 1166.
- c) Rosenthal Fair Debt Collection Practices Act (Rosenthal Act). SB 1286 (Min, 2024) similarly applied protections afforded to consumers and expanded the law to apply to commercial debt. Specifically, SB 1286 will extend the Rosenthal Act to two situations: (1) When a person takes out a personal loan in their name for the business, and (2) When a person co-signs a loan in the business's name.

Originally, the Rosenthal Act, which was passed in 1977, placed reasonable limits on the kinds of activities that creditors and debt collectors can employ when collecting payments from consumers. The Rosenthal Act, like the FDCPA, prohibits deceptive, dishonest, unfair and unreasonable debt collection practices, and many of the law's provisions govern how debt collectors can interact and communicate with debtors. The law also provides a private right of action for harmed consumers. With the passage of SB 1286, the protections in the Rosenthal Act apply only to covered commercial debt incurred, renewed, sold, or assigned on or after July 1, 2025. Commercial debts above \$500,000 or owed by entities other than natural persons are not covered.

- d) Debt Collection Licensing Act (DCLA). SB 908 (Wieckowski), Chapter 163, Statutes of 2020, establishes a program within the Department of Financial Protection and Innovation (DFPI) to license and oversee debt collectors and debt buyers in California. While this licensing program does not add significant new requirements for these entities, the new licensing program adds a layer of regulatory oversight over them. Under the DCLA, a debt collector and buyer must obtain a license and comply with the Rosenthal Act and the Fair Debt Buying Practices Act. A licensee must pay an annual fee and requires DFPI to examine a licensee for compliance.
- 3) Background: Commercial debt collectors
Small businesses, especially sole proprietors and personal guarantors, often rely on high-risk commercial credit and may seek debt relief services that are poorly regulated. The myriad of federal and state statutes to protect consumers from debt collection harms do not apply to business debt. Generally, it is assumed that, unlike a consumer, a business is more sophisticated and has greater means to evaluate commercial credit options and their associated risks. However, this assumption has weakened as policymakers and advocates scrutinize commercial debt collection practices.

In 2022, CFPB flagged small business debt collection issues stemming from the COVID-19 pandemic. The agency notes:

Of the estimated 31.7 million business enterprises in the country, small businesses constituted about 99.9% of all firms. Nearly 81% of those small businesses do not have

paid employees. Of the business establishments with employees, the Census Bureau has identified 72.5% with 9 or fewer employees and more than half (54.4%) with fewer than 5. That suggests a level of resources and expertise for most small businesses on par with consumer borrowers rather than what may be the general perception of commercial enterprises with readily available financial resources and expertise. The result is the potential for exploitation comparative to what is encountered by consumers, without any of the protections granted to consumers by the FDCPA.²

Commercial debt settlement agreements are typically governed by general contract law, requiring offer, acceptance, and consideration. AB 1166 establishes minimum statutory requirements for these agreements when entered into with commercial financing recipients. The bill ensures that debt settlement providers and payment processors adhere to standards that prohibit unfair, abusive, or deceptive acts or practices, as defined in statute, when offering debt settlement or payment processing services. These provisions align commercial debt settlement practices with existing consumer protections, addressing a previously unregulated area of small business finance.

ARGUMENTS IN SUPPORT

The Innovative lending Platform Association writes:

Just as individual consumers are vulnerable to predatory practices, small businesses are often targets of misleading debt resolution service providers and face significant risks when dealing with them. Predatory debt resolution service providers often approach debtors, charging them pennies on the dollar of what they owe on their loan agreement and promising that unsubstantiated discounts will be made on their debt. These predatory lenders require the debtor to stop paying and communicating with their original finance provider. Meanwhile, the debt resolution service providers are not working to reach a reasonable agreement with the finance provider. This deceptive practice leads to debtors defaulting on their loans, and without any resolution from the predatory provider, finance providers have no choice but to sue on the debt.

REGISTERED SUPPORT / OPPOSITION:

Support

Innovative Lending Platform Association

Opposition

None on file.

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² <https://www.consumerfinance.gov/about-us/blog/protecting-families-and-honest-businesses-from-debt-collection-abuses/>