

Date of Hearing: January 8, 2018

ASSEMBLY COMMITTEE ON BANKING AND FINANCE

Monique Limon, Chair

AB 1526 (Kalra) – As Amended January 3, 2018

SUBJECT: Civil actions: time of commencing

SUMMARY: This bill would specify that when the four-year period in which a debt collection action must be commenced has run, no person may bring suit or initiate arbitration or other legal proceeding to collect the debt. **Specifically, this bill:**

- 1) Aligns Section 1788.14 of the Civil Code with the CA Fair Debt Buying Practices Act, specifically Section 1788.52, which would require a debt collector to provide a debtor with notice on collection of a time-barred debt.
- 2) Prohibits a creditor/debt collector from threatening or pursuing legal action against a debtor if the debt is time-barred.
- 3) Prohibits the renewal of the statute of limitations on debt if payment on the debt is made after it is time-barred, unless both the creditor and debtor agree pursuant to Section 360 of the Code of Civil Procedure.

EXISTING LAW: Establishes the Fair Debt Buying Practices Act (FDBPA) which regulates the activities of a person or entity that has bought charged-off consumer loans for collection purposes. The FDBPA is limited to debt buyers with respect to all consumer debt sold or resold on or after January 1, 2014. (Civil Code Section 1788.50 et seq.)

- 1) Provides that a debt buyer shall not bring suit or initiate arbitration or other legal proceeding to collect a consumer debt if the applicable statute of limitations on the debt buyer's claim has expired.
- 2) Requires that in an action brought by a debt buyer on consumer debt, certain facts must be alleged in the complaint, including, among others:
 - a) The date of default or the date of the last payment;
 - b) The name and an address of the charge-off creditor at the time of charge off and the charge-off creditor's account number associated with the debt. The charge-off creditor's name and address shall be in sufficient form so as to reasonably identify the charge-off creditor;
 - c) The name and last known address of the debtor as they appeared in the charge-off creditor's records prior to the sale of the debt. If the debt was sold prior to January 1, 2014, the debtor's name and last known address as they appeared in the debt owner's records on December 31, 2013, shall be sufficient; and,
 - d) The names and addresses of all persons or entities that purchased the debt after charge off, including the plaintiff debt buyer. The names and addresses shall be in sufficient form so as to reasonably identify each such purchaser.

- 3) Provides that in an action initiated by a debt buyer, no default or other judgment may be entered against a debtor unless business records, authenticated through a sworn declaration, are submitted by the debt buyer to the court to establish the specific facts required to be alleged, above. Existing law further provides that no default or other judgment may be entered against a debtor unless a copy of the contract or other document described, as specified, authenticated through a sworn declaration, has been submitted by the debt buyer to the court.
- 4) Provides that in any action on a consumer debt, if a debt buyer plaintiff seeks a default judgment and has not complied with the requirements of the FDBPA, the court shall not enter a default judgment for the plaintiff and may, in its discretion, dismiss the action.
- 5) Provides that, except as provided in the FDBPA, the above default judgment provisions are not intended to modify or otherwise amend existing procedures established under Code of Civil Procedure Section 585 (which provides a procedure for judgment to be had if a defendant fails to answer or otherwise respond to a complaint).
- 6) Provides that when service of a summons has not resulted in actual notice to a party in time to defend the action and a default or default judgment has been entered against him or her in the action, he or she may serve and file a notice of motion to set aside the default or default judgment and for leave to defend the action. Existing law requires that the notice of motion be served and filed within a reasonable time, but in no event exceeding the earlier of: a) two years after entry of a default judgment against him or her; or b) 180 days after service on him or her of a written notice that the default or default judgment has been entered. (Code of Civil Procedure Section 473.5 et. seq.)
- 7) Requires that a notice of motion to set aside a default or default judgment and for leave to defend the action designate as the time for making the motion a date prescribed under a specified provision (which sets forth the statutory timelines for filing and serving specified noticed motions, opposing papers, and reply papers), and that the notice be accompanied by an affidavit showing under oath that the party's lack of actual notice in time to defend the action was not caused by his or her avoidance of service or inexcusable neglect. The party shall serve and file with the notice a copy of the answer, motion, or other pleading proposed to be filed in the action.
- 8) Provides that upon a finding by the court that the motion was made within the period permitted by subdivision 3)a) above, and that his or her lack of actual notice in time to defend the action was not caused by his or her avoidance of service or inexcusable neglect, it may set aside the default or default judgment on whatever terms as may be just and allow the party to defend the action.

EXISTING FEDERAL LAW: Regulates the collection of debt through, among other things, the Fair Debt Collection Practices Act; Fair Credit Reporting Act; and the Gramm-Leach-Bliley Act.

FISCAL EFFECT: Unknown

COMMENTS: Substantial amendments to the bill have led to all opposition being removed.

According to the author:

California has long been a leader in consumer protection; this includes having established one of the country's oldest laws providing a four-year statute of limitations on the ability of debt collectors to sue to collect on debt, yet, more is needed to protect consumers from aggressive debt collecting practices. Because the existing four-year statute of limitations does not extinguish the underlying debt, it allows unsuspecting and unaware consumers to pay a debt that is no longer legally enforceable.

While not infringing upon the rights of creditors to enforce debts prior to the end of the statute of limitation period, AB 1526 would:

- Provide that no person may sue or bring legal action against a consumer for a debt that is beyond the four-year statute of limitation.
- Provide that the statute of limitation may not be extended unless as otherwise allowed under Section 360 of the Code of Civil Procedure.
- Require debt collectors or the original creditor who chooses to pursue the debt, and does not sell it off, to provide consumer information about what time-barred debt is and whether they may or may not be sued because of the nonpayment of the debt, similar to what is already required under the Fair Debt Buying Practices Act.

Concerns have been raised that even after the four-year statute of limitations has run for a particular debt, debt collectors will use "creative" methods to revive an expired debt. This can lead to debt collectors taking legal action against a consumer on a debt that is no longer legally enforceable. Consumers may be unaware of this action and their legal rights under the law.

This bill seeks to protect consumers by ensuring they are appropriately informed of a debt collection action and that no time barred account may be litigated beyond the 4-year statute of limitations.

The Western Center on Law and Poverty, the sponsors of the bill, note that Alaska, the District of Columbia, Maryland, Mississippi, New Hampshire, North Carolina, and South Carolina all have three-year statute of limitations, while Wisconsin and Mississippi extinguish time barred debt at four years

REGISTERED SUPPORT / OPPOSITION:

SUPPORT:

Asian Law Alliance (prior version)
California Low-Income Consumer Coalition (prior version)
California Pan - Ethnic Health Network (prior version)
Consumer Federation of California (prior version)
Consumers Union (updated 1/4/18)
Courage Campaign (updated 1/4/18)

East Bay Community Law Center (prior version)

Health Access California (updated 1/4/18)

Public Law Center (updated 1/4/18)

OPPOSE:

All previous opposition has contacted the committee and removed their opposition.

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