

Date of Hearing: April 16, 2018

ASSEMBLY COMMITTEE ON BANKING AND FINANCE

Monique Limón, Chair

AB 2825 (Jones-Sawyer) – As Amended March 19, 2018

SUBJECT: Debt collection. collection: debt buying

SUMMARY: Expands the protections of the Rosenthal Fair Debt Collection Practices Act and Fair Debt Buying Practices to apply to collections of unpaid parking penalties, past due residential rent, and charges underlying a lien created by operation of law, including towing and storage charges.

Specifically, **this bill:**

- 1) Defines “nonconsensual obligation to pay” as:
 - a. the charges underlying a lien created by operation of law under Section 2881, including towing and storage charges under Section 22851 of the Vehicle Code;
 - b. unpaid parking penalties under Section 40220 of the Vehicle Code; or
 - c. past due residential rent and associated late fees.
- 2) Prohibits a debt collector from collecting or attempting to collect a nonconsensual obligation to pay by means of the following:
 - a. the use, or threat of use, of physical force or violence or any criminal means to cause harm to a debtor, or a debtor’s reputation or property.
 - b. the use of profane language, placing phone calls without disclosure of the caller’s identity, causing a telephone to ring repeatedly to annoy the person called, or communicating by phone or in person so frequently as to constitute harassment of a debtor.
 - c. communication with a debtor’s employer, certain family members, or public communications, as specified.
 - d. false representation that any person is an attorney or government official or communications that falsely simulate legal or judicial process.
- 3) Requires a debt collector who collects or attempts to collect a nonconsensual obligation to pay to comply with provisions of the federal Fair Debt Collection Practices Act.
- 4) Requires a debt collector to stop collecting a nonconsensual obligation to pay if a debtor provides certain information alleging the debtor is a victim of identity theft.
- 5) Prohibits a debt buyer from making any written statement in an attempt to collect a nonconsensual obligation to pay unless the debt buyer possess the following information:

- a. that the debt buyer is the sole owner or is authorized to assert the rights of all owners of the nonconsensual obligation to pay,
 - b. the balance of the nonconsensual obligation to pay,
 - c. the name and address of the debtor, the creditor that charged off the nonconsensual obligation to pay, and any persons that purchased the nonconsensual obligation to pay after charge off.
- 6) Requires debt buyers to provide debtors with specified information, upon request, related to the nonconsensual obligation to pay.

EXISTING LAW:

- 1) Regulates the collection of consumer debt under the Rosenthal Fair Debt Collections Practices 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) Defines “debt collector” as any person who, in the ordinary course of business, regularly, on behalf of himself or herself or others, engages in debt collection. The term includes any person who composes and sells, or offers to compose and sell, forms, letters, and other collection media used or intended to be used for debt collection, but does not include an attorney or counselor at law. (Civil Code, Section 1788.2)
- 3) Regulates the collection of consumer debt by a debt buyer, including requirements for debt buyers to have specified evidence of the origin, balance, payment history, and ownership history of a charged off consumer debt and to provide this evidence to a debtor upon request. (Title 1.6C.5 of Part 4 of Division 3 of the Civil Code, Section 1788.50 et seq.)
- 4) The federal Fair Debt Collection Practices Act prohibits debt collectors from using abusive, unfair, or deceptive practices. (15 USC Section 1692 et seq.)

FISCAL EFFECT: Unknown

COMMENTS:

1) PURPOSE

The author states:

“California has a long established history of protecting consumers. The Rosenthal Fair Debt Collection Practices Act has served consumers well, and ensures fair debt collection. However, the current act does not protect consumers in cases where people owe debt because of towing fees and past due rent, or residential fees. Individuals with non-consensual debt are often forced into circumstances where they have to choose between feeding themselves, or paying a debt.

While it is important that debts are paid, it is also important for debts to be settled fairly. The court has ruled in various cases that non-consensual debt is not covered by protections in current law, but debt collectors should be held to the same standards no matter how a debt was incurred. AB 2825 fixes a loophole in current law and extends protections to more types of debt, because all debt should be settled in a fair and equitable manner.”

2) COMMONSENSE PROTECTIONS

The Rosenthal Fair Debt Collections Practices Act (RFDCPA) currently applies only to transactions “in which property, services, or money is acquired on credit.” Based on the construction of the statute, courts have ruled that consumers who owe debts related to a “nonconsensual obligation to pay,” as defined in this bill, are not covered by the protections in RFDCPA.¹ This bill would extend commonsense protections to consumers that owe a nonconsensual obligation to pay, including prohibiting debt collectors from engaging in unscrupulous activities such as the use of violence or profanity, defamation, and the false representation of an attorney.

To be clear, this bill does not affect the enforceability of amounts owed by a consumer for a nonconsensual obligation to pay – the consumer is still responsible for paying the amount owed. This bill simply extends the same protections that currently apply to collections practices for consumer credit transactions to also apply to nonconsensual obligations to pay.

3) ARGUMENTS IN SUPPORT

The Mexican American Legal Defense Fund (MALDEF), the nation’s leading Latino legal civil rights organization, is the sponsor of the bill and writes in support:

“AB 2825...would provide individuals in California with much needed consumer protection regarding certain debts such as car towing fees, parking tickets, and past due residential rent from the unscrupulous and often unethical practices by debt collectors.” The bill “extends critical protections to exposed communities such as low-income communities, communities of color, immigrant communities, and the elderly by extending the protections under RFDCPA without changing the collection practices for debts arising from consumer transactions.”

4) COMMITTEE AMENDMENTS

The committee recommends the following clarifying amendments:

- i) Delete all instances of the phrase “or nonconsensual obligation to pay” from subdivision (d) of Section 1788.52. The deletion of this phrase from the disclosures required by this section will result in disclosures that are easier for consumers to understand. Generally, consumer disclosures should use plain

¹ See *Gousko v. Aptos Village Garage, Inc.* (2001) 94 Cal.App.4th 754, *Udo v. Kelkris Associates, Inc.* (2012) 2012 WL 5985663, *Phillips v. Archstone Simi Valley LLC* (2016) 2016 WL 7444550.

language and commonly understood terms. Removing this phrase from the disclosures does not affect the applicability of the protections described in the disclosures as a “nonconsensual obligation to pay” is a “debt” as defined in subdivision (d) of Section 1788.2 of the Civil Code.

REGISTERED SUPPORT / OPPOSITION:

Support

Mexican American Legal Defense Fund (sponsor)
American Civil Liberties Union of California
California Immigrant Policy Center
Legal Services for Prisoners with Children

Opposition

None received

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