

Date of Hearing: May 1, 2017

ASSEMBLY COMMITTEE ON BANKING AND FINANCE

Matthew Dababneh, Chair

AB 1526 (Kalra) – As Amended April 25, 2017

SUBJECT: Civil actions: time of commencing

SUMMARY: Clarifies that a consumer's payment on an outstanding debt does not revive the statute of limitations and changes requirements dealing with book accounts and accounts stated, as specified. Specifically, **this bill:**

- 1) Prohibits a debt collector from attempting to collect on a time-barred debt without providing the debtor through written notices, as specified.
- 2) Requires that for an action to recover a book account or account stated for an account of one or more items, the time shall run separately for each transaction.

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 an 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: This bill makes changes to provisions of consumer outstanding debt, how the statute of limitations (SOL) affects that debt, and applicable reporting requirements. According to the author's office:

Even though a debt is no longer legally enforceable after the expiration of the SOL, debt collectors will often use creative ways to compel consumers to make a payment, no matter how small, on the debt. Some creditors and collectors combine later received services or credit with an old debt to revive a time-barred

debt by combining the two into one account. Even though the debt is no longer legally enforceable, debt collectors can still take legal action against unsuspecting consumers. This often happens to consumers unaware of their legal rights afforded under SOL laws, especially those who are unable to afford legal representation.

SB 233 (Leno), Chapter 64, Statutes of 2013, establishes the Fair Debt Buying Practices Act to regulate the activities of a person or entity (debt buyer) that has bought charged-off consumer debt for collection purposes. Unlike debt buyers, debt collectors typically are contracted by debt originators to collect outstanding debt for the originator. SB 233 was enacted as a result of significant stakeholder participation and negotiation. The provisions in this bill that mirror the language in the FDBPA seek to extend the same requirements currently on debt buyers and apply it to debt collectors. Generally, debt held by debt buyers is older than that held by debt collectors as it has already been sold off by the debt originator. It is not clear the extent of the problem that this use of the FDBPA language is meant to address.

Recent amendments to the bill change language relating to when an action can be taken within the Code of Civil Procedure. Current language states that within four years an action to recover a stated account shall begin to run from the date of the last item. This bill alters that requirement to “the time shall run separately for each transaction.” Unfortunately, this language introduces ambiguity into the timing of when an action could be taken.

Contributing to the uncertainty noted above is the inclusion of “book accounts” alongside “stated accounts” within this provision. Book accounts can be understood as an account that a business like a dentist, a pool maintenance company, or a hospital maintains across several transactions with a consumer. Requiring the timing for an action to recover for a book account to run separately for each transaction places a significant burden on the originating business.

Committee staff recommendation: This analysis looks at the bill with its most recent amendments. These recent amendments removed several contentious provisions of the bill but also inserted language that added ambiguity and increased opposition. Given that, it seems prudent that the author make this a two-year bill using the additional time to gather all stakeholders and work towards a more amicable solution built upon some level of consensus.

REGISTERED SUPPORT / OPPOSITION:

SUPPORT:

Asian Law Alliance
California Low-Income Consumer Coalition
California Pan - Ethnic Health Network
Consumer Federation of California
Consumers Union
Courage Campaign
East Bay Community Law Center

Health Access California
Public Law Center

OPPOSE:

California Association of Collectors, Inc.
California Bankers Association
California Community Banking Network
California Credit Union League
California Hospital Association
Cavalry
PRA Group
Receivables Management Association International
USCB America Inc.

Analysis Prepared by: William Herms / B. & F. / (916) 319-3081