

Date of Hearing: March 20, 2023

ASSEMBLY COMMITTEE ON BANKING AND FINANCE

Timothy Grayson, Chair

AB 1312 (Committee on Banking and Finance) – As Introduced February 16, 2023

**SUBJECT:** Financial transactions

**SUMMARY:** Makes assorted technical corrections to the Rosenthal Fair Debt Collections Practices Act (Rosenthal Act), the Banking Law, and the California Financing Law (CFL).

Specifically, **this bill:**

- 1) Corrects a reference to federal law in a Rosenthal Act provision governing a debt collector’s determination that a debt is collectible following the receipt of specified identify theft information.
- 2) Corrects a code section reference in a Banking Law provision authorizing a \$25 licensing fee for uninsured “other state” banks, such as trusts.
- 3) Corrects a typo in a CFL provision specifying a person’s right to request a hearing following a notice of intention by the commissioner to issue an order to censure, suspend, or bar a person from any position of employment with, or management or control of, any finance lender, broker, program administrator, or any other person, if specified conditions are met.

**EXISTING STATE LAW:**

Rosenthal Act

- 1) The Rosenthal Act regulates the collection of consumer debts and 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 (Civil Code, Sec.1788 et seq.).
- 2) Requires a debt collector to cease collection activities upon completing a review of a police report filed by the debtor or a copy of the Federal Trade Commission (FTC) identity theft report, the debtor’s written statement claiming to be a victim of identity theft (Civil Code Sec. 1788.18).

Banking Law

- 3) Banking Law specifies authorizations, requirements, and restrictions that govern how a corporation may engage in commercial banking activity in the state (Financial Code Section 1000 et seq.).
- 4) Establishes fees to be paid to and collected by the commissioner, including fees for out-of-state banks opening facilities or branches in California (Financial Code Section 1674).

CFL

- 5) The CFL regulates the making and brokering of secured and unsecured, residential and commercial installment loans in California by nondepository institutions, through the licensure of finance lenders, finance brokers, and mortgage loan originators (Financial Code Section 22000 et seq.).
- 6) Provides the commissioner with the authority to censure, suspend, or bar an employee from any position of employment or management or control of, any finance lender, broker, program administrator, or any other person, if the commissioner finds either that the action in the public interest and that the person has committed or caused a violation of the CFL or rule or order of the commissioner, or if the person has been convicted of or pleaded nolo contendere to any crime or has been held liable in any civil action by final judgment or any administrative judgment by any public agency (Financial Code Sec. 22169).

**FISCAL EFFECT:** None. This bill is keyed nonfiscal by Legislative Counsel.

**COMMENTS:**

1) **Purpose.**

AB 1312 is the Assembly Committee on Banking and Finance omnibus technical cleanup bill. This bill makes assorted technical and uncontroversial changes to statutes under the committee's jurisdiction.

2) **Background on Rosenthal Act identity theft protections.**

Identity theft can take on different forms but is generally defined as fraud that is committed using a person's identity information without that person's authority. Some of the most common types of identity theft include using someone else's information to claim a tax refund, obtaining medical care using someone else's health insurance, or using someone else's information to claim government benefits

The Rosenthal Act establishes a number of protections for identity theft victims. Among those protections, the Rosenthal Act requires a debt collector to cease collection activities upon completing review of either a FTC identity theft report or a police report along with the debtor's written statement claiming to be an identity theft victim. The debt collector may restart debt collection but only after making a good faith determination that the information does not establish that the debtor is not responsible for the specific debt in question. Under current law, the debt collector must make this determination in a manner consistent with the Fair Debt Collection Practices Act. However, current law references the wrong federal code section, the result of an inadvertent change in 2007. AB 1312 restores the original code reference.

3) **Background on "other state" bank facilities**

Banks headquartered in other states can still open offices in California. The "home state" regulator bears the responsibility for licensing, examining, and regulating this bank. An FDIC-insured, state-chartered bank headquartered in a different state may establish loan production offices in California by filing a notice with the Department of Financial Protection and Innovation (DFPI) commissioner. A non-insured, state-chartered bank, such

as a trust company, must file an application and pay a \$25 fee. This bill corrects an error in the provision in Banking Law authorizing this fee.

4) **Background on CFL and DFPI's enforcement authority.**

DFPI's Enforcement Division enforces the laws administered by DFPI and has available a number of administrative and legal tools. DFPI's administrative tools include orders to stop violations of the laws, to deny, censure, suspend, revoke or take possession of a license, and to censure, suspend, or bar individuals from participating in a regulated industry. A licensee, person, or business may challenge these orders through the Office of Administrative Hearings.

Included in this broad enforcement authority is the ability for the commissioner to bar an employee from working for a CFL licensee, including a finance lender, broker, and PACE program administrator. The commissioner may do this if the commissioner finds that the action is in the public interest and that the person has violated the CFL or rule or order from the commissioner, or if the person has been convicted or pleaded nolo contendere to any crime. AB 1312 corrects an incorrect reference in this code section.

**REGISTERED SUPPORT / OPPOSITION:**

**Support**

None on file.

**Opposition**

None on file.

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