

Date of Hearing: June 29, 2021

ASSEMBLY COMMITTEE ON BANKING AND FINANCE
Timothy Grayson, Chair
SB 531 (Wieckowski) – As Amended June 21, 2021

SENATE VOTE: 29-9

SUBJECT: Consumer debt

SUMMARY: Requires creditor or debt collector to provide a notice to a debtor following the sale or assignment of a delinquent debt and establishes documentation requirements for a debt collector who has been assigned a delinquent debt. Specifically, **this bill:**

- 1) Defines “delinquent debt” to mean a consumer debt, other than a mortgage debt, that is past due at least 30 days and has not been charged off.
- 2) Prohibits a creditor or debt collector from selling a delinquent debt or assigning to a third party the right to collect payments on a delinquent debt unless the creditor or debt collector provides a notice to the debtor within five days after selling or assigning the delinquent debt that indicates the amount of the outstanding debt and the name of the party to whom the debt was sold or assigned. The creditor or debt collector must also send the same notice to the assignee or purchaser of the delinquent debt. This notification requirement applies only to delinquent debt assigned or sold after January 1, 2022.
- 3) Requires a debt collector to which a delinquent debt has been assigned for collection to provide to the debtor, upon written request, a statement that includes the following information:
 - a) That the debt collector has authority to assert the rights of the creditor to collect the debt
 - b) The debt balance and an explanation of the amount, nature, and reason for all interest and fees, if any, imposed by the creditor or any subsequent entities to which the debt was assigned.
 - c) The date the debt became delinquent or the date of the last payment.
 - d) The name and an address of the creditor and the creditor’s account number associated with the debt.
 - e) The name and last known address of the debtor as they appeared in the creditor’s records before the assignment of the debt to the debt collector.
 - f) The names and addresses of all persons or entities other than the debt collector to which the debt was assigned.
 - g) The license number of the debt collector.
 - h) A copy of the notice sent to the debtor pursuant to the provision above.

- 4) Prohibits a debt collector to which delinquent debt has been assigned from making a written statement to a debtor in an attempt to collect the debt unless the debt collector has access to a copy of the notice from above and a copy of a contract or other document evidencing the debtor's agreement to the debt. If the claim is based on debt for which no signed contract or agreement exists, the debt collector shall have access to a copy of a document provided to the debtor while the account was active, demonstrating that the debt was incurred by the debtor. For a revolving credit account, the most recent monthly statement recording a purchase transaction, last payment, or balance transfer shall be deemed sufficient to satisfy these requirements.
- 5) Requires a debt collector to which delinquent debt has been assigned to provide the information or documents identified above to the debtor without charge within 30 calendar days of receipt of a debtor's written request for information regarding the debt or proof of the debt.
- 6) Provides that if the debt collector cannot provide the information or documents within 30 calendar days, the debt collector shall cease all collection of the debt until the debt collector provides the debtor the information or documents.
- 7) Requires a debt collector to which delinquent debt has been assigned to include in its first written communication with the debtor in no smaller than 12-point type, a prominent notice that contains a specified statement.

EXISTING STATE LAW:

- 1) Regulates the collection of consumer debt under the Rosenthal Fair Debt Collections Practices Act ("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) Regulates the activities of a debt buyer under the Fair Debt Buying Practices Act, 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.)
- 3) Prohibits a debt buyer from making any written statement to a debtor in an attempt to collect a consumer debt unless the debt buyer possesses specified information, including the date of default or the date of the last payment. (Civil Code Section 1788.52)
- 4) Defines a "debt buyer" as a person or entity that is regularly engaged in the business of purchasing charged-off consumer debt for collection purposes, whether it collects the debt itself, hires a third party for collection, or hires an attorney-at-law for collection

EXISTING FEDERAL LAW:

- 1) Provides the Fair Debt Collection Practices Act (FDCPA) which prohibits deceptive, unfair, and harassing debt collection activity. (15 U.S.C. Section 1692 et seq.)

- 2) Requires a debt collector to send a consumer a written notice containing information validating the debt, including the amount of the debt and the name of the creditor to whom the debt is owed. Provides the consumer with 30 days to dispute the debt or to request the name and address of the original creditor, if different from the current creditor. (15 U.S.C. Section 1692g)

FISCAL EFFECT: Unknown. This bill is keyed fiscal by Legislative Counsel.

COMMENTS:

1) **Purpose.**

The author's office describes two problems this bill is trying to address: (1) reports from legal services organizations that debt collectors are improperly claiming they are not subject to the Fair Debt Buying Practice Act because they are collecting an "assigned" debt rather than a sold debt, and (2) the lack of notifications from debt owners that they have sold or assigned a debt to a new party, which can cause confusion for the borrower when a company under a different name reaches out to collect.

According to the author:

SB 531 will bring needed transparency to the debt collection business, an industry where debt is exchanged so fast and often times through multiple hands that consumers are left confused as to whom they really owe money. My bill would require debt collectors, who have delinquent debt assigned to them, to have proof that they have the authority to collect on the debt. Consumers would have the right to request that proof, along with simple but important information such as how much debt is owed, any fees or interests, and the date of the last payment. SB 531 would also require a notification to consumers, within 5 days of a sale or assignment, when a debt is transferred to another party. This will help consumers avoid confusion and suspicions of fraud. This continuity is especially important in our age of scams.

2) **Background.**

Both federal and state law place various notification requirements and protections for borrowers related to the practices of debt collection and debt purchasing. Specifically:

- a) **The federal Fair Debt Collection Practices Act (FDCPA).** In 1977, the federal government established the FDCPA to prohibit debt collectors from engaging in abusive, unfair or deceptive practices to collect debts. Violations of the FDCPA are enforceable through a private right of action or a class action, or through administrative action. Under the FDCPA, a debt collector must send a debtor written validation letters containing information such as the amount of debt and the name of the creditor to whom the debt is owed.
- b) **The Rosenthal Act.** The Legislature passed the Rosenthal Act in 1977 to place reasonable limits on the kinds of activities that creditors and debt collectors can employ when collecting payments. 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 consumers. The law also provides a private right of action for harmed consumers, though nothing in the Rosenthal Act provides that the debt collector prove they have the right to collect the debt.

- c) **The Fair Debt Buying Practices Act.** The Legislature passed the Fair Debt Buying Practices Act in 2013 to provide protections to consumers whose debts were sold to a debt buyer. It requires a person who buys delinquent or charged-off consumer debt to maintain certain documentation and require a debt buyer to provide disclosures to consumers when the buyer attempts to collect debts that are beyond the applicable statute of limitations. While the Fair Debt Buying Practices Act applies only to instances when the transfer of collection is structured as a sale, it also contains stronger validation requirements than the Rosenthal Act and the federal Fair Debt Collections Practices Act.
- d) **Debt Collection Licensing Act.** 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 Act, a debt collector and debt buyer must obtain a license and must comply with both the Rosenthal Act and Fair Debt Buying Practices Act. A licensee must pay an annual fee and requires DFPI to examine a licensee for compliance.

3) **What this bill does.**

This bill proposes new requirements around the assignment, sale, and collection of delinquent debts that are not charged off but overdue by at least 30 days. This bill contains two main components meant to address the two corresponding problems identified in Comment #1. Specifically:

- a) **Notification requirement.** The author's office argues that borrowers are often confused when a company under a different name reaches out to collect a delinquent debt. The proposed solution is to prohibit a creditor or debt collector from selling or assigning a debt that is already delinquent to a third party for collection unless they send a notice to the borrower (and the collector who is being assigned the debt) that includes the name of the new collecting entity and the amount of debt.
- b) **Fair Debt Buying Practices Act-like disclosures and requirements.** The other problem the author aims to address are instances when debt collectors claiming they are not subject to the Fair Debt Buying Practices Act because they are collecting assigned delinquent debt rather than sold debt. The proposed solution is to apply similar disclosures required under the Fair Debt Buying Practices Act to instances when a debt collector is assigned a debt that is delinquent. Upon request of the debtor, a debt collector must provide a statement with specified information such as the balance and an explanation of the amount, nature, and reason for all interest and fees, the debt collector's license number, and the names and addresses of all persons or entities to which the debt was assigned.

Moreover, the collector cannot initiate the first communication with the debtor unless it has both the notification described in (a) and a copy of the contract or another document

showing evidence of the debtor's agreement or, if no contract or agreement exists, a copy of a document given to the debtor while the account was active showing the debt was incurred by that debtor.

4) **Arguments in support.**

According to the California Low-Income Consumer Coalition (CLICC), a coalition of legal aid providers, this bill will help curb abuses by collectors who target the wrong debtors or collect the wrong amounts. CLICC writes the following:

Unfortunately, legal services providers have recently reported debt collectors going out of their way to assert that debt they are collecting has been "assigned" to them rather than sold – and therefore that they are not subject to the FDBPA's restrictions on debt buyers. But there is no reason for these collectors not to be subject to the same consumer protection measures as debt buyers: "assignment" means that the original creditor technically still owns the debt, but the debt collector makes all decisions relating to collection activity. And the abuses are the same as those targeted by the FDBPA: collectors are targeting the wrong debtors and collecting incorrect amounts, and the consumer has no way to determine the truth of the collectors' claims.

The Public Law Center (PLC) writes in support of this bill and offers this example of the types of cases this bill aims to address:

In one situation, the plaintiff debt collector sued the wrong individual. The true defendant was an individual with a similar name, but the wrong person had been notified of the lawsuit. The plaintiff was not a debt buyer, and therefore was not subject to the FDBPA. Until PLC got involved, the plaintiff would not provide the information that the debtor needed in order to show that this debt was not his. While legal services provides assistance to as many individuals as possible, there are always individuals who cannot find assistance, and this law would ensure those debtors are also protected.

5) **Arguments in opposition.**

A coalition letter signed by the California Bankers Association, California Credit Union League, the California Land Title Association, the California Financial Services Association, and the California Rental Housing Association states:

SB 531 conflates the obligations of debt collectors and debt buyers by mandating that debt collectors, and in some instances loan servicers, adhere to existing disclosure and validation requirements that are specifically designed for debt buyers. In doing so, we believe this bill appears to be a solution in search of a problem, potentially conflicts with newly revised federal regulations, and will invariably be ripe for abuse given the complex disclosure obligations. For example, SB 531 requires an assigned debt collector to provide a debtor with specified documentation, including the original agreement signed by the debtor among other things. Access to that documentation is difficult as many financial institutions and businesses do not keep original agreements.

6) **Committee amendments.**

The committee recommends the following amendments to address concerns about the bill's scope:

- a) **Remove Section 1788.14.4.** The committee recommends removing the section of the bill requiring a creditor or debt collector to notify a debtor when a delinquent debt is assigned to a third party for collection. Federal law already requires a debt collector to send a consumer a validation notice showing the amount owed, the name of the creditor, and how the debtor can dispute the debt in writing. A new CFPB rule that will take effect in 2022 additionally clarifies these notifications.¹ More importantly, the scope of the problem being addressed with this new notification requirement remains unclear.
- b) **Make Section 1788.14.5 apply to delinquent debt sold or assigned on or after January 1, 2022.** The author amended this bill on June 21st to make Section 1788.14.4, which this committee recommends removing from the bill, apply prospectively to delinquent debt sold or assigned on or after January 1, 2022. However, a similar provision was not placed in other sections of the bill. The author has suggested to the committee a similar amendment to Section 1788.14.5.
- c) **Define “delinquent debt” as 90 days past due and move this definition to Section 1788.14.5.** Based on constructive conversations with opponents and supporters, the committee recommends changing the definition of delinquent debt to be consumer debt, other than mortgage debt, that is 90 days past due and not charged off instead of consumer debt, other than mortgage debt, that is 30 days past due and not charged off. This will align the definition more closely with industry practices around delinquent debt and further target the bill's provisions to those debts that are most likely to cause confusion for borrowers or be the subject of misleading tactics by collectors. Moreover, the author has suggested an amendment to relocate this definition to Section 1788.14.5 so as to not cause confusion with other definitions of “delinquent debt” found in state law.

7) **A note on the amendment process.**

This bill is also referred to Assembly Judiciary Committee. Because of limited time constraints and file notice requirements, the Assembly Judiciary Committee will process any amendments agreed to in committee as author amendments.

REGISTERED SUPPORT / OPPOSITION:

Support

California Low-Income Consumer Coalition
Western Center on Law & Poverty
Center for Responsible Lending
Public Law Center

¹ https://files.consumerfinance.gov/f/documents/cfpb_december_2020_debt_collection_executive_summary.pdf

Oppose

California Bankers Association
California Community Banking Network
California Credit Union League
California Creditors Bar Association
California Financial Services Association
California Land Title Association
California Rental Housing Association
Southern California Rental Housing Association

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