

Date of Hearing: August 12, 2020

ASSEMBLY COMMITTEE ON BANKING AND FINANCE

Monique Limón, Chair

SB 908 (Wieckowski) – As Amended August 10, 2020

SENATE VOTE: 29-4

SUBJECT: Debt collectors: licensing and regulation: Debt Collection Licensing Act

SUMMARY: Establishes a licensing law for debt collectors and debt buyers to be administered by the Department of Business Oversight.

Specifically, **this bill:**

- 1) Adds a new Division 24 to the Financial Code, titled “Debt Collection Licensing Act” (DCLA), effective January 1, 2022, which requires the licensure of persons who engage in the business of debt collection in this state and is administered by the Department of Business Oversight (DBO). The DCLA:
 - a. Defines “debt collector” using identical language as the Rosenthal Act and provides that a person who meets the definition of “debt buyer” in the FDBPA is considered a debt collector for purposes of the licensing law. Provides that a debt collector is operating in this state if they are located in this state and are seeking to collect from a debtor that resides inside or outside the state or if they are located outside this state and are seeking to collect from a debtor that resides in this state.
 - b. Defines the terms “consumer credit transaction,” “creditor,” “debt,” “debt collection,” and “person” as those terms are defined in the Rosenthal Act.
 - c. Defines the terms “consumer debt” and “consumer credit” as those terms are defined in the Rosenthal Act and provides that the term “consumer debt” includes “charged-off consumer debt,” as that term is defined in the FDBPA.
 - d. Requires licensees to comply with the Rosenthal Act and the FDBPA and provides that a violation of the Rosenthal Act or the FDBPA constitutes a violation of the DCLA.
 - e. Provides exemptions from licensure under the DCLA to depository institutions chartered under state or federal law, California Financing Law licensees, California Residential Mortgage Lending Act licensees, persons subject to the Karmette Rental-Purchase Act (commonly known as rent-to-own stores), and Real Estate Law licensees, but allows the DBO commissioner to issue desist and refrain orders to any of these entities that violate the Rosenthal Act or the FDBPA and to order any of these entities to pay ancillary relief in connection with Rosenthal Act or FDBPA violations.
 - f. Provides powers to the Commissioner of Business Oversight similar to those in other Financial Code licensing laws administered by DBO, including rulemaking authority; authority to prescribe the content of the licensing application and require applicants to

- apply through the Nationwide Multistate Licensing System & Registry; investigation and examination authority; and limited enforcement authority, which includes desist and refrain authority, the ability to order ancillary relief, and the ability to suspend or revoke a license.
- g. Requires applicants for licensure to submit to a background check, as specified, pay specified application fees, and provide information requested by the commissioner.
 - h. Requires licensees to pay annual license fees, as specified; notify the commissioner regarding any changes that result in the information in their applications becoming inaccurate or incomplete and notify the commissioner regarding any changes in their places of business; develop policies and procedures reasonably intended to promote compliance with the DCLA; file annual and special reports and submit to requests for information as required by the commissioner; maintain surety bonds of at least \$25,000; and submit to examinations by the commissioner.
 - i. Authorizes the commissioner to issue a desist and refrain order and to order the payment of ancillary relief by a person engaged in business as a debt collector without a license from the commissioner.
 - j. Creates a Debt Collection Advisory Committee within DBO to advise the commissioner on matters related to debt collection.
- 2) Amends the Rosenthal Act and the FDBPA to require debt collectors and debt buyers to include their license numbers on their written communications.

EXISTING 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) 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:

According to the Senate Appropriations Committee, this bill will result in unknown, potentially significant costs to DBO to develop regulations for the oversight of debt collectors and implement the examination requirements and enforcement provisions of this bill. Fees and assessments from applicants and licensees may offset ongoing enforcement and administration costs to DBO.

COMMENTS:

1) PURPOSE

This bill is sponsored by the author. According to the author:

Americans held more than \$13 trillion in debt even before the COVID 19 outbreak and wages were not keeping up with the cost of living. As unemployment soars, families will be forced to make agonizing decisions which will undoubtedly include burdening themselves with more debt, SB 908 is needed to ensure existing debt collection law is followed because without it, bad actors will seize the opportunity to prey on desperate and vulnerable Californians.

2) DEBT COLLECTION IS A PREVALENT SOURCE OF CONSUMER COMPLAINTS

Debt collection practices consistently remain a top complaint from consumers. From July 2011 to March of 2018, the Consumer Financial Protection Bureau (CFPB) received approximately 400,500 debt collection complaints, representing 27 percent of the total complaints received, exceeded only by complaints related to consumer credit reporting. The most common concerns identified by consumers were attempts to collect a debt not owed (39 percent), written notification about debt (17 percent), and communication tactics (17 percent).¹

A large number of Californians likely interact with debt collectors, and such interactions are often related to non-financial debt. According to a 2018 report published by the CFPB, more than one-in-four consumers (28 percent) with a credit report in a nationally representative sample of consumer credit files had at least one third-party collections tradeline on their file in 2018. The study also found that more than three-out-of-four third-party collections tradelines are for non-financial debt. More than half (58 percent) of these tradelines are for medical debt and another 20 percent for telecommunications or utilities debt.

Illegal debt collection practices harm consumers financial health in several ways. Most obviously, a consumer who is deceived into paying an amount not owed endures a direct negative hit to their savings or cash flow that displaces opportunities to spend on goods and services. The consumer may also be harmed by erroneous reports by debt collectors that harm their credit score. Many consumers pursued by debt collectors experience stress that can create or exacerbate physical and mental health challenges.²

¹ https://files.consumerfinance.gov/f/documents/bcfp_complaint-snapshot_debt-collection_052018.pdf

² <https://www.consumerfinance.gov/about-us/newsroom/cfpb-report-finds-debt-collection-tops-older-consumer-complaints/>

3) EXISTING LAWS ARE SPORADICALLY ENFORCED

Existing state and federal laws generally prohibit debt collectors from abusive, unfair, and deceptive practices, but the volume and nature of complaints filed by consumers with the CFPB suggests that compliance with the laws is not uniform across the debt collection industry. Large cases may attract the attention of state or federal law enforcement. In 2015, California Attorney General Kamala Harris settled a case against JP Morgan Chase for committing credit card debt collection abuses against tens of thousands Californians, including collecting debts not owed and improperly obtaining judgments against military servicemembers. Federal regulators, like the CFPB, will also bring cases, but recent cases settled by the Trump-appointed CFPB directors have resulted in no restitution for consumers despite findings of consumer harm.³

The state Rosenthal Act provides a private right of action for harmed consumers, but the available remedies may be insufficient to incentivize attorneys to take on cases. The Public Law Center (PLC) is a non-profit legal services organization that serves low-income clients in Orange County. Writing in support of the bill, PLC notes the following:

While California has had laws on the books requiring fair debt collection practices since 1977, our laws do little to stem the bad behavior they prohibit. This is because the law requires the consumer to sue the debt collection company. In other words, a consumer who has been harassed, threatened, misled, ripped off, or wrongfully accused of owing a debt, must seek to enforce the law herself.

Most consumers do not have the means to vindicate their rights under the law. Even for the few who could afford a lawyer, it isn't financially worth the time and cost it takes to bring a lawsuit against a collection agency who violated their consumer rights by collecting against the wrong person, attempting to collect on a debt already paid, inflating the amount of money owed, or misrepresenting why they were repeatedly calling. So consumers never bother to sue or they give up.

4) LICENSING LAWS PROVIDE OPPORTUNITY FOR STRONGER STATE OVERSIGHT

Licensing laws are the primary mechanism that states use to supervise and regulate providers of financial services and products. In California, the Department of Business Oversight (DBO) is charged with administering licensing laws that cover a variety of businesses, including banks, credit unions, money transmitters, finance lenders and brokers, student loan servicers, and payday lenders. While the details of each licensing law differ, the laws generally provide DBO with the authority to establish minimum requirements for receiving a license, establish requirements and prohibitions that a licensee must comply with, authorize DBO to examine a licensee for compliance, and authorize DBO to take enforcement actions when a violation is discovered.

California is one of sixteen states that do not license debt collectors, and many of the 34 states that license debt collectors also have their own fair debt collection laws. In these cases, a licensing law is not a substitute for a fair debt collection law, but rather a complement that

³ <https://www.consumerfinance.gov/about-us/newsroom/bureau-settles-national-credit-adjusters-llc-and-bradley-hochstein/>

helps the state to better protect consumers by providing additional tools to improve compliance with fair debt collection laws.

This bill uses the definitions and established law regarding fair debt collection practices in the Rosenthal Act and the Fair Debt Buyers Practices Act as a foundation for the licensing law. By leveraging the provisions of existing law, this bill avoids duplicative or contradictory requirements for debt collection activities. The bill does not establish substantive new restrictions or requirements on debt collection practices, but instead focuses on the administrative requirements for seeking a license. This approach should lighten the compliance burden on debt collectors as these entities were already required to comply with these state laws.

5) HOW THIS BILL AFFECTS ENTITIES LICENSED UNDER OTHER LAWS

Several types of businesses that are licensed by DBO pursuant to other laws have expressed opposition or concerns related to the provisions of this bill. In response to these requests, the author has amended the bill in a manner that maintains the primary intent of the bill – to ensure existing debt collection law is followed – but has removed duplicative licensure requirements for existing licensees of DBO. Pursuant to that amendment, banks, credit unions, finance lenders, residential mortgage lenders, and residential mortgage loan servicers are not required to be licensed as debt collectors. Under current law, these entities are already required to comply with the Rosenthal Act, and this bill would authorize DBO to take enforcement action against its licensees if DBO discovers a violation of Rosenthal. Providing enforcement authority to DBO will alleviate the burden on consumers to bring private actions for alleged violations, while maintaining due process rights for licensees who may contest administrative actions by DBO through the judicial system.

Two types of businesses licensed by other regulators have also raised concerns about the bill. Private investigators and attorneys who collect debts point out that they are required to be licensed by the Bureau of Security and Investigative Services and the State Bar, respectively. Neither regulator, however, has authority to provide a remedy to a consumer harmed by a violation of the Rosenthal Act, nor does either regulator routinely examine licensees for compliance with Rosenthal. Enforcement and examination authority are key tenets of this bill, and exempting attorneys or private investigators would create gaps in DBO's oversight of the debt collection industry.

6) TECHNICAL AMENDMENTS

On page 12, line 38: strike “any” and replace with “all”

On page 18, line 14: strike “any” and replace with “a”

7) ARGUMENTS IN SUPPORT

Consumer advocacy organizations and non-profit legal services providers cite national data suggesting debt collectors pose a potential threat to consumers and argue that stronger state oversight will reduce the incidence of noncompliance with fair debt collection practices laws. The East Bay Community Law Center provides multiple examples of illegal debt collection practices by attorneys and financial institutions, which demonstrates that the oversight envisioned by this bill is appropriate for those entities. The Center for Responsible Lending

also urges that the bill cover attorneys, as “many collection firms have weaponized the court system to harass consumers and operate as lawsuit mills filing thousands of collection lawsuits a year, often without proper review of original account documentation.”

The California Association of Collectors and the Receivables Management Association International, two large trade associations representing the interests of debt collectors, write in support of the bill. The associations state that the author worked with industry participants to craft a licensing system that will protect consumers, while being workable for the regulated industry.

8) ARGUMENTS IN OPPOSITION

Banks and credit unions oppose the bill unless it is amended to completely exempt them from its provisions. Although the author has exempted banks and credit unions from the licensure requirement, the bill authorizes DBO to bring enforcement actions against such entities for violating existing fair debt collection laws to which they are already subject. The California Bankers Association raises a federal preemption argument citing a recent bulletin from the Office of the Comptroller of the Currency (OCC) that contains contestable claims related to the reach of federal preemption; however, state laws related to “rights to collect debts” are explicitly *not* preempted by federal law as recognized by the very same OCC as promulgated in its own regulations (see 12 CFR § 7.4008 (e)).

The California Creditors Bar Association opposes the bill unless it is amended to exempt attorneys from the licensure requirement in the same manner provided to banks, mortgage banks, and real estate brokers.

REGISTERED SUPPORT / OPPOSITION:

Support

Bay Area Legal Aid
 Bet Tzedek Legal Services
 California Association of Collectors, Inc
 California Attorneys for Criminal Justice
 California Indian Legal Services
 California Low-income Consumer Coalition
 CANHR
 Center for Responsible Lending
 Consumer Federation of California
 Consumer Reports
 Consumers for Auto Reliability & Safety
 Courage California
 East Bay Community Law Center
 Legal Aid Association of California
 Public Law Center
 Receivables Management Association International
 Western Center on Law & Poverty

Oppose Unless Amended

California Association of Licensed Investigators
California Bankers Association
California Credit Union League
California Creditors Bar Association

Analysis Prepared by: Michael Burdick / B. & F. / (916) 319-3081