

SENATE JUDICIARY COMMITTEE
Senator Thomas Umberg, Chair
2021-2022 Regular Session

SB 531 (Wieckowski)
Version: April 19, 2021
Hearing Date: April 27, 2021
Fiscal: Yes
Urgency: No
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SUBJECT

Consumer debt

DIGEST

This bill requires certain notices to be provided to debtors in connection with the sale or assignment of delinquent consumer debt. It also establishes certain documentation requirements for debt collectors and a right to request certain information from those collecting on sold or assigned delinquent debt.

EXECUTIVE SUMMARY

The Fair Debt Buying Practices Act (FDBPA) places obligations and restrictions on debt *buyers*, including prohibiting a debt buyer from making a written statement to collect a consumer debt without possessing specific information. Existing law also regulates the collection of consumer debt under the Rosenthal Fair Debt Collections Practices Act (the Rosenthal Act) by debt *collectors*, which includes any person who, in the ordinary course of business, regularly, on their own behalf or others, engages in debt collection.

In response to concerns that in certain instances debtors are uninformed of which entities their overdue debt has been sold or assigned to and are unable to authenticate collection claims, this bill amends the Rosenthal Act to require certain notices to be sent to debtors within five days of a “delinquent debt” being sold or assigned, grants debtors the right to request certain information regarding the debt and the entity collecting on it, similar to provisions within the FDBPA, and requires a debt collector to whom a delinquent debt has been assigned to provide a notice of rights to the debtor. Debt buyers are also required to possess the original notice before collecting on a debt.

This bill is author sponsored. It is supported by the Center for Responsible Lending and various legal services organizations, including the Western Center on Law and Poverty. It is opposed by various industry associations, including the California Bankers Association and the California Financial Services Association. The bill passed out of the Senate Banking and Financial Institutions Committee on a 7 to 2 vote.

PROPOSED CHANGES TO THE LAW

Existing law:

- 1) Establishes the Rosenthal Act with the purpose to prohibit debt collectors from engaging in unfair or deceptive acts or practices in the collection of consumer debts and to require debtors to act fairly in entering into and honoring such debts. (Civ. Code § 1788 et seq.)
- 2) Defines, for purposes of the Rosenthal Act, “debt collection” as any act or practice in connection with the collection of consumer debts. (Civ. Code § 1788.2(b).) It defines “debt collector” as any person who, in the ordinary course of business, regularly, on behalf of that person 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. (Civ. Code § 1788.2(c).)
- 3) Defines “consumer debt” to mean money, property, or their equivalent, due or owing or alleged to be due or owing from a natural person by reason of a consumer credit transaction. (Civ. Code § 1788.2(e), (f).)
- 4) Establishes the FDBPA, which defines “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 litigation. (Civ. Code § 1788.50 et seq.) “Charged-off consumer debt” means a consumer debt that has been removed from a creditor’s books as an asset and treated as a loss or expense. (Civ. Code § 1788.50.)
- 5) Prohibits, under the FDBPA, a debt buyer from making any written statement to a debtor in an attempt to collect a consumer debt unless the debt buyer possesses the following information:
 - a. that the debt buyer is the sole owner of the debt at issue or has authority to assert the rights of all owners of the debt;
 - b. the debt balance at charge off and an explanation of the amount, nature, and reason for all post-charge-off interest and fees, if any, imposed by the charge-off creditor or any subsequent purchasers of the debt. This paragraph shall not be deemed to require a specific itemization, but the explanation shall identify separately the charge-off balance, the total of any post-charge-off interest, and the total of any post-charge-off fees;
 - c. the date of default or the date of the last payment;
 - d. 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;
- e. 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 name and last known address of the debtor as they appeared in the debt owner's records on December 31, 2013, shall be sufficient;
 - f. the names and addresses of all persons or entities that purchased the debt after charge off, including the debt buyer making the written statement. The names and addresses shall be in sufficient form so as to reasonably identify each such purchaser; and
 - g. the California license number of the debt buyer.
- 6) Prohibits a debt buyer from making any written statement to a debtor in an attempt to collect a consumer debt unless the debt buyer has access to 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 buyer 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 this requirement.
 - 7) Requires a debt buyer to provide this information or documents to the debtor without charge within 15 calendar days of receipt of a debtor's written request for information regarding the debt or proof of the debt. (Civ. Code § 1788.52.)
 - 8) Establishes, pursuant to federal law, the Fair Debt Collection Practices Act (FDCPA), to eliminate abusive debt collection practices by debt collectors, to insure that those debt collectors who refrain from using abusive debt collection practices are not competitively disadvantaged, and to promote consistent State action to protect consumers against debt collection abuses. (15 U.S.C. § 1692.)
 - 9) Provides, pursuant to the FDCPA, that within five days after the initial communication with a consumer in connection with the collection of any debt, a debt collector shall, unless the following information is contained in the initial communication or the consumer has paid the debt, send the consumer a written notice containing:
 - a. the amount of the debt;
 - b. the name of the creditor to whom the debt is owed;
 - c. a statement that unless the consumer, within thirty days after receipt of the notice, disputes the validity of the debt, or any portion thereof, the debt will be assumed to be valid by the debt collector;

- d. a statement that if the consumer notifies the debt collector in writing within the thirty-day period that the debt, or any portion thereof, is disputed, the debt collector will obtain verification of the debt or a copy of a judgment against the consumer and a copy of such verification or judgment will be mailed to the consumer by the debt collector; and
- e. a statement that, upon the consumer's written request within the thirty-day period, the debt collector will provide the consumer with the name and address of the original creditor, if different from the current creditor. (15 U.S.C. § 1692g.)

10) Provides that the FDCPA does not annul, alter, or affect, or exempt any person subject to it from complying with the laws of any State with respect to debt collection practices, except to the extent that those laws are inconsistent with any provision of the FDCPA, and then only to the extent of the inconsistency. A State law is not inconsistent if the protection such law affords any consumer is greater than the protection provided by this title. (15 U.S.C. § 1692n.)

This bill:

- 1) 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, and the purchaser or assignee that is the subject of such notice, 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.
- 2) 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.
- 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. This must identify separately the balance, the total of any interest, and the total of any fees;
 - 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; and
 - h) a copy of the notice sent to the debtor pursuant to the provision above.
- 4) Provides that a debt buyer, as defined, that complies with Section 1788.52 of the FDBPA shall be deemed in compliance with the previous provision and those below.
- 5) 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.
- 6) 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.
- 7) 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.
- 8) Requires a debt collector to provide a debtor with whom it has contact an active postal address to which a debtor may send a request for this information. The debt collector can also provide an active email address to which these requests can be sent and through which the information and documents can be delivered if the parties agree.
- 9) 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 separate prominent notice that contains the following statement:

"You may request records showing the following: (1) that [insert name of debt collector] has the right to seek collection of the debt; (2) the debt balance, including an explanation of any interest charges and additional fees; (3) the date the debt became delinquent or the date of the last payment; (4) the name of the creditor and the account number associated with the debt; (5) the

name and last known address of the debtor as it appeared in the creditor's records prior to assignment of the debt; and (6) the names of all persons or entities other than the debt collector to which the debt has been assigned, if applicable. You may also request from us a copy of the contract or other document evidencing your agreement to the debt.

A request for these records may be addressed to: [insert debt collector's active mailing address and email address, if applicable]."

- 10) Provides that if a language other than English is principally used by the debt collector in the initial oral contact with the debtor, the notice required by this subdivision shall be provided to the debtor in that language within five business days.
- 11) Prohibits a debt *buyer* from making a written statement to a debtor in an attempt to collect a consumer debt unless the debt buyer possesses a copy of the notice from above.

COMMENTS

1. Stated intent of the bill

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 original creditors to notify debtors, within 5 days of a sale or assignment, that they will be transferring their debt to another party. This will help consumers avoid confusion and suspicions of fraud. This continuity is especially important in our age of telephone scams.

2. Ensuring fair debt collection and buying

In federal law, the Fair Debt Collection Practices Act seeks to eliminate abusive debt collection practices by debt collectors, to insure that those debt collectors who refrain from using abusive debt collection practices are not competitively disadvantaged, and to promote consistent State action to protect consumers against debt collection abuses.

(15 U.S.C. § 1692.) The federal act specifically provides that it does not affect or exempt any person subject to it from complying with applicable state laws with respect to debt collection practices, except to the extent state law is inconsistent. (15 U.S.C. § 1692n.) However, a state law is not deemed inconsistent if it affords greater protections to consumers.

Existing law regulates the collection of consumer debt under the Rosenthal Act. The purpose of the act is to prohibit debt collectors from engaging in unfair or deceptive acts or practices in the collection of consumer debts and to require debtors to act fairly in entering into and honoring such debts. (Civ. Code § 1788 et seq.) The Act 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.

Debt buyers are companies that purchase delinquent or charged-off debts from a creditor for a fraction of the face value of the debt. After these companies became subject to increased scrutiny due to numerous complaints on behalf of consumers, SB 233 (Leno and Correa, Ch. 64, Stats. 2013), sponsored by Attorney General Kamala Harris, established the FDBPA. The law made numerous changes relating to debt *buyers*, including requiring a complaint in an action to collect on a consumer debt to include specific allegations, and prohibiting a debt buyer from bringing suit if the applicable statute of limitations has expired.

3. Extending FDBPA protections to the Rosenthal Act

The author lays out the issue that exists in current law warranting the bill:

Consumers [are] going back to original creditors trying to pay off their debt only to find that the creditor no longer owns the debt. Consumers then have no idea who owns their debt and have to wait for the new owners to contact them. When the new owners do contact the debtor they are most often names which the consumer has never heard of, which can sometimes cause confusion or suspicion of fraud.

This bill addresses the issue by requiring certain disclosures to debtors after selling or assigning a “delinquent debt,” defined as a consumer debt, other than a mortgage debt, that is past due at least 30 days and has not been charged off. It enacts Section 1788.14.4 of the Civil Code prohibiting a creditor or debt collector from selling, 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 contains 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 provide the Section 1788.14.4 notice to the purchaser or assignee of the debt that is the subject of the notice.

Many of the provisions of the bill are simply applying requirements that are already provided for in the FDBPA to creditors and debt collectors under the Rosenthal Act. Under the former, a debt buyer is prohibited from making any written statement to a debtor in an attempt to collect a consumer debt unless the debt buyer possesses the following information:

- that the debt buyer is the sole owner of the debt at issue or has authority to assert the rights of all owners of the debt;
- the debt balance at charge off and an explanation of the amount, nature, and reason for all post-charge-off interest and fees, if any, imposed by the charge-off creditor or any subsequent purchasers of the debt. This paragraph shall not be deemed to require a specific itemization, but the explanation shall identify separately the charge-off balance, the total of any post-charge-off interest, and the total of any post-charge-off fees;
- the date of default or the date of the last payment;
- 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;
- 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 name and last known address of the debtor as they appeared in the debt owner's records on December 31, 2013, shall be sufficient;
- the names and addresses of all persons or entities that purchased the debt after charge off, including the debt buyer making the written statement. The names and addresses shall be in sufficient form so as to reasonably identify each such purchaser;
- the California license number of the debt buyer. (Civ. Code § 1788.52(a).)

The debt buyer must provide the information to a debtor without charge within 15 calendar days of receipt of a debtor's written request. (Civ. Code § 1788.52(c).)

This bill requires a debt collector to which a delinquent debt has been assigned for collection to provide to the debtor, without charge within 30 days upon the debtor's written request, a statement that includes nearly all of the same information as laid out above:

- that the debt collector has authority to assert the rights of the creditor to collect the debt;
- 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. This must identify separately the balance, the total of any interest, and the total of any fees;
- the date the debt became delinquent or the date of the last payment;

- the name and an address of the creditor and the creditor's account number associated with the debt;
- 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;
- the names and addresses of all persons or entities other than the debt collector to which the debt was assigned;
- the license number of the debt collector; and
- a copy of the Section 1788.14.4 notice sent to the debtor.

One specific difference is the Section 1788.14.4 notice. In the only change to the FDBPA, the bill also adds this notice as a piece of documentation a debt buyer must possess and provide to a debtor upon request.

In both instances, if the debt collector or debt buyer cannot provide the documentation or information, it must cease collection activities of the debt until it does. This bill also applies the FDBPA requirement that a debt collector must include in its first communication with a debtor regarding the delinquent debt a clear notice of the debtor's right to request the above documents. If a language other than English was used in the initial contact, the notice must also be in that language. Just as debt buyers are required to do, a debt collector will now have to provide a debtor with an active address for the debtor to send requests to and optionally provide an email address for requests and through which the information and documents requested can be delivered.

The bill also amends the Rosenthal Act to restrict a debt collector that has been assigned delinquent debt from making a written statement to a debtor in an attempt to collect on it unless the debt collector has a copy of a contract or other document evidencing the debtor's agreement to the debt or, if the claim is based on debt for which no signed contract or agreement exists, a copy of a document provided to the debtor while the account was active, demonstrating that the debt was incurred by the debtor. It also provides for specific documentation if it is a revolving credit account. These are identical requirements to those applied to debt buyers under the FDBPA. (*See* Civ. Code § 1788.52(b).) The debt collector is further required to have a copy of the Section 1788.14.4 notice. Responding to concerns from those in opposition, the author has recently amended the bill to make clear that if a debt buyer, as defined in the FDBPA, complies with Section 1788.52, then it shall be deemed in compliance with the requirements of this bill, except for Section 1788.14.4, which provides for the notice of sale or assignment of the debt.

Writing in support, the Center for Responsible Lending explains the need and importance of applying these FDBPA protections to debt collectors in this context:

FDBPA brought some reform to a largely unregulated and broken system of debt buying in California. There were widespread cases of collecting

against the wrong person, targeting of debt that had already been paid off, and efforts to collect on incorrect amounts. The FDBPA helped to address these issues by requiring debt buyers, who have debt sold to them, to have proof of their ownership of that debt and allowed the debtor to request that proof to be shown. The law also required the disclosure of basic information such as how much debt is owed, any fees or interests, and the date of the last payment.

Unfortunately, there are reports from legal service organizations of debt collectors going out of their way to assert that debt they are collecting on is assigned debt, not sold. Assigned meaning the original creditor technically still owns the debt, but they have a debt collector make all decisions relating to collection activity. Because the debt is not being sold, debtors' rights and protections given under the FDBPA [are] being circumvented. Collectors are targeting wrong debtors, they are collecting on incorrect amounts, and the consumer has no way to determine the truth to their claims.

SB 531 would require debt collectors that have delinquent debt assigned to them have proof that they have the authority to collect on the assigned debt, and the bill would allow the consumer the right to request that proof, along with other basic information in regards to the debt. These rights are the same as those found in the FDBPA for debt that is sold.

In 2018, AB 1526 (Kalra, Ch. 247, Stats. 2018) similarly sought to apply important protections that exist in the FDBPA to debt collectors under the Rosenthal Act. A key component of the bill was to provide that when the limitations period on commencing an action on a debt has expired, there is an outright bar on initiating such proceedings, rather than an affirmative defense that a debtor would need to know to assert. This provision was taken directly from the FDBPA.

Western Center on Law and Poverty writes in support of the bill:

SB 531 would require debt collectors that have delinquent debt assigned to them have proof that they have the authority to collect on the assigned debt, and the bill would allow the consumer the right to request that proof, along with other basic information in regards to the debt. These rights are the same as those found in the FDBPA for debt that is sold.

The California Bankers Association and the California Credit Union League write in opposition: "SB 531 seeks to expand to debt collectors those existing disclosure and validation requirements specifically designed for debt buyers. We [believe] this bill is premature, potentially conflicts with newly revised federal regulations, and requires

documentation that might not be accessible.” They take particular umbrage at provisions that require debt collectors to have documentation to authenticate the debt:

Specifically, SB 531 requires an assigned debt collector to provide a debtor with specified documentation, including the original agreement signed by the debtor. Access to that documentation is difficult as many financial institutions and businesses do not keep original agreements. While the bill specifies other sources of documentation this approach is truly more aligned with debt buying, not debt collectors.

The California Association of Collectors takes an oppose-unless-amended position. It seeks an amendment to make clear that the bill applies prospectively. Although that is the natural operation of all changes to the law unless otherwise provided, and therefore should need no further clarity, the author has agreed to take the amendment that provides that the changes made by the bill apply prospectively. It should be noted that such provisions in statutes are discouraged and should not be read to imply their absence elsewhere is meaningful.

SUPPORT

California Low-Income Consumer Coalition
Center for Responsible Lending
Neighborhood Legal Services of Los Angeles County
Public Law Center
Western Center on Law & Poverty

OPPOSITION

California Association of Collectors
California Bankers Association
California Credit Union League
California Creditors Bar Association
California Financial Services Association
California Land Title Association

RELATED LEGISLATION

Pending Legislation:

SB 373 (Min, 2021) amends the Rosenthal Act to restrict collection of debts that are a result of economic abuse. This bill is currently in the Senate Banking and Financial Institutions Committee.

AB 1020 (Friedman, 2021) applies certain requirements from the FDBPA to the Hospital Fair Pricing Act, including communications requirements and pleading and evidentiary standards. This bill is currently in the Assembly Appropriations Committee.

Prior Legislation:

SB 187 (Wieckowski, Ch. 545, Stats. 2019) amends definitions in the Rosenthal Act, removing the exception for attorneys in the definition of “debt collector” and clarifying that the definition of “consumer debt” includes mortgage debt.

AB 1526 (Kalra, Ch. 247, Stats. 2018) amended the Act to prohibit a debt collector from attempting to collect a time-barred debt without providing specific notices to the debtor indicating that the debtor may not be sued for the debt, but that the debt, depending on its age, may be reported as unpaid to credit reporting agencies, as specified.

AB 2825 (Jones-Sawyer, 2018) would have generally applied the protections of the Rosenthal Fair Debt Collections Practices Act and the FDBPA to the collection of certain government debts and debts arising from the towing, impounding, and storing of vehicles. The bill died in the Senate Appropriations Committee.

SB 233 (Leno, Ch. 64, Stats. 2013) *See* Comment 2.

PRIOR VOTES:

Senate Banking and Financial Institutions Committee (Ayes 7, Noes 2)
