

SENATE JUDICIARY COMMITTEE
Senator Thomas Umberg, Chair
2025-2026 Regular Session

AB 1166 (Valencia)
Version: July 7, 2025
Hearing Date: July 15, 2025
Fiscal: No
Urgency: No
AWM

SUBJECT

Fair Debt Settlement Practices Act

DIGEST

This bill expands protections in the Fair Debt Settlement Practices Act (FDSPA) for consumer debtors to include commercial debtors, as defined.

EXECUTIVE SUMMARY

Current law establishes the FDSPA, which regulates debt settlement providers and payment processors who provide services to consumer debtors, i.e., natural persons who incurred debt for personal, household, or family purposes. FDSPA complements the Rosenthal Fair Debt Collection Practices Act (Rosenthal Act), which regulates debt collection practices by the creditors themselves as well as by third-party debt collectors. These regimes recognize that persons in debt can be uniquely vulnerable and susceptible to deceptive, abusive, and misleading business practices.

This bill expands the FDSPA to apply most of its debt settlement protections to small businesses that owe \$500,000 or less on a commercial debt and are responsible for the debt. This bill would thus require debt settlement providers who work with these businesses to comply with the FDSPA under most of the same terms as debt settlement providers who work with consumers.

This bill is sponsored by the author. This bill is opposed by Rise Alliance and Second Wind Consultants. The Senate Banking and Financial Institutions Committee passed this bill with a vote of 5-2.

PROPOSED CHANGES TO THE LAW

Existing law:

- 1) Establishes the FDSPA. (Civ. Code, div. 3, pt. 4, tit. 1.6c.17, §§ 1788.300 et seq.)
- 2) Defines the following relevant terms:
 - a) "Debt settlement provider" means a person who, for compensation and on behalf of a consumer, provides debt settlement services.
 - b) "Debt settlement services" means any of the following: providing advice, or offering to act or acting as an intermediary, including, but not limited to, offering debt negotiation, debt reduction, or debt relief services between a consumer and one or more of the consumer's creditors, if the primary purpose of that advice or action is to obtain a settlement for less than the full amount of the debt; and advising, encouraging, or counseling a consumer to accumulate funds in an account for future payment of a reduced amount of debt to one or more of the consumer's creditors.
 - c) "Consumer" means a person who is allegedly legally responsible for a debt.
 - d) "Creditor" means the person who originated the debt or is assigned, or has purchased for collection, a debt for which the consumer is allegedly legally responsible.
 - e) "Debt" means money, whether in principal, interest, fees, or other charges, which is due or owing or alleged to be due or owing from a natural person to another person and incurred primarily for personal, family, or household purposes.
 - f) "Payment processor" means a person who provides payment processing services.
 - g) "Payment processing services" means accepting, maintaining, holding, or distributing funds, or facilitating the acceptance, maintenance, holding, or distribution of funds, on behalf of a consumer for the purpose of facilitating debt settlement services. (Civ. Code, § 1788.301.)
- 3) Prohibits a debt settlement provider from engaging in false, deceptive, or misleading acts or practices when providing debt settlement services, which include, but are not limited to:
 - a) Making or permitting another entity to publicly make on behalf of the debt settlement, a statement or representation that is false, deceptive, or misleading.
 - b) Posting directly, or indirectly causing to be posted, an online review ranking on an internet website if the debt settlement provider, or its agent, provided anything of value in exchange for favorable treatment in that review or ranking.
 - c) Omitting any material information. (Civ. Code, § 1788.302(a).)

- 4) Requires a debt settlement provider to provide to the consumer specified disclosures along with an unsigned copy of the written contract proposed to be entered into between the debt provider and the consumer no fewer than three days before the execution of the contract by the consumer; and requires the contract to include specified terms and information relating to the services provided. (Civ. Code, § 1788.302(b)(1) & (2).)
- 5) Prohibits a debt settlement provider from communicating with any of a consumer's creditors until five calendar days after full execution of a contract for debt settlement services. (Civ. Code, § 1788.302(b)(3).)
- 6) Prohibits a debt settlement provider and a payment processor from engaging in unfair, abusive, or deceptive acts or practices when providing debt settlement services or payment processing services, which include, but are not limited to:
 - a) For a debt settlement provider and payment processor, offering to lend money or extend credit to the consumer, or purchase an enrolled debt.
 - b) For a debt settlement provider, requesting or receiving payment of any fee or consideration for debt settlement services, unless and until specified conditions are met.
 - c) For a payment processor, facilitating the distribution of payment of any fee or consideration for debt settlement services before specified requirements have been met.
 - d) For a payment processor, failing to distribute a statement of accounting to a consumer at least once a month while the consumer is engaged with the payment processor, as well as on or before the fifth business day after a consumer requests a statement of accounting; the statement of accounting must include specified information, as applicable.
 - e) For a debt settlement provider, failing to distribute a statement of accounting to a consumer at least once a month while the contract for debt settlement services is in effect, as well as on or before the fifth business day after a consumer requests a statement of accounting; the statement of accounting must include specified information, as applicable. (Civ. Code, § 1788.302(c).)
- 7) Permits a consumer to terminate a contract for debt settlement services at any time without a fee or penalty of any sort by notifying the debt settlement provider in writing, electronically, or orally.
 - a) Upon receipt of the notice, the debt settlement provider must immediately cancel the contract and immediately notify the payment processor of the cancellation.
 - b) The payment processor must stop accumulating service fees, close the account, and deliver to the consumer the balance in the settlement account within seven days.

- c) The debt settlement provider and the payment processor must each provide the consumer with a detailed accounting, as specified. (Civ. Code, § 1788.301(d).)
- 8) Provides that the FDSPA does not apply to persons doing business pursuant to specified licenses under the authority of the Commissioner of Financial Protection and Innovation; nonprofit business organizations that satisfy specified criteria; attorneys and law firms that satisfy specified criteria; and specified entities whose principal function is that of serving the community as a reporting agency. (Civ. Code, § 1788.304.)
- 9) Provides that a consumer may bring a cause of action against a debt settlement provider and a payment processor for a violation of the FDSPA in order to recover or obtain any of the following:
 - a) Statutory damages to be determined by the court, but no less than \$1,000 and no more than \$5,000, and actual damages sustained by the consumer as a result of the violation.
 - b) Injunctive relief.
 - c) Any other relief that the court deems proper.
 - d) Costs of the action and reasonable attorney's fees. (Civ. Code, § 1788.305(b).)
- 10) Permits the court to award attorney's fees to a prevailing debt settlement provider and a prevailing payment processor upon a finding by the court that the consumer's prosecution of the cause of action was not in good faith. (Civ. Code, § 1788.305(b)(2).)
- 11) Provides that a debt settlement provider or prevailing payment processor shall have no civil liability for damages under 9) if the debt settlement provider or prevailing payment processor shows by a preponderance of the evidence that the violation was not intentional and resulted from a bona fide error, and occurred notwithstanding the maintenance of procedures reasonably adopted to avoid any error. (Civ. Code, § 1788.305(d).)
- 12) Requires a consumer to commence a cause of action under 9) within four years of the later of the last payment by or on behalf of the consumer or the date on which the consumer discovered or reasonably should have discovered the facts giving rise to the claim. (Civ. Code, § 1788.305(e).)

This bill:

- 1) Adds or modifies the following definitions to the FDSPA:
 - a) "Commercial loan" means a loan of a principal amount of \$5,000 or more, or any loan under an open-end credit program, whether secured by either real or personal property, or both, or unsecured, the proceeds of which are

intended by the borrower for use primarily for other than personal, family, or household purposes. For purposes of determining whether a loan is a commercial loan, the lender may rely on any written statement of intended purpose signed by the borrower, which may be a separate statement or may be contained in a loan application or other document signed by the borrower. The lender shall not be required to ascertain that the proceeds of the loan are used in accordance with the statement of intended purpose.

- b) "Commercial debtor" means a person who satisfies the following conditions: (1) the person owes commercial debt in an amount equal to or less than \$500,000 and who is responsible for repaying that debt; and (2) the person is not a business entity organized for profit with annual gross receipts of more than the annual gross receipt level established for a "small business" as biennially adjusted by the Department of General Services (DGS), as specified.
 - c) "Commercial debt" means money, whether in principal, interest, fees, or other charges, which is due or owing or alleged to be due related to one or more commercial loans.
 - d) The definition of "debt" is changed to "commercial debt" and modified to mean money, whether in principal, interest, fees, or other charges, which is due or owing or alleged to be due or owing from a natural person to another person and incurred primarily for personal, family, or household purposes.
- 2) Modifies the FDSPA's definition of "debt" to mean money, whether in principal, interest, fees, or other charges, which is due to owing or allegedly due or owing from a consumer or commercial financing recipient to another person.
- 3) Extends the FDSPA's protections to consumer debtors, with distinctions between commercial and consumer debt, as follows:
- a) A debt settlement provider's obligation to provide FDSPA disclosures and an unsigned copy of the written contract no fewer than three calendar days prior to the execution, and the prohibition on communicating with the debtor's creditors until five calendar days after full execution of a contract for debt settlement services, applies to consumer debtors but not commercial debtors.
 - b) With respect to acts deemed unfair, abusive, or deceptive, the existing prohibitions on requesting or receiving payment in advance for consumer debt settlement services, and the limitations on fees that may be charged, are not extended to commercial debt settlement services.
 - c) It is deemed an unfair, abusive, or deceptive practice for a debt settlement provider providing debt settlement services to a commercial debtor to collect or retain fees in excess of the difference between the amount owed at the time the commercial debt was enrolled in the service and the amount agreed pursuant to any settlement agreement between the commercial debt and the creditor to satisfy the commercial debt.

COMMENTS

1. Author's comment

According to the author:

AB 1166 would protect small business, the beating heart of the California economy, from predatory practices by extending the Fair Debt Settlement Practices Act to commercial financing. By creating parity in the industry, we can ensure that we are safeguarding what makes California such a vibrant and strong environment for business.

2. Background on the FDSPA

The FDSPA, enacted in 2021,¹ regulates debt settlement providers and payment processors who provide services to consumer debtors, i.e., natural persons who incurred debt for personal, household, or family purposes.² FDSPA complements the Rosenthal Fair Debt Collection Practices Act (Rosenthal Act), which regulates (aptly) debt collection practices by the creditors themselves as well as by third-party debt collectors.³ These regimes recognize that persons in debt can be uniquely vulnerable and susceptible to deceptive, abusive, and misleading business practices.

The FDSPA was enacted to target for-profit companies that hold themselves out as being able to assist natural persons with consumer debt, by, e.g., negotiating for debt reductions or payment plans with creditors, having the consumer place money in a designated account to accumulate sufficient funds to make debt payments, and advising consumers on how to best make payments to creditors. While these programs can help consumers, they can also be risky: as the Federal Trade Commission (FTC) warns:

If a company can't get your creditors to agree to settle your debt, you could owe even more money in the end in late fees and interest. Even if a debt settlement company does get your creditors to agree, you still have to be able to make payments long enough to get them settled. You also have to watch out for dishonest debt settlement companies that make promises they can't keep, charge you a lot of money, and then do little to help you. You may not be able to settle all your debts. While you're in the debt settlement program you may still get

¹ AB 1405 (Wicks, Ch. 454, Stats. 2021).

² Civ. Code, div. 3, pt. 4, tit. 1.6c.17, §§ 1788.300 et seq.

³ Civ. Code, div. 3, pt. 4, tit. 1.6c, §§ 1788 et seq.

calls from debt collectors and your credit report and credit score are likely to be damaged. The process can take years to complete.⁴

The FDSPA was enacted to regulate these debt settlement providers and the payment processors who provide payment services for debt settlement providers. To that end, the FDSPA prohibits debt settlement providers from engaging in false, deceptive, or misleading acts or practices, as well as unfair, abusive, or deceptive acts or practices, when providing debt settlement services, and requires that a debt settlement provider provide certain disclosures and information to the consumer prior to the consumer entering into a contract with the debt settlement provider.⁵ The FDSPA also regulates certain payment processor activity when conducted to facilitate debt settlement activity.⁶ A consumer harmed by a violation of the FDCPA can bring a cause of action against the debt settlement provider or payment processor to recover actual and statutory damages, as specified.⁷ The FDCPA does not apply to specified entities which are regulated under specified other regimes or that operate on a non-profit basis.⁸

3. Small business financing and the push for increased protections for small business financing recipients

Small businesses account for more than 43 percent of the United States Gross Domestic Product and 40 percent of the private sector payroll.⁹ Small business owners nevertheless frequently report that they have difficulty accessing capital and that increased costs of financing have made it difficult to make payments on debt.¹⁰ While banks originate the majority of small business loans, banks have tightened access to capital in recent years, and more businesses are seeking financing from non-bank providers.¹¹ Business owners with low credit scores or who are members of underserved groups are most likely to apply for non-bank funding.¹² Nontraditional financing sources – such as financial technology (fintech), venture capital, and private equity – are often significantly more expensive than traditional options.¹³ Nontraditional options include factoring, asset-based lending transactions, commercial open-end credit plans, and lease financing.

⁴ FTC, How to Get Out of Debt: Debt Settlement (Apr. 2022), *available at* <https://consumer.ftc.gov/articles/how-get-out-debt#Other%20Debt%20Relief%20Services>. All links in this analysis are current as of July 11, 2025.

⁵ Cov. Code, § 1788.302.

⁶ *Ibid.*

⁷ *Id.*, § 1788.305.

⁸ *Id.*, § 1788.304.

⁹ United States Department of the Treasury, Financing Small Business: Landscape and Policy Recommendations (Jan. 2025), p. 2, *available at* <https://home.treasury.gov/system/files/136/Financing-Small-Business-Landscape-and-Recommendations.pdf>.

¹⁰ *Id.* at p. 2.

¹¹ *Id.* at pp. 3-4.

¹² *Id.* at p. 5.

¹³ *Id.* at p. 8.

In recognition of the shifting small business financing landscape, the Legislature, over the past several years, has enacted several measures to implement protections for small business borrowers and borrowers obtaining nontraditional forms of financing, including:

- SB 1235 (Glazer, Ch. 1011, Stats. 2018), which established disclosure requirements for specified entities extending commercial financing offers of less than \$500,000.
- SB 1286 (Min, Ch. 522, Stats. 2024), which extended the Rosenthal Act's protection against unfair debt collection practices to apply to commercial financing transactions equal to or less than \$500,000.

For the most part, legislation relating to small business financing applies to financing at or below \$500,000. The Rosenthal Act provides some protections for small business commercial debtors, but not all of them – it extends only to commercial debts owed by a natural person, not owed directly by the business.¹⁴

4. This bill extends the FDSPA to commercial debtors with debts less than or equal to \$500,000

This bill expands the FDSPA to apply most of its debt settlement protections to small businesses that owe \$500,000 or less on a commercial debt and are responsible for the debt. This bill would thus require debt settlement providers who work with these businesses to comply with the FDSPA under most of the same terms as debt settlement providers who work with consumers.

The author agreed to amendments in the Senate Banking and Financial Institutions Committee, which passed this bill with a vote of 5-2, that established some distinctions between permitted practices for consumer debtors and commercial debtors; these amendments reflect discussions with stakeholders about the differences between consumer and commercial debt collection practices. These distinctions include:

- Exempting commercial debt settlement providers from the FDSPA's timelines for providing the consumer debtor with a contract and refraining from contacting a creditor. Stakeholders indicate that these timelines will significantly impede legitimate debt settlement services providers from being able to assist commercial debtors.
- Establishing different restrictions relating to charging upfront fees and the amount of fees that may be charged. In light of the differences between consumer and commercial debt and how these debts are collected, these distinctions appear appropriately tailored to protect small businesses without unduly restricting legitimate debt settlement services providers.

¹⁴ Civ. Code, § 1788.2(n).

The amendments taken in the Senate Banking and Financial Institutions Committee also explicitly limit the FDSPA's protection for commercial debtors to small business commercial debtors, defined as a business that is for-profit and whose annual gross receipts are consistent with the DGS's annual gross receipt level for small businesses;¹⁵ this level is adjusted biennially, thereby ensuring that the threshold for who qualifies as a small business remains consistent with inflation.

Opponents of the bill, who are commercial debt collection entities, argue that, even with the amendments, the consumer debt framework is a poor fit for the commercial debt collection space. They also note that this bill does not provide further protections for small businesses against the actual creditors; and while the Rosenthal Act applies only to commercial debts held by a natural person, it does not extend to debts held by a small business entity.¹⁶ The Committee has not heard from any small businesses or small-business-related advocacy groups.

5. Arguments in opposition

According to Second Wind Consultants:

Entrepreneurs, the very people being protected by this bill, are the ones that will feel the most pain. AB 1166 allows predatory lenders unfettered and unrestricted access to their borrowers without any inherent checks or balances. Handcuffs will be placed on debt settlement companies in their federally recognized practice, and more businesses will be thrust into bankruptcy, a process that kills over 90% of its filers.

This may be unintentional, which is why I felt compelled to write this letter.

Businesses in crisis turn to firms like ours not to "settle debt" in a consumer sense, but to stay afloat, restructure, and survive. Unfortunately, several provisions in this bill make such assistance harder to deliver.

Specifically, there are a number of components to this bill that are unrealistic and untenable. The fee limitation is confusing.

- Why would the bill prevent professionals from billing for their services if they can make unsupportable debt supportable debt providing a win-win for all parties involved. The fee limitations do not help, they harm.
- Timing guarantees are completely unrealistic. There's a reason why lawyers cannot guarantee outcomes or timeframes. Why would debt settlement companies be required to commit to something they have absolutely no control over?

¹⁵ See Gov. Code, § 14837.

¹⁶ Civ. Code, § 1788.2(n).

- This bill puts all the control in the hands of lenders, whether they are honest or predatory, and that is contrary to the intent of this bill.
- There is nothing contained in this bill that pertains to debt collection practices, which, again is confusing. Limiting options available to entrepreneurs and not limiting the actions of those that aim to hurt is not logical.

SUPPORT

None received

OPPOSITION

Rise Alliance
Second Wind Consultants

RELATED LEGISLATION

Pending legislation:

SB 728 (Padilla, 2025) implements a registration program under the California Consumer Financial Protection Law (CCFPL) for persons offering non-loan commercial financing or commercial financing brokerage services to California residents and small businesses, as defined, to be overseen by the Department of Financial Protection and Innovation (DFPI), and imposes restrictions on non-loan commercial financing products offered to small businesses. SB 728 is pending before the Senate Appropriations Committee.

SB 362 (Grayson, 2025) strengthens requirements related to pricing disclosures for commercial financing transactions and clarifies the DFPI's enforcement authority for violations of those requirements. SB 362 is pending before the Assembly Judiciary Committee.

Prior legislation:

SB 1482 (Glazer, 2024) was substantially similar to SB 896 (Glazer, 2023) when it was passed by this Committee, but it was eventually amended by the author so that it would have established a registration program for commercial financing providers; the Assembly Appropriations Committee then amended out most of the bill's effective provisions. SB 1482 died on the Assembly Floor.

SB 1286 (Min, Ch. 522, Stats. 2024) expanded the scope of the Rosenthal Act to cover specified commercial debt, providing certain debtors with protections from harassment and other prohibited collections activities.

SB 869 (Glazer, 2023) would have expanded the CFL to include protections for non-loan commercial financing, including provisions and restrictions substantially similar to the ones in this bill. SB 869 died in the Senate Appropriations Committee.

SB 33 (Glazer, Ch. 376, Stats. 2023) removed the sunset provision put in place by SB 1235 (Glazer, Ch. 1011, Stats. 2018) on a specific disclosure term required for entities offering commercial financing products not covered by the CFL.

AB 1405 (Wicks, Ch. 454, Stats. 2021) enacted the FDSPA.

SB 1235 (Glazer, Ch. 1011, Stats. 2018) established disclosure requirements for specified entities extending commercial financing offers of less than \$500,000, including entities offering commercial financing in forms not covered by the CFL.

PRIOR VOTES:

Senate Banking and Financial Institutions Committee (Ayes 5, Noes 2)

Assembly Floor (Ayes 73, Noes 0)

Assembly Banking and Finance Committee (Ayes 9, Noes 0)
