

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

SB 1324 (Durazo)
Version: April 7, 2022
Hearing Date: April 19, 2022
Fiscal: Yes
Urgency: No
TSG

SUBJECT

Rosenthal Fair Debt Collection Practices Act: rental debt

DIGEST

This bill clarifies that, when collecting rent from their tenants, landlords must abide by the Rosenthal Act's prohibition against deceptive, dishonest, unfair, and unreasonable debt collection practices.

EXECUTIVE SUMMARY

The Rosenthal Fair Debt Collection Practices Act (Rosenthal) establishes a set of basic norms that debt collectors must adhere to when going about their work. Without excusing anyone from paying what they rightly owe, Rosenthal requires debt collectors to treat debtors civilly and honestly throughout the process. It prohibits things like threatening debtors, trying to trick them, humiliating them in front of others, or calling them up repeatedly in the middle of the night to demand payment. Unpaid rent is a form of debt, but because it does not originate through the extension of credit, there is some controversy about whether Rosenthal applies to landlords when they are collecting rent. This bill would clarify that it does.

The bill is sponsored by the California Low-Income Consumer Coalition and Public Counsel. Support comes from tenant and consumer rights groups who maintain that tenants deserve basic civility from their landlords. Opposition comes from realtor and landlord associations, who contend that, unless the bill is amended, it will complicate ordinary, everyday interactions between landlords and tenants. The bill passed out of the Senate Banking and Financial Institutions Committee by a vote of 7-1. If the bill passes out of this Committee, it will next be heard by the Senate Appropriations Committee.

PROPOSED CHANGES TO THE LAW

Existing law:

- 1) Prohibits debt collectors, pursuant to the Fair Debt Collection Practices Act, from using abusive, unfair, or deceptive practices. (15 U.S.C. § 1692 *et seq.*)
- 2) Defines a debt collector as a person who regularly collects, or attempts to collect, debts owed to another person. (15 U.S.C. § 1692a)
- 3) Regulates the collection of consumer debt under the Rosenthal Fair Debt Collection 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. (Civ. Code §§ 1788 *et seq.*) The Rosenthal Act:
 - a) Defines “consumer debt” and “consumer credit” as 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. The term “consumer debt” includes a mortgage debt. (Civ. Code § 1788.2.)
 - b) Defines “consumer credit transaction” as a transaction between a natural person and another person in which property, services, or money is acquired on credit by that natural person from the other person primarily for personal, family, or household purposes. (Civ. Code § 1788.2.)
 - c) 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.
 - d) Prohibits a debt collector from the following conduct or practices, among others, when collecting or attempting to collect a consumer debt:
 - i) The use or threat of physical force or violence. (Civ. Code § 1788.10.)
 - ii) Threats and communications that rely on false representations. (Civ. Code §§ 1788.10 and 1788.13.)
 - iii) Using obscene or profane language. (Civ. Code § 1788.11.)
 - iv) Communicating with the debtor with such frequency as to be unreasonable, and to constitute harassment of the debtor under the circumstances. (Civ. Code § 1788.11.)
 - v) Communicating unnecessarily about the debtor’s debt with the debtor’s employer or extended family. (Civ. Code § 1788.12.)
 - e) Requires a debt collector to provide its California debt collector license number to a consumer in specified circumstances. (Civ. Code § 1788.11.)
 - f) Incorporates by reference specified provisions of the federal Fair Debt Collection Practices Act into state law, but exempts original creditors and specified people collecting debts on their behalf from some of those incorporated provisions. (Civ. Code § 1788.17.)
 - g) Provides remedies to a harmed debtor in an amount equal to any actual damages sustained by the debtor as a result of the violation, plus an amount of

\$100 - \$1,000 if the violation was conducted willfully and knowingly by the debt collector. (Civ. Code § 1788.30.)

- h) Provides a release from liability to a debt collector who cures a violation, as specified, or who shows by a preponderance of evidence that the violation was not intentional and resulted notwithstanding the maintenance of procedures reasonably adapted to avoid any such violation. (Civ. Code § 1788.30.)
- 4) Provides the Debt Collection Licensing Act (DCLA) that prohibits a person from engaging in the business of debt collection without a license and requires the Department of Financial Protection and Innovation to administer the licensing program. (Fin. Code § 100000 *et seq.*)

This bill:

- 1) Defines “rental debt,” for purposes of the Rosenthal Act, as unpaid rent or any other unpaid financial obligation of a tenant under a tenancy.
- 2) Extends the provisions of the Rosenthal Act to cover the collection of rental debt that became past due on or after January 1, 2019, but exempts anyone collecting rental debt from the requirement to list a debt collector license number when seeking to collect rent from their tenants.
- 3) Specifies that the phrase “consumer credit transaction” does not mean a transaction that results in rental debt, thereby clarifying that landlords need not obtain a debt collector license in order to collect rental debts from their tenants.
- 4) Does not make any alterations to the applicable statutes of limitation.

COMMENTS

1. The problem the bill is intended to address

Since 1977, the Rosenthal Fair Debt Collection Practices Act (the Rosenthal Act) has protected debtors against the most egregious tactics that creditors might otherwise be tempted to utilize while pursuing their money. The Rosenthal Act prohibits creditors from engaging in deceptive, harassing, humiliating, threatening, or otherwise unreasonable conduct while seeking payment. For example, under the Rosenthal Act, a creditor cannot try to extract payments by waking the debtor up in the middle of the night with repeated phone calls; trying to embarrass the debtor in front of family members; threatening to have the debtor sent to jail, cursing at the debtor, or telling the debtor that the creditor will drop the matter in exchange for a payment when the creditor has no actual intention of doing so. Nothing in the Rosenthal Act excuses a debtor from having to pay, but the Rosenthal Act does demand that creditors treat the people who owe them money with honesty and civility. This is true whether the debt is

a huge amount racked up on a Parisian shopping spree or a small amount accumulated while stretching a tight budget to cover groceries.

It is unclear, however, whether any of these basic protections apply to landlords when they are demanding payment of the rent from a tenant. It is unclear, therefore, whether anything in the law prevents a landlord from threatening, harassing, humiliating, or deceiving tenants in pursuit of the rent money. This bill would expressly extend the protections of the Rosenthal Act to cover rental debt, thereby clarifying that landlords must abide by Rosenthal's minimum standards for honesty and civility when collecting rent.

2. The relevance of the pandemic

It is probably safe to say that, for as long as landlords have rented homes to tenants there have been some tenants who fell behind on their payments. Accordingly, the rationale for establishing some baseline set of civility standards to govern landlords' conduct while collecting rent pre-dates the COVID-19 pandemic. Nonetheless, the amount of unpaid rent that California tenants owe to their landlords expanded tremendously over the course of the pandemic.

This dramatic increase in rental debt has taken place for at least three reasons. First, as has been well-documented, California confronted a housing affordability crisis even before the pandemic started. Second, the economic fallout from the pandemic left many Californians unable to pay the rent. Third, state-imposed legal protections against eviction for nonpayment of rent enabled tenants to stay in their homes without paying all of their rent during the period from March 2020 until the end of September 2021. These protections did not excuse tenants from having to pay back the outstanding balance to the landlord eventually, but they effectively converted the rental debt into a more ordinary consumer debt: something landlords could sue to recover in small claims or in civil court, but not through the unlawful detainer process. The availability of emergency rental housing assistance has cured many of these debts, but they will not cover every rental debt owed by a tenant to a landlord. In short, for the foreseeable future, California tenants will owe their landlords uniquely high levels of rental debt. Understandably, landlords will be eager to recover this money as quickly as possible.

Highlighting this context, the proponents of this bill stress the importance of having safeguards in place to ensure that the collection of all this rental debt happens fairly and honestly. The opponents counter by suggesting that the rent collection civility standards required by this bill should therefore expire once the specialized pandemic-era provisions expire.

The public policy rationale for the bill will not dissipate entirely when the pandemic-era provisions regarding rent fade from relevance, however. Some tenants will still fall behind on rent even when the economic fallout from the pandemic is a distant memory.

For their part, landlords will still want to collect on that debt and, of course, they will still have every right to do so. Keeping the provisions of this bill in force beyond the end of the pandemic merely assures that rent collection remains a civil and respectful process whenever it takes place.

3. What the bill does and does not do

This bill would extend the debt collections standards in California's Rosenthal Act to the collection of rent. For landlords, all this means is that as they go about the ordinary business of collecting rent from their tenants, landlords must abide by the minimal standards of civility and honesty that the Rosenthal Act requires and are subject to the Rosenthal Act's remedies if they do not. Beyond that, the bill does not impose any additional requirements on landlords. Thus, under this bill, a landlord would be free to call a tenant and request rent payment, post notices to pay rent or quit, file eviction lawsuits, sue tenants for unpaid rent, and otherwise conduct the business of being a landlord and collecting rent without any additional requirements apart from those originating elsewhere in the law. The only difference would be that, under this bill, a landlord could not go about these things in any of the harassing, threatening, or deceptive ways prohibited by the Rosenthal Act.

To illustrate with some examples, under this bill, a landlord:

- COULD call a tenant who is late with the rent and ask the tenant when payment can be expected without providing any additional notifications or disclosures beyond what is already required by law.
- COULD NOT call the tenant repeatedly at two or three o'clock in the morning demanding to know when the rent will be paid, because this violates the Rosenthal Act. (Civ. Code § 1788.11.)
- COULD sue a tenant in small claims or civil court to recover unpaid rent without having to provide the tenant with any additional notifications, disclosures, or verifications beyond what is already required by law.
- COULD NOT tell the tenant that the landlord will have the tenant arrested if the tenant does not pay, because this violates the Rosenthal Act. (Civ. Code § 1788.10.)
- COULD proceed with an unlawful detainer against a tenant for nonpayment of rent without adding anything to the notices, the complaint, or any other part of the eviction process beyond what is already required by law.
- COULD NOT agree to dismiss an unlawful detainer if the tenant pays off the debt and then proceed to take a default judgment after the tenant makes the payment, because this violates the Rosenthal Act. (15 U.S.C. 1692e as incorporated into the Rosenthal Act by Civ. Code § 1788.17.)

In discussion and testimony about this bill before the Senate Banking and Financial Institutions Committee, there was some suggestion that, contrary to the foregoing, the bill would require landlords to take additional, affirmative steps when collecting rent from their tenants and that the bill would therefore interfere with the regular operation of California's legal procedures for eviction. In particular, opponents have alleged that to comply with the Rosenthal Act landlords would have to provide specified written notices in connection with an initial contact with a tenant about a debt. The opponents have also raised the specter that, under the bill, landlords would have to provide verification of rental debt upon request from a tenant. The bill does not appear to impose any such requirements.

It is true that such requirements exist in the federal Fair Debt Collection Practices Act (FDCPA). (*See* 15 U.S.C. §§ 1692e(11) and 11692g.) It is also true that the Rosenthal Act incorporates *some* aspects of the FDCPA into the Rosenthal Act. The relevant statute is Civil Code Section 1788.17. Careful examination of Section 1788.17 reveals, however, that the Rosenthal Act does *not* incorporate those parts of the FDCPA that require written notices in connection with an initial contact or that obligate debt collectors to provide verification upon request, at least not in any way that would apply to landlords should this bill be enacted.

Section 1788.17 begins by sweeping a broad swath of the FDCPA into the Rosenthal Act, including the FDCPA's remedies provisions:

Notwithstanding any other provision of this title, every debt collector collecting or attempting to collect a consumer debt shall comply with the provisions of Sections 1692b to 1692j, inclusive, of, and shall be subject to the remedies in Section 1692k of, Title 15 of the United States Code.

Critically, however, Section 1788.17 then goes on to specifically *carve back out* those components of the FDCPA that would otherwise require the provision of a special notice upon initial contact and validation of debts upon request:

[s]ubsection (11) of Section 1692e and Section 1692g *shall not apply* to any person specified in paragraphs (A) and (B) of subsection (6) of Section 1692a of Title 15 of the United States Code or that person's principal. (Emphasis added.)

Subsection (11) of Section 1692e is the requirement to provide specialized notice to a debtor upon initial contact. Section 1692g is the requirement to validate debts upon request. The people specified in paragraph (A) of subsection (6) of Section 1692a are "any officer or employee of a creditor while, in the name of the creditor, collecting debts for such creditor." The people specified in paragraph (B) of that subsection are: "any person while acting as a debt collector for another person, both of whom are related by

common ownership or affiliated by corporate control, if the person acting as a debt collector does so only for persons to whom it is so related or affiliated and if the principal business of such person is not the collection of debts.”

Translated to the context of a landlord collecting rent from a tenant, this means that Section 1788.17 operates to ensure that landlords (and their officers, employees, and co-owners) would not have to provide a special notice upon initial contact, nor would they have to validate rental debts upon request from a tenant. In short, all landlords would have to do is abide by the basic civility and honesty standards that the Rosenthal Act and the FDCPA require, nothing more.

The opponents of the bill express the further concern that, even if Rosenthal does not impose any additional affirmative requirements from the FDCPA now, that could change if the federal law were to change in the future. Here, too, however, the incorporation provision of the Rosenthal Act already appears to address the concern raised. The final sentence of Section 1788.17 reads: “The references to federal codes in this section refer to those codes as they read January 1, 2001.”¹ Thus, even if the federal statute were to change, it would not impact the meaning or application of the Rosenthal Act.

To summarize: careful analysis of the provision incorporating elements of the FDCPA into the Rosenthal Act appears to show that the bill in print would require landlords to adhere to the minimum set of civility standards that are set forth in the Rosenthal Act without imposing any other affirmative requirements or duties on them.

Nonetheless, to allay any concern that this is not the case, the author proposes to offer two amendments in Committee. The first would insert an instruction regarding interpretation of the statute expressly stating that nothing in the bill shall be construed to obligate landlords to provide any notice, disclosure, or debt validation other than those otherwise required by law. The second would add language to Section 1788.17, the Rosenthal Act’s provision incorporating elements of the FDCPA, so that it explicitly states that landlords do not have to comply with the FDCPA’s requirements for special notice on initial contact and validation of debts.

4. Addressing opposition concerns

The proponents and opponents of this bill start from a point of consensus: that tenants deserve the same basic minimum protections against threats, harassment, deception, and humiliation, as anyone else who owes a debt. As the bill arrived in the Senate

¹ The inclusion of the final sentence pegging the exceptions to incorporation to the federal statute to a specific date was, it turns out, the result of an amendment taken at the suggestion of this Committee back in 1999. (See Sen. Com. on Judiciary, Analysis of Sen. Bill No.969 (1999-2000 Reg. Sess.) as amended May 18, 1999.) That analysis anticipated precisely the issue that the opponents raise now and recommended pegging the cross-reference to the federal statute as of a specific date in order to avoid the problem.

Banking and Financial Institutions Committee, however, the opponents of the bill expressed two primary concerns with the bill: (1) they did not want the bill to define rental debt as resulting from a consumer credit transaction because, they contend, landlords do not extend credit to their tenants during an ordinary rental transaction; and (2) they wanted it to be clear that the bill would not require landlords to obtain a license for debt collection or obligate them to list a debt collection license number on communications with tenants about paying the rent. Amendments taken in the Senate Banking and Financial Institutions Committee addressed both of those points.

During testimony at the Senate Banking and Financial Institutions Committee hearing, opponents raised an additional, broader concern about the bill. Extending the Rosenthal's minimum standards for fair debt collection to the context of rent payment, the opponents asserted, could interfere with some of the basic, day-to-day functions of California landlord-tenant law, including calling tenants to request payment or carrying out an eviction. As detailed in Comment 3, above, those claims do not seem to hold up once the exemptions from federal law contained in Civil Code Section 1788.17 are examined closely.

Nevertheless, as it is not the author or sponsor's intent that this bill add any new notices, disclosures, verification of debts, or other affirmative requirements to how landlords go about demanding rent payment, there is no harm in adding belt and suspenders, so to speak, that underscore this point. In this way, the proposed amendments make clear that a landlord would still be able to request rent payment from tenants, proceed with unlawful detainer actions, and attempt to recover unpaid rent through small claims or civil court actions just as they do now, with the only difference being that, while they went about doing these things, landlords could not engage in the sort of deceptive, harassing, threatening, humiliating, or otherwise unreasonable conduct the Rosenthal Act forbids.

Committee members should be aware of one further point raised by the opposition. Throughout the bill's journey through the Legislature so far, its opponents have suggested an alternative format. Rather than extending the existing Rosenthal Act to cover rental debt, they propose taking all of the component parts of the Rosenthal Act and reassembling them into an entirely new Civil Code chapter or title that would be devoted exclusively to the minimum standards associated with collecting rent payments.

The Senate Banking and Financial Institutions Committee analysis of the bill counseled against taking this approach:

Creating a parallel title with a high proportion of identical language to an existing law does not reflect the normal practice of statutory construction of laws under this committee's jurisdiction. Rather than copy and paste identical provisions into a new title, the

author may consider providing specific exemptions to any provisions of the Rosenthal Act that the author believes should not apply to rental debt. (Sen. Com. on Banking & Financial Institutions, Analysis of Sen. Bill No. 1324 (2021-2022 Reg. Sess.) as introduced Feb. 18, 2022, p. 6.)

Viewed from the perspective of this Committee's jurisdiction, there may be additional reasons why simply extending the existing statute makes better policy sense than creating a whole new set of laws. The Rosenthal Act and its federal counterpart have been around since 1977. Many of their ambiguities have been litigated and a robust jurisprudence has built up to guide practitioners, the bench, and the bar alike. Creating a whole new set of statutes specific to rental debt would effectively throw out all of this jurisprudence and require re-litigating many of the issues from scratch, which could prove costly to landlords and might further tax judicial resources.

5. Does the Rosenthal Act already apply to rental debt?

Since collection of rent shares many of the same characteristics as collection of any other debt owed, a natural question is whether the Rosenthal Act already applies to the collection of rent. The opponents are adamant that it does not, and though the matter does not appear completely settled, the bulk of existing authority seems to support the opponent's view. They bring the following court decisions to the Committee's attention.

In *Picazo v. Tirey*, No. 17CV1437 JM (BGS), 2018 WL 1583228, a tenant brought Rosenthal Act claims against the law firm which had filed an unlawful detainer against that tenant. The court had to decide whether that unlawful detainer was an attempt to collect a consumer debt, and thus subject to the Rosenthal Act. Parsing the definition of what constitutes a consumer debt under Rosenthal, the court ultimately concluded that Rosenthal did not apply because renting residential property does not involve acquiring anything on credit. Courts reached similar conclusions in at least two other cases: *Phillips v. Archstone Simi Valley LLC* (C.D. Cal. Dec. 15, 2016) 2016 WL 7444550, at 5; and *Ortiz v. Lyon Mgmt. Grp., Inc.* (2007) 157 Cal. App. 4th 604, 619 (finding that renting an apartment is not truly a credit transaction because the landlord neither sells property on time nor makes funds available to tenants).

The proponents of the bill, by contrast, believe that the Rosenthal Act may already cover rental debt. To support their view, they point to a federal district court case in which a former tenant brought Rosenthal Act claims against the attorney for his former landlord arising out of an unlawful detainer action for nonpayment of rent. Though the court did not directly address the question of whether the Rosenthal Act applies to rental debt, it sustained one of the plaintiff's causes of action under the Rosenthal Act. (*Gonzalez v. Law Office of Allen Robert King* (C.D. Cal. 2016) 195 F. Supp. 3d 1118, 1130.) If the court did not believe that the Rosenthal Act applies to rental debt, it seems hard to imagine how the court could have reached this conclusion.

Perhaps the safest conclusion, from either perspective, is that the law is not completely settled in this area. Clarifying that rental debt is covered by the Rosenthal Act, as this bill would do, would resolve the issue and eliminate the need for either side to engage in further litigation over it.

6. The bill does not have retroactive effect

The bill clarifies that rental debt is covered under the Rosenthal Act by expanding the definition of “consumer debt” under existing law to include “rental debt that became past due on or after January 1, 2019. The inclusion of the date January 1, 2019 in that definition does not give the bill retroactive effect. Rather, the bill would prohibit deceptive, dishonest, unfair, and unreasonable attempts to collect rent prospectively, beginning January 1, 2023, to the degree that such tactics are not already prohibited. The January 19, 2019 date is included in the definition to account for the fact that, on January 1, 2023, some rental debt will already have accumulated. If enacted, this bill would apply to attempts to collect those debts, but only on or after January 1, 2023.

The January 19, 2019 date is included since, by January 1, 2023, the state of limitations will have run for rental debt incurred prior to January 19, 2019, so no further collection activity would be likely or appropriate.

7. Remedies under the Rosenthal Act

The Rosenthal Act includes mechanisms for debtors to enforce their rights under the law. In general, the remedies available to a debtor who has been harmed by a violation of the Rosenthal Act are modest and forgiving. If a court finds that a debt collector has engaged in the sort of deceptive, harassing, or threatening collection practices that the Rosenthal Act forbids, the debtor who was subjected to the violation may obtain an amount equal to any actual damages sustained by the debtor as a result of the violation, plus an amount of \$100 - \$1,000 if the violation was conducted willfully and knowingly by the debt collector. (Civ. Code § 1788.30(a) and (b).) However, if the debt collector promptly cures the violation, or the debt collector convinces the court that the violation was not intentional and happened in spite of office procedures reasonably adapted to avoid any such violation, then the debt collector can avoid liability altogether. (Civ. Code § 1788.30(d) or (e).) A debtor who prevails on a claim under the Rosenthal Act is entitled to a reasonable attorney’s fee award, but if a debtor tries to bring a claim under the Rosenthal Act in bad faith, then the debtor may wind up having to pay the attorney’s fees of the debt collector. (Civ. Code § 1788.30(c).) Nearly identical remedies are available under the federal law incorporated by the Rosenthal Act, though the federal law also permits class actions. (Civ. Code § 1788.17; 15 U.S.C. 1692k.)

If enacted, this bill would give tenants access to these same mechanisms for redress in the event that their landlord, in the course of collecting rent, engages in the sort of deceptive, harassing, or threatening conduct that the Rosenthal Act prohibits.

8. Proposed amendments

In order to address the issues set forth in the Comments, above, the author proposes to incorporate amendments into the bill that would:

- underscore that the bill shall not be construed to require landlords to provide additional notices, disclosures, or validation of debts; and
- underscore that landlords are exempt from the incorporation into the Rosenthal Act of federal requirements to provide special notice on initial contact with a debtor and to validate debts upon request.

A mock-up of the amendments in context is attached to this analysis.

9. Arguments in support of the bill

According to the author:

During the eviction moratorium, tenants have accumulated unprecedented amounts of debt – as much as tens of thousands of dollars per family. In my district the average is \$9k to \$10k. The rules and processes for evictions, pandemic debt and rent relief are complex and constantly changing. [...] As families try to get back on their feet, and as they stress over paying their bills, we want to keep renters safe from harassment and abusive behavior. After all, no one ever planned or imagined themselves in a situation of owing thousands – sometimes tens of thousands of dollars – to stay housed. California’s primary debt collection law should explicitly protect tenants from abusive practices in collecting rental debt. This bill says that tenants facing debt collection have the same protections that apply to other types of consumer debt. The eviction moratorium was meant to keep families in their homes while they accessed needed assistance, to keep our communities stable as we attempted to recover and heal from a crisis that has permanently changed our way of life. Now, as we face the aftermath together, we must help Californians as they work hard to rebuild their lives.

As sponsor of the bill, California Low-Income Consumer Coalition writes:

The protections that the Rosenthal Act extends are neither onerous nor controversial. They include prohibitions on threatening the use of force, on calling a person’s employer, on phoning in the middle of the night and other forms of harassment. Closing this potential loophole in California law means making clear that a landlord may not let the phone ring endlessly, or tell a tenant’s relatives about the debt, or threaten a tenant with jail. These are practices that all of us can agree landlords – like others collecting debt – should not

engage in. The Rosenthal Act should likely have been clarified long ago to expressly include the collection of back rent debt. The extraordinary circumstances of the current situation make that clarification urgent.

10. Arguments in opposition to the bill

In opposition to the bill, the California Apartment Association writes:

The courts have confirmed that consumer debt does not apply to rental debt nor does the state or federal law require rental property owners, property managers, or their attorneys to register as debt collectors when collecting rental debt. [...] Notwithstanding the court decisions, we do agree that tenants should not face abusive, deceptive, or unfair debt collection practices from debt collectors or from property owners, managers, or their attorneys. We believe that the best way to accomplish your goal and to ensure that there is no confusion over the term “rental debt” is to create a separate title within the Civil Code. It is important to ensure that “rental debt” is not confused with a consumer credit transaction and that rental property owners, managers, and their attorneys are not required to register as debt collectors.

In further opposition to the bill, the California Association of Realtors writes:

SB 1324 shoehorns specified rental debt into provisions that pertain to debt collectors and consumer debt. As a result, the bill creates uncertainty in the marketplace as it could have the unintended consequence of dramatically altering a housing provider’s ability to serve notice upon the tenant related to nonpayment of rent. The Committee should be mindful not to advance a proposal that will likely have a ripple effect throughout other areas of the law and create more confusion than clarity.

SUPPORT

California Low-Income Consumer Coalition (sponsor)
Public Counsel (sponsor)
Bay Area Legal Aid
California Reinvestment Coalition
California Rural Legal Assistance Foundation
Californians for Economic Justice
California Association for Micro Enterprise Opportunity
Center for Responsible Lending

Community Legal Services in East Palo Alto
Consumer Federation of California
Housing and Economic Rights Advocates
Lawyers Committee for Civil Rights of the San Francisco Bay Area
Western Center on Law and Poverty

OPPOSITION

California Apartment Association
California Association of Realtors
Southern California Rental Housing Association

RELATED LEGISLATION

Pending Legislation: None known.

Prior Legislation:

SB 908 (Wieckowski, Ch. 163, Stats. 2020) established the Debt Collection Licensing Act which provides for licensure, regulation, and oversight of debt collectors by the Department of Financial Protection and Innovation.

SB 187 (Wieckowski, Ch. 545, Stats. 2019) added mortgage debt to the definition of consumer debt covered by the Rosenthal Act and removed the exception for an attorney or counselor at law from the definition of debt collector under the Rosenthal Act.

AB 969 (Papan, Ch. 319, Stats. 1999) incorporated some components of the federal Fair Debt Collection Practices Act, including its remedies provisions, into the Rosenthal Act, with specified exceptions.

SB 237 (Robbins, Ch. 907, Stats. 1977) enacted the Rosenthal Fair Debt Collection Practices Act.

PRIOR VOTES:

Senate Banking and Financial Institutions Committee (Ayes 7, Noes 1)

Amended Mock-up for 2021-2022 SB-1324 (Durazo (S))

Mock-up based on Version Number 98 - Amended Senate 4/7/22

THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

SECTION 1. Section 1788.2 of the Civil Code is amended to read:

1788.2. (a) Definitions and rules of construction set forth in this section are applicable for the purpose of this title.

(b) The term “debt collection” means any act or practice in connection with the collection of consumer debts.

(c) The term “debt collector” means 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.

(d) The term “debt” means money, property, or their equivalent that is due or owing or alleged to be due or owing from a natural person to another person.

(e) The term “consumer credit transaction” means a transaction between a natural person and another person in which property, services, or money is acquired on credit by that natural person from the other person primarily for personal, family, or household purposes.

(f) “Consumer credit” means 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.

(g) The term “person” means a natural person, partnership, corporation, limited liability company, trust, estate, cooperative, association, or other similar entity.

(h) Except as provided in Section 1788.18, the term “debtor” means a natural person from whom a debt collector seeks to collect a consumer debt that is due and owing or alleged to be due and owing from such person.

(i) The term “creditor” means a person who extends consumer credit to a debtor.

(j) The term “consumer credit report” means any written, oral, or other communication of any information by a consumer reporting agency bearing on a consumer’s creditworthiness, credit standing, credit capacity, character, general reputation, personal characteristics, or mode of living that is used or expected to be used or collected in whole or in part for the purpose of serving as a factor in establishing the consumer’s

eligibility for (1) credit or insurance to be used primarily for personal, family, or household purposes, or (2) employment purposes, or (3) other purposes authorized under any applicable federal or state law or regulation. The term does not include (a) any report containing information solely as to transactions or experiences between the consumer and the person making the report; (b) any authorization or approval of a specific extension of credit directly or indirectly by the issuer of a credit card or similar device; or (c) any report in which a person who has been requested by a third party to make a specific extension of credit directly or indirectly to a consumer conveys that person's decision with respect to that request, if the third party advises the consumer of the name and address of the person to whom the request was made, and the person makes the disclosures to the consumer required under any applicable federal or state law or regulation.

(k) The term "consumer reporting agency" means any person that, for monetary fees, dues, or on a cooperative nonprofit basis, regularly engages, in whole or in part, in the practice of assembling or evaluating consumer credit information or other information on consumers for the purpose of furnishing consumer credit reports to third parties and uses any means or facility for the purpose of preparing or furnishing consumer credit reports.

(l) "Consumer debt" means either of the following:

(1) 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, including a mortgage debt.

(2) Rental debt that became past due on or after January 1, 2019.

(m) "Rental debt" means unpaid rent or any other unpaid financial obligation of a tenant under a tenancy.

(o) Nothing in this title shall be construed to require a landlord or a landlord's employee to provide any notice, disclosure, or validation of rental debt unless that notice, disclosure, or validation of rental debt is otherwise required by law.

SEC. 2. Section 1788.11 of the Civil Code is amended to read:

1788.11. A debt collector shall not collect or attempt to collect a consumer debt by means of the following practices:

(a) Using obscene or profane language.

(b) (1) Placing a telephone call without disclosing the caller's identity, provided that an employee of a licensed collection agency may identify oneself by using their registered alias name if they correctly identify the agency that they represent.

(2) (A) A debt collector placing a telephone call as described in this subdivision shall provide its California debt collector license number upon the consumer's request.

(B) This paragraph applies only to a debt collector, as defined in Section 100002 of the Financial Code.

(c) Causing expense to any person for long distance telephone calls, telegram fees, or charges for other similar communications, by misrepresenting to the person the purpose of the telephone call, telegram or similar communication.

(d) Causing a telephone to ring repeatedly or continuously to annoy the person called.

(e) Communicating, by telephone or in person, with the debtor with such frequency as to be unreasonable, and to constitute harassment of the debtor under the circumstances.

(f) (1) Sending written or digital communication to the person that does not display the California license number of the collector in at least 12-point type.

(2) This subdivision applies only to a debt collector, as defined in Section 100002 of the Financial Code.

SEC. 3. Section 1788.17 of the Civil Code is amended to read:

(a) Notwithstanding any other provision of this title, every debt collector collecting or attempting to collect a consumer debt shall comply with the provisions of Sections 1692b to 1692j, inclusive, of, and shall be subject to the remedies in Section 1692k of, Title 15 of the United States Code.

(b) Notwithstanding subdivision (a), subsection (11) of Section 1692e and Section 1692g shall not apply to either of the following:

(1) A person specified in paragraphs (A) and (B) of subsection (6) of Section 1692a of Title 15 of the United States Code or that person's principal.

(2) A landlord collecting rent, including, but not limited, to any attempt to recover unpaid rent through an unlawful detainer, small claims, or civil court action.

(c) The references to federal codes in this section refer to those codes as they read January 1, 2001.

SEC. 43. Section 100002 of the Financial Code is amended to read:

100002. For purposes of this division, the following terms have the following meanings:

(a) "Applicant" means a person who applied for a license pursuant to this division.

(b) "California debtor accounts" means accounts that are owned by consumers who reside in California at the time that the consumer makes a payment on the account.

(c) "Collection agency" means a business entity through which a debt collector or an association of debt collectors engage in debt collection.

(d) "Commissioner" means the Commissioner of Business Oversight.

(e) (1) "Consumer credit transaction" means a transaction between a natural person and another person in which property, services, or money is acquired on credit by that natural person from the other person primarily for personal, family, or household purposes.

(2) "Consumer credit transaction" does not mean a transaction that results in rental debt, as defined in Section 1788.2 of the Civil Code.

(f) "Consumer debt" or "consumer credit" means 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. The term "consumer debt" includes a mortgage debt. The term "consumer debt" includes "charged-off consumer debt" as defined in Section 1788.50 of the Civil Code.

(g) "Creditor" means a person who extends consumer credit to a debtor.

(h) "Debt" means money, property, or their equivalent that is due or owing or alleged to be due or owing from a natural person to another person.

(i) "Debt collection" means any act or practice in connection with the collection of consumer debt.

(j) "Debt collector" means any person who, in the ordinary course of business, regularly, on the person's own behalf or on behalf of 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. The term "debt collector" includes "debt buyer" as defined in Section 1788.50 of the Civil Code.

(k) "Debtor" means a natural person from whom a debt collector seeks to collect a consumer debt that is due or owing or alleged to be due or owing from the person.

(l) "Department" means the Department of Business Oversight.

(m) "Fund" means the Debt Collection Licensing Fund established pursuant to Section 100006.5.

(n) "Licensee" means a person licensed pursuant to this chapter.

(o) “Nationwide Multistate Licensing System & Registry” means a system of record, created by the Conference of State Bank Supervisors and the American Association of Residential Mortgage Regulators, for nondepository, financial services licensing or registration in participating state agencies, the District of Columbia, Puerto Rico, the United States Virgin Islands, and Guam.

(p) “Person” means a natural person, partnership, corporation, limited liability company, trust, estate, cooperative, association, or other similar entity.

| **SEC. 54.** This act does not affect the statute of limitations described in subdivision (f) of Section 1788.30 of the Civil Code.