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SB-531 Consumer debt. (2021-2022)

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Date Published: 10/05/2021 09:00 PM

Senate Bill No. 531

CHAPTER 455

An act to add Section 1788.14.5 to the Civil Code, relating to consumer debt.

[Approved by Governor October 04, 2021. Filed with Secretary of State October 04, 2021.]

LEGISLATIVE COUNSEL'S DIGEST

SB 531, Wieckowski. Consumer debt.

Existing law, the Rosenthal Fair Debt Collection Practices Act, regulates the collection of a consumer debt, as defined, by a debt collector. Existing law defines "debt collector" to mean a person who, in the ordinary course of business engages in debt collection, including 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.

Existing law, the Debt Collection Licensing Act, prohibits, beginning January 1, 2022, a person from engaging in the business of debt collection in this state without first obtaining a license from the Commissioner of Financial Protection and Innovation. Existing law 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 specified information, including the date of default or the date of the last payment, and requires the debt buyer to include specified information in the written statement to the debtor. Existing law defines "debt buyer" to mean 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.

This bill would require a debt collector to which delinquent debt, as defined and specified, has been assigned to provide to the debtor, upon the debtor's request, a written statement that includes certain information, including the date the debt became delinquent or the date of the last payment, within 30 calendar days of receipt of a debtor's written request for information regarding the debt or proof of the debt, as specified. The bill would require a debt collector to which delinquent debt has been assigned to include in its first written communication with the debtor a specified notice, and would require a debt collector to provide a debtor an active postal address to which a debtor may send a request for the information. The bill would provide that a debt buyer who complies with the written statement requirements under the Debt Collection Licensing Act is deemed to comply with this new requirement on a debt collector, to which a delinquent debt has been assigned, to provide a written statement to the debtor upon the debtor's request. The bill would prohibit a debt collector to which a delinquent debt has been assigned from making a written statement to a debtor in an attempt to collect a delinquent consumer debt, except if the debt collector has access to specified information, as provided. The bill would provide that these provisions become operative on July 1, 2022.

Vote: majority Appropriation: no Fiscal Committee: yes Local Program: no

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

SECTION 1. Section 1788.14.5 is added to the Civil Code, to read:

1788.14.5. (a) A debt collector to which delinquent debt has been assigned shall provide to the debtor, upon the debtor's written request, a statement that includes all of the following information pursuant to subdivision (c):

(1) That the debt collector has authority to assert the rights of the creditor to collect the debt.

(2) (A) 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.

(B) The explanation required by subparagraph (A) shall identify separately the balance, the total of any interest, and the total of any fees.

(3) The date the debt became delinquent or the date of the last payment.

(4) The name and an address of the creditor and the creditor's account number associated with the debt. The creditor's name and address shall be in sufficient form so as to reasonably identify the creditor.

(5) 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.

(6) The names and addresses of all persons or entities other than the debt collector to which the debt was assigned. The names and addresses shall be in sufficient form so as to reasonably identify each assignee.

(7) The California license number of the debt collector.

(b) A debt collector to which delinquent debt has been assigned shall not make a written statement to a debtor in an attempt to collect a delinquent debt unless the debt collector has access to a copy of a contract or other document evidencing the debtor's agreement to the debt, except in the following circumstances:

(1) 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.

(2) 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 the requirements of this subparagraph.

(c) (1) A debt collector to which delinquent debt has been assigned shall provide the information or documents identified in subdivisions (a) and (b) 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.

(2) 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 described in subdivisions (a) and (b).

(d) (1) A debt collector shall provide a debtor with whom it has contact an active postal address to which a debtor may send a request for the information described in this section.

(2) A debt collector may also provide an active email address to which these requests can be sent and through which information and documents can be delivered if the parties agree.

(e) (1) A debt collector to which delinquent debt has been assigned shall 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]."

(2) 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.

(f) (1) A debt buyer that complies with the requirements of Section 1788.52 shall be deemed to be in compliance with this section.

(2) For purposes of this subdivision, "debt buyer" shall have the same meaning as in Section 1788.50.

(g) For the purposes of this section, the term "delinquent debt" means a consumer debt, other than a mortgage debt, that is past due at least 90 days and has not been charged off.

(h) This section shall apply to all delinquent debt sold or assigned on or after July 1, 2022.

(i) This section shall become operative on July 1, 2022.