

California Enacts New Requirements Related to Collection of Commercial Debt in Amounts Less Than \$500,000

October 1, 2024

On September 24, Governor Gavin Newsom signed into law [California Senate Bill 1286](#) that will impact the collection of “covered commercial debt” and “covered commercial credit”¹ in the state after July 1, 2025 (the law’s effective date) (the Collection Law). Specifically, as it relates to commercial finance providers, the Collection Law will require all collectors, *including first-party commercial finance providers that originate covered commercial debt*, to examine their collection practices to ensure such practices conform to the state’s Rosenthal Fair Debt Collection Practices Act (the Rosenthal Act) to the extent such collection efforts are directed toward natural persons (either as a direct party to a commercial financing transaction or as a guarantor of the underlying commercial financing transaction from whom payment for a defaulted commercial financing transaction is sought).²

While not unreasonably prescriptive in terms of its requirements, the Rosenthal Act contains certain provisions that could potentially impact a commercial finance provider’s collection processes, including (i) a requirement that the debt collector not communicate by telephone or in-person “with such frequency as to be unreasonable” and to constitute harassment of the debtor;³ (ii) a prohibition against using a “false representation that a legal proceeding has been, is about to be, or will be instituted unless payment of a covered debt is made;”⁴ and (iii) a prohibition against communicating with the debtor by means of a written communication that displays or conveys information about the covered debt or the debtor other than the name, address and telephone number of the debtor and the debt collector and that is intended both to be seen by any other person and also to embarrass the debtor.⁵ With respect to (iii), this creates the potential for individuals to claim that written communications that are shared with persons or entities other than the underlying natural person from whom payment is sought are violative of this provision.⁶

¹ The Collection Law defines “covered commercial debt” and “covered commercial credit” identically as “money due or owing or alleged to be due or owing from a natural person to a lender, a commercial financing provider, as defined in Section 22800 of the Financial Code, or a debt buyer, as defined in Section 1788.50, by reason of one or more covered commercial credit transactions, provided the total amount of all covered commercial credit transactions and all other noncovered commercial credit transactions due and owing by the debtor or other person obligated under the transactions to the same lender, commercial financing provider, or debt buyer is no more than five hundred thousand dollars (\$500,000).” CA Civil Code § 1788.1(n). For ease of reading, Katten will use only the term “covered commercial debt” throughout this advisory.

² CA Civil Code §§ 1788.1 et seq. Notably, if payment is not sought from a “natural person,” the Collection Law will not apply.

³ CA Civil Code § 1788.11(e).

⁴ CA Civil Code § 1788.13(j). This involves the threat of the imminent filing of a suit when, in reality, no such suit has been contemplated or prepared.

⁵ CA Civil Code § 1788.12(d).

⁶ In the consumer debt collection context, certain similar claims have been raised in connection with the provision of information about a consumer debtor to the lender’s mail vendor for purposes of mailing to such consumer a letter notice related to the debt. These claims typically relate to an alleged violation of the federal Fair Debt Collection Practices Act (which prohibits the disclosure of a consumer plaintiff’s debt obligation to a third party). See, for example, *Hunstein v. Preferred Collection and Management Services, Inc.*, 2022 WL 4102824 (11th Cir. Sept. 8, 2022).

Scope. The scope of the Collection Law is not limited to commercial loans; rather, other commercial finance providers like merchant cash advance providers and commercial factors are included. Specifically, the definition of “covered commercial debt” includes lenders (a term that is undefined in the Collection Law), commercial financing providers (as such term is defined in the California Finance Code),⁷ and debt buyers (a term defined in the Rosenthal Act). Moreover, the Collection Law is not limited to the collection of commercial financing transactions entered into after July 1, 2025. Rather, it applies to “covered commercial debts” that are *entered into, renewed, sold, or assigned* on or after July 1, 2025. In practice, this means that a *performing debt* that was originated before July 1, 2025, but sold (assigned) to a subsequent holder after that date would be covered. It also means that a performing covered commercial debt that was entered into before July 1, 2025, but had a draw subsequent to that date might be picked up to the extent that such draw is treated as “renewal” of the underlying commercial financing obligation under California law.⁸

Importantly, certain debts can be *excluded* when determining whether the Collection Law applies. For example, if the commercial debts “due and owing” by the natural person debtor *combined with* those amounts due and owing by the corporate borrowers involved in the underlying transactions exceed \$500,000, then the Collection Law does not apply to collection efforts against any natural persons involved in such transactions.⁹

Licensure Requirements. Notably, the Collection Law amends California’s debt collection *licensing* laws to exclude commercial debt collection.¹⁰ As such, commercial entities subject to the terms of the Collection Law do not need to obtain a collections license.

Impact on Insured Depository Institutions. Insured depository institutions are not exempt from the Collection Law and, relatedly, are not exempt from the Rosenthal Act. Whether or not an out-of-state insured depository institution would be covered by the Collection Law and the Rosenthal Act will depend upon the applicable preemption law analysis.¹¹

Impact on Commercial Mortgages. Importantly, the protections in the Collection Law likely also extend to the collection of commercial mortgages as the Legislative Counsel’s Digest accompanying the bill notes that “[e]xisting law also defines ‘consumer debt’ to include a mortgage [in the context of consumer debt collections].” Given this inclusion, we believe it is likely that the collection of commercial mortgages also is within the scope of the Collection Law.

Impact on Commercial Leasing. Given that the definition of covered commercial debt incorporates the definition of “commercial financing provider” from the California Financing Code, commercial leases (as such term is defined in the California Financing Code) also are included within the scope of the Collection Law.

Questions regarding Nexus. Like certain other California laws related to consumer and commercial finance, the Collection Law also raises important questions as to its scope. For example, if a “covered commercial credit” involves an out-of-state company that is a party to a loan agreement that is governed by another state’s law (likely New York) and the relevant guarantor resides in California, is the fact that the guarantor’s residence is

⁷ The term “commercial financing provider” is defined in CA Fin. Law § 22800 as “an accounts receivable purchase transaction, including factoring, asset-based lending transaction, commercial loan, commercial open-end credit plan, or lease financing transaction intended by the recipient for use primarily for other than personal, family, or household purposes.”

⁸ Based upon informal conversations Katten has participated in with lawyers at the DFPI over the years, it is our understanding that the agency takes the position that any assessment of a borrower’s credit capacity under an existing loan agreement is treated as a new loan for certain purposes. It is not clear, however, whether that interpretation would carry through to the enforcement of this law.

⁹ See footnote 1 for the definition of “covered commercial debt” and note that it excludes total, aggregated debt due and owing by the natural person and the commercial party to the applicable transaction(s) in excess of \$500,000.

¹⁰ CA Fin. Code § 100001(c): “This division shall not apply to . . . the collection of covered commercial debt or covered commercial credit.”

¹¹ See *Cantero v. Bank of America* (US Supreme Court, May 30, 2024). In the *Cantero* decision, the US Supreme Court sent a case involving residential mortgage escrow interest back to the Second Circuit for further analysis in light of its determination that “Dodd-Frank provides that the National Bank Act preempts a state law ‘only if’ the state law (i) discriminates against national banks as compared to state banks; or (ii) ‘prevents or significantly interferes with the exercise by the national bank of its powers,’ as determined ‘in accordance with the legal standard for preemption’ in the Court’s decision in *Barnett Bank of Marion Cty., N. A. v. Nelson*, 517 U. S. 25. §§25b(b)(1)(A), (B).”

in California bring the creditor’s collection efforts within the scope of the Collection Law? The answer to this question is likely “yes.” However, what if the facts are reversed and the underlying covered commercial debt was originated to a California business and the commercial guarantor lives outside California? It seems to be a more challenging question to argue that the law’s scope exceeds its territorial borders to protect a personal guarantor who resides outside California.

How to Prepare. Of immediate concern, commercial lenders and commercial finance providers should assess their business lines to determine the extent of potential applicability of the Collection Law. If the provider does not extend credit to individuals (either as a co-borrower or in his/her capacity as a personal guarantor), then the Collection Law does not apply. If, however, the commercial lender or commercial finance provider does extend this type of credit, the Rosenthal Act’s requirements should be assessed and refinements to collection practices implemented before July 1, 2025.

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