



California Enacts Legislation Regulating Buyers of Consumer Debt

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On July 11, 2013, California's governor signed into law Senate Bill 233, known as the Fair Debt Buying Practices Act. The Act regulates entities that buy charged-off consumer debt, the collection of that debt and the circumstances under which the debt buyer may bring suit.

The Act, which was sponsored by California's Attorney General Kamala Harris, is intended to address perceived abuses in collection efforts by debt buyers to persons who may not be the correct debtor, or on debts that are time-barred or have already been paid.

The Act applies to "debt buyers," defined 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. 'Debt buyer' does not mean a person or entity that acquires a charged-off consumer debt incidental to the purchase of a portfolio predominantly consisting of consumer debt that has not been charged off."

The Act only governs collection of consumer debt, i.e., that incurred primarily for personal, family or household purposes.

Key provisions of the Act are:

- The Act prohibits a debt buyer from making any written statement in an attempt to collect a consumer debt unless the debt buyer possesses information that it is the sole owner of the debt or is authorized to assert the rights of all owners of the debt. The Act also requires the debt buyer to possess information regarding the debt balance at charge-off, the total of any post-charge-off fees, and total of any post-charge-off interest, the name and address of the creditor at the time the debt was charged off, and the name and address of the debtor at time of charge-off, among other things.
- A specified notice advising the debtor of the right to obtain certain documents and information regarding the debt must be included with the debt buyer's first written communication with the debtor. If the statute of limitations on the debt has expired, the notice must also advise the borrower that he will not be sued on the debt.
- A debt buyer must make certain documents available to the debtor, free of charge, within 15 days of receipt of a request. Such documents include a copy of a contract or other document evidencing the debtor's agreement to the debt. If the debt buyer cannot provide the



information or documents within 15 calendar days, the debt buyer shall cease all collection until it provides these documents.

- All settlement agreements between a debt buyer and a debtor must be documented in open court or in writing.
- A debt buyer who receives a payment on a debt must, within 30 days, provide a receipt or statement showing the date and amount paid, among other things.
- A debt buyer is prohibited from initiating a suit to collect a debt if the statute of limitations on the cause of action has expired.
- A debt buyer bringing a lawsuit on a consumer debt is required to include certain information in the complaint, including the allegation that the plaintiff is a debt buyer, a statement of the nature of the debt, and an explanation of the amount of the debt, including separate identification of the amount of the charged-off debt, the total of any post-charge-off fees, and the total of any post-charge-off interest. A copy of the contract or other document evidencing the debtor's agreement to the debt must also be attached to the complaint.
- Entry of judgment, including a default judgment, in favor of a debt buyer is prohibited unless business records authenticated through a sworn declaration and relating to the debt and its ownership are submitted by the debt buyer to the court. A court may dismiss a debt buyer's collection action with or without prejudice if this information is not provided or if the debt buyer fails to appear or is not prepared on the date scheduled for trial.
- Existing law establishes a process for the enforcement of money judgments and requires a levying officer to provide certain documents and information to a judgment debtor and to the debtor's employer in connection with wage garnishment. The Act amends these procedures to require that a copy of the form a judgment debtor may use to make a claim of exemption and a copy of the form used to provide a financial statement also be provided.
- The Act prescribes penalties for each violation and provides that its provisions may not be waived. Penalties for violation of the Act in an individual action include actual damages and statutory damages between \$100 and \$1,000. In a class action, if the court finds that the debt buyer engaged in a pattern and practice of violation, the court may award additional damages to the class of \$500,000 or 1 percent of the net worth of the debt buyer, whichever is less. Attorneys' fees may be awarded to a prevailing debtor in an action asserting violation of the Act, but may be awarded to a prevailing debt buyer only if the plaintiff's action was not in good faith.

The Act will apply to consumer debt sold or resold on or after January 1, 2014.

The new law is expected to make collection of charged-off debt more difficult and costly, as many consumers may now choose to litigate the sufficiency of the disclosures and documentation of the debt provided. As a result, the Act may negatively impact the pricing of charged-off debt sold to third parties. All banks and other companies that buy and sell charged-off debt will need to work with collection counsel to ensure a plan for compliance is in place.

For more information on the matters discussed in this *Locke Lord QuickStudy*, please contact the author:

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