

New California law extends consumer debt protections to small businesses

Jamilex Gotay

Senate Bill 1286 (SB 1286), signed into law by California Governor Gavin Newsom on Sept. 24, 2024, will extend existing consumer debt collection protections in the state to small businesses and to the collection activities of business debt.

Why it matters: B2B credit managers and third-party collectors in California or selling to customers in California must follow the same stringent rules for pursuing commercial debts as they do for consumer debts.

SB 1286, titled the *Rosenthal Fair Debt Collection Practices Act: Covered Debt: Commercial Debts (RFDCPA)*, is designed to expand existing prohibitions against debt collectors. Unlike the federal Fair Debt Collection Practices Act (FDCPA), the RFDCPA applies to a creditor collecting its own debts in its own name, as well as to third-party collectors or attorneys collecting debts on behalf of another.

The debate over RFDCPA

Supporters of the RFDCPA argue that the law will narrowly expand the existing fair debt collection protections available for individual consumers to individuals who have a personal guarantee on their business's debt. "They say that small business owners are being unfairly harassed and threatened by debt collectors, preventing them from achieving success in their business," said Ash Arnett, NACM's Washington Representative with PACE Government Affairs.

Opponents of the bill, who are predominantly lenders, argue that while parts of the RFDCPA are commendable, such as prohibiting harassment, threats of violence and use of false identities, other aspects are unworkable in commercial settings, such as the requirements that judicial proceedings be filed in the county in which the debt was incurred as opposed to where the collateral is located. "Further, SB 1286 covers loans up to \$500,000, far beyond what most consider to be 'small,'" Arnett explained.

The RFDCPA applies specifically to a "covered commercial credit transaction," which means a credit transaction of \$500,000 or less primarily for purposes other than personal, family or household purposes. This definition broadly covers sales-based financing transactions, finance leases and traditional loans. SB 1286 further defines "debtor" to include guarantors of covered commercial credit transactions.

"While it seemed that the early intention of the bill's sponsors was to broaden the reach of the RFDCPA to small business debts, it appears that the \$500,000 threshold and broad statutory definitions impact much more than just small business debts," said Christopher Ng, managing partner at Gibbs Giden Locher Turner Senet & Wittbrodt LLP (Westlake Village, CA).

What's more, this bill would revise the definition of "delinquent debt" to mean a covered debt, other than a mortgage debt, as specified, and would specify that these provisions apply to all delinquent covered commercial debt sold or assigned on or after July 1, 2025.

Penalties for violation

The RFDCPA will expose businesses to lawsuits for many routine transactions when businesses fail to adhere to the new law. The remedies available for a violation under the RFDCPA are the same as those of the FDCPA, and the debtor is allowed to assert his or her own private right of action. Furthermore, the RFDCPA provides statutory damages ranging from \$100 to \$1,000 per violation.

How does this impact B2B credit managers?

If B2B creditors were subject to consumer debt collection laws, it would create challenges and unintended consequences for commercial credit. These laws, designed to protect individual consumers, would restrict B2B credit professionals' ability to communicate flexibly with business clients—essential for negotiation and maintaining cash flow. Unlike consumers, businesses rely heavily on credit, and B2B creditors need adaptable approaches to sustain financial stability across industries.

“Credit managers are already following strict protocols when collecting receivables,” said Gregory Garner, vice president of strategy and collections at NACM Commercial Services (San Diego, CA). “Under California SB 1286, it is likely creditors will be subject to even stricter protocols and compliance.”

One strict protocol for credit professionals is in Section 4 of the bill, which states that “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. A debt collector shall provide its California debt collector license number, if applicable, upon the consumer’s request.”

What’s next: SB 1286 will take effect on Jan. 1, 2025. But it is still unknown as to how the new bill will be implemented, as parts of California's debt collection consumer protection law are not applicable to businesses, which is the primary argument that banks and lenders have made. SB 1286 does not appear to have national backing at this time. The bill's main legislative advocate is Dave Min, a Democratic state legislator, who has won a heated race to succeed California Rep. Katie Porter

The bottom line: The newly signed Senate Bill 1286 extends consumer debt collection protections to small businesses in California, subjecting B2B credit managers and third-party collectors to stricter rules, potentially leading to challenges for commercial credit and increased costs for businesses.