



# Regulatory Compliance Bulletin

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## SB 908 – Debt Collection Licensing Act

SB 908, which was chaptered on September 25, 2020, enacts the Debt Collection Licensing Act (“DCLA”) to create a new licensing law for debt collectors and debt buyers.

Under the Fair Debt Collection Practices Act (“FDCPA”), federal law has prohibited debt collectors from engaging in abusive, unfair or deceptive practices to collect debts. Violation of this law is enforceable through a private right of action, or class action, or through administrative action.

In California, the Rosenthal Fair Debt Collection Practices Act (“Rosenthal Act”) is the state equivalent to the FDCPA. Under this Act, debt collectors are prohibited from engaging in specified abusive, unfair, or deceptive practices to collect debt. Violations are also enforceable through a private right of action.

California also has the Fair Debt Buying Practices Act (“FDBPA”), which requires persons that purchase delinquent or charged-off consumer debt to maintain documentation proving that the debtor is the individual associated with the original contract or agreement, and that the amount of indebtedness is accurate. Violations of the FDBPA are enforceable through a private right of action or a class action.

SB 908 adds Division 25 to the Financial Code to create the Debt Collection Licensing Act. This Act will be effective on January 1, 2022. The new Act will require the licensure of persons who engage in the business of debt collection in California and is administered by the Department of Business Oversight (DBO).

The bill prohibits a person from engaging in the business of debt collection without first obtaining a license. Although SB 908 provides an exemption from licensure to depository institutions chartered under state or federal law, California Financing Law licensees, California Residential Mortgage Lending Act licensees, Real Estate Law licensees, foreclosure trustees, and persons subject to the Karnette Rental-Purchase Act, the bill allows the DBO Commissioner to issue desist and refrain orders to these depository institutions for violations of the Rosenthal Act or the FDBPA and allows the commissioner to order any of these entities to pay ancillary relief.

SB 908 grants the commissioner the ability to administer the DCLA, including rulemaking authority, authority to issue or not issue a license, authority to revoke a license, investigate complaints and enforcement authority.

Specifically, Section 100003 of the Financial Code will allow the DBO Commissioner to revoke or suspend any license for a violation of this law. In addition, it allows the Commissioner to subpoena documents and witnesses, and to compel their attendance and production, to administer oaths, and to require the production of documents. The Commissioner would also have the ability to enforce these provisions and to levy fees, fines and charges. The Commissioner would allow for notice and a hearing for violations.

This new law creates a Debt Collection Advisory Committee that will advise the commissioner on matters related to debt collection or the debt collection business, including proposed fee schedules and the mechanics and feasibility of implementing requirements proposed in regulations.

CBA opposed this legislation arguing that this measure goes unnecessarily beyond the scope of licensing unlicensed debt collectors by adding DBO as an enforcer of the Rosenthal Act over banks and credit unions, entities that are exempted from licensure in the bill.

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