

Senate Bill No. 233

CHAPTER 64

An act to add Title 1.6C.5 (commencing with Section 1788.50) to Part 4 of Division 3 of the Civil Code, and to amend Sections 700.010, 706.103, 706.104, 706.108, and 706.122 of, and to add Section 581.5 to, the Code of Civil Procedure, relating to debt buyers.

[Approved by Governor July 11, 2013. Filed with
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LEGISLATIVE COUNSEL'S DIGEST

SB 233, Leno. Debt buying.

(1) Existing state and federal law regulate the practice of debt collection. Existing state law prohibits a debt collector from engaging in specified conduct, including the use of threats or causing a telephone to ring repeatedly to annoy the person called. Existing law prohibits a debt collector from obtaining an affirmation from a debtor of a consumer debt that has been discharged in bankruptcy, without clearly and conspicuously disclosing to the debtor, in writing, the fact that the debtor is not legally obligated to make such affirmation.

This bill would enact the Fair Debt Buying Practices Act, which would regulate the activities of a person or entity that has bought charged-off consumer debt, as defined, for collection purposes and the circumstances pursuant to which the person may bring suit. The bill would apply to consumer debt sold or resold on or after January 1, 2014. The bill would prohibit a debt buyer, as defined, from making any written statement in an attempt to collect a consumer debt unless the debt buyer possesses information that the debt buyer is the sole owner or is authorized to assert the rights of all owners of the specific debt at issue, the debt balance, as specified, and the name and address of the creditor at the time the debt was charged off, among other things. The bill would require the debt buyer to make certain documents available to the debtor, without charge, upon receipt of a request, within 15 days. The bill would require that a specified notice be included with the debt buyer's first written communication with the debtor. The bill would require all settlement agreements between a debt buyer and a debtor to be documented in open court or otherwise in writing and would require a debt buyer who receives a payment on a debt to provide a receipt or statement containing certain information. The bill would prohibit a debt buyer from initiating a suit to collect a debt if the statute of limitations on the cause of action has expired. The bill would prescribe penalties for each violation of the act and would provide that its provisions may not be waived. The bill would require a debt buyer bringing an action on consumer debt to include certain information in his or her complaint. The bill would

prohibit an entry of judgment in favor of a plaintiff debt buyer unless business records authenticated through a sworn declaration and relating to the debt and ownership of it, among other things, are submitted by the debt buyer to the court, and would permit a court to dismiss a debt buyer's action to collect with 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.

(2) 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 a designated employer in connection with wage garnishment. Existing law permits a process server also to serve an earnings withholding order on an employer and requires that the process server also serve certain documents at this time. Existing law requires an employer who is served with an earnings withholding order to provide certain documents to an employee who is a judgment debtor.

This bill would require, in the circumstances described above, that a copy of the form that the 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 people of the State of California do enact as follows:

SECTION 1. The Legislature finds and declares the following:

(a) The collection of debt purchased by debt buyers has become a significant focus of public concern due to the adequacy of documentation required to be maintained by the industry in support of its collection activities and litigation.

(b) State law does not currently prescribe the specific nature of documentation that a debt buyer must maintain and produce in a legal action on the debt.

(c) Documentation used to support the collection of a debt must be sufficient to prove that the individual who is being asked to pay the debt is in fact the individual associated with the original contract or agreement, and that the amount of indebtedness is accurate.

(d) It is important to create documentation and process standards for the collection of consumer debt that all interested parties can easily understand.

(e) This act is not intended to affect the legal enforceability, or collectability, of a charged-off consumer debt, but is intended to impose enforceable standards upon the collection and litigation of consumer debt that has been purchased by a debt buyer following the consumer debt's charge off by a creditor.

(f) Setting specific documentation and process standards will protect consumers, provide needed clarity to courts, and establish clearer criteria for debt buyers and the collection industry.

(g) This act shall be known, and may be cited, as the Fair Debt Buying Practices Act.

SEC. 2. Title 1.6C.5 (commencing with Section 1788.50) is added to Part 4 of Division 3 of the Civil Code, to read:

TITLE 1.6C.5. FAIR DEBT BUYING PRACTICES

1788.50. (a) As used in this title:

(1) “Debt buyer” means 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.

(2) “Charged-off consumer debt” means a consumer debt that has been removed from a creditor’s books as an asset and treated as a loss or expense.

(b) The acquisition by a check services company of the right to collect on a paper or electronic check instrument, including an Automated Clearing House item, that has been returned unpaid to a merchant does not constitute a purchase of delinquent consumer debt under this title.

(c) Terms defined in Title 1.6C (commencing with Section 1788) shall apply to this title.

(d) This title shall apply to debt buyers with respect to all consumer debt sold or resold on or after January 1, 2014.

1788.52. (a) A debt buyer shall not make any written statement to a debtor in an attempt to collect a consumer debt unless the debt buyer possesses the following information:

(1) That the debt buyer is the sole owner of the debt at issue or has authority to assert the rights of all owners of the debt.

(2) The debt balance at charge off and an explanation of the amount, nature, and reason for all post-charge-off interest and fees, if any, imposed by the charge-off creditor or any subsequent purchasers of the debt. This paragraph shall not be deemed to require a specific itemization, but the explanation shall identify separately the charge-off balance, the total of any post-charge-off interest, and the total of any post-charge-off fees.

(3) The date of default or the date of the last payment.

(4) The name and an address of the charge-off creditor at the time of charge off, and the charge-off creditor’s account number associated with the debt. The charge-off creditor’s name and address shall be in sufficient form so as to reasonably identify the charge-off creditor.

(5) The name and last known address of the debtor as they appeared in the charge-off creditor’s records prior to the sale of the debt. If the debt was sold prior to January 1, 2014, the name and last known address of the debtor as they appeared in the debt owner’s records on December 31, 2013, shall be sufficient.

(6) The names and addresses of all persons or entities that purchased the debt after charge off, including the debt buyer making the written statement. The names and addresses shall be in sufficient form so as to reasonably identify each such purchaser.

(b) A debt buyer shall not make any written statement to a debtor in an attempt to collect a consumer debt unless the debt buyer has access to a

copy of a contract or other document evidencing the debtor's agreement to the debt. If the claim is based on debt for which no signed contract or agreement exists, the debt buyer 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. 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 this requirement.

(c) A debt buyer shall provide the information or documents identified in subdivisions (a) and (b) to the debtor without charge within 15 calendar days of receipt of a debtor's written request for information regarding the debt or proof of the debt. If the debt buyer cannot provide the information or documents within 15 calendar days, the debt buyer shall cease all collection of the debt until the debt buyer provides the debtor the information or documents described in subdivisions (a) and (b). Except as provided otherwise in this title, the request by the debtor shall be consistent with the validation requirements contained in Section 1692g of Title 15 of the United States Code. A debt buyer shall provide all debtors with whom it has contact an active postal address to which these requests can be sent. A debt buyer 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.

(d) (1) A debt buyer shall include with its first written communication with the debtor in no smaller than 12-point type, a separate prominent notice that provides:

“You may request records showing the following: (1) that [insert name of debt buyer] 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 of default or the date of the last payment; (4) the name of the charge-off creditor and the account number associated with the debt; (5) the name and last known address of the debtor as it appeared in the charge-off creditor's or debt buyer's records prior to the sale of the debt, as appropriate; and (6) the names of all persons or entities that have purchased the debt. 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 buyer's active mailing address and email address, if applicable].”

(2) When collecting on a time-barred debt where the debt is not past the date for obsolescence provided for in Section 605(a) of the federal Fair Credit Reporting Act (15 U.S.C. Sec. 1681c):

“The law limits how long you can be sued on a debt. Because of the age of your debt, we will not sue you for it. If you do not pay the debt, [insert name of debt buyer] may [continue to] report it to the credit reporting agencies as unpaid for as long as the law permits this reporting.”

(3) When collecting on a time-barred debt where the debt is past the date for obsolescence provided for in Section 605(a) of the federal Fair Credit Reporting Act (15 U.S.C. Sec. 1681c):

“The law limits how long you can be sued on a debt. Because of the age of your debt, we will not sue you for it, and we will not report it to any credit reporting agency.”

(e) If a language other than English is principally used by the debt buyer in the initial oral contact with the debtor, the notice required by subdivision (d) shall be provided to the debtor in that language within five working days.

(f) In the event of a conflict between the requirements of subdivision (d) and federal law, so that it is impracticable to comply with both, the requirements of federal law shall prevail.

1788.54. (a) All settlement agreements between a debt buyer and a debtor shall be documented in open court or otherwise reduced to writing. The debt buyer shall ensure that a copy of the written agreement is provided to the debtor.

(b) A debt buyer that receives payment on a debt shall provide, within 30 calendar days, a receipt or monthly statement, to the debtor. The receipt or statement shall clearly and conspicuously show the amount and date paid, the name of the entity paid, the current account number, the name of the charge-off creditor, the account number issued by the charge-off creditor, and the remaining balance owing, if any. The receipt or statement may be provided electronically if the parties agree.

(c) A debt buyer that accepts a payment as payment in full, or as a full and final compromise of the debt, shall provide, within 30 calendar days, a final statement that complies with subdivision (b). A debt buyer shall not sell an interest in a resolved debt, or any personal or financial information related to the resolved debt.

1788.56. A debt buyer shall not bring suit or initiate an arbitration or other legal proceeding to collect a consumer debt if the applicable statute of limitations on the debt buyer’s claim has expired.

1788.58. In an action brought by a debt buyer on a consumer debt:

(a) The complaint shall allege all of the following:

(1) That the plaintiff is a debt buyer.

(2) The nature of the underlying debt and the consumer transaction or transactions from which it is derived, in a short and plain statement.

(3) That the debt buyer is the sole owner of the debt at issue, or has authority to assert the rights of all owners of the debt.

(4) The debt balance at charge off and an explanation of the amount, nature, and reason for all post-charge-off interest and fees, if any, imposed by the charge-off creditor or any subsequent purchasers of the debt. This paragraph shall not be deemed to require a specific itemization, but the explanation shall identify separately the charge-off balance, the total of any post-charge-off interest, and the total of any post-charge-off fees.

(5) The date of default or the date of the last payment.

(6) The name and an address of the charge-off creditor at the time of charge off, and the charge-off creditor's account number associated with the debt. The charge-off creditor's name and address shall be in sufficient form so as to reasonably identify the charge-off creditor.

(7) The name and last known address of the debtor as they appeared in the charge-off creditor's records prior to the sale of the debt. If the debt was sold prior to January 1, 2014, the debtor's name and last known address as they appeared in the debt owner's records on December 31, 2013, shall be sufficient.

(8) The names and addresses of all persons or entities that purchased the debt after charge off, including the plaintiff debt buyer. The names and addresses shall be in sufficient form so as to reasonably identify each such purchaser.

(9) That the debt buyer has complied with Section 1788.52.

(b) A copy of the contract or other document described in subdivision (b) of Section 1788.52, shall be attached to the complaint.

(c) The requirements of this title shall not be deemed to require the disclosure in public records of personal, financial, or medical information, the confidentiality of which is protected by any state or federal law.

1788.60. (a) In an action initiated by a debt buyer, no default or other judgment may be entered against a debtor unless business records, authenticated through a sworn declaration, are submitted by the debt buyer to the court to establish the facts required to be alleged by paragraphs (3) to (8), inclusive, of subdivision (a) of Section 1788.58.

(b) No default or other judgment may be entered against a debtor unless a copy of the contract or other document described in subdivision (b) of Section 1788.52, authenticated through a sworn declaration, has been submitted by the debt buyer to the court.

(c) In any action on a consumer debt, if a debt buyer plaintiff seeks a default judgment and has not complied with the requirements of this title, the court shall not enter a default judgment for the plaintiff and may, in its discretion, dismiss the action.

(d) Except as provided in this title, this section is not intended to modify or otherwise amend the procedures established in Section 585 of the Code of Civil Procedure.

1788.62. (a) In the case of an action brought by an individual or individuals, a debt buyer that violates any provision of this title with respect to any person shall be liable to that person in an amount equal to the sum of the following:

(1) Any actual damages sustained by that person as a result of the violation, including, but not limited to, the amount of any judgment obtained by the debt buyer as a result of a time-barred suit to collect a debt from that person.

(2) Statutory damages in an amount as the court may allow, which shall not be less than one hundred dollars (\$100) nor greater than one thousand dollars (\$1,000).

(b) In the case of a class action, a debt buyer that violates any provision of this title shall be liable for any statutory damages for each named plaintiff as provided in paragraph (2) of subdivision (a). If the court finds that the debt buyer engaged in a pattern and practice of violating any provision of this title, the court may award additional damages to the class in an amount not to exceed the lesser of five hundred thousand dollars (\$500,000) or 1 percent of the net worth of the debt buyer.

(c) (1) In the case of any successful action to enforce liability under this section, the court shall award costs of the action, together with reasonable attorney's fees as determined by the court.

(2) Reasonable attorney's fees may be awarded to a prevailing debt buyer upon a finding by the court that the plaintiff's prosecution of the action was not in good faith.

(d) In determining the amount of liability under subdivision (b), the court shall consider, among other relevant factors, the frequency and persistence of noncompliance by the debt buyer, the nature of the noncompliance, the resources of the debt buyer, and the number of persons adversely affected.

(e) A debt buyer shall have no civil liability under this section if the debt buyer shows by a preponderance of evidence that the violation was not intentional and resulted from a bona fide error, and occurred notwithstanding the maintenance of procedures reasonably adopted to avoid any error.

(f) An action to enforce any liability created by this title shall be brought within one year from the date of the last violation.

(g) Recovery in an action brought under the Rosenthal Fair Debt Collection Practices Act (Title 1.6C (commencing with Section 1788)) or the federal Fair Debt Collection Practices Act (15 U.S.C. Sec. 1692 et seq.) shall preclude recovery for the same acts in an action brought under this title.

1788.64. Any waiver of the provisions of this title is contrary to public policy, and is void and unenforceable.

SEC. 3. Section 581.5 is added to the Code of Civil Procedure, to read:

581.5. In a case involving consumer debt, as defined in Section 1788.2 of the Civil Code, and as regulated under Title 1.6C.5 (commencing with Section 1788.50) of Part 4 of Division 3 of the Civil Code, if the defendant debtor appears for trial on the scheduled trial date, and the plaintiff debt buyer either fails to appear or is not prepared to proceed to trial, and the court does not find a good cause for continuance, the court may, in its discretion, dismiss the action with or without prejudice. Notwithstanding any other law, in this instance, the court may award the defendant debtor's costs of preparing for trial, including, but not limited to, lost wages and transportation expenses.

SEC. 4. Section 700.010 of the Code of Civil Procedure is amended to read:

700.010. (a) At the time of levy pursuant to this article or promptly thereafter, the levying officer shall serve a copy of the following on the judgment debtor:

(1) The writ of execution.

(2) A notice of levy.

(3) If the judgment debtor is a natural person, a copy of the form listing exemptions prepared by the Judicial Council pursuant to subdivision (c) of Section 681.030, the list of exemption amounts published pursuant to subdivision (e) of Section 703.150, a copy of the form that the judgment debtor may use to make a claim of exemption pursuant to Section 703.520, and a copy of the form the judgment debtor may use to provide a financial statement pursuant to Section 703.530.

(4) Any affidavit of identity, as defined in Section 680.135, for names of the debtor listed on the writ of execution.

(b) Service under this section shall be made personally or by mail.

SEC. 5. Section 706.103 of the Code of Civil Procedure is amended to read:

706.103. (a) The levying officer shall serve upon the designated employer all of the following:

(1) The original and one copy of the earnings withholding order.

(2) The form for the employer's return.

(3) The notice to employee of earnings withholding order.

(4) A copy of the form that the judgment debtor may use to make a claim of exemption.

(5) A copy of the form the judgment debtor may use to provide a financial statement.

(b) At the time the levying officer makes service pursuant to subdivision (a), the levying officer shall provide the employer with a copy of the employer's instructions referred to in Section 706.127. The Judicial Council may adopt rules prescribing the circumstances when compliance with this subdivision is not required.

(c) No earnings withholding order shall be served upon the employer after the time specified in subdivision (b) of Section 699.530.

SEC. 6. Section 706.104 of the Code of Civil Procedure is amended to read:

706.104. Any employer who is served with an earnings withholding order shall:

(a) Deliver to the judgment debtor a copy of the earnings withholding order, the notice to employee of earnings withholding, a copy of the form that the judgment debtor may use to make a claim of exemption, and a copy of the form the judgment debtor may use to provide a financial statement within 10 days from the date of service. If the judgment debtor is no longer employed by the employer and the employer does not owe the employee any earnings, the employer is not required to make such delivery. The employer is not subject to any civil liability for failure to comply with this subdivision. Nothing in this subdivision limits the power of a court to hold the employer in contempt of court for failure to comply with this subdivision.

(b) Complete the employer's return on the form provided by the levying officer and mail it by first-class mail, postage prepaid, to the levying officer within 15 days from the date of service. If the earnings withholding order is ineffective, the employer shall state in the employer's return that the order

will not be complied with for this reason and shall return the order to the levying officer with the employer's return.

SEC. 7. Section 706.108 of the Code of Civil Procedure is amended to read:

706.108. (a) If a writ of execution has been issued to the county where the judgment debtor's employer is to be served and the time specified in subdivision (b) of Section 699.530 for levy on property under the writ has not expired, a judgment creditor may deliver an application for issuance of an earnings withholding order to a registered process server who may then issue an earnings withholding order.

(b) If the registered process server has issued the earnings withholding order, the registered process server, before serving the earnings withholding order, shall deposit with the levying officer a copy of the writ of execution, the application for issuance of an earnings withholding order, and a copy of the earnings withholding order, and shall pay the fee provided by Section 26750 of the Government Code.

(c) A registered process server may serve an earnings withholding order on an employer whether the earnings withholding order was issued by a levying officer or by a registered process server, but no earnings withholding order may be served after the time specified in subdivision (b) of Section 699.530. In performing this function, the registered process server shall serve upon the designated employer all of the following:

- (1) The original and one copy of the earnings withholding order.
- (2) The form for the employer's return.
- (3) The notice to the employee of the earnings withholding order.
- (4) A copy of the form that the judgment debtor may use to make a claim of exemption.
- (5) A copy of the form the judgment debtor may use to provide a financial statement.

(6) A copy of the employer's instructions referred to in Section 706.127, except as otherwise prescribed in rules adopted by the Judicial Council.

(d) Within five court days after service under this section, all of the following shall be filed with the levying officer:

- (1) The writ of execution, if it is not already in the hands of the levying officer.
- (2) Proof of service on the employer of the papers listed in subdivision (c).
- (3) Instructions in writing, as required by the provisions of Section 687.010.

(e) If the fee provided by Section 26750 of the Government Code has been paid, the levying officer shall perform all other duties required by this chapter as if the levying officer had served the earnings withholding order. If the registered process server does not comply with subdivisions (b), where applicable, and (d), the service of the earnings withholding order is ineffective and the levying officer is not required to perform any duties under the order and may terminate the order and may release any withheld earnings to the judgment debtor.

(f) The fee for services of a registered process server under this section shall be allowed as a recoverable cost pursuant to Section 1033.5.

SEC. 8. Section 706.122 of the Code of Civil Procedure is amended to read:

706.122. The “notice to employee of earnings withholding order” shall contain a statement that informs the employee in simple terms of the nature of a wage garnishment, the right to an exemption, the procedure for claiming an exemption, and any other information the Judicial Council determines would be useful to the employee and appropriate for inclusion in the notice, including all of the following:

(a) The named employer has been ordered to withhold from the earnings of the judgment debtor the amounts required to be withheld under Section 706.050, or such other amounts as are specified in the earnings withholding order, and to pay these amounts over to the levying officer for transmittal to the person specified in the order in payment of the judgment described in the order.

(b) The manner of computing the amounts required to be withheld pursuant to Section 706.050.

(c) The judgment debtor may be able to keep more or all of the judgment debtor’s earnings if the judgment debtor proves that the additional earnings are necessary for the support of the judgment debtor or the judgment debtor’s family supported in whole or in part by the judgment debtor.

(d) If the judgment debtor wishes a court hearing to prove that amounts should not be withheld from the judgment debtor’s earnings because they are necessary for the support of the judgment debtor or the judgment debtor’s family supported in whole or in part by the judgment debtor, the judgment debtor shall file with the levying officer an original and one copy of the “judgment debtor’s claim of exemption” and an original and one copy of the “judgment debtor’s financial statement.”

SEC. 9. The provisions of this act are severable. If any provision of this section or its application is held invalid, that invalidity shall not affect other provisions or applications that can be given effect without the invalid provision or application.