

California Brings Licensing and Oversight to Consumer Debt Collectors

On September 25, 2020, California Gov. Gavin Newsom signed S.B. 908, enacting the Debt Collection Licensing Act (DCLA). The DCLA will take effect on January 1, 2022, but proposed regulations will begin to roll out soon. The Act is one of several new consumer protection bills recently enacted in California, including the state's "mini-CFPB," otherwise known as the California Consumer Financial Protection Law, which was previously discussed [here](#).

As the name makes clear, the DCLA provides for the licensure, regulation, and oversight of entities seeking to collect consumer debts from California residents. Under the DCLA, debt collectors located in California and debt collectors outside of California seeking to collect debts within the state, regardless of office location, will be required to obtain a license. Licensure will require an application fee and a background check and, if approved, licensees will be required to file reports with the commissioner under oath, maintain a surety bond, and pay a pro-rata share of all costs and expenses necessary to administer the licensing function. The Act also provides for regulatory oversight by the commissioner of the Department of Financial Protection and Innovation (DFPI), including examination and reporting functions.¹ Debt collectors who submit their licensing application before January 1, 2022, will be permitted to operate while their application is pending.

The DCLA includes some notable exemptions. Specifically, the DCLA exempts most depository institutions, student loan servicers, licensees under the Residential Mortgage Lending Act, and others, from the licensing requirement. However, banks and credit unions should continue reading because, while they are exempt from the licensing requirements, such entities will nonetheless be subject to the DFPI's power to bring enforcement actions against all debt collectors for violations of existing debt collection laws or new debt collection regulations created under the Act. Although the DCLA has not yet gone into effect, the Legislative Council's Digest provides some insight into this function:

The bill would authorize the commission to enforce these provisions by, among other things, adopting regulations, performing investigations, suspending a license, issuing orders and claims for relief, and enforcing the provisions, as specified.²

California debt collection entities, and out-of-state entities seeking to collect debts owed by California residents, are already intimately familiar with the fact that they must operate differently within California than in other states. For example, while the federal Fair Debt Collection Practices Act defines "debt collector" as a person or entity attempting to collect a debt owed to another, the analogous Rosenthal Act in California expands that definition to also include first-party debt issuers.³ As a result, creditors attempting to collect debts on their own behalf in California, unlike in other states, must be cognizant of what they can and cannot do under the Rosenthal Act.

The DCLA now takes this one step further. In addition to the licensing requirements, the DCLA prohibits certain debt collection acts and practices. Many of the prohibited acts are already prohibited by the existing Rosenthal Act (e.g., not using profane language, not calling repeatedly to cause annoyance or harassment, etc.). However, the DCLA will introduce new requirements, including a mandate that all communications, in addition to the "mini-Miranda warnings" required by Rosenthal, will now need to contain the collector's California licensing number in at least 12 point font.

The DCLA also calls for the creation of a Debt Collection Advisory Committee. The committee will consist of seven members, one of which must be a consumer advocate. The members will serve two-year terms and will work to advise the commissioner on issues relating to debt collection acts



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Finally, the DCLA grants authority to the commissioner to adopt and enforce regulations regarding debt collection. Therefore, even though the Act does not go into effect until January 1, 2022, some of these proposed regulations should start rolling out over the next year as this new Act starts to take shape.

¹ Note that the text of the bill refers to the Department of Business Oversight (DBO). Other legislation recently passed, the California Consumer Financial Protection Law (CCFPL) rebranded the DBO as the Department of Financial Protection and Innovation.

² https://leginfo.legislature.ca.gov/faces/billTextClient.xhtml?bill_id=201920200SB908

³ Cal. Civ. Code § 1788, *et seq.*