

## Bill Under Consideration in California Would Apply Collections Law to Commercial Financing Providers

August 29, 2024 | [Eric D. Mulligan](#)

California's Senate Bill 1286 is under consideration in the Legislature. The bill, if passed, would expand the scope of the Rosenthal Fair Debt Collection Practices Act to cover the collection of certain commercial-purpose debts. The RFDCPA as it exists now covers only the collection of consumer-purpose debts. Unlike the federal Fair Debt Collection Practices Act and many state debt collection laws, the RFDCPA applies to a person collecting its own debts in its own name as well as to a person collecting debts on behalf of another or a person collecting its own debts under a different name. As a result, this legislation would impact providers of small business financing who service and collect their own transactions.

The current version of the RFDCPA applies to "consumer credit" and "consumer debt." SB 1286 would expand the RFDCPA to cover "covered commercial credit" and "covered commercial debt" as well. Those terms would each mean money, property, or their equivalent, due or owing or alleged to be due or owing from a natural person to a lender, a commercial financing provider, or a debt buyer by reason of a covered commercial credit transaction. The term "covered commercial credit transaction," in turn, would mean a credit transaction of \$500,000 or less primarily for other than personal, family, or household purposes. Note that these definitions are broad enough to cover sales-based financing transactions and leases as well as traditional loans. Note also that the bill would define "debtor" to include guarantors of covered commercial credit transactions.

The RFDCPA includes provisions closely resembling provisions of the federal FDCPA. For example, the RFDCPA prohibits certain types of threats and harassment of debtors. The RFDCPA also requires a debt collector to provide certain information to the debtor, such as the amount of the debt and the name of the creditor. However, the RFDCPA also includes provisions distinct from anything in the FDCPA. For example, the RFDCPA requires specific disclosures that a debt collector must provide if it attempts to collect a time-barred debt.

A violation of the RFDCPA is subject to the same remedies as a violation of the 2001 version of the FDCPA, including a lawsuit by the debtor. The RFDCPA also provides for statutory damages of between \$100 and \$1,000 per violation. Like the FDCPA, the RFDCPA provides a defense for a debt collector that can show that a violation was the result of a bona fide error and occurred despite procedures designed to prevent such an

error. If SB 1286 becomes law, it will take effect on January 1, 2025.

What would this bill mean for you if you provide financing to California businesses? First, don't assume that the law won't apply to you just because you originated a debt. The RFDCPA, unlike most debt collection laws, applies to a person collecting its own debt in its own name. Second, be aware that the bill would define "covered commercial credit transaction" broadly enough that any business that owes you money, regardless of the form of the transaction, might have rights under the RFDCPA if the original amount financed or lease amount was \$500,000 or less. If you determine (or your lawyer tells you) that some debts owed to you might be covered if the bill passes, then you'll need to see what new obligations the amended law imposes on you.

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