



California Enacts Fair Debt Buying Practices Act, Imposing New Documentation Requirements in Actions to Collect on Debts

Following unanimous votes in the State Assembly and Senate, California Governor Jerry Brown approved the enactment of the state's [Fair Debt Buying Practices Act \(S.B. 233\)](#). The Act, which will apply to debt sold or resold on or after January 1, 2014, regulates entities buying consumer debt for collection purposes, by—among other rules—imposing strict documentation requirements.

Debt buyers may not engage in written collection efforts unless they possess a copy of a contract or document evidencing the debtor's agreement to the debt and can demonstrate certain information concerning the debt. Specifically, they must be able to provide documentation showing the debt buyer's ownership of the debt (*i.e.*, its authority to collect the debt), the debt balance at charge-off, the date of default or last payment, and the names and addresses of the creditor at charge-off and of the debt buyer (and any other purchasers of the debt). Debt buyers must inform debtors of their right to request the required documentation and upon receiving a debtor's request must provide that information within 15 days. Additionally, written collection demands must notify debtors of the consequences of nonpayment—whether, in particular, the debt is time-barred and whether it may be reported to credit agencies under the Fair Credit Reporting Act.

The Act also requires that settlement agreements with debtors be “documented in open court or otherwise reduced to writing.” Debt buyers receiving payments from debtors must provide written receipts detailing the status of the outstanding debt, and where the debt buyer accepts a payment in full (or deems the debt satisfied), it must

provide a final statement to the debtor. The Act imposes stringent documentation requirements for debt buyers that choose to initiate litigation. Complaints must include a prescribed set of allegations concerning the debt, and no default or other judgment may be entered unless the debt buyer produces records, authenticated by sworn declaration, supporting each statement.

Perhaps most critically, the Act creates a private right of action allowing individuals to bring suit against debt buyers who engage in illegal collection practices. Courts may award actual damages, statutory damages, and attorney's fees and costs and even have the discretion to levy civil penalties of up to \$500,000 in class actions brought against debt buyers engaging in patterns of willful noncompliance with the law. Debt buyers can escape civil penalties if they can demonstrate that their violations were unintentional, resulted from bona fide error, and were made despite reasonable efforts to ensure compliance.

Given these risks, entities engaging in debt collection practices should modify and standardize their practices to ensure consistent compliance with the new California law.

For more information about the content of this alert, please contact [Michael Mallow](#) or [Michael Thurman](#).

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