**Outline of Presentation:**

**Commercial Accounts Under Threat:  Navigating the California Rosenthal Act and Defending Against the Impending Surge of Lawsuits**

**I. Introduction**

* Overview of the Rosenthal Act
* Purpose and Scope of Presentation

**II. Agenda**

* Background
* Impact on Commercial Debt
* Protections & Prohibitions
* Compliance Risks
* Operational Requirements

**III. Background on S.B. 1286**

* **Legislative Sponsor**: Dave Min (successor to Katie Porter)
* **Author’s Statement**:
	+ Challenges in small business lending
	+ Role of alternative lenders
	+ Increasing use of personal guarantees
	+ Need for dignified debt collection practices for small business owners
* **Critical Dates**:
	+ Effective date: July 1, 2025

**IV. How S.B. 1286 Affects Commercial Debt**

* **Critical Definitions**:
	+ **Covered Commercial Debt & Covered Commercial Credit**:
		- Debt owed by a natural person to a lender, commercial financing provider, or debt buyer
	+ **Covered Commercial Credit Transaction**:
		- Value ≤ $500,000
		- Acquired on credit for non-personal use
	+ **Inclusion of Personal Guarantors**:
		- Guarantors are now considered “debtors”
	+ **Application to Debt Collectors**:
		- Extends consumer debt protections to covered commercial debts
* **Exemptions**:
	+ Transactions over $500,000
	+ Certain commercial financing providers under § 22800 of the Financial Code
	+ No additional licensing required under the Debt Collection Licensing Act

**V. Protections Under the Act**

* **Required Actions ("Thou Shalt")**:
	+ File suits in proper county (debtor’s residence or business location)
		- Impacts Venue Provisions
	+ Provide special notices for time-barred debts
	+ Notify debtor upon assignment of delinquent debt
	+ Investigate and take corrective steps in identity theft cases
		- Not just natural persons

**VI. Prohibitions Under the Act**

* **General Conduct ("Thou Shalt Not")**:
	+ NO False threats, harassment, or misleading communications
	+ NO Call recording without disclosure (CA is a two-party consent state)
	+ NO Communication with represented debtors
	+ NO Calling Unreasonable frequency of communication
	+ NO Abusing the legal process
* **Specific Prohibited Actions**:
	+ **False Threats**:
		- Threats of violence, false accusations, or legal action not actually intended
		- False claims about debt-related consequences (e.g., arrest, wage garnishment)
	+ **Harassment**:
		- Obscene language, excessive phone calls, or undisclosed caller identity
		- Using misleading aliases
	+ **Shaming Debtors**:
		- Publicizing debtor lists ("deadbeat lists") or embarrassing communications
	+ **Misleading Practices**:
		- False claims of attorney/government affiliation
		- Misrepresenting debt collection fees, legal proceedings, or credit reporting
	+ **Abuse of Process**:
		- Improper venue selection for lawsuits
		- Filing suits without proper service of process
		- Simulating judicial processes

**VII. Danger**

* **Potential Liability for Violations**
* **California Historically has an Expansive Interpretation**
* **Tourgeman v. Collins Financial Servs., Inc. (9th Cir. 2014)**:
	+ Misidentification of original creditor in collection letters
* **Slenk v. Transworld Systems, Inc. (9th Cir. 2001)**:
	+ Commercial debt reclassified as consumer debt based on personal use
* **Giotta v. Ocwen Loan Servicing, LLC, 706 F. App'x 421, 422 (9th Cir. 2017)**
	+ Loan Servicer is an assignee of under a mortgage loan agreement

**VIII. Compliance and Operational Requirements**

* Ensuring adherence to new legal requirements
* Risk mitigation strategies for debt collectors
* Maintaining transparency in communication and collection practices
* Training – the Pull from Commercial only to Consumer Protections
	+ Consequences of non-compliance for an agency.
	+ The phone number you are calling is important.
	+ What the agency’s role is with the clients.
	+ Agency sales reps working with agency collectors.

**IX. Conclusion & Questions**

* Recap of key takeaways
* Open floor for questions
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