**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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