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*COMMERCIAL  
ACCOUNTS UNDER  
THREAT: NAVIGATING  
THE CALIFORNIA  
ROSENTHAL ACT AND  
DEFENDING AGAINST  
THE IMPENDING  
SURGE OF LAWSUITS*

*Presented by:*

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**Date:** May 17, 2025



# **BACKGROUND ON S.B. 1286 AMENDING THE ROSENTHAL FAIR DEBT COLLECTION PRACTICE ACT**

## **Legislative Sponsor:**

- Dave Min

## **Reasons per Author:**

- Challenges in small business lending
- Role of alternative lenders
- Increasing use of personal guarantees
- Need for dignified debt collection practices for small business owners

## **Effective July 1, 2025**

- SB 1286's amendments to the Rosenthal Act will apply only to commercial credit or debts "entered into, renewed, sold, or assigned on or after July 1, 2025."

- To prohibit debt collectors from engaging in unfair or deceptive acts or practices in the collection of consumer debts and small business debts and **to require debtors to act fairly in entering into and honoring those debts, as specified in this title.**

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# DEFINITIONS UNDER CAL. CIVIL CODE SEC. 1788.1

The diagram consists of two downward-pointing chevrons. The top chevron is red and labeled 'Debtor'. The bottom chevron is purple and labeled 'Covered commercial debt and Covered commercial credit'. A vertical line is positioned to the left of these chevrons.

Debtor

- A natural person who owes a debt and, **in relation to a covered commercial debt or covered commercial credit**, a natural person who *guarantees* a debt owed to another person or entity.
- Commercial debt owed by a company or organization, and that is not guaranteed by a natural person would not fall within the ambit of the amended Rosenthal Act.

Covered commercial  
debt and Covered  
commercial credit

- Money due, or owing or alleged to be due, or owing from, a natural person to a lender, a commercial financing provider (as that term is defined under California's 2018 commercial finance disclosure law), or a debt buyer, by reason of **one or more covered commercial credit transactions**, provided that the **total amount of all covered and non-covered transactions** due and owing does not exceed **\$500,000**.

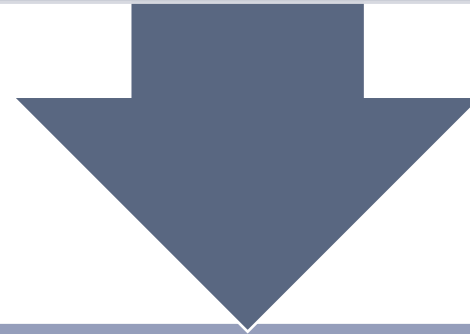
# HOW S.B. 1286 AFFECTS COMMERCIAL DEBT

Extends consumer debt protections to guarantors of commercial debts and credit if a natural person:

Debt  $\leq$  \$500,000

Non-personal use

Personal Guarantee:  
Guarantors now  
considered “debtors”



Application to Debt Collectors, Attorneys, *and* Original Creditors



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# UNRESOLVED ISSUES

A covered debt includes money owed from a wide range of transactions and is not limited merely to loans or credit transactions. Real-estate-secured debt is also **not** expressly excluded from the amended Rosenthal Act. Under SB 1286, a debt derives from a covered commercial transaction if it was incurred primarily for a purpose other than personal, family, or household purposes.

It is not clear whether a sole proprietorship would qualify as a debtor covered by the amended statute and these new protections.

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# PROTECTIONS UNDER THE ACT

- **Requirements:**

- Provide a statement to a debtor containing a description of the debt and the debtor's rights prior to attempting to collect on their debt.
  - File suits in proper county
    - Provides that a judicial proceeding to collect a commercial debt may be brought in
      - the county where the debt was incurred,
      - the county where the debtor resides, or
      - the county where the entity whose debt is guaranteed by a personal guarantor is located.
    - Forum selection clauses are unenforceable
    - Recommended to follow this requirement when collecting any debt that was (i) incurred in California; (ii) guaranteed by a personal guarantor who resides in California; or (iii) owed by a debtor that resides in California.
  - Provide special notices for time-barred debts
  - Notify debtor upon assignment of delinquent debt
  - Investigate and correct identity theft cases
    - Must stop collections once an alleged debtor provides the collector with evidence they were a victim of identity theft.
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# GENERAL PROHIBITIONS UNDER THE ACT

- Using threatening language with debtors or threatening to take unlawful conduct to collect a debt;
  - Using obscene or profane language in debtor communications or harassing the debtor;
  - Communicating with a debtor's employer or other third parties;
  - Making false or misleading representations to debtors;
  - Collecting impermissible fees from debtors or collecting time-barred debts;
  - Failing to make disclosures to debtors regarding the debt, creditor, and debt collector;
  - No recording calls without disclosure (*CA is a two-party consent state*); and,
  - No excessive calls or legal abuse
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# DIFFERENCES FROM FDCPA



## No Mini-Miranda Warning:

FDCPA §1692e(11) requires debt collectors to disclose that they are attempting to collect a debt and that any information obtained will be used for that purpose — aka the “mini-Miranda.”

Because §1788.17 (which includes §1692e(11)) and § 1812.700 is limited to consumer debts, **commercial debt collectors don’t have to include the mini-Miranda.**



## No 30-Day Validation Notice:

FDCPA §1692g requires collectors to send a written notice within 5 days of initial communication, informing the debtor of their right to dispute the debt.

Since §1788.17 applies only to consumer debt, **no “first notice” or 30-day validation notice is required.**

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# COMPLIANCE & OPERATIONAL REQUIREMENTS



## SCRIPTS

- **Collector Scripts**
- **Sales Scripts**

## NEW NOTICE REQUIREMENTS

Time Barred Debt Notice  
Requirements

First Written Communication  
Requirements

Foreign Language  
Requirements

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# NEW PROCESSES



VALIDATION  
PROCESS



IDENTITY THEFT  
PROCESS



INTERNATIONAL  
CONCERNS

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# COMPLIANCE & OPERATIONAL REQUIREMENTS

- **Training needs:**
  - Shift from commercial focus to consumer protections
  - Consequences of non-compliance within the company
  - Effective agency-client communication



## PENALTIES

Actual damages

Statutory damages

Fees and costs

Class actions?



## CALIFORNIA: CASES WITH A CAUSE

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*Young v. Midland Funding, LLC* (2023) 91 Cal.App.5th 63 [308 Cal.Rptr.3d 80]- a debt collector can be held liable for making a false representation in connection with debt collection, even if the collector did not know the representation was false.

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*De Alba v. Velocity Invs., LLC* 2024 U.S.Dist.LEXIS 147995– The client is vicariously liable for acts of its attorney (It is not necessary to prove that the principal exercised his right of control or actually supervised the work of the agent, so long as the existence of the right is established)

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*Tourgeman v. Collins Financial Servs., Inc.* , 755 F.3d 1109 (9<sup>th</sup> Cir. 2014). Consumer had U.S. Const. Art. III standing to assert claims based on the incorrect information misidentifying the consumer's original creditor in a series of collection letters that he did not receive

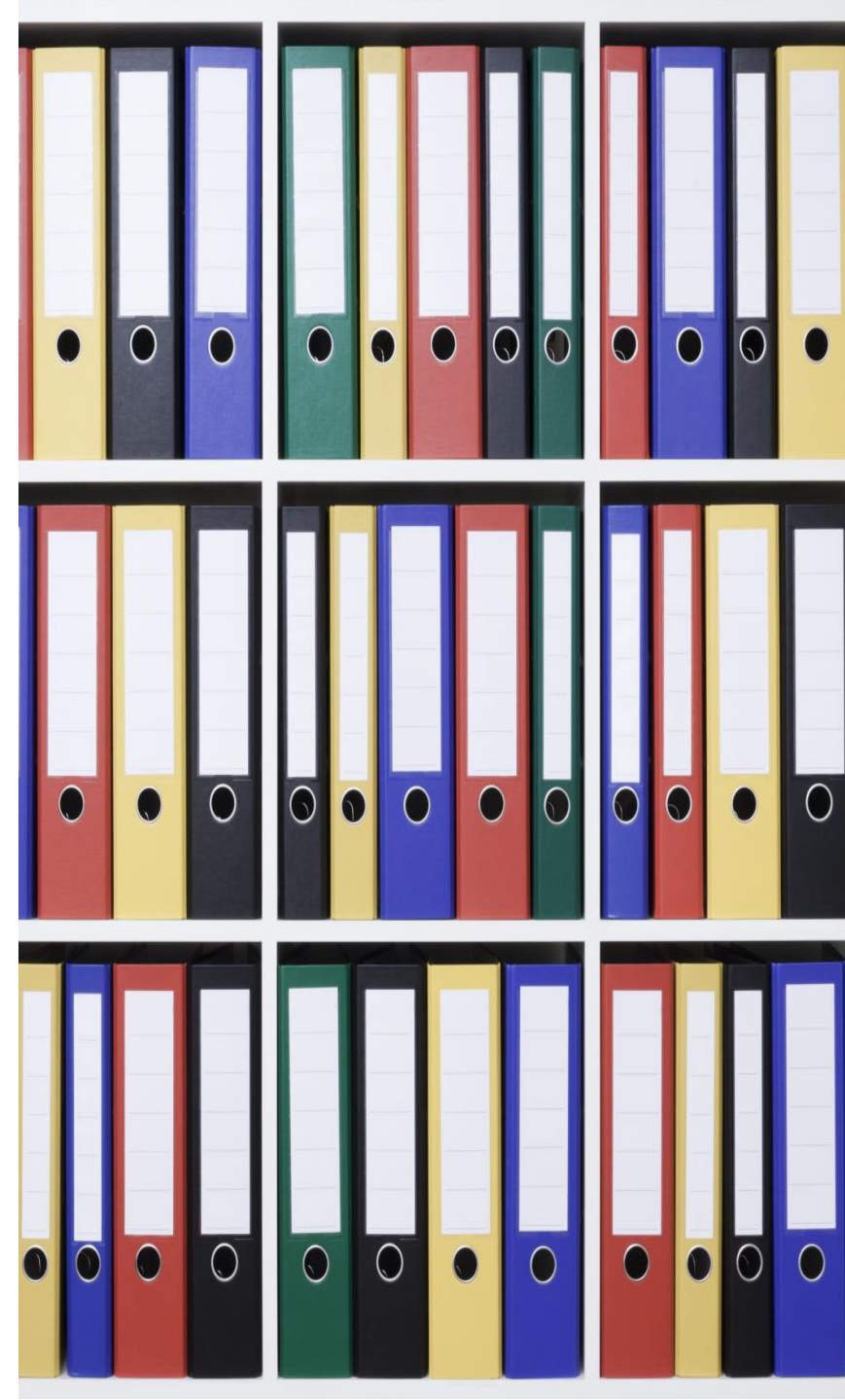
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*Slenk v. Transworld Systems, Inc.*, 236 F.3d 1072 (9<sup>th</sup> Cir. 2001). 9<sup>th</sup> Circuit ruled that debt for commercial backhoe bought by a builder but used only in building his family home and driveway could be “consumer debt” as the use was personal .

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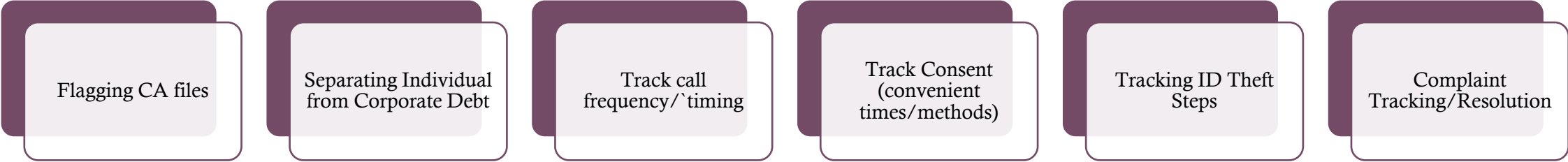
## RISK MITIGATION – REVIEW POLICIES, DOCUMENTS, AND PROCESSES

- **POLICIES:** reflecting the changes
- **DOCUMENTS:** all letters, emails, voicemails, and scripts
- **PROCESS:**
  - INTAKE – identifying affected accounts
  - INTAKE - Information you Receive
  - Statute of Limitations Process
  - Identity Theft Allegation Process
  - Complaint/Dispute Tracking Process



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# RISK MITIGATION – REVIEW CASE MANAGEMENT SYSTEM



Flagging CA files

Separating Individual  
from Corporate Debt

Track call  
frequency/^timing

Track Consent  
(convenient  
times/methods)

Tracking ID Theft  
Steps

Complaint  
Tracking/Resolution

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# RISK MITIGATION – REVIEW VENDORS

Contracts

Right to Audit

Proof of Following the Rules on file by file basis

Indemnification

What is Remediable v. Zero Tolerance

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RISK  
MITIGATION

TRAIN STAFF

ANNUALLY

new rules

processes

case management changes

tracking

# RISK MITIGATION – AUDIT



Determine the cadence  
– monthly/every 6  
months/annually

Create Checklist –  
every month 5% or 5,  
whichever is greater



Inside/third party?



Annual audit correspondence and scripts.



Log Versions and changes.



# WHY IS THIS?



Right to Cure

**BONA FIDE  
ERROR  
DEFENSE**

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# BUT IT IS STILL CALIFORNIA



**Even though statute says:**

“violation was not intentional and resulted notwithstanding the maintenance of procedures reasonably adapted to avoid any such violation.”



**The COURTS have read into it:**

Liability when the debt collector failed to demonstrate that it had procedures reasonably adapted to avoid the **specific** error

# QUESTIONS RECEIVED – LOTS OF GREY

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Can we send a copy of the complaint?

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Do we need to send a letter like the Model B-1 Form?

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Do I need to have copies of the contract?

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Can I still call the office?

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Can we say “may file arb, seek bank garnishment, send to collections”?

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What’s the deal with the requirement for the postal address?

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And more....

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# END OF THE DAY – YOUR RISK TOLERANCE



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# THANK YOU

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