

Assembly Bill No. 1526

CHAPTER 247

An act to amend Section 1788.14 of the Civil Code, and to amend Section 337 of the Code of Civil Procedure, relating to debt collection.

[Approved by Governor September 5, 2018. Filed with Secretary of State September 5, 2018.]

LEGISLATIVE COUNSEL'S DIGEST

AB 1526, Kalra. Debt collection.

The Rosenthal Fair Debt Collection Practices Act regulates the practice of debt collection and the conduct of debt collectors, as defined. The act prohibits specified conduct by a debt collector in connection with the collection or attempted collection of a consumer debt. The act provides for enforcement by means of civil penalties and damages, as specified.

This bill would prohibit a debt collector from sending a written communication to a debtor attempting to collect a time-barred debt without providing specified written notices stating that the debtor may not be sued for the debt, but that the debt, depending on its age, may be reported as unpaid to credit reporting agencies, as specified.

Existing law prescribes periods for commencement of various actions. Among others, an action must be commenced within 4 years if the action is to recover (1) upon a book account whether consisting of one or more entries; (2) upon an account stated based upon an account in writing, but the acknowledgment of the account stated need not be in writing; or (3) a balance due upon a mutual, open and current account, the items of which are in writing. Existing law provides, however, that where an account stated is based upon an account of one item, the time shall begin to run from the date of the item, and where an account stated is based upon an account of more than one item, the time shall begin to run from the date of the last item.

This bill would specify that when the 4-year period in which an action must be commenced has run, no person may bring suit or initiate an arbitration or other legal proceeding to collect the debt. This bill would provide that the period may be extended only in specified circumstances.

The people of the State of California do enact as follows:

SECTION 1. Section 1788.14 of the Civil Code is amended to read:

1788.14. No debt collector shall collect or attempt to collect a consumer debt by means of the following practices:

(a) Obtaining an affirmation from a debtor of a consumer debt which has been discharged in bankruptcy, without clearly and conspicuously disclosing to the debtor, in writing, at the time such affirmation is sought, the fact that the debtor is not legally obligated to make such affirmation;

(b) Collecting or attempting to collect from the debtor the whole or any part of the debt collector's fee or charge for services rendered, or other expense incurred by the debt collector in the collection of the consumer debt, except as permitted by law; or

(c) Initiating communications, other than statements of account, with the debtor with regard to the consumer debt, when the debt collector has been previously notified in writing by the debtor's attorney that the debtor is represented by such attorney with respect to the consumer debt and such notice includes the attorney's name and address and a request by such attorney that all communications regarding the consumer debt be addressed to such attorney, unless the attorney fails to answer correspondence, return telephone calls, or discuss the obligation in question. This subdivision shall not apply where prior approval has been obtained from the debtor's attorney, or where the communication is a response in the ordinary course of business to a debtor's inquiry.

(d) Sending a written communication to a debtor in an attempt to collect a time-barred debt without providing the debtor with one of the following written notices:

(1) If the debt is not past the date for obsolescence set forth in Section 605(a) of the federal Fair Credit Reporting Act (15 U.S.C. Sec. 1681c), the following notice shall be included in the first written communication provided to the debtor after the debt has become time-barred:

"The law limits how long you can be sued on a debt. Because of the age of your debt, we will not sue you for it. If you do not pay the debt, [insert name of debt collector] may [continue to] report it to the credit reporting agencies as unpaid for as long as the law permits this reporting."

(2) If the debt is past the date for obsolescence set forth in Section 605(a) of the federal Fair Credit Reporting Act (15 U.S.C. Sec. 1681c), the following notice shall be included in the first written communication provided to the debtor after the date for obsolescence:

"The law limits how long you can be sued on a debt. Because of the age of your debt, we will not sue you for it, and we will not report it to any credit reporting agency."

(e) For purposes of this section, "first written communication" means the first communication sent to the debtor in writing or by facsimile, email, or other similar means.

SEC. 2. Section 337 of the Code of Civil Procedure is amended to read:
337. Within four years:

(a) An action upon any contract, obligation or liability founded upon an instrument in writing, except as provided in Section 336a; provided, that the time within which any action for a money judgment for the balance due upon an obligation for the payment of which a deed of trust or mortgage with power of sale upon real property or any interest therein was given as

security, following the exercise of the power of sale in such deed of trust or mortgage, may be brought shall not extend beyond three months after the time of sale under such deed of trust or mortgage.

(b) An action to recover (1) upon a book account whether consisting of one or more entries; (2) upon an account stated based upon an account in writing, but the acknowledgment of the account stated need not be in writing; (3) a balance due upon a mutual, open and current account, the items of which are in writing; provided, however, that if an account stated is based upon an account of one item, the time shall begin to run from the date of the item, and if an account stated is based upon an account of more than one item, the time shall begin to run from the date of the last item.

(c) An action based upon the rescission of a contract in writing. The time begins to run from the date upon which the facts that entitle the aggrieved party to rescind occurred. Where the ground for rescission is fraud or mistake, the time shall not begin to run until the discovery by the aggrieved party of the facts constituting the fraud or mistake. Where the ground for rescission is misrepresentation under Section 359 of the Insurance Code, the time shall not begin to run until the representation becomes false.

(d) When the period in which an action must be commenced under this section has run, a person shall not bring suit or initiate an arbitration or other legal proceeding to collect the debt. The period in which an action may be commenced under this section shall only be extended pursuant to Section 360.