

Collector's Ink

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PRESIDENT'S MESSAGE | CINDY YAKLIN



Suffice to say, this may be my favorite time of year. Spring is in the air, everything is in bloom, the weather is getting warmer and the days are getting longer, but most importantly, Legislative Day in Sacramento is finally here. I

will never forget my very first Legislative Day in Sacramento. I was young and nervous, and we appeared in large numbers as an association, met in hot and very small offices to communicate our message. I shadowed with Tom Ferris that day, a past president of CAC. I soon realized that I may have just found something of an unknown passion for the legislative process and wanted to continue advocating for our industry in an attempt to dispel the myths about collection agencies and the value-added work that we perform for consumers and our clients.

REGISTER FOR THE CAC VIRTUAL LEGISLATIVE DAYS!

MAY 18 FROM 10 AM - 4 PM

MAY 19 FROM 8:30 AM - 12:30 PM

Now is your time to educate legislators about your industry and how their votes can impact your businesses. It's vital for the members of this association to have an impact on the narrative being told at the capitol. The best way for that to happen is to register and have face to face conversations with influential leaders in the capitol. It's your right as a business owner and your duty as a CAC Member.

[REGISTER HERE](#)

After serving as the Legislative Chair for CAC for many years we now find ourselves in a position that is a bit unfamiliar. Our association has introduced AB 1089 with the help and support of Assemblyman Grayson that will aim to increase the transparency of Credit Service Organizations in California. Over two years ago at our annual convention we heard the message from our membership and the need to address the abusive practices of CSO's acting on behalf of consumers. All eyes are now upon those of us here in California to succeed.

Last week we successfully cleared our first hurdle in accomplishing our goal. With the assistance of our legislative team and more conference calls and virtual meetings than I can count, AB 1089 passed the Assembly Banking and Finance committee. This is just the first step in a long process and that is where I ask for your help. Attending the Legislative Day on May 18 and 19 is more important this year than in previous years. The meetings will be virtual which will aid in making the time commitment from your offices or remotely. Our legislative team, led by our highly respected lobbyist, Cliff Berg, will guide you through the process and review the talking points so our message to legislators is clear and uniform. CAC has been on a journey to implement needed changes to the practices of the CSO's and their tactics but it cannot be accomplished without the strength and unity of the California membership as a whole.

If you have any questions regarding Legislative Day, the process, or how the meetings will be structured, please reach out to me. I would be more than happy to assist in any way I can and I look forward to seeing you all on May 18.



LEGISLATIVE ADVOCATE UPDATE | CLIFF BERG

The California Association of Collectors has been engaged in a wide variety of legislative and regulatory issues since the beginning of the year. The California Legislature began a new Legislative Session despite restrictions imposed on the legislative process by the COVID pandemic. What has become a broad theme to the year, the Governor's January budget proposal outlines how state government can best respond to the public health, employment and economic challenges created by the pandemic. The Governor called on the State Legislature to enact a number of COVID responses, which he had labeled "early action items". These included stimulus checks for low income working Californians, grants for small businesses and non-profits, suspension of certain business fees for industries such as restaurants, funding for safe opening of schools and protection for California renters from eviction or nonpayment of rent. The latter issue has had an impact on the assignment or sale of renter debt by property owners. SB 91, in addition to extending emergency limits on eviction, unlawful detainer or lawsuits over COVID affected residential renters, limits the sale or assignment of any unpaid COVID-19 rental debt between March 1, 2020 and June 30, 2021. The limitation expires July 1, 2021. SB 91 also contains a prohibition on the sale or assignment of any unpaid COVID-19 rental debt between March 1, 2020 and June 30, 2021 of any person who would have qualified for rental assistance funding under the federal Consolidated Appropriations Act where the person's household income is at or below 80 percent of the area median income for the 2020 calendar year. These bills were pushed through the Legislature by the Governor and Legislative Leadership without public input or debate. Tom Griffin has been working with

Members and legislative staff to clarify the language. We are trying to start a conversation with Apartment owners regarding tweaks or fixes if they try to extend these provisions again.

Since the Legislature finished with working on the Governor's early action plan, it is turning its attention to the thousands of bills introduced this year. The end of February was the deadline to introduce bills for this year's session and April and early May are the critical period for hearing bills in the first policy committee. CAC has sponsored a bill, AB 1089 this session to address problems for consumers and creditors created by credit repair organizations. AB 1089 is authored by Assemblyman Tim Grayson (D-Concord), who carried this bill last year for CAC. It was AB 699 in the 2019-20 Legislative Session. AB 699 passed the Assembly but was hung up in the Senate due to a COVID shortened hearing schedule. Last year's bill was opposed by Lexington Law, the Assembly Banking Committee on April 15th.

CAC has identified a number of bills introduced this year that might impact members. In the area of debt collection, we are seeing a disturbing trend partially fueled by the reaction to the economic consequences of the pandemic to absolve debtors of responsibility for their financial obligations. Some ideas are well intentioned but not thought through as to the overall consequences. One bill of concern this year was SB 373 (Min), which was recently amended to stop the collection of debt owed by victims of economic abuse. While certain categories mentioned in the bill such as victims of domestic abuse need protection from abuse, the bill would have put the burden not on the abuser but the uninvolved creditor. We have had good discussions with the author and expect he

will be amending the bill to include evidentiary standards to protect creditors and narrowing the focus.

Senator Wieckowski returned with a new bill SB 531 that would extend exiting disclosure and validation requirements that were enacted on debt buyers in SB 233 (Leno) Chapter 64, Statutes of 2013 to debt collectors. The bill's sponsors, the Public Law Center seems to be saying that certain debt buyers are claiming that they are debt collectors to avoid the provisions of the Leno bill. Their answer is to extend SB 233 (Leno) Chapter 64, Statutes of 2013 to everyone. We have been talking with the author's office and the staff of the Senate Banking Committee regarding our concerns. The Committee recommended a number of amendments based on problems with the bill that we pointed out, which were adopted at the April 7th Committee hearing. We are still seeking additional changes and the bill now goes to the Senate Judiciary Committee.

Assemblyman Grayson also introduced a bill that would expand the ability of victims of identity theft to document the crime. As amended, AB 430 (Grayson) would allow the victim to provide a copy of a Federal Trade Commission Identity Theft Affidavit signed under penalty of perjury in addition to a police report.

There are a large number of bills introduced this year on financial services, privacy, data security, and banking. There are new bills on student loan services, debt settlers and proraters.

We continue to work with the State Department of Financial Protection and Innovation on implementing the licensing bill. We have a busy year ahead.

EXECUTIVE DIRECTOR | KIM ANDOSCA

THANK YOU for your membership in the California Association of Collectors! And it's once again time to build our PAC fund for 2021.

As you read the updates from your CAC leadership, please consider adding your additional support to the imperative CAC PAC fund.

A pledge of \$500 will go a long way to win decisively for our industry. Here's where the money will go:

- **First priority:** The Legislature is in a major state of change. Members are leaving and new Members have been elected ... a record number in California. Before California passed term limits, that was not the case. A small interest group like CAC must move quickly to educate new Members on our industry, and probably defuse long-held incorrect impressions of the collection industry. Your contributions assure we will meet them even before they arrive in Sacramento early next year.
- **Second priority:** A small group like ours needs to have the leadership of both Houses know us and our issues. We do not have the capacity to be a major player with the Legislators, so we are left to be known by those Legislators who can influence others to help us. This means the Leadership of both Houses as well as Committee Chairs and Vice Chairs.

These are real, tangible benefits that will help each and every collection agency in California!

By providing just \$500 to CAC's PAC Fund you will become an integral part of the history-making team that continues to protect the California Collection Industry.

We are asking you and all of your colleagues in the industry to write a check for \$500 (or any amount you can provide) to the CAC PAC Fund. You know where the money will go and what it will do. Now, it's up to you.

Contributions in any amount may also be made by credit card by clicking here.

Thank you for your generous help!



GENERAL COUNSEL | TOM GRIFFIN

A NEW YEARS...NEW BILLS

We are all glad that 2020 is in our rear view. A government-mandated shutdown, quarantining, transitioning to an at-home work force, distance learning, masks, social distancing, working from home, testing and retesting, illness and more. 2020 tested us all in a way we could not have imagined. And although we are not yet in the clear, we see progress and have hope for a return to normal or something close to it.

This author hopes that you were able to navigate and survive 2020 and that 2021 brings you a renewed joy and prosperity.

The new year marked the beginning of a new two-year legislative session at the Capitol. And, as always, the legislators have been busy introducing new bills. Here is a summary of a few of the bills that affect the collection industry.

AB 1089

This bill was AB 699 in the prior legislative session. Sponsored by CAC and introduced by Assembly Member Tim Grayson, this bill aims to update the Credit Repair Act of 1984 and to require more transparency and accountability from credit repair companies. If this bill becomes law, it will impose new requirements and restrictions (including limits on frivolous disputes) on credit repair agencies such as Lexington Law. One significant change from AB 699 is that AB 1089, if signed into law, will require credit repair companies to be licensed by the Department of Financial Innovation and Protection.

In the last two-year session, AB 699 (the prior version of AB 1089) was making great progress before the pandemic brought the committee meetings and legislative sessions to a screeching halt. Once the Legislature resumed operations, the shortened calendar did not allow for all bills to be heard. Mr. Grayson pushed for the AB 699 to be considered, but ultimately the leadership determined that bills relating to budget matters and providing economic relief to those impacted by COVID-19 had priority. So, AB 699 was shelved. Mr. Grayson, the author of AB 1089, is now the

chairperson of the Banking and Finance Committee. This should prove to be helpful in CAC's efforts to have AB 1089 land on the Governor's desk.

SB 531

Sponsored by various legal aid groups and introduced by our good friend (cue up the sarcasm) Senator Robert Wieckowski, this bill seeks to impose some of the mandates in the Fair Debt Buying Practices Act (FDBPA) on debt collectors when working assigned debt, rather than when working only debt purchased by a debt buyer. The sponsors and author want debt collectors to have certain information before contacting a consumer, to provide certain documentation and information to a consumer upon request and to include certain allegations in any complaints filed against consumers.

As introduced, this bill sought simply to expand the definition of debt buyer to include debt collectors. The drafters now realize that they missed the mark in doing that. We all know and appreciate the differences between debt collectors and debt buyers. Others – including the drafters of this bill – often do not understand the differences.

As a result of a number of phone conferences and email exchanges, the drafters are beginning to understand the differences between the two groups and they are rethinking their approach. To be clear, they are not ceasing their efforts. However, they now realize that simply dropping “debt collector” into the FDBPA's definition of debt buyer is inappropriate.

SB 91

The Governor signed SB 91 on January 29, 2021, which became effective immediately. SB 91 extended and expanded the COVID-19 Tenant Relief Act of 2020. The bill was part of a larger economic response and package negotiated between the Governor and Legislature. It passed quickly without public input or negotiations.

Under the SB 91 and the Tenant Relief Act, landlords are prevented from assigning or selling certain unpaid residential rental debt to



collection agencies and others, as follows.

- Unpaid residential debt from March 1, 2020, through June 30, 2021, cannot be assigned or sold until July 1, 2021. (This period may be further extended by the Legislature.)
- Unpaid residential debt from March 1, 2020, through June 30, 2021, may not ever be assigned or sold if the renter would have qualified for rental assistance under the new State Rental Assistance Fund (State Fund). A renter qualifies if her/his household income is at or below 80% of the area median income for the 2020 calendar year.

While the delay in the first restriction above may be challenging, the absolute prohibition described in the second restriction is troubling and may serve as a minefield for potential liability.

The State Fund is being established to implement the federal Consolidated Appropriations Act (“CSA”) and administer the funds from the CSA. The goal of the rent-related portions of the CSA is to entice residential landlords to accept – from the State Fund - 80% of the rent due from eligible renters. In return, the remaining, or last, 20% of the rent will be waived. So, as envisioned by the supporters of SB 91, if the last 20% should be waived, then that it should not be assigned or sold. This prohibition on the sale or assignment of rental debt due from eligible renters was designed to be a further enticement for residential landlords to apply for the rent reimbursement from the State Fund.

SB 908

As we all know, this bill, signed into law in 2020, requires the DFPI to license debt collectors starting January 1, 2022. As the DFPI prepares to administer the licensing program, it has submitted its anticipated budget for this program to the Legislature. CAC’s Legislative team has been watching this and has participated in numerous phone conferences with the Commissioner and staff members of the DFPI and others regarding the proposed

budget. CAC has made the case that the number of anticipated staff members to administer the licensing program is overstated. The DFPI predicts as many as 7,000 licensees and CAC and others peg this number as closer to 2,000 to 2,500.

The ultimate number of licensees is important since the annual cost of administering the licensing program is passed through to the licensees in an annual assessment. Having a bloated staff will drive up the cost to our members. CAC is committed to continue to push on this issue.

REGISTER FOR THE NEXT CAC WEBINAR!

COMMUNICATION CHANNELS - OPTIONS AND CONSIDERATIONS POST-CFPB RULE IMPLEMENTATION

JUNE 2 FROM 10:00 - 11:00 AM

Description: Mike Frost will provide an overview of the CFPB rule related to the use of various communication channels, including e-mail, text messaging, social media, IVA, etc. and the impact on collections and recovery.

Speakers: Mike Frost, Partner at Malone Frost Martin PLLC

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California Business Bureau
mcheek@cbbinc.com

Kimberly Andosca, Executive Director

Office Address: Calif. Assn. of Collectors
One Capitol Mall, Suite 800
Sacramento, CA 95814
Office Phone: 916-929-2125
kandosca@amgroup.us

Tom Griffin – General Counsel

tgriffin@hsmlaw.com

Cliff Berg – Legislative Advocate

cberg@govadv.com