Collector's Ink

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PRESIDENT'S MESSAGE | CINDY YAKLIN

Well…it sure has been some kind of a year. Fall is in the air and as we all enjoy the fall colors, football, and pumpkin spice lattes, our industry is ramping up for the most significant changes we have since the Fair Debt Collection Practices Act of 1977 was signed into law. Our day-to-day operations are now filled with daily webinars and a seemingly endless list of questions on how we are to dissect Reg F which, if you haven't reviewed the cliff notes version, is actually almost 1,000 pages in text. Oh, and I would be remiss if I didn't mention that at the same time, all of us within California also have to navigate a new licensure requirement and additional rules from the DFPI.

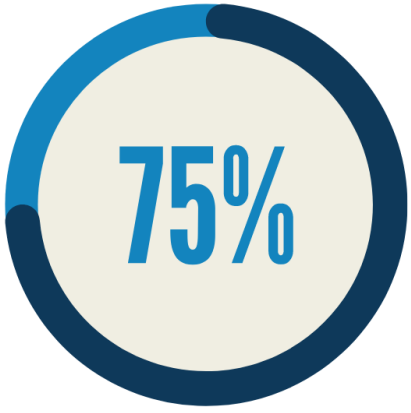
I visited with my father the other day who has been in the industry for over 50 years now and has recently retired, and he asked me, "so how is business going"? I responded the only way I knew how…I laughed.

Our industry and the work we do has never been 'easy,' but there is a reason we have all chosen to remain and continue to stand strong. We inherently believe the work we perform on behalf of our clients and consumers provides a value-added benefit and is vital to the overall economy and the credit industry. I have always been a glass-half-full kind of a person, and I do believe there may be some true benefits to the CFPB rules outlined in Reg F. We will now have the option to communicate with consumers electronically and via text message. We have clarity on call frequency, a template for written communication, and guidance on a limited-contact message to highlight a few. Although the next year may be filled with uncertainty as we implement these new guidelines, change is inevitable, and I remain hopeful.

The task before us may seem daunting.How are we supposed to write policies, execute across our organizations, consult with each and every one of our clients, train our staff, AND continue to recover money each and every day? Lean on CAC.We are here to help. For those of us who manage smaller agencies, it may be difficult to navigate all the nuances and attendance at the annual conference this year will undoubtedly be one of the most important investments in this pivotal year. We are bringing the industry experts to you, in person, so that CAC members may gain insight from our panels on the interpretation of Reg F, implementation, and how to navigate our new licensing application process.Although virtual presentations may be helpful, I firmly believe the opportunity to interact with colleagues in a think-tank format and hear first-hand responses to situational questions the group will raise on these subjects is invaluable.

If you have not already done so, I encourage you to review the agenda for the conference and register today and I look forward to seeing all of you at CAC's 104th Annual Conference in Rancho Mirage!

CAC PAC FUND



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LEGISLATIVE ADVOCATE UPDATE | CLIFF BERG

The California Legislature recessed Friday, September 10 ending the first year of the two-year legislative session. Before recessing there was much backroom discussion of last-minute legislation that would have required workers to either be vaccinated or get weekly coronavirus testing. One bill by Assemblywoman Buffy Wicks would have required all workers to either receive the vaccine or submit to weekly testing. Another bill by Assemblyman Evan Low sought to make sure state law protected businesses that chose to require their workers to be vaccinated while also extending paid sick leave for up to 40 hours per week for anyone who cannot work because of the virus. Drafts of both bills were circulated around the Capitol all week, but Wicks announced she would not pursue her bill this year and Low also indicated he would wait until January.

Overall, 2021 saw the Governor and State Legislature focusing significant time and effort in responding to the perceived impact of the COVID pandemic on California. Two key pieces of the California COVID response, in addition to the public health issues, was trying to accelerate the state's economic recovery and minimize the financial impact on Californians who saw their income reduced or business curtailed by the pandemic.

On the economic recovery end, the Governor announced his California Comeback Plan to accelerate the state's recovery, which used a significant part of the state's 100 billion dollar budget surplus to fund the biggest economic recovery package in California's history. Elements of the plan included:

1. Over 12 billion dollars in Golden State Stimulus checks to families.
2. A renters assistance program to provide over 5 billion dollars to renters and landlords and billions for past due water and utility bills.
3. Over 4 billion dollars in small business grants.
4. Wildfire resilience.
5. Investments in state Infrastructure, including broadband.
6. Over 12 billion in expanded programs for homeless housing and affordable housing investments.

In addition to these and many other substantial investments in transportation and schools, the Governor and Legislature sought to provide added protection to individual Californians. Some of these efforts struggled to work such as the ongoing difficulties at the State Employment Development Department to get claims processed for those who lost real jobs due to the pandemic, while paying out billions of dollars in fraudulent claims. The Legislature and Governor agreed to provide renters with an eviction moratorium which was extended several times. To address concerns from landlords, they created a rental assistance program intended to backfill the past due rent to assuage property owners. This program failed to function as intended with little rental assistance actually being processed. In addition, they halted the ability of property owners to sell or assign past due rent during the pandemic. This limitation was divided between past due rent for certain renters and past due rent for those who qualified for rental assistance. The latter remains uncollectible while the former may now be collectible since the moratorium expires on September 30.

Sympathy for those impacted by the pandemic created an unsympathetic atmosphere for those seeking to enforce financial obligations. We saw a significant number of bills intended to strengthen California laws requiring validation and documentation of consumer debt. One bill sought to simply prohibit collection of debt from victims of economic abuse. Overly broad with vague provisions, the author recognized the need to work on the proposal after we reached out to him and made it a two-year bill.We expect it to come back in January. Three other bills sought to expand disclosure and documentation requirements from the Fair Debt Buyers Act to debt collectors. AB 1020 (Friedman) targeted hospital debt, SB 531 (Wieckowski) targeted

consumer debt, and AB 424 (Stone) targeted student debt. We were able to work out amendments to address CAC concerns with AB 1020 and SB 531 and removed our opposition, but AB 424 remains a bad bill. It has been sent to the Governor and awaits his action. It creates significant liability issues by creating per violation liability for various technical disclosure requirements and operational issues. We are urging the Governor to veto this bill. He has until Oct 10 to act on nearly 800 bills that were sent to him by the Legislature. Among those bills is AB 430 (Greyson), that expands consumers ability to document identity theft and AB 1405 (Wicks) that expands consumer protections in dealing with debt settlers. CAC supported AB 1405 and sees many similarities between problems caused by debt settlers and credit repair organizations. Our bill AB 1089 (Grayson) passed two policy committees in the State Assembly but was held in fiscal committee. We hope to continue working on this issue next year when the Legislature returns for the second year of the two-year session.

Meanwhile, CAC has spent a good part of the year working with the DFPI on implementation of SB 908 which establishes a state licensing program for debt collectors, debt buyers, and attorneys in California. We are also monitoring closely the newly created state privacy board which held its first meeting in September and rolled out a long list of privacy issues that it wants to address.

California remains a heavily Democratic state with a liberal Democrat in every statewide office with no Republican in any statewide position. Liberal progressive Democrats control both houses of the State Legislature by over 2/3rds majorities, 31 to 9 in the Senate and 61 to 18 in the Assembly. This presents significant challenges in Sacramento, but CAC has many opportunities to build relationships and has found many key Democrats very reasonable to work with. Assemblyman Tim Grayson (D-Concord) has authored our bill on credit repair organizations abusing consumers and businesses two years in a row and now Chairs the Assembly Banking Committee. Senator Tom Umberg, (D-Santa Ana) now Chairs the Senate Judiciary Committee and is open and accessible unlike the prior chair. You can help CAC build important relationships in your community and in Sacramento by participating in CAC, the CAC lobby day, and the Fall Annual Conference. It makes a difference. In addition, we need your support of the CAC PAC, which is critical to relationship building. Hoping you and your family and business members stay healthy and have a safe year.

EXECUTIVE DIRECTOR | KIM ANDOSCA

THANK YOU for your membership in the California Association of Collectors! And it's once again time to consider contributing to 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

LEGISLATION, LICENSING AND NEW LAWS

And, we all believed that 2020 was challenging. In 2021, California's legislators have sent three bills that will directly impact collection agencies to the Governor, collection agencies must complete their licensing applications by the end of the year, Reg F will become effective at the end of November and the DFPI will be issuing a number of regulations. These changes will greatly affect collection agencies and the ongoing efforts to comply with the myriad of requirements will be time-consuming and frustrating.

The software vendors that support collection agencies will be busy indeed.

SB 531

This bill seeks to impose many of the mandates in the Fair Debt Buying Practices Act on collection agencies 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.

At the time of the writing of this article, this bill is waiting for the Governor's signature. Assuming he signs the bill, the requirements of SB 531 will become effective on July 1, 2021.

This bill requires a collection agency to which delinquent debt has been assigned to provide to the debtor within 30 days of the debtor's written request, a statement that includes all the following information:

(a) That the debt collector has authority to assert the rights of the creditor to collect the debt.

(b) The debt balance and an explanation of the amount, nature, and reason for all interest and fees, if any, imposed by the creditor or any subsequent entities to which the debt was assigned. The explanation shall identify separately the balance, the total of any interest, and the total of any fees.

(c) The date the debt became delinquent or the date of the last payment.

(d) The name and an address of the creditor and the creditor's account number associated with the debt. The creditor's name and address shall be in sufficient form so as to reasonably identify the creditor.

(e) The name and last known address of the debtor as they appeared in the creditor's records before the assignment of the debt to the collection agency.

(f) The names and addresses of all persons or entities other than the collection agency to which the debt was assigned. The names and addresses shall be in sufficient form so as to reasonably identify each assignee.

(g) The California license number of the collection agency.

Further, the collection agency shall not communicate with the debtor in writing in an attempt to collect a delinquent debt unless the collection agency has access to a copy of a contract or other document evidencing the debtor's agreement to the debt. If the claim is based on debt for which no signed contract or agreement exists, the collection agency shall have access to a copy of a document provided to the debtor while the account was active, demonstrating that the debt was incurred by the debtor. For a revolving credit account, the most recent monthly statement recording a purchase transaction, last payment, or balance transfer shall be deemed sufficient to satisfy these requirements.

Debt buyers, and collection agencies that collect debt for debt buyers, have had to abide by these requirements since 2014.

AB 1020 – Part 1: Applicable to All Debt

At the time of the writing of this article, this bill is waiting for the Governor's signature.Assuming he signs the bill, the requirements of AB 1020 will become effective on January 1, 2022.

In addition to the requirements of SB 531, a portion of AB 1020 applies to all collection agencies regardless of the type of debt being collected. This portion prohibits a collection agency from the following:

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

(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 the attorney with respect to the consumer debt and the notice includes the attorney's name and address and a request by the attorney that all communications regarding the consumer debt be addressed to the attorney, unless the attorney fails to answer correspondence, return telephone calls, or discuss the obligation in question. This prohibition shall not apply if prior approval has been obtained from the debtor's attorney, or if 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 thefederal 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) Collecting consumer debt that originated with a hospital licensed pursuant to subdivision (a) of Section 1250 of the Health and Safety Code without including in the first written communication to the debtor a copy of the notice required pursuant to subdivision (e) of Section 127425 of the Health and Safety Code and a statement that the collection agency will wait at least 180 days from the date the debtor was initially billed for the hospital services that are the basis of the debt before reporting adverse information to a credit reporting agency or filing a lawsuit against the debtor.

AB 1020 – Part 2: Specific Medical Debt

The second portion of AB 1020 applies to collection agencies when they file a complaint in an attempt to collect debtthat originated with a general acute care hospital licensed pursuant to subdivision (a) of Section 1250 of the Health and Safety Code.

A collection agency that files a complaint to collect this type of debt must allege the following:

(a) That the plaintiff is a debt collector.

(b) That the underlying debt originated with a general acute care hospital.

(c) The information contained in paragraph (6) of subdivision (e) of Section 127425 of the Health and Safety Code and a statement identifying the language in which that information was sent to the debtor.

(d) The balance of the debt upon assignment to the debt collector and an explanation of the amount, nature, and reason for any interest and fees that are added to the debt balance by the debt collector after the assignment of the debt. This obligation shall not be deemed to require a specific itemization, but the explanation shall identify separately the charge-off balance of the debt upon assignment to the debt collector, the total of any interest, and the total of any fees added to the debt balance by the debt collector after the assignment of the debt.

(e) The date of default or the date of the last payment, and the date the debt was assigned.

(f) The name and address of the hospital at the time of assignment.

(g) The hospital's account number associated with the debt.

(h) Copies of the application for financial assistance that was provided to the debtor by the hospital and the notice that was provided to the debtor by the hospital about applying for financial assistance shall be attached to the complaint. If the notice was provided as part of the hospital bill that cannot be separated, the bill shall be redacted to remove confidential information or a sample hospital bill with the substance of the notice regarding financial assistance in the format in use at the time the patient was billed may be provided.

Notably, this bill expressly states that it does not require the disclosure in public records of personal, financial, or medical information, the confidentiality of which is protected by state or federal law. This protected information shall be redacted and not filed with the complaint.

AB 424 – Private Student Loan Debt

At the time of the writing of this article, this bill is waiting for the Governor's signature. Assuming he signs the bill, the requirements of AB 424 will become effective on January 1, 2022.

Pre-litigation Requirements. Before sending any written communication to a private student loan debt borrower or guarantor, a collection agency must possess all the following:

(a) The name of the owner of the private education loan.

(b) The creditor's name at the time of default, if applicable.

(c) The creditor's account number used to identify the private education loan at the time of default, if the original creditor used an account number to identify the private education loan at the time of default.

(d) The amount due at default.

(e) An itemization of interest, if any, that has accrued on the private education loan.

(f) An itemization of fees, if any, claimed to be owed on the private education loan and whether those fees were imposed by the original creditor or any subsequent owners of the private education loan.

(g) The date that the private education loan was incurred.

(h) The date of the first partial payment or the first day that a payment was missed, whichever is earlier, that precipitated default.

(i) The date and amount of the last payment, if applicable.

(j) Any payments, settlement, or financial remuneration of any kind paid to the creditor by a guarantor, surety, or other party not obligated on the loan as compensation under a separate contract that provides coverage for financial losses incurred as a result of default, if applicable.

(k) The names of all persons or entities that owned the private education loan after the time of default, if applicable, and the date of each sale or transfer.

(m) A copy of the self-certification form and any other "needs analysis" conducted by the original creditor prior to origination of the loan.

(n) Documentation establishing that the creditor is the owner of the specific individual private education loan at issue. If the private education loan was assigned more than once, the creditor shall possess each assignment or other writing evidencing the transfer of ownership of the specific individual private education loan to establish an unbroken chain of ownership, beginning with the original creditor to the first subsequent creditor and each additional creditor. Each assignment or other writing evidencing transfer of ownership or the right to collect shall contain the original creditor's account number (redacted for security purposes to show only the last four digits) of the private education loan purchased or otherwise assigned, the date of purchase and assignment, and shall clearly show the borrower's correct name associated with the original account number. The assignment or other writing attached shall be that by which the creditor or other assignee acquired the private education loan, not a document prepared for litigation.

(o) A copy of all pages of the contract, application, or other documents evidencing the debtor's liability for the private education loan, stating all terms and conditions applicable to the private education loan.

(p) A list of all collection attempts made in the last 12 months, including date and time of all calls and written communications.

(q) A statement as to whether the creditor is willing to renegotiate the terms of the private student loan.

(r) Copies of all written settlement communications made in the last 12 months, or, in the alternative, a statement that the creditor has not attempted to settle or otherwise renegotiate the debt prior to suit.

(s) A statement as to whether the private education loan is eligible for an income-based repayment plan.

That is quite a laundry list!

But, there is more. The laundry list must be provided to a private student loan borrower or guarantor in the first written communication after (1) the loan is in defaultandit has been accelerated, or (2) the loan has been in default for 12 consecutive months, or (c) an event is either (1) or (2) has occurred and the laundry list has not been provided in the previous 12 months.

And, for the ultimate insult, AB 424 contains a $500 per violation damages provision.Indeed. In a bill with a long list of new and detailed requirements, the author could not be convinced (despite this writer's pleas) to keep the strict liability damages provisions consistent with the various other statutes - $1,000 per lawsuit. This is an enormous change and presents a very real deterrent to the collection of private student loan debt.

Regulation F and DFPI Regulations

In addition to the above bill, collection agencies will have to grapple with the new notice requirements of Reg F and the new obligations in the regulations that will be promulgated by the DFPI. Undoubtedly, there will be conflicts and inconsistencies. All in a strict liability setting.

There were many frustrating aspects to CAC's efforts to negotiate the terms of the bills described above. Perhaps the most frustrating experience in this year's legislative session was the compete unwillingness of the authors to coordinate with each other to bring consistency to the language in their bills and the damage provisions.

Conclusion

CAC will be hosting sessions at the Annual Conference and in member calls to address the many concerns raised by this new landscape. Together, we will stive to find answers to the many open questions.

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We are delighted to announce that Attendee registration for the LIVE Annual Conference is open. Make sure to register today to reserve your spot and book your hotel room at the Omni Rancho Las Palmas! Space is limited.

Rates:

Members: First Registrant **$525**, Additional staff from same agency **$395**.
Non-Members: First Registrant **$675**, Additional staff from same agency **$495**.
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