

Calif. Banking Brief: All The Notable Legal Updates In Q2

By **Mehul Madia, Moorari Shah and Moriah Dworkin** (July 1, 2024)

In this Expert Analysis series, attorneys provide quarterly recaps discussing the biggest developments in California banking regulation and policymaking.

In the second quarter of 2024, California's banking and financial services sector saw notable regulatory and legislative activity.

As we move to the middle of the year, there are two themes that stand out. First, California is one of the nation's leading states that is actively undertaking legislative efforts to extend consumer protections to commercial financing transactions.

Of course, California's proactive approach to protect commercial transactions is not a new development: It is one of a minority of states whose lending licensure laws apply to both consumer and commercial transactions, and it was also the first state to enact legislation to add disclosures like those in the Truth in Lending Act for commercial transactions in 2018. Since then, more than a dozen other states have enacted or are considering similar disclosure legislation.

In keeping with its reputation, recent proposed amendments to the Rosenthal Fair Debt Collection Practices Act continue that trend. In addition, California is moving to expand consumer protection and taking enforcement action in areas that are the focus of federal regulators — namely, medical debt and student loans. We discuss these developments in more detail below.

Amending Rosenthal Act to Cover Small Business Debt

In April, the California Senate Banking and Financial Institutions Committee began considering S.B. 1286, which would expand the scope of the Rosenthal Act to prohibit debt collectors from engaging in unfair or deceptive practices in collecting small business debts.[1]

The bill defines "covered commercial debt" as "money, property, or their equivalent, due or owing or alleged to be due or owing from a natural person to a lender, a commercial financing provider ... or a debt buyer ... by reason of a covered commercial credit transaction."

The bill, as amended, defines "covered commercial credit transaction" to mean "a transaction between a person and another person in which property, services, or money, of a total value of no more than five hundred thousand dollars (\$500,000), is acquired on credit by that person from the other person for use primarily for other than personal, family, or household purposes."



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What are some key takeaways from the proposed legislation?

- It expands key provisions of the Rosenthal Act to now apply to small business debt collection. For example, Rosenthal Act provisions relating to threatening, harassing or making certain false representations to California consumers are now extended to business borrowers in certain covered commercial credit transactions.
- The bill would also incorporate certain unique Rosenthal Act provisions, such as specific disclosures that a debt collector must provide if it is collecting on a time-barred debt, and prohibits attempting to collect a debt by means of a court proceeding outside the county in which the debtor resides or has incurred the debt.
- Unlike the federal Fair Debt Collection Practices Act, the Rosenthal Act applies to creditors collecting on their own debts in their own name, as well as to third-party debt collectors collecting on behalf of others.

If passed, S.B. 1286 will take effect in January 2025.

S.B. 1286 will significantly affect debt collection practices in California and is part of the state's broader efforts to apply consumer protection laws to commercial financing transactions.

Bill Banning Credit Reporting of Medical Debt In State Senate

On April 2, the California Senate passed S.B. 1061, which seeks to prevent healthcare providers and collection agencies from sharing information about patients' medical debt with credit reporting companies.[2] The bill, which is now being considered by the Assembly, defines medical debt as debt related to a medical service, product or device, but does not include any debt charged to a credit card.

Attorney General Rob Bonta, one of the sponsors of the legislation, stated that the legislation is needed to protect individuals and families from the "harmful and unnecessary impacts resulting from having their credit damaged by medical debt." [3]

California's bill is in line with laws in New York and Colorado that prevent the reporting of medical debt on credit reports. It also joins efforts by the Consumer Financial Protection Bureau, which released a proposed rule on June 11 to amend Regulation V of the Fair Credit Reporting Act to remove medical bills from most credit reports, disallow the consideration of medical debts in credit decisions, and curtail credit reporting practices that the bureau deems coercive.[4]

The bureau's efforts in particular follow a near decadelong windup of research and market monitoring efforts on medical debt.

California DFPI Action Against Missouri-Based Student Loan Servicer

On April 24, the California Department of Financial Protection and Innovation, or DFPI, entered into a consent order with the Higher Education Loan Authority of the State of Missouri, or MOHELA, for failing to provide the DFPI with timely contact information for California borrowers with certain student loans.[5]

In April 2022, the U.S. Department of Education announced the income-driven repayment, or IDR, one-time adjustment. Under the IDR adjustment, the Department of Education would review borrowers' accounts and give them credit for certain months of repayment, forbearance and deferment that did not previously qualify for IDR forgiveness.

To take advantage of this adjustment, the Department of Education required borrowers to submit a loan consolidation application by April 30. The DFPI requested information from servicers for the purpose of completing outreach to affected borrowers ahead of the loan consolidation application deadline.

MOHELA provided this information 17 days after the deadline set by the DFPI. As part of the settlement, it agreed to pay administrative penalties of \$27,500. The DFPI announced it is the first state regulator to take public action against MOHELA for violating state consumer protection laws.

While the ultimate penalty is small, the DFPI's aggressive approach mirrors efforts by federal regulators — in particular, the CFPB — to hold student loan servicers accountable for servicing missteps.

The bureau has undertaken a multitude of enforcement actions against student loan servicers over the past several years. Perhaps not surprisingly, the increased regulatory scrutiny, coupled with the increasingly complex task of managing and servicing student loan accounts, has caused some servicers to exit the student loan servicing business altogether.

Looking Ahead

Nearing the completion of its fourth year of existence, the DFPI has expanded upon the efforts of its predecessor, the Department of Business Oversight, to become a national model for consumer and commercial protections for financial products and services.

Bolstered by a cooperative state legislature, which passed the Dodd-Frank-inspired California Consumer Financial Protection Law, the DFPI has introduced a variety of regulations in recent years focused on both consumer and commercial financial products and services.[6]

Combined with the state's parallel initiatives on protecting consumer privacy, which also have been parroted by more than a dozen states passing similar laws, California's role as a trendsetter in consumer protection appears to be well ingrained for the foreseeable future.

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[1] See S.B. 1286, 2023-2024 Leg., Reg. Sess. (Cal. 2024).

[2] See S.B. 1061, 2023-2024 Leg., Reg. Sess. (Cal. 2024).

[3] Press Release, Office of the Attorney Gen., Cal. Dep't of Just., Attorney General Rob Bonta, Senator Limón Unveil Legislation to Protect Consumers Against Medical Debt (Mar. 10, 2024).

[4] Prohibition on Creditors and Consumer Reporting Agencies Concerning Medical Information (Regulation V), 89 Fed. Reg. 51,682 (proposed June 18, 2024) (to be codified at 12 C.F.R. pt. 1022).

[5] Press Release, Cal. Dep't of Fin. Prot. & Innovation, DFPI Takes Action Against MOHELA to Protect California Student Loan Borrowers (Apr. 24, 2024).

[6] For a list of proposed rules and regulations, see California Department of Financial Protection and Innovation at <https://dfpi.ca.gov/california-consumer-financial-protection-law-regulations-legislation-opinions-and-releases/>.