

Introduced by Senator Wieckowski

February 27, 2015

An act to add Section 1788.61 to the Civil Code, relating to debt buying.

LEGISLATIVE COUNSEL'S DIGEST

SB 641, as amended, Wieckowski. Debt buying: default judgment.

(1) Existing law, the Fair Debt Buying Practices Act, regulates the practice of buying charged-off consumer debt, as defined, sold or resold on or after January 1, 2014, for collection purposes and prescribes the circumstances pursuant to which the debt buyer may bring suit. The act prohibits a court from entering a default or other judgment in an action initiated by a debt buyer against a debtor unless business records, authenticated through a sworn declaration, are submitted by the debt buyer to the court to establish the facts required to be alleged, as specified.

This bill would permit a debtor to serve and file a notice of motion and motion to set aside a default or default judgment and for leave to defend an action relating to debt, if service of a summons did not result in actual notice to the debtor in time to defend an action brought by a ~~3rd party~~ debt buyer and a default or default judgment has been entered against the debtor in the action. The bill would require a debtor to make this service and filing within *6 years after entry of the default judgment or 180 days of the first actual notice of the ~~action~~ action, whichever is earlier*. The bill would prescribe requirements for the filing, which would include an affidavit submitted to the court under oath and that the party's lack of actual notice in time to defend the action was not

caused by his or her avoidance of service or inexcusable neglect. By expanding the crime of perjury, the bill would impose a state-mandated local program. The bill would permit a court to set aside the default or default judgment on whatever terms as may be just and allow the party to defend the action. The bill would ~~state that its provisions apply to all consumer debt, regardless of the date it was sold.~~ *a judgment entered on and after January 1, 2010.*

(2) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: yes.

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

1 SECTION 1. Section 1788.61 is added to the Civil Code, to
2 read:
3 1788.61. (a) Notwithstanding Section 473.5 of *the* Code of
4 Civil Procedure, if service of a summons has not resulted in actual
5 notice to a debtor in time to defend an action brought by a ~~third~~
6 ~~party~~ debt buyer and a default or default judgment has been entered
7 against the debtor in the action, the debtor may serve and file a
8 notice of motion and motion to set aside the default or default
9 judgment and for leave to defend the ~~action within~~ *action. The*
10 *notice of motion shall be served and filed within the earlier of:*
11 *(1) Six years after entry of the default or default judgment*
12 *against the debtor.*
13 *(2) Within 180 days of the first actual notice of the action.*
14 (b) A notice of motion to set aside a default or default judgment
15 and for leave to defend the action shall designate as the time for
16 making the motion a date prescribed by Section 1005 of the Code
17 of Civil Procedure, and it shall be accompanied by an affidavit
18 showing under oath that the party's lack of actual notice in time
19 to defend the action was not caused by his or her avoidance of
20 service or inexcusable neglect. The party shall serve and file with
21 the notice a copy of the answer, motion, or other pleading proposed
22 to be filed in the action.

1 (c) Upon a finding by the court that the motion was made within
2 the period permitted by subdivision (a) and that debtor's lack of
3 actual notice in time to defend the action was not caused by his or
4 her avoidance of service or inexcusable neglect, the court may set
5 aside the default or default judgment on whatever terms as may
6 be just and allow the party to defend the action.

7 (d) This section shall ~~not be limited by the time period specified~~
8 ~~in Section 1788.50 and shall be applied to debt buyers with respect~~
9 ~~to all consumer debt, regardless of the date it was sold.~~ *apply to a*
10 *default or default judgment entered on or after January 1, 2010.*

11 SEC. 2. No reimbursement is required by this act pursuant to
12 Section 6 of Article XIII B of the California Constitution because
13 the only costs that may be incurred by a local agency or school
14 district will be incurred because this act creates a new crime or
15 infraction, eliminates a crime or infraction, or changes the penalty
16 for a crime or infraction, within the meaning of Section 17556 of
17 the Government Code, or changes the definition of a crime within
18 the meaning of Section 6 of Article XIII B of the California
19 Constitution.