

Introduced by Senator WieckowskiFebruary 3, 2020

An act to amend Sections 1788.11 and 1788.52 of the Civil Code, and to add Division 24 (commencing with Section 90000) to the Financial Code, relating to debt collectors.

LEGISLATIVE COUNSEL'S DIGEST

SB 908, as introduced, Wieckowski. Debt collectors: licensing and regulation: Debt Collection Licensing Act.

(1) Existing law, the Rosenthal Fair Debt Collection Practices Act, prohibits debt collectors from engaging in unfair or deceptive acts or practices in the collection of consumer debts and defines “consumer debt” and “consumer credit” for purposes of that act.

This bill would include sending digital or written communications that do not clearly display the license number of the debt collector as a prohibited debt collection practice.

Existing law establishes the Department of Business Oversight as headed by the Commissioner of Business Oversight, who, among other things, generally provides for the licensure and regulation of persons who are engaged in various consumer financial businesses.

This bill would enact the Debt Collection Licensing Act which would provide for the licensure, regulation, and oversight of debt collectors by the commissioner, define terms for its purposes, and make other conforming changes. The bill would prohibit a person from engaging in the business of collecting on a consumer debt in this state without a license and comply with reporting, examination, and other oversight by the commissioner. The bill would require a person applying for a license to, among other things, pay an application fee, sign the application under penalty of perjury, and submit to a criminal

background check by the Department of Justice. By expanding the scope of the crime of perjury this bill would impose a state-mandated local program.

This bill would require each licensee to, among other things, file reports with the commissioner under oath, maintain a surety bond, pay to the commissioner its pro rata share of all costs and expenses reasonably incurred in the administration of these provisions, as estimated by the commissioner. The bill would authorize the commissioner to enforce these provisions by, among other things, promulgating regulations, performing investigations, suspending a license, and enforcing the provisions, as specified. The bill would prohibit the public disclosure of specific information provided by a licensee to the commissioner.

(2) Existing constitutional provisions require that a statute that limits the right of access to the meetings of public bodies or the writings of public officials and agencies be adopted with findings demonstrating the interest protected by the limitation and the need for protecting that interest.

This bill would make legislative findings to that effect.

(3) 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 1788.11 of the Civil Code is amended
2 to read:
3 1788.11. No debt collector shall collect or attempt to collect a
4 consumer debt by means of the following practices:
5 (a) Using obscene or profane ~~language~~; *language*.
6 (b) Placing telephone calls without disclosure of the caller's
7 ~~identity, provided that an employee of a licensed collection agency~~
8 ~~may identify himself by using his registered alias name as long as~~
9 ~~he correctly identifies the agency he represents~~; *identity and*
10 *California debt collector license number.*

1 (c) Causing expense to any person for long distance telephone
2 calls, telegram—~~fees~~ *fees*, or charges for other similar
3 communications, by misrepresenting to ~~such the~~ *such the* person the purpose
4 of ~~such the~~ telephone call, telegram or similar ~~communication~~;
5 *communication*.

6 (d) Causing a telephone to ring repeatedly or continuously to
7 annoy the person ~~called~~; or *called*.

8 (e) Communicating, by telephone or in person, with the debtor
9 with such frequency as to be ~~unreasonable~~ *unreasonable*, and to
10 constitute an harassment to the debtor under the circumstances.

11 (f) *Sending written or digital communications to the person that*
12 *do not clearly display the California license number of the debt*
13 *collector.*

14 SEC. 2. Section 1788.52 of the Civil Code is amended to read:

15 1788.52. (a) A debt buyer shall not make any written statement
16 to a debtor in an attempt to collect a consumer debt unless the debt
17 buyer possesses the following information:

18 (1) That the debt buyer is the sole owner of the debt at issue or
19 has authority to assert the rights of all owners of the debt.

20 (2) The debt balance at charge off and an explanation of the
21 amount, nature, and reason for all post-charge-off interest and fees,
22 if any, imposed by the charge-off creditor or any subsequent
23 purchasers of the debt. This paragraph shall not be deemed to
24 require a specific itemization, but the explanation shall identify
25 separately the charge-off balance, the total of any post-charge-off
26 interest, and the total of any post-charge-off fees.

27 (3) The date of default or the date of the last payment.

28 (4) The name and an address of the charge-off creditor at the
29 time of charge off, and the charge-off creditor's account number
30 associated with the debt. The charge-off creditor's name and
31 address shall be in sufficient form so as to reasonably identify the
32 charge-off creditor.

33 (5) The name and last known address of the debtor as they
34 appeared in the charge-off creditor's records prior to the sale of
35 the debt. If the debt was sold prior to January 1, 2014, the name
36 and last known address of the debtor as they appeared in the debt
37 owner's records on December 31, 2013, shall be sufficient.

38 (6) The names and addresses of all persons or entities that
39 purchased the debt after charge off, including the debt buyer

1 making the written statement. The names and addresses shall be
2 in sufficient form so as to reasonably identify each such purchaser.

3 (7) *The California license number of the debt buyer.*

4 (b) A debt buyer shall not make any written statement to a debtor
5 in an attempt to collect a consumer debt unless the debt buyer has
6 access to a copy of a contract or other document evidencing the
7 debtor's agreement to the debt. If the claim is based on debt for
8 which no signed contract or agreement exists, the debt buyer shall
9 have access to a copy of a document provided to the debtor while
10 the account was active, demonstrating that the debt was incurred
11 by the debtor. For a revolving credit account, the most recent
12 monthly statement recording a purchase transaction, last payment,
13 or balance transfer shall be deemed sufficient to satisfy this
14 requirement.

15 (c) A debt buyer shall provide the information or documents
16 identified in subdivisions (a) and (b) to the debtor without charge
17 within 15 calendar days of receipt of a debtor's written request for
18 information regarding the debt or proof of the debt. If the debt
19 buyer cannot provide the information or documents within 15
20 calendar days, the debt buyer shall cease all collection of the debt
21 until the debt buyer provides the debtor the information or
22 documents described in subdivisions (a) and (b). Except as
23 provided otherwise in this title, the request by the debtor shall be
24 consistent with the validation requirements contained in Section
25 1692g of Title 15 of the United States Code. A debt buyer shall
26 provide all debtors with whom it has contact an active postal
27 address to which these requests can be sent. A debt buyer may also
28 provide an active email address to which these requests can be
29 sent and through which information and documents can be
30 delivered, if the parties agree.

31 (d) (1) A debt buyer shall include with its first written
32 communication with the debtor in no smaller than 12-point type,
33 a separate prominent notice that provides:

34
35 “You may request records showing the following: (1) that [insert
36 name of debt buyer] has the right to seek collection of the debt;
37 (2) the debt balance, including an explanation of any interest
38 charges and additional fees; (3) the date of default or the date of
39 the last payment; (4) the name of the charge-off creditor and the
40 account number associated with the debt; (5) the name and last

1 known address of the debtor as it appeared in the charge-off
2 creditor’s or debt buyer’s records prior to the sale of the debt, as
3 appropriate; and (6) the names of all persons or entities that have
4 purchased the debt. You may also request from us a copy of the
5 contract or other document evidencing your agreement to the debt.

6 “A request for these records may be addressed to: [insert debt
7 buyer’s active mailing address and email address, if applicable].”

8
9 (2) When collecting on a time-barred debt where the debt is not
10 past the date for obsolescence provided for in Section 605(a) of
11 the federal Fair Credit Reporting Act (15 U.S.C. Sec. 1681c):

12
13 “The law limits how long you can be sued on a debt. Because
14 of the age of your debt, we will not sue you for it. If you do not
15 pay the debt, [insert name of debt buyer] may [continue to] report
16 it to the credit reporting agencies as unpaid for as long as the law
17 permits this reporting.”

18
19 (3) When collecting on a time-barred debt where the debt is
20 past the date for obsolescence provided for in Section 605(a) of
21 the federal Fair Credit Reporting Act (15 U.S.C. Sec. 1681c):

22
23 “The law limits how long you can be sued on a debt. Because
24 of the age of your debt, we will not sue you for it, and we will not
25 report it to any credit reporting agency.”

26
27 (e) If a language other than English is principally used by the
28 debt buyer in the initial oral contact with the debtor, the notice
29 required by subdivision (d) shall be provided to the debtor in that
30 language within five working days.

31 (f) In the event of a conflict between the requirements of
32 subdivision (d) and federal law, so that it is impracticable to comply
33 with both, the requirements of federal law shall prevail.

34 SEC. 3. Division 24 (commencing with Section 90000) is added
35 to the Financial Code, to read:

1 DIVISION 24. DEBT COLLECTION LICENSING ACT

2
3 CHAPTER 1. GENERAL PROVISIONS

4
5 Article 1. Short Title

6
7 90000. This division shall be known and may be cited as the
8 Debt Collection Licensing Act.

9
10 Article 2. Requirements for Licensure

11
12 90001. (a) No person shall engage in the business of collecting
13 on a consumer debt in this state without first obtaining a license
14 pursuant to this division. A license shall not be transferred or
15 assigned.

16 (b) This division shall not apply to a financial institution that
17 collects its own debt in its own name.

18 (c) This division shall not apply to debt collection regulated
19 pursuant to Division 12.5 (commencing with Section 28100).

20
21 Article 3. Definitions

22
23 90002. For purposes of this division, the following terms have
24 the following meanings:

25 (a) “Applicant” means a person who applied for a license
26 pursuant to this division.

27 (b) “Collection agency” means a business entity through which
28 a debt collector or an association of debt collectors engage in debt
29 collection.

30 (c) “Commissioner” means the Commissioner of Business
31 Oversight.

32 (d) “Consumer credit transaction” means a transaction between
33 a natural person and another person in which property, services,
34 or money is acquired on credit by that natural person from the
35 other person primarily for personal, family, or household purposes.

36 (e) “Consumer debt” or “consumer credit” means money,
37 property, or their equivalent, due or owing, or alleged to be due
38 or owing, from a natural person by reason of a consumer credit
39 transaction. The term “consumer debt” includes “charged-off
40 consumer debt” as defined in Section 1788.50 of the Civil Code.

1 (f) “Creditor” means a person who extends consumer credit to
2 a debtor.

3 (g) “Debt” means money, property, or their equivalent that is
4 due or owing or alleged to be due or owing from a natural person
5 to another person.

6 (h) “Debt collection” means any act or practice in connection
7 with the collection of consumer debt.

8 (i) “Debt collector” means any person who, in the ordinary
9 course of business, regularly, on the person’s own behalf or on
10 behalf of others, engages in debt collection. The term includes any
11 person who composes and sells, or offers to compose and sell,
12 forms, letters and other collection media used or intended to be
13 used for debt collection. The term “debt collector” includes “debt
14 buyer” as defined in Section 1788.50 of the Civil Code.

15 (j) “Debtor” means a natural person from whom a debt collector
16 seeks to collect a consumer debt that is due or owing or alleged to
17 be due or owing from the person.

18 (k) “Department” means the Department of Business Oversight.

19 (l) “Fund” means the Debt Collection Licensing Fund
20 established pursuant to Section 90006.5.

21 (m) “Licensee” means a person licensed pursuant to this chapter.

22 (n) “Nationwide Multistate Licensing System & Registry” means
23 a system of record, created by the Conference of State Bank
24 Supervisors and the American Association of Residential Mortgage
25 Regulators, for nondepository, financial services licensing or
26 registration in participating state agencies, the District of Columbia,
27 Puerto Rico, the United States Virgin Islands, and Guam.

28 (o) “Person” means a natural person, partnership, corporation,
29 limited liability company, trust, estate, cooperative, association,
30 or other similar entity.

31

32 CHAPTER 2. LICENSING

33

34 Article 1. Commissioner on Business Oversight

35

36 90003. (a) The commissioner shall administer this division
37 and may promulgate rules and regulations, and issue orders,
38 consistent with that authority.

39 (b) Without limitation, the functions, powers, and duties of the
40 commissioner include all of the following:

- 1 (1) To issue or to refuse to issue a license as provided in this
- 2 division.
- 3 (2) To revoke or suspend any license for a violation of this
- 4 division or a violation of Title 1.6C (commencing with Section
- 5 1788) or Title 1.6C.5 (commencing with Section 1788.50) of Part
- 6 4 of Division 3 of the Civil Code.
- 7 (3) To keep records of licenses issued under this division.
- 8 (4) To receive, consider, investigate, and act upon a complaint
- 9 made in connection with a licensee.
- 10 (5) To prescribe the form of and to receive applications for
- 11 licenses and reports, books, and records required to be made or
- 12 retained by a licensee.
- 13 (6) To subpoena documents and witnesses, and to compel their
- 14 attendance and production, to administer oaths, and to require the
- 15 production of books, papers, or other materials relevant to any
- 16 inquiry authorized by this division.
- 17 (7) To require information with regard to an applicant that the
- 18 commission may deem necessary, with regard for the paramount
- 19 public interest in ascertaining the experience, background, honesty,
- 20 truthfulness, integrity, and competency of an applicant for
- 21 collecting consumer debt, and if an applicant is an entity other
- 22 than an individual, in ascertaining the honesty, truthfulness,
- 23 integrity, and competency of officers, directors, or managing
- 24 members of the corporation, association, or other entity, or the
- 25 general patters of a partnership.
- 26 (8) To enforce by order any provision of this division.
- 27 (9) To levy fees, fines, and charges in an amount sufficient to
- 28 cover the cost of the services performed in administering this
- 29 division. The fees collected pursuant to this division shall not
- 30 exceed the costs of administering this division.
- 31 90004. (a) Notwithstanding any law the commissioner shall
- 32 have the authority to conduct investigations and examinations of
- 33 an applicant or licensee as follows:
- 34 (1) For purposes of determining whether an applicant is eligible
- 35 for a license, or that a licensee is complying with the provisions
- 36 of this division or any regulation or order of the commissioner,
- 37 the commissioner may access, receive, and use any books,
- 38 accounts, records, files, documents, information, or evidence,
- 39 including, but not limited to, any of the following relating to the
- 40 intent to, or the practice of, collecting consumer debt:

1 (A) Criminal, civil, and administrative history information.

2 (B) Personal history and experience information, including, but
3 not limited to, independent credit reports obtained from a consumer
4 reporting agency.

5 (C) Any other documents, information, or evidence that the
6 commissioner deems relevant to the inquiry or investigation
7 regardless of the location, possession, control, or custody of those
8 documents, information, or evidence.

9 (2) For the purposes of investigating violations or complaints
10 arising under this division, the commissioner may direct, subpoena,
11 or order the attendance of, and examine under oath, any person
12 whose testimony may be required about the consumer debt or
13 account of the debtor.

14 (b) In making any examination or investigation authorized by
15 this section, the commissioner may control access to any documents
16 and records of the licensee or person under examination or
17 investigation. The commissioner may take possession of the
18 documents and records or place a person in exclusive charge of
19 the documents and records in the place where they are usually
20 kept. During the period of control, no person shall remove or
21 attempt to remove any of the documents and records except
22 pursuant to a court order or with the consent of the commissioner.
23 Unless the commissioner has reasonable grounds to believe the
24 documents or records of a licensee have been, or are at risk of
25 being, altered or destroyed for purposes of concealing a violation
26 of this division, the licensee or owner of the documents and records
27 shall have access to the documents or records as necessary to
28 conduct their ordinary business affairs.

29 90006. (a) Notwithstanding any law, the commissioner may
30 by rule or order prescribe circumstances under which to accept
31 electronic records or electronic signatures. This section shall not
32 be deemed to require the commissioner to accept electronic records
33 or electronic signatures.

34 (b) For purposes of this section, the following terms have the
35 following meanings:

36 (1) "Electronic record" means an initial license application, or
37 material modification of that license application, and any other
38 record created, generated, sent, communicated, received, or stored
39 by electronic means. "Electronic record" also includes, but is not
40 limited to, all of the following electronic documents:

- 1 (A) An application, amendment, supplement, and exhibit, filed
2 for any license, consent, or other authority.
- 3 (B) A financial statement, report, or advertising.
- 4 (C) A surety bond, rider, or endorsement thereto.
- 5 (D) An order, license, consent, or other authority.
- 6 (E) A notice of public hearing, accusation, and statement of
7 issues in connection with any application, license, consent, or other
8 authority.
- 9 (F) A proposed decision of a hearing officer and a decision of
10 the commissioner.
- 11 (G) The transcripts of a hearing and correspondence between a
12 party and the commissioner directly relating to the record.
- 13 (H) A release, newsletter, interpretive opinion, determination,
14 or specific ruling.
- 15 (I) Correspondence between a party and the commissioner
16 directly relating to any document listed in subparagraphs (A) to
17 (H), inclusive.
- 18 (2) “Electronic signature” means an electronic sound, symbol,
19 or process attached to or logically associated with an electronic
20 record and executed or adopted by a person with the intent to sign
21 the electronic record.
- 22 (c) The Legislature finds and declares that the Department of
23 Business Oversight has continuously implemented methods to
24 accept records filed electronically, and is encouraged to continue
25 to expand its use of electronic filings to the extent feasible, as
26 budget, resources, and equipment are made available to accomplish
27 that goal.
- 28 90006. (a) The commissioner may require an applicant for a
29 debt collector license to make some or all of the filings with the
30 commissioner through the Nationwide Multistate Licensing System
31 & Registry.
- 32 (b) The commissioner may require an application to be made
33 through the Nationwide Multistate Licensing System & Registry,
34 and may require fees, fingerprints, financial statements, supporting
35 documents, changes of address, and any other information, and
36 amendments or modifications thereto, to be submitted by applicants
37 and licensees through the Nationwide Multistate Licensing System
38 & Registry.
- 39 (c) The commissioner may require licensees to pay assessments
40 through the Nationwide Multistate Licensing System & Registry.

- 1 90006.5. (a) The Debt Collection Licensing Fund is hereby
2 established within the state treasury.
3 (b) All licensing fees collected shall be deposited into the Fees
4 Account which is hereby established within the fund.
5 (c) All fines and penalties collected shall be deposited into the
6 Penalties Account which is hereby established within the fund.
7 (d) All monies deposited into the fund shall be available to the
8 commissioner, upon appropriation by the Legislation, for the
9 purposes of this division.

10
11 Article 2. Application for Licensure
12

- 13 90007. An applicant shall apply for a license by submitting all
14 of the following to the commissioner:
15 (a) A completed application for a license in a form prescribed
16 by the commissioner and signed under penalty of perjury.
17 (b) The sum of one hundred dollars (\$100) as a fee for
18 investigating the application, plus the cost of fingerprint processing
19 and the criminal history record check under Section 90009, and
20 three hundred dollars (\$300) as an application fee. The
21 investigation fee, including the amount for the criminal history
22 record check, and the application fee are not refundable if an
23 application is denied or withdrawn.
24 (c) A sample of all documents the licensee will use in
25 correspondence with California consumers.
26 90008. (a) The commissioner shall submit to the Department
27 of Justice fingerprint images and related information required by
28 the Department of Justice of every applicant for a license for
29 purposes of obtaining information as to the existence and content
30 of a record of state or federal convictions, state or federal arrests,
31 and information as to the existence and content of a record of state
32 or federal arrests for which the Department of Justice establishes
33 that the person is free on bail or on their own recognizance pending
34 trial or appeal.
35 (b) When received, the Department of Justice shall transmit
36 fingerprint images and related information received pursuant to
37 this section to the Federal Bureau of Investigation for the purpose
38 of obtaining a federal criminal history records check. The
39 Department of Justice shall review the information returned from

1 the Federal Bureau of Investigation and compile and disseminate
2 a response to the commissioner.

3 (c) The Department of Justice shall provide a response to the
4 commissioner pursuant to paragraph (1) of subdivision (p) of
5 Section 11105 of the Penal Code.

6 (d) The commissioner shall request from the Department of
7 Justice subsequent arrest notification service, as provided pursuant
8 to Section 11105.2 of the Penal Code, for the license applicant
9 described in subdivision (a).

10 (e) The Department of Justice shall charge a fee, payable by the
11 applicant, sufficient to cover the costs of processing the requests
12 pursuant to this section.

13 90009. (a) (1) Upon the filing of an application for a license
14 pursuant to Section 90007 and the payment of the fees, if the
15 applicant is a partnership, the commissioner shall investigate the
16 applicant and its general partners and individuals owning or
17 controlling, directly or indirectly, 10 percent or more of the
18 outstanding interests or any individual responsible for the conduct
19 of the applicant's servicing activities in this state.

20 (2) Upon the filing of an application for a license pursuant to
21 Section 90007 and the payment of the fees, if the applicant is a
22 corporation, trust, limited liability company, or association,
23 including an unincorporated organization, the commissioner shall
24 investigate the applicant, its principal officers, directors, trustee,
25 managing members, and individuals owning or controlling, directly
26 or indirectly, 10 percent or more of the outstanding equity securities
27 or any individual responsible for the conduct of the applicant's
28 debt collection activities in this state.

29 (b) Upon the filing of an application for a license pursuant to
30 Section 90007 and the payment of the fees, the commissioner shall
31 investigate the individual responsible for the debt collection activity
32 of the licensee at the new location described in the application.
33 The investigation may be limited to information that was not
34 included in prior applications filed pursuant to this division.

35 (c) For the purposes of this section, "principal officers" shall
36 mean president, chief executive officer, treasurer, and chief
37 financial officer, as may be applicable, and any other officer with
38 direct responsibility for the conduct of the applicant's servicing
39 activities in this state.

1 90010. (a) Before an applicant is issued a license, the applicant
2 shall file with the commissioner, in any form as the commissioner
3 may require, an appointment irrevocably appointing the
4 commissioner to be the applicant's or licensee's attorney, to receive
5 service of any lawful process in any noncriminal judicial or
6 administrative proceeding against the applicant or licensee, or any
7 of its successors, that arises under this division, Title
8 1.6C(commencing with Section 1788) or Title 1.6C.5 (commencing
9 with Section 1788.50), of Part 4 of Division 3 of the Civil Code,
10 or under any regulation or order issued under this division after
11 such appointment has been filed, with the same force and validity
12 as if served personally on the applicant, licensee, or successor.

13 (b) Service may be made by leaving a copy of the process at
14 any office of the commissioner, but that service is not effective
15 unless (1) the party making that service, who may be the
16 commissioner, sends notice of service and a copy of the process
17 by registered or certified mail to the party served at its last address
18 on file with the commissioner, and (2) an affidavit of compliance
19 with this section by the party making service is filed in the case
20 on or before the return date, if any, or within any further time as
21 the court, in the case of a judicial proceeding, or the administrative
22 agency, in the case of an administrative proceeding, allows.

23 90011. (a) When the application is complete, including the
24 information from the Department of Justice, and the commissioner
25 determines that the applicant has satisfied the requirements set
26 forth in this division and does not find facts constituting reasons
27 for denial, the commissioner shall issue and deliver a license to
28 the applicant.

29 (b) If the commissioner determines that the requirements have
30 not been satisfied, the commission may deny the application and
31 shall provide a written explanation for the denial.

32 90012. (a) The proceedings for a denial of a license shall be
33 conducted in accordance with Chapter 5 (commencing with Section
34 11500) of Part 1 of Division 3 of Title 2 of the Government Code.

35 (b) The commissioner may deny an application for a license for
36 any of the following reasons:

37 (1) A false statement of a material fact has been made in the
38 application.

39 (2) The applicant or any principal officer, director, general
40 partner, managing member, or individual owning or controlling,

1 directly or indirectly, 10 percent or more of the outstanding
2 interests or equity securities of the applicant, within the last 10
3 years has (A) been convicted of, or pleaded nolo contendere to, a
4 crime or (B) committed any act involving dishonesty, fraud, or
5 deceit, if the crime or act is substantially related to the
6 qualifications, functions, or duties of a person engaged in business
7 in accordance with this division.

8 (3) The applicant or any principal officer, director, general
9 partner, managing member, or individual owning or controlling,
10 directly or indirectly, 10 percent or more of the outstanding
11 interests or equity securities of the applicant, has violated, or is
12 not in material compliance with this division, or an order or rule
13 of the commissioner.

14 (4) A material requirement for issuance of a license has not been
15 met.

16 (5) The applicant or any principal officer, director, general
17 partner, managing member, or individual owning or controlling,
18 directly or indirectly, 10 percent or more of the outstanding
19 interests or equity securities of the applicant, has violated this
20 division or the rules thereunder, or any similar regulatory scheme
21 of this or a foreign jurisdiction.

22 (6) The applicant or any principal officer, director, general
23 partner, managing member, or individual owning or controlling,
24 directly or indirectly, 10 percent or more of the outstanding
25 interests or equity securities of the applicant, has been held liable
26 in any civil action by final judgment or any administrative
27 judgment by any public agency within the past seven years.

28 (7) The commissioner, based on its investigation of the
29 applicant, is unable to find that the financial responsibility, criminal
30 records, experience, character, and general fitness of the applicant
31 and its general partners, managing members, principal officers and
32 directors, and individuals owning or controlling, directly or
33 indirectly, 10 percent or more of the outstanding interests or equity
34 securities of the applicant, support a finding that the business will
35 be operated honestly, fairly, efficiently, and in accordance with
36 the requirements of this division.

37 90013. (a) The commissioner may deem an application for a
38 license abandoned if the applicant fails to respond to any request
39 for information required by the commissioner or department during
40 an investigation of the application.

1 (b) The commissioner shall notify the applicant, in writing, that
2 if the applicant fails to submit responsive information within 60
3 days from the date the commissioner sent the written request for
4 information, the commissioner shall deem the application
5 abandoned.

6 (c) An application fee paid prior to the date an application is
7 deemed abandoned shall not be refunded. Abandonment of an
8 application pursuant to this subdivision shall not preclude the
9 applicant from submitting a new application and fee for a license.

10 90014. A license shall remain effective until the license is
11 either suspended or revoked by the commissioner or surrendered
12 by the licensee.

13

14 Article 3. Nationwide Multistate Licensing System and Registry

15

16 90015. (a) The commissioner is authorized to establish
17 relationships or contracts with the Nationwide Multistate Licensing
18 System & Registry or other entities designated by the Nationwide
19 Multistate Licensing System & Registry to collect and maintain
20 records and process transaction fees or other fees related to
21 licensees or other persons subject to this division.

22 (b) For the purpose of participating in the Nationwide Multistate
23 Licensing System & Registry, the commissioner is authorized to
24 waive or modify, in whole or in part, by rule, regulation, or order,
25 any or all of the requirements of this division and to establish new
26 requirements as reasonably necessary to participate in the
27 Nationwide Multistate Licensing System & Registry.

28 (c) The commissioner may use the Nationwide Multistate
29 Licensing System & Registry as a channeling agent for requesting
30 information from, and distributing information to, the Department
31 of Justice, any other governmental agency, or any other source, as
32 directed by the commissioner.

33 (d) The commissioner shall establish a process through which
34 applicants and licensees may challenge information entered into
35 the Nationwide Multistate Licensing System & Registry by the
36 commissioner.

37 90016. (a) Except as otherwise provided in Section 1512 of
38 the SAFE Act (12 U.S.C. Sec. 5111(a)), the requirements under
39 any federal law or the Information Practices Act of 1977 (Chapter
40 1 (commencing with Section 1798) of Part 4 of Division 3 of the

1 Civil Code) regarding the privacy or confidentiality of any
 2 information or material provided to the Nationwide Multistate
 3 Licensing System & Registry, and any privilege arising under
 4 federal or state law, including the rules of any state court, with
 5 respect to that information or material, shall continue to apply to
 6 the information or material after the information or material has
 7 been disclosed to the Nationwide Multistate Licensing System &
 8 Registry. The information and material may be shared with all
 9 state and federal regulatory officials with industry oversight
 10 authority without the loss of privilege or the loss of confidentiality
 11 protections provided by federal law or the Information Practices
 12 Act.

13 (b) Information or material that is subject to a privilege or
 14 confidentiality under subdivision (a) shall not be subject to any of
 15 the following:

16 (1) Disclosure under any federal or state law governing the
 17 disclosure to the public of information held by an officer or an
 18 agency of the federal government or the state.

19 (2) Subpoena or discovery, or admission into evidence, in any
 20 private civil action or administrative process, unless with respect
 21 to any privilege held by the Nationwide Multistate Licensing
 22 System & Registry with respect to the information or material, the
 23 person to whom the information or material pertains waives, in
 24 whole or in part, in the discretion of that person, that privilege.

25 (c) This section shall not apply with respect to the information
 26 or material relating to the employment history of, and publicly
 27 adjudicated disciplinary and enforcement actions included in, the
 28 Nationwide Multistate Licensing System & Registry for access by
 29 the public.

30 90017. The commissioner shall report regularly violations of
 31 this division, as well as enforcement actions and other relevant
 32 information, to the Nationwide Multistate Licensing System &
 33 Registry, to the extent that the information is a public record.

34

CHAPTER 3. LICENSEE DUTIES

35

36
 37 90018. (a) A licensee shall notify the commissioner, in writing,
 38 of any change in the information provided in the application for a
 39 license, as applicable, not later than 10 business days after the

1 occurrence of the event that results in the information becoming
2 inaccurate or incomplete.

3 (b) (1) If a licensee seeks to change its place of business to a
4 street address other than that designated in its license, the licensee
5 shall provide notice to the commissioner at least 10 days prior to
6 the change. The commissioner shall notify the licensee within 10
7 days if the commissioner disapproves the change, and if the
8 commissioner does not notify the licensee of disapproval within
9 10 days, the change in address shall be deemed approved.

10 (2) A licensee shall not engage in the business of debt collection
11 at a new location in a name other than a name approved by the
12 commissioner.

13 (3) If notice is not given at least 10 days prior to the change of
14 a street address of a place of business, as required by subdivision
15 (b), or notice is not given at least 10 days prior to engaging in the
16 business of debt collection at a new location, the commissioner
17 may assess a civil or administrative penalty on the licensee not to
18 exceed five hundred dollars (\$500).

19 90019. A licensee shall do all of the following:

20 (a) Develop policies and procedures reasonably intended to
21 promote compliance with this division.

22 (b) File with the commissioner any report required by the
23 commissioner.

24 (c) Comply with the provisions of this division and any
25 regulation or order of the commissioner.

26 (d) Submit to periodic examination by the commissioner as
27 required by this division and any regulation or order of the
28 commissioner.

29 (e) Maintain a surety bond in accordance with this section in a
30 minimum amount of twenty-five thousand dollars (\$25,000). The
31 bond shall be payable to the commissioner and issued by an insurer
32 authorized to do business in this state. The surety bond, including
33 any and all riders and endorsements executed subsequent to the
34 effective date of the bond, shall be filed with the commissioner
35 within 10 days of execution. The bond shall be used for the
36 recovery of expenses, fines, and fees levied by the commissioner
37 in accordance with this division and for losses or damages incurred
38 by borrowers as the result of a licensee's noncompliance with the
39 requirements of this division. The commissioner may require
40 licensees to submit bonds, riders, and endorsements electronically

1 through the Nationwide Multistate Licensing System & Registry's
2 electronic surety bond function.

3 (1) When an action is commenced on a licensee's bond, the
4 commissioner may require the filing of a new bond. Immediately
5 upon recovery of any action on the bond, the licensee shall file a
6 new bond. Failure to file a new bond within 10 days of the recovery
7 on a bond, or within 10 days after notification by the commissioner
8 that a new bond is required, constitutes sufficient grounds for the
9 suspension or revocation of the license.

10 (2) The commissioner may require a higher bond amount for a
11 licensee based on the dollar amount of collecting consumer debt
12 by that licensee.

13 90020. (a) Each licensee shall pay to the commissioner its pro
14 rata share of all costs and expenses reasonably incurred in the
15 administration of this division, as estimated by the commissioner,
16 for the ensuing year and any deficit actually incurred or anticipated
17 in the administration of the division in the year in which the
18 assessment is made. The pro rata share shall be the proportion that
19 a licensee's debt collection activities in this state bears to the costs
20 and expenses remaining after the amount assessed pursuant to
21 subdivision (c).

22 (b) On or before September 30 in each year, the commissioner
23 shall notify each licensee of the amount assessed and levied against
24 it and that amount shall be paid by October 31. If payment is not
25 made by October 31, the commissioner shall assess and collect a
26 penalty, in addition to the assessment, of 1 percent of the
27 assessment for each month or part of a month that the payment is
28 delayed or withheld.

29 (c) In the levying and collection of the assessment, a licensee
30 shall neither be assessed for nor be permitted to pay less than two
31 hundred fifty dollars (\$250) per licensed location per year.

32 (d) If a licensee fails to pay the assessment on or before October
33 31, the commissioner may by order summarily suspend or revoke
34 the license issued to the licensee. If, after an order is made, a
35 request for hearing is filed in writing within 30 days, and a hearing
36 is not held within 60 days thereafter, the order is deemed rescinded
37 as of its effective date. During any period when the license is
38 revoked or suspended, a licensee shall not engage in the business
39 of collecting debt in this state pursuant to this division except as
40 may be permitted by order of the commissioner. However, the

1 revocation, suspension, or surrender of a license shall not affect
2 the powers of the commissioner as provided in this division.

3 (e) Notwithstanding subdivisions (a) to (d), inclusive, the
4 commissioner may by rule require licensees to pay assessments
5 through the Nationwide Multistate Licensing System & Registry.

6 90021. (a) A licensee shall file an annual report with the
7 commissioner, on or before March 15, giving the relevant
8 information that the commissioner reasonably requires concerning
9 the business and operations conducted by the licensee in the state
10 during the preceding calendar year, including information regarding
11 collection activity. The report shall, at minimum, require disclosure
12 of all of the following information:

13 (1) The total number of debtor accounts purchased or collected
14 on in the preceding year.

15 (2) The total dollar amount of California debtor accounts
16 purchased in the preceding year.

17 (3) The face value dollar amount of California debtor accounts
18 in the licensee's portfolio in the preceding year.

19 (4) The total dollar amount collected in the preceding year, and
20 the total dollar amount of outstanding debt that remains
21 uncollected.

22 (5) Whether or not the licensee is acting as a debt collector, debt
23 buyer, or both.

24 (b) The individual annual reports filed pursuant to this section
25 shall be made available to the public for inspection.

26 (c) The report shall be made under oath and in the form
27 prescribed by the commissioner.

28 (d) A licensee shall make other special reports that may be
29 required by the commissioner.

30 90022. A licensee that ceases to engage in debt collection shall
31 inform the commissioner in writing and surrender the license and
32 all other indicia of license to the commissioner.

33

34 CHAPTER 4. PERIODIC EXAMINATION OF LICENSEES

35

36 90023. (a) As often as the commissioner deems necessary and
37 appropriate, but at least once every 36 months, the commissioner
38 shall examine the affairs of each licensee for compliance with this
39 division. The commissioner shall appoint suitable persons to
40 perform the examination. The commissioner and their appointees

1 may examine the books, records, and documents of the licensee,
2 and may examine the licensee’s officers, directors, employees, or
3 agents under oath regarding the licensee’s operations. The
4 commissioner may cooperate with any agency of the state, the
5 federal government, or other states in performing license
6 examinations.

7 (b) Unless otherwise exempt pursuant to Section 90001,
8 affiliates of a licensee are subject to examination by the
9 commissioner on the same terms as the licensee, but only when
10 reports from, or examination of, a licensee provides documented
11 evidence of unlawful activity between a licensee and affiliate
12 benefitting, affecting, or arising from the activities regulated by
13 this division.

14 (c) The cost of each examination of a licensee shall be paid to
15 the commissioner by the licensee examined, and the commissioner
16 may maintain an action for the recovery of the cost in any court
17 of competent jurisdiction. In determining the cost of the
18 examination, the commissioner may use the estimated average
19 hourly cost for all persons performing examinations of licensees
20 or other persons subject to this division for the fiscal year.

21 (d) The statement of the findings of an examination shall belong
22 to the commissioner and shall not be disclosed to anyone other
23 than the licensee, law enforcement officials, or other state or federal
24 regulatory agencies for further investigation and enforcement.
25 Reports required of licensees by the commissioner under this
26 division and results of examinations performed by the
27 commissioner under this division are the property of the
28 commissioner.

29 (e) The commissioner shall provide a written statement of the
30 findings of the examination, issue a copy of that statement to the
31 licensee and take appropriate steps to ensure correction of any
32 violations of this division.

33 (f) Notwithstanding any provision of this division, the
34 commissioner shall have the authority to waive one or more branch
35 office examinations, if the commissioner deems that the branch
36 office examinations are not necessary for the protection of the
37 public, due to the centralized operations of the licensee or other
38 factors acceptable to the commissioner.

1 (g) In any proceeding under this division, the burden of proving
2 an exemption or an exception from a definition is upon the person
3 claiming it.

4 SEC. 4. The Legislature finds and declares that Section 1 of
5 this act, which adds Section Division 24 (commencing with Section
6 90000) to the Financial Code, imposes a limitation on the public's
7 right of access to the meetings of public bodies or the writings of
8 public officials and agencies within the meaning of Section 3 of
9 Article I of the California Constitution. Pursuant to that
10 constitutional provision, the Legislature makes the following
11 findings to demonstrate the interest protected by this limitation
12 and the need for protecting that interest:

13 Protecting from public disclosure limited confidential
14 information provided by licensees to the Commissioner of Business
15 Oversight properly balances protecting legitimate private economic
16 interests and public interests in effective regulation.

17 SEC. 5. No reimbursement is required by this act pursuant to
18 Section 6 of Article XIII B of the California Constitution because
19 the only costs that may be incurred by a local agency or school
20 district will be incurred because this act creates a new crime or
21 infraction, eliminates a crime or infraction, or changes the penalty
22 for a crime or infraction, within the meaning of Section 17556 of
23 the Government Code, or changes the definition of a crime within
24 the meaning of Section 6 of Article XIII B of the California
25 Constitution.