

AMENDED IN SENATE JUNE 18, 2020

AMENDED IN SENATE MAY 26, 2020

AMENDED IN SENATE APRIL 15, 2020

SENATE BILL

No. 908

Introduced by Senator Wieckowski

February 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 amended, 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 placing a telephone call without disclosing the caller’s identity, as specified, and sending digital or written communications that do not display the license number of the debt collector in at least 12-point type as a prohibited debt collection practice.

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

This bill would enact the Debt Collection Licensing Act which would, beginning on January 1, 2022, provide for 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 debt collecting in this state without a license and would also require the person to 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, *and* 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, adopting regulations, performing investigations, suspending a license, issuing orders and claims for relief, and enforcing the provisions, as specified. The bill would authorize the commissioner to use the authority to issue orders and claims for relief in connection with a violation of the Rosenthal Fair Debt Collection Practices Act or provisions regulating debt buyers, by insured depository institutions and persons who are licensed and regulated pursuant to the California Financing Law, the California Residential Mortgage Lending Act, and the Real Estate Law, as specified. The bill would, commencing January 1, 2021, require the commissioner to take all action necessary in order to be prepared to perform these duties commencing January 1, 2022, including, but not limited to, the adoption of necessary regulations. 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.

6 (b) Placing a telephone call without disclosing the caller's
7 identity, provided that an employee of a licensed collection agency
8 may identify oneself by using their registered alias name if they
9 correctly identify the agency that they represent. A debt collector
10 shall provide its California debt collector license number upon the
11 consumer's request.

12 (c) Causing expense to any person for long distance telephone
13 calls, telegram fees, or charges for other similar communications,
14 by misrepresenting to the person the purpose of the telephone call,
15 telegram or similar communication.

16 (d) Causing a telephone to ring repeatedly or continuously to
17 annoy the person called.

18 (e) Communicating, by telephone or in person, with the debtor
19 with such frequency as to be unreasonable, and to constitute
20 harassment of the debtor under the circumstances.

21 (f) Sending written or digital communication to the person that
22 does not display the California license number of the collector in
23 at least 12-point type.

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

25 1788.52. (a) A debt buyer shall not make any written statement
26 to a debtor in an attempt to collect a consumer debt unless the debt
27 buyer possesses the following information:

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

30 (2) The debt balance at charge off and an explanation of the
31 amount, nature, and reason for all post-charge-off interest and fees,
32 if any, imposed by the charge-off creditor or any subsequent
33 purchasers of the debt. This paragraph shall not be deemed to
34 require a specific itemization, but the explanation shall identify

1 separately the charge-off balance, the total of any post-charge-off
2 interest, and the total of any post-charge-off fees.

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

4 (4) The name and an address of the charge-off creditor at the
5 time of charge off, and the charge-off creditor's account number
6 associated with the debt. The charge-off creditor's name and
7 address shall be in sufficient form so as to reasonably identify the
8 charge-off creditor.

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

14 (6) The names and addresses of all persons or entities that
15 purchased the debt after charge off, including the debt buyer
16 making the written statement. The names and addresses shall be
17 in sufficient form so as to reasonably identify each such purchaser.

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

19 (b) A debt buyer shall not make any written statement to a debtor
20 in an attempt to collect a consumer debt unless the debt buyer has
21 access to a copy of a contract or other document evidencing the
22 debtor's agreement to the debt. If the claim is based on debt for
23 which no signed contract or agreement exists, the debt buyer shall
24 have access to a copy of a document provided to the debtor while
25 the account was active, demonstrating that the debt was incurred
26 by the debtor. For a revolving credit account, the most recent
27 monthly statement recording a purchase transaction, last payment,
28 or balance transfer shall be deemed sufficient to satisfy this
29 requirement.

30 (c) A debt buyer shall provide the information or documents
31 identified in subdivisions (a) and (b) to the debtor without charge
32 within 15 calendar days of receipt of a debtor's written request for
33 information regarding the debt or proof of the debt. If the debt
34 buyer cannot provide the information or documents within 15
35 calendar days, the debt buyer shall cease all collection of the debt
36 until the debt buyer provides the debtor the information or
37 documents described in subdivisions (a) and (b). Except as
38 provided otherwise in this title, the request by the debtor shall be
39 consistent with the validation requirements contained in Section
40 1692g of Title 15 of the United States Code. A debt buyer shall

1 provide all debtors with whom it has contact an active postal
2 address to which these requests can be sent. A debt buyer may also
3 provide an active email address to which these requests can be
4 sent and through which information and documents can be
5 delivered, if the parties agree.

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

9
10 “You may request records showing the following: (1) that [insert
11 name of debt buyer] has the right to seek collection of the debt;
12 (2) the debt balance, including an explanation of any interest
13 charges and additional fees; (3) the date of default or the date of
14 the last payment; (4) the name of the charge-off creditor and the
15 account number associated with the debt; (5) the name and last
16 known address of the debtor as it appeared in the charge-off
17 creditor’s or debt buyer’s records prior to the sale of the debt, as
18 appropriate; and (6) the names of all persons or entities that have
19 purchased the debt. You may also request from us a copy of the
20 contract or other document evidencing your agreement to the debt.

21 “A request for these records may be addressed to: [insert debt
22 buyer’s active mailing address and email address, if applicable].”
23

24 (2) When collecting on a time-barred debt where the debt is not
25 past the date for obsolescence provided for in Section 605(a) of
26 the federal Fair Credit Reporting Act (15 U.S.C. Sec. 1681c):
27

28 “The law limits how long you can be sued on a debt. Because
29 of the age of your debt, we will not sue you for it. If you do not
30 pay the debt, [insert name of debt buyer] may [continue to] report
31 it to the credit reporting agencies as unpaid for as long as the law
32 permits this reporting.”
33

34 (3) When collecting on a time-barred debt where the debt is
35 past the date for obsolescence provided for in Section 605(a) of
36 the federal Fair Credit Reporting Act (15 U.S.C. Sec. 1681c):
37

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

1
2 (e) If a language other than English is principally used by the
3 debt buyer in the initial oral contact with the debtor, the notice
4 required by subdivision (d) shall be provided to the debtor in that
5 language within five working days.

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

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

11
12 DIVISION 24. DEBT COLLECTION LICENSING ACT

13
14 CHAPTER 1. GENERAL PROVISIONS

15
16 Article 1. Short Title

17
18 90000. This division shall be known, and may be cited, as the
19 Debt Collection Licensing Act.

20 90000.5. (a) Except as set forth in this section, this division
21 shall become operative on January 1, 2022.

22 (b) Commencing January 1, 2021, the commissioner shall take
23 all actions necessary to prepare to be able, commencing January
24 1, 2022, to fully enforce the licensing and regulatory provisions
25 of this division, including, but not limited to, adoption of all
26 necessary regulations.

27 (c) The commissioner shall allow any debt collector that submits
28 an application prior to January 1, 2022, to operate pending the
29 approval or denial of the application.

30
31 Article 2. Requirements for Licensure

32
33 90001. (a) No person shall engage in the business of debt
34 collection in this state without first obtaining a license pursuant to
35 this division. To the extent permitted by federal law, a person is
36 acting in this state if the person is located in this state and is seeking
37 to collect from a debtor that resides inside or outside the state, or
38 is located outside of the state and is seeking to collect from a debtor
39 that resides in this state. A license shall be obtained for the
40 licensee's principal place of business and shall not be transferred

1 or assigned. A separate license is not required for each individual
2 branch office.

3 (b) (1) Except as provided in paragraph (2), this division shall
4 not apply to a depository institution, as defined in Section 1420,
5 a person licensed pursuant to Division 9 (commencing with Section
6 22000) or Division 20 (commencing with Section 50000), a person
7 licensed pursuant to Part 1 (commencing with Section 10000) of
8 Division 4 of the Business and Professions Code, or a trustee
9 performing acts in connection with a nonjudicial foreclosure
10 pursuant to Article 1 (commencing with Section 2920) of Chapter
11 2 of Title 14 of Part 4 of Division 3 of the Civil Code.

12 (2) The commissioner may use the authority described in Section
13 90005 in connection with a violation of Title 1.6C (commencing
14 with Section 1788) or Title 1.6C.5 (commencing with Section
15 1788.50) of Part 4 of Division 3 of the Civil Code by a person
16 described in paragraph (1).

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

19
20 Article 3. Definitions

21
22 90002. For purposes of this division, the following terms have
23 the following meanings:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

CHAPTER 2. LICENSING

Article 1. Commissioner on Business Oversight

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

(b) Without limitation, the functions, powers, and duties of the 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 allow affiliated companies to be under a single license.
4 The commissioner shall adopt regulations specifying what
5 constitutes an affiliated company for these purposes.

6 (3) To revoke or suspend any license for a violation of this
7 division or a violation of Title 1.6C (commencing with Section
8 1788) or Title 1.6C.5 (commencing with Section 1788.50) of Part
9 4 of Division 3 of the Civil Code.

10 (4) To keep records of licenses issued under this division.

11 (5) To receive, consider, investigate, and act upon a complaint
12 made in connection with a licensee.

13 (6) To prescribe the form of and to receive applications for
14 licenses and reports, books, and records required to be made or
15 retained by a licensee.

16 (7) To subpoena documents and witnesses, and to compel their
17 attendance and production, to administer oaths, and to require the
18 production of books, papers, or other materials relevant to any
19 inquiry authorized by this division.

20 (8) To require information with regard to an applicant that the
21 commission may deem necessary, with regard for the paramount
22 public interest in ascertaining the experience, background, honesty,
23 truthfulness, integrity, and competency of an applicant for
24 collecting consumer debt, and if an applicant is an entity other
25 than an individual, in ascertaining the honesty, truthfulness,
26 integrity, and competency of officers, directors, or managing
27 members of the corporation, association, or other entity, or the
28 general patterns of a partnership.

29 (9) To enforce by order any provision of this division.

30 (10) To levy fees, fines, and charges in an amount sufficient to
31 cover the cost of the services performed in administering this
32 division. The fees collected pursuant to this division shall not
33 exceed the costs of administering this division.

34 90004. (a) Notwithstanding any law the commissioner shall
35 have the authority to conduct investigations and examinations of
36 an applicant or licensee as follows:

37 (1) For purposes of determining whether an applicant is eligible
38 for a license, or that a licensee is complying with the provisions
39 of this division or any regulation or order of the commissioner,
40 the commissioner may access, receive, and use any books,

1 accounts, records, files, documents, information, or evidence that
2 relates to debt collection, including, but not limited to, any of the
3 following relating to the intent to, or the practice of, collecting
4 consumer debt:

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

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

9 (C) Any other documents, information, or evidence that the
10 commissioner deems relevant to the inquiry or investigation
11 regardless of the location, possession, control, or custody of those
12 documents, information, or evidence.

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

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

33 (c) The commissioner may permit affiliated companies to be
34 subject to a single examination. The department shall list all
35 affiliated company names on the license and shall post them on
36 the department's internet website.

37 90005. (a) If, in the opinion of the commissioner, a person
38 who is required to be licensed under this division is engaged in
39 business as a debt collector without a license from the
40 commissioner, or a licensee has violated any provision of this

1 division, an order, or a regulation adopted pursuant to this division,
2 the commissioner may do any of the following:

3 (1) Order the person or licensee to desist and to refrain from
4 engaging in the business of further continuing the violation.

5 (2) Order the person to pay ancillary relief. The ancillary relief
6 may include, but need not be limited to, refunds, restitution,
7 disgorgement, and payment of damages, as appropriate, on behalf
8 of a person injured by the conduct or practice that constitutes the
9 subject matter of the assessment.

10 (b) If, within 30 days after an order issued pursuant to
11 subdivision (a) is served, a written request for a hearing is filed
12 and no hearing is held within 30 days thereafter, the order shall be
13 deemed rescinded.

14 90006. (a) Notwithstanding any law, the commissioner may
15 by rule or order prescribe circumstances under which to accept
16 electronic records or electronic signatures. This section shall not
17 be deemed to require the commissioner to accept electronic records
18 or electronic signatures.

19 (b) For purposes of this section, the following terms have the
20 following meanings:

21 (1) “Electronic record” means an initial license application, or
22 material modification of that license application, and any other
23 record created, generated, sent, communicated, received, or stored
24 by electronic means. “Electronic record” also includes, but is not
25 limited to, all of the following electronic documents:

26 (A) An application, amendment, supplement, and exhibit, filed
27 for any license, consent, or other authority.

28 (B) A financial statement, report, or advertising.

29 (C) A surety bond, rider, or endorsement thereto.

30 (D) An order, license, consent, or other authority.

31 (E) A notice of public hearing, accusation, and statement of
32 issues in connection with any application, license, consent, or other
33 authority.

34 (F) A proposed decision of a hearing officer and a decision of
35 the commissioner.

36 (G) The transcripts of a hearing and correspondence between a
37 party and the commissioner directly relating to the record.

38 (H) A release, newsletter, interpretive opinion, determination,
39 or specific ruling.

1 (I) Correspondence between a party and the commissioner
2 directly relating to any document listed in subparagraphs (A) to
3 (H), inclusive.

4 (2) “Electronic signature” means an electronic sound, symbol,
5 or process attached to or logically associated with an electronic
6 record and executed or adopted by a person with the intent to sign
7 the electronic record.

8 (c) The Legislature finds and declares that the Department of
9 Business Oversight has continuously implemented methods to
10 accept records filed electronically, and is encouraged to continue
11 to expand its use of electronic filings to the extent feasible, as
12 budget, resources, and equipment are made available to accomplish
13 that goal.

14 90006.3. (a) The commissioner may require an applicant for
15 a debt collector license to make some or all of the filings with the
16 commissioner through the Nationwide Multistate Licensing System
17 & Registry.

18 (b) The commissioner may require an application to be made
19 through the Nationwide Multistate Licensing System & Registry,
20 and may require fees, fingerprints, financial statements, supporting
21 documents, changes of address, and any other information, and
22 amendments or modifications thereto, to be submitted by applicants
23 and licensees through the Nationwide Multistate Licensing System
24 & Registry.

25 (c) The commissioner may require licensees to pay annual fees
26 through the Nationwide Multistate Licensing System & Registry.

27 90006.5. (a) The Debt Collection Licensing Fund is hereby
28 established within the state treasury.

29 (b) All licensing fees collected shall be deposited into the Fees
30 Account which is hereby established within the fund.

31 (c) All fines and penalties collected shall be deposited into the
32 Penalties Account which is hereby established within the fund.

33 (d) All monies deposited into the fund shall be available to the
34 commissioner, upon appropriation by the Legislation, for the
35 purposes of this division.

36 Article 2. Application for Licensure

37
38
39 90007. An applicant shall apply for a license by submitting all
40 of the following to the commissioner:

1 (a) A completed application for a license in a form prescribed
2 by the commissioner and signed under penalty of perjury. Every
3 application shall include the location of the applicant's principal
4 place of business and all branch office locations.

5 (b) An application fee and investigation fee, the amount of which
6 shall be determined by the department, to cover any costs incurred
7 in processing an application, including a fingerprint processing
8 and criminal history record check under Section 90009. The
9 investigation fee, including the amount for the criminal history
10 record check, and the application fee are not refundable if an
11 application is denied or withdrawn.

12 (c) A sample of the initial letter required pursuant to Section
13 1692g of Title 15 of the United States Code that the licensee will
14 use in correspondence with California consumers.

15 90008. (a) The commissioner shall submit to the Department
16 of Justice fingerprint images and related information required by
17 the Department of Justice of every applicant for a license for
18 purposes of obtaining information as to the existence and content
19 of a record of state or federal convictions, state or federal arrests,
20 and information as to the existence and content of a record of state
21 or federal arrests for which the Department of Justice establishes
22 that the person is free on bail or on their own recognizance pending
23 trial or appeal.

24 (b) When received, the Department of Justice shall transmit
25 fingerprint images and related information received pursuant to
26 this section to the Federal Bureau of Investigation for the purpose
27 of obtaining a federal criminal history records check. The
28 Department of Justice shall review the information returned from
29 the Federal Bureau of Investigation and compile and disseminate
30 a response to the commissioner.

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

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

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

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

8 (2) Upon the filing of an application for a license pursuant to
9 Section 90007 and the payment of the fees, if the applicant is a
10 corporation, trust, limited liability company, or association,
11 including an unincorporated organization, the commissioner shall
12 investigate the applicant, its principal officers, directors, trustee,
13 managing members, and individuals owning or controlling, directly
14 or indirectly, 10 percent or more of the outstanding equity securities
15 or any individual responsible for the conduct of the applicant's
16 debt collection activities in this state.

17 (b) Upon the filing of an application for a license pursuant to
18 Section 90007 and the payment of the fees, the commissioner shall
19 investigate the individual responsible for the debt collection activity
20 of the licensee at the location described in the application. The
21 investigation may be limited to information that was not included
22 in prior applications filed pursuant to this division.

23 (c) For the purposes of this section, "principal officers" shall
24 mean president, chief executive officer, treasurer, and chief
25 financial officer, as may be applicable, and any other officer with
26 direct responsibility for the conduct of the applicant's debt
27 collection activities in this state.

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

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

37 90012. (a) The proceedings for a denial of a license shall be
38 conducted in accordance with Chapter 5 (commencing with Section
39 11500) of Part 1 of Division 3 of Title 2 of the Government Code.

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

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

5 (2) The applicant or any principal officer, director, general
6 partner, managing member, or individual owning or controlling,
7 directly or indirectly, 10 percent or more of the outstanding
8 interests or equity securities of the applicant, within the last 10
9 years has (A) been convicted of, or pleaded nolo contendere to, a
10 crime, other than traffic violations, or (B) committed any act
11 involving dishonesty, fraud, or deceit, if the crime or act is
12 substantially related to the qualifications, functions, or duties of a
13 person engaged in business in accordance with this division.

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

20 (4) A material requirement for issuance of a license has not been
21 met, provided that a written notice of a material omission shall
22 first be sent to the applicant with an opportunity to correct the
23 omission prior to the applicant's denial.

24 (5) The applicant or any principal officer, director, general
25 partner, managing member, or individual owning or controlling,
26 directly or indirectly, 10 percent or more of the outstanding
27 interests or equity securities of the applicant, has violated this
28 division or the rules thereunder, or any similar regulatory scheme
29 of this or a foreign jurisdiction.

30 (6) The applicant or any principal officer, director, general
31 partner, managing member, or individual owning or controlling,
32 directly or indirectly, 10 percent or more of the outstanding
33 interests or equity securities of the applicant, has been held liable
34 by final judgment in a civil action under Title 1.6C (commencing
35 with Section 1788) or Title 1.6C.5 (commencing with Section
36 1788.50) of Part 4 of Division 3 of the Civil Code, within the past
37 seven years.

38 (7) The commissioner, based on its investigation of the
39 applicant, is unable to find that the financial responsibility, criminal
40 records, experience, character, and general fitness of the applicant

1 and its general partners, managing members, principal officers and
2 directors, and individuals owning or controlling, directly or
3 indirectly, 10 percent or more of the outstanding interests or equity
4 securities of the applicant, support a finding that the business will
5 be operated honestly, fairly, efficiently, and in accordance with
6 the requirements of this division.

7 90013. (a) The commissioner may deem an application for a
8 license abandoned if the applicant fails to respond to any request
9 for information required by the commissioner or department during
10 an investigation of the application.

11 (b) The commissioner shall notify the applicant, in writing, that
12 if the applicant fails to submit responsive information within 60
13 days from the date the commissioner sent the written request for
14 information, the commissioner shall deem the application
15 abandoned.

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

20 90014. A license shall remain effective until the license is
21 either suspended or revoked by the commissioner or surrendered
22 by the licensee.

23 24 Article 3. Nationwide Multistate Licensing System and Registry 25

26 90015. (a) The commissioner is authorized to establish
27 relationships or contracts with the Nationwide Multistate Licensing
28 System & Registry or other entities designated by the Nationwide
29 Multistate Licensing System & Registry to collect and maintain
30 records and process transaction fees or other fees related to
31 licensees or other persons subject to this division.

32 (b) For the purpose of participating in the Nationwide Multistate
33 Licensing System & Registry, the commissioner is authorized to
34 waive or modify, in whole or in part, by rule, regulation, or order,
35 any or all of the requirements of this division and to establish new
36 requirements as reasonably necessary to participate in the
37 Nationwide Multistate Licensing System & Registry.

38 (c) The commissioner may use the Nationwide Multistate
39 Licensing System & Registry as a channeling agent for requesting
40 information from, and distributing information to, the Department

1 of Justice, any other governmental agency, or any other source, as
2 directed by the commissioner.

3 (d) The commissioner shall establish a process through which
4 applicants and licensees may challenge information entered into
5 the Nationwide Multistate Licensing System & Registry by the
6 commissioner.

7 90016. (a) Except as otherwise provided in Section 1512 of
8 the SAFE Act (12 U.S.C. Sec. 5111(a)), the requirements under
9 any federal law or the Information Practices Act of 1977 (Chapter
10 1 (commencing with Section 1798) of Part 4 of Division 3 of the
11 Civil Code) regarding the privacy or confidentiality of any
12 information or material provided to the Nationwide Multistate
13 Licensing System & Registry, and any privilege arising under
14 federal or state law, including the rules of any state court, with
15 respect to that information or material, shall continue to apply to
16 the information or material after the information or material has
17 been disclosed to the Nationwide Multistate Licensing System &
18 Registry. The information and material may be shared with all
19 state and federal regulatory officials with industry oversight
20 authority without the loss of privilege or the loss of confidentiality
21 protections provided by federal law or the Information Practices
22 Act.

23 (b) Information or material that is subject to a privilege or
24 confidentiality under subdivision (a) shall not be subject to any of
25 the following:

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

29 (2) Subpoena or discovery, or admission into evidence, in any
30 private civil action or administrative process, unless with respect
31 to any privilege held by the Nationwide Multistate Licensing
32 System & Registry with respect to the information or material, the
33 person to whom the information or material pertains waives, in
34 whole or in part, in the discretion of that person, that privilege.

35 (c) This section shall not apply with respect to the information
36 or material relating to the employment history of, and publicly
37 adjudicated disciplinary and enforcement actions included in, the
38 Nationwide Multistate Licensing System & Registry for access by
39 the public.

1 90017. The commissioner shall report regularly violations of
2 this division, as well as enforcement actions and other relevant
3 information, to the Nationwide Multistate Licensing System &
4 Registry, to the extent that the information is a public record.

5
6 CHAPTER 3. LICENSEE DUTIES
7

8 90018. (a) A licensee shall notify the commissioner, in writing,
9 of any change in the information provided in the application for a
10 license, as applicable, not later than 30 days after the occurrence
11 of the event that results in the information becoming inaccurate
12 or incomplete.

13 (b) (1) If a licensee seeks to change its place of business to a
14 street address other than that designated in its license, the licensee
15 shall provide written notice to the commissioner at least 10 days
16 prior to the change.

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

20 (3) A licensee that opens a new branch office or changes the
21 location of an existing branch office shall notify the commissioner
22 in writing of the new or changed branch office location within 30
23 days after the branch office begins business.

24 90019. A licensee shall do all of the following:

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

27 (b) File with the commissioner any report required by the
28 commissioner.

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

31 (d) Submit to periodic examination by the commissioner as
32 required by this division and any regulation or order of the
33 commissioner.

34 (e) Maintain a surety bond in accordance with this section in a
35 minimum amount of twenty-five thousand dollars (\$25,000). The
36 bond shall be payable to the commissioner and issued by an insurer
37 authorized to do business in this state. The surety bond, including
38 any and all riders and endorsements executed subsequent to the
39 effective date of the bond, shall be filed with the commissioner
40 within 10 days of execution. The bond shall be used for the

1 recovery of expenses, fines, and fees levied by the commissioner
2 in accordance with this division. The commissioner may require
3 licensees to submit bonds, riders, and endorsements electronically
4 through the Nationwide Multistate Licensing System & Registry's
5 electronic surety bond function.

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

13 (2) The commissioner may require a higher bond amount for a
14 licensee based on the number of affiliates under the license and
15 the dollar amount of collecting consumer debt by that licensee.

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

25 (b) On or before September 30 in each year, the commissioner
26 shall notify each licensee of the amount of the annual fee schedule
27 that will take effect on January 1. If payment is not made by
28 January 1, the commissioner shall assess and collect a penalty, in
29 addition to the fee, of 1 percent of the assessment for each month
30 or part of a month that the payment is delayed or withheld.

31 (c) In the levying and collection of the annual fees, a licensee
32 shall neither be charged for nor be permitted to pay less than two
33 hundred fifty dollars (\$250) nor more than an aggregate of ____
34 dollars (\$____) with the exception of fees associated with
35 investigations and examinations.

36 (d) If a licensee fails to pay the annual fees on or before January
37 1, the commissioner may by order summarily suspend or revoke
38 the license issued to the licensee. If, after an order is made, a
39 request for hearing is filed in writing within 30 days, and a hearing
40 is not held within 60 days thereafter, the order is deemed rescinded

1 as of its effective date. During any period when the license is
2 revoked or suspended, a licensee shall not engage in the business
3 of collecting debt in this state pursuant to this division except as
4 may be permitted by order of the commissioner. However, the
5 revocation, suspension, or surrender of a license shall not affect
6 the powers of the commissioner as provided in this division.

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

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

17 (1) The total number of California debtor accounts purchased
18 or collected on in the preceding year.

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

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

23 (4) The total dollar amount of California debtor accounts
24 collected in the preceding year, and the total dollar amount of
25 outstanding debt that remains uncollected.

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

28 (6) The case number of any action in which the licensee was
29 held liable by final judgment under Title 1.6C (commencing with
30 Section 1788) or Title 1.6C.5 (commencing with Section 1788.50)
31 of Part 4 of Division 3 of the Civil Code.

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

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

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

38 90022. A licensee that ceases to engage in debt collection shall
39 inform the commissioner in writing and surrender the license and
40 all other indicia of license to the commissioner.

CHAPTER 4. PERIODIC EXAMINATION OF LICENSEES

90023. (a) As often as the commissioner deems necessary and appropriate, but at least once every ~~36 months~~, 5 years, the commissioner shall examine the affairs of each licensee for compliance with this division. The commissioner shall appoint suitable persons to perform the examination. The commissioner and their appointees may examine the books, records, and documents of the licensee, and may examine the licensee's officers, directors, employees, or agents under oath regarding the licensee's debt collection operations. ~~The~~

(b) The commissioner may cooperate with any agency of the state, the federal government, or other states in performing license examinations.

~~(b)~~

(c) *This section does not require the commissioner to conduct examinations at the business offices of licensees. Unless an onsite examination is considered necessary for the protection of the public, the commissioner may conduct some or all examinations without a site visit to the business office of a licensee, by requesting that licensees submit required books and records to the department electronically, via a secure portal.*

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

~~(e)~~

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

~~(f)~~

(f) The statement of the findings of an examination shall belong to the commissioner and shall not be disclosed to anyone other

1 than the licensee, law enforcement officials, or other state or federal
2 regulatory agencies for further investigation and enforcement.
3 Reports required of licensees by the commissioner under this
4 division and results of examinations performed by the
5 commissioner under this division are the property of the
6 commissioner.

7 ~~(e)~~

8 (g) The commissioner shall provide a written statement of the
9 findings of the examination, issue a copy of that statement to the
10 licensee and take appropriate steps to ensure correction of any
11 violations of this division.

12 ~~(f)~~

13 (h) Notwithstanding any provision of this division, the
14 commissioner shall have the authority to waive one or more branch
15 office examinations, if the commissioner deems that the branch
16 office examinations are not necessary for the protection of the
17 public, due to the centralized operations of the licensee or other
18 factors acceptable to the commissioner.

19 ~~(g)~~

20 (i) In any proceeding under this division, the burden of proving
21 an exemption or an exception from a definition is upon the person
22 claiming it.

23 SEC. 4. The Legislature finds and declares that Section 1 of
24 this act, which adds Section Division 24 (commencing with Section
25 90000) to the Financial Code, imposes a limitation on the public's
26 right of access to the meetings of public bodies or the writings of
27 public officials and agencies within the meaning of Section 3 of
28 Article I of the California Constitution. Pursuant to that
29 constitutional provision, the Legislature makes the following
30 findings to demonstrate the interest protected by this limitation
31 and the need for protecting that interest:

32 Protecting from public disclosure limited confidential
33 information provided by licensees to the Commissioner of Business
34 Oversight properly balances protecting legitimate private economic
35 interests and public interests in effective regulation.

36 SEC. 5. No reimbursement is required by this act pursuant to
37 Section 6 of Article XIII B of the California Constitution because
38 the only costs that may be incurred by a local agency or school
39 district will be incurred because this act creates a new crime or
40 infraction, eliminates a crime or infraction, or changes the penalty

1 for a crime or infraction, within the meaning of Section 17556 of
2 the Government Code, or changes the definition of a crime within
3 the meaning of Section 6 of Article XIII B of the California
4 Constitution.

O