

September 30, 2021

Department of Financial Protection and Innovation
Legal Division
Attn: Sandra Sandoval, Legal Analyst
300 S. Spring Street, Ste. 15513
Los Angeles, CA 90013

Submitted electronically to: regulations@dfpi.ca.gov

SUBJECT: PROPOSED SECOND RULEMAKING UNDER THE DEBT COLLECTION LICENSING ACT – PRO 05-21

Dear Ms. Sandoval:

The California Chamber of Commerce appreciates the opportunity to provide comments on the Proposed Second Rulemaking Under the Debt Collection Licensing Act – PRO 05-21, specifically the question proposed in Section 1.B. of your letter dated August 19, 2021.

Comments to Section 1.B.

The DCLA states that “[n]o person shall engage in the business of debt collection in this state without first obtaining a license pursuant to this division.” Are regulations needed to clarify the term “engage in the business of debt collection”?

We believe clarification about the term “engage in the business of debt collection” is necessary to ensure that retailers whose primary business is to sell products to consumers need not obtain licenses under SB 908.

Financial Code Section 100001 does not state that all persons acting in the capacity of a “debt collector” or that ever engage in an act of debt collection must be licensed. Rather, it more narrowly provides that those who “engage *in the business of* debt collection” in California must be licensed (emphasis added). This is an important distinction. Other laws regarding licensure of businesses clearly state that licensing requirements apply to *both* those engaging in a certain type of business *and* those acting in the capacity of a certain position. This includes contractors, real estate brokers, and real estate sales persons. See Cal. Bus. & Prof. Code § 7028 (“[I]t is a misdemeanor for a person to **engage in the business of, or act in the capacity of, a contractor** within this state under either of the following conditions . . . the person is not licensed in accordance with this chapter”); Cal. Bus. & Prof. § 10130 (“It is unlawful for any person to **engage in the business of, act in the capacity of, advertise as, or assume to act as a real estate broker or a real estate salesperson** within this state without first obtaining a real estate license from the department”).

The plain language in SB 908 only prohibits engaging in the business of debt collection without a license – it does not say that all who may from time to time fall under the definition of a debt collector or occasionally engage in debt collection must be licensed. This is a key difference between SB 908 and similar statutes. If SB 908 were to be enforced such that any person who ever collects debt must be licensed, this could include persons for whom debt collection is incidental to their business. For example, it could include any merchant that ever sell products through installment contracts. A local furniture store that allows a customer to pay for a couch

through twelve monthly installment payments could be required to obtain a license. This means they will be subject to burdensome annual fees, reporting, and background checks. Such an interpretation would deter smaller businesses from offering installment contracts to customers, making it more difficult for consumers to purchase necessary goods such as furniture, cars, or appliances.

It is evident that the Legislature intended to crack down on enforcement over those who are primarily engaged in collecting debt. We do not believe the bill sought to license merchants like the furniture store described above that seek to only collect direct payments owed to themselves for certain customers. SB 908's author, Senator Bob Wieckowski noted that one of the primary justifications for the bill was the debt collection and debt buying industries' "notoriously unscrupulous" practices, which yield large numbers of consumer complaints each year. Statements by the author and bill supporters discuss licensing the "profession" of debt collection and "their employees who manage thousands of accounts", demonstrating the intent of SB 908 is to license those whose business is primarily focused on debt collection.¹ The Consumer Financial Protection Bureau ("CFPB") study cited by proponents of the bill provides that the large number of complaints regarding debt collection largely stem from predatory practices. Examples cited by proponents of the bill include predatory conduct by debt collection agencies, financial institutions, and mill law firms that spend substantial time and resources collecting debt. The issue SB 908 seeks to resolve is the unchecked practices of those actors. To interpret SB 908 as requiring any retailer that ever engages in debt collection because it allows consumers to pay monthly installments for a product to be licensed would be a significant overreach with negative unintended consequences on both businesses and consumers.

For the foregoing reasons, we request that the DFPI define "engage in the business of debt collection" to clarify that only those persons or entities who primarily engage in the business of debt collection must be licensed, not any retailer who may collect debt from a customer.

We appreciate your consideration of our concerns and comments.

Sincerely,



Ashley Hoffman
California Chamber of Commerce

cc: Consultant, Office of the Governor

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¹ Press Release, [California Senate passes bill to license debt collectors | Senator Bob Wieckowski](#); Senate Banking and Financial Institutions Analysis, [201920200SB908_Senate Banking And Financial Institutions.pdf](#).