



California New Car Dealers Association

October 1, 2021

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

RE: Debt Collection Regulation – PRO 05-21

Dear Ms. Sandoval:

The California New Car Dealers Association (CNCDA) is a statewide trade association that represents the interests of over 1,200 franchised new car and truck dealer members. CNCDA members are primarily engaged in the retail sale and lease of new and used motor vehicles, but also engage in automotive service, repair, and parts sales. We are writing to you today in response to the invitation for comments dated August 19, 2021. Specifically, we are asking the Department of Financial Protection and Innovation (DFPI) to clarify the phrase “engage in the business of debt collection.”

CNCDA is supportive of regulating the debt collection industry and applauds the efforts to prevent bad actors from taking advantage of consumers. New car dealers are licensed and regulated by multiple state agencies¹ and must abide by a myriad of consumer protection laws. However, to avoid unintended consequences, CNCDA seeks clarification that businesses requiring licensure under the Debt Collection Licensing Act (DCLA) are those in which the purpose of the business is debt collection. In other words, retailers (including new car dealers), should not be considered to be engaging “in the business of debt collection,” even if they incidentally engage in activities that could constitute “debt collection.”

Why is Clarification of the Phrase “Business of Debt Collection” Needed?

The definitions section of the DCLA largely incorporates the terms and meanings contained within the Rosenthal Act, which has long regulated debt collection and debt collector activities. For the purposes of this letter, the most important terms are “debt collection,” “debt collector,” “consumer debt,” and “consumer credit transaction.”

The term “debt collection” is very broad – it encompasses “any act or practice in connection with the collection of consumer debt.”² The term “consumer debt” is also incredibly broad – it “means money, property, or their equivalent, due or owing, [...] from a natural person by reason of a consumer credit transaction.” “Consumer credit transaction” includes transactions “between a natural person and another

¹ These include the Department of Motor Vehicles, the Bureau of Automotive Repair, the New Motor Vehicle Board, and the Department of Justice, just to name a few.

² Financial Code Section 100002.

person in which property, services, or money is acquired on credit by that natural person from the other person primarily for personal, family, or household purposes.”

The term “debt collector” is much narrower.³ It only includes a “person who, in the ordinary course of business, regularly, on the person’s own behalf or on behalf of others, engages in debt collection.” In other words, to qualify as a “debt collector” a person must regularly engage in debt collection and such debt collection must occur during the ordinary course of business.

Put together, this means that a business can engage in an activity that constitutes “debt collection,” but not be a “debt collector” unless they regularly engage in such activities during the ordinary course of business. For example, a retailer that sells a mattress to a customer on a 12-month installment plan may engage in “debt collection” if they seek to collect on the debt in the event of a customer default. However, the retailer would not be a “debt collector” unless they regularly engage in debt collection during the ordinary course of their business.

The DCLA does not require all persons that engage in “debt collection” to become licensed, nor does it require “debt collectors” to be licensed. Instead, the DCLA mandates licensure for those persons that “*engage in the business of* debt collection” (emphasis added).⁴ For the reasons articulated below, we believe DFPI should interpret the modifier “engage in the business of” to narrow the scope of the law’s licensure requirement to only those persons that operate a business whose sole or primary purpose is debt collection.

An Overbroad Interpretation of the Licensing Requirements Would Implicate Many Retailers

Many retailers, including new car dealers, sell goods through retail installment sales contracts (RISC) and lease agreements. Products that are commonly sold by retailers through RISCs include many high-value items, including mattresses, furniture, appliances, cameras, smartphones, athletic gear, televisions, jewelry, and motor vehicles. Many of these same products are offered by retailers through lease agreements that offer customers the option to use a good for a fixed period (e.g., 12 months).

These contracts require customers to make payments in installments, and if a customer fails to make payments, the seller is empowered to collect on the deficiency. As noted above, a retailer that collects on this deficiency could be engaging in “debt collection,” given the term’s very broad definition. However, a typical retailer would not be a “debt collector,” as the collection on debts is not a regular part of their business.

The DFPI should adopt an interpretation of “engage in the business of debt collection” to avoid requiring many retailers, including many small businesses, from becoming licensed as debt collectors. Such a broad interpretation creates an absurd result that is not textually supported. Put simply, most retailers do not “engage in the business of debt collection,” they engage in the business of selling their products to customers.

³ Financial Code Section 100002.

⁴ Financial Code Section 100001.

Legislative History Does Not Support the Application of the DCLA Licensure Requirement to New Car Dealers

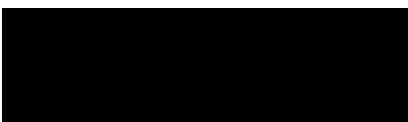
New car dealers that occasionally collect on RISCs or lease agreements are not the type of businesses contemplated by the legislature to be licensed through Senate Bill (SB) 908, which enacted the DCLA.

As summarized in the Senate Floor Analysis, SB 908 was intended to “add a layer of regulatory oversight over *debt collectors and debt buyers* already subject to state law, but *not currently subject to licensure*.”⁵ Further, the legislature intended to license debt collectors previously unlicensed who “spend a considerable portion of their business collecting on credit debt held by natural persons” and the new law was meant to exclude persons who “only incidentally engage in debt collection activities.” In other words, the legislature wanted debt collectors to become licensed, since prior law did not require licensure for persons that operate a debt collection business.

The application of the DCLA licensure requirement to new car dealers makes little sense since dealer business operations have been subject to licensure requirements prior to SB 908. For many decades, California has required persons that operate a business to sell and service motor vehicles to become licensed. A new car dealer must obtain a license from the Department of Motor Vehicles to operate their vehicle sale and lease business, and they must obtain a license from the Bureau of Automotive Repair to operate their vehicle service business.⁶ As such, applying the debt collection licensure requirement to new car dealers does not further the legislative intent behind the DCLA, which was to license previously unlicensed business activity.

The plain language and legislative history demonstrate that new car dealers should not be required to obtain a debt collection license. Dealers are engaged in the business of selling and servicing automobiles, not the “business of debt collection.” Moreover, the purpose of SB 908 is to require unlicensed actors to become licensed. The business of selling and servicing cars has required a license for decades. For these reasons, we ask you to clarify the definition of “engaging in the business of debt collection” so that retailers like new car dealers that incidentally engage in debt collection are not required to obtain a license.

Respectfully,



Anthony Bento
Director of Legal and Regulatory Affairs
California New Car Dealers Association

⁵ Senate Floor Analysis of Sen. Bill No. 908 (2019-2020 Reg. Sess.) as amended August 24, 2020 (emphasis added).

⁶ Vehicle Code Section 11700; Business and Professions Code Section 9880.1.