

TEXT OF PROPOSED REGULATIONS
DEPARTMENT OF FINANCIAL PROTECTION AND INNOVATION
TITLE 10. INVESTMENT
CHAPTER 3. COMMISSIONER OF FINANCIAL PROTECTION AND INNOVATION

PRO 05-21
DEBT COLLECTION LICENSING ACT

SECTION 1. Section 1850 is amended to read:

§ 1850. Definitions.

ADD: (i) "Employee" means an individual whose manner and means of performance of work are subject to the right of control of, or are controlled by, a person and whose compensation for federal income tax purposes is reported, or required to be reported, on a W-2 form or international equivalent, issued by the controlling person.

ADD: (j) "Engage in the business of debt collection": A person engages in the business of debt collection and is required to be licensed pursuant to section 100001, subdivision (a) of the Financial Code if the person (A) engages in debt collection for a profit or gain, and (B) the activity is of a regular, frequent, or continuous nature. Advertising or otherwise offering the service of debt collection for remuneration constitutes engaging in the business of debt collection.

ADD: (o) For purposes of subdivision (a) of Financial Code section 100020, "net proceeds generated by California debtor accounts" shall mean the revenues less cost of goods sold or "gross income" generated by California debtor accounts.

(1) For purposes of this section, revenues generated by California debtor accounts means any income generated from collection activity for California debtor accounts, including but not limited to fees for services related to the collection of California debt accounts, income received from the payment of debt by a debtor, and income received from buying and selling California debtor accounts.

(2) For purposes of this section, cost of goods sold for the collection of California debtor accounts includes expenses directly attributable to the debt being collected, including the cost

of the debt. The cost of goods sold does not include operational costs that are not directly attributable to the expenses for the collection of California debtor accounts.

SECTION 2. Section 1850.1 is adopted to read:

§ 1850.1 Scope of Licensing requirement.

(a) Employees of debt collectors are not required to be licensed under the Debt Collection Licensing Act when acting within the scope of their employment with a debt collector licensed pursuant to Division 25 of the Financial Code, commencing with Section 100000.

(b) The licensing exemption in section 100001, subdivision (b)(1) of the Financial Code applies to the listed entities only. The exemption does not apply to parent entities, subsidiaries, or to affiliates.

(c) Original creditors: A creditor seeking, in its own name, repayment of consumer debt arising from credit the creditor extended is not engaged in the business of debt collection for purposes of licensure under the Debt Collection Licensing Act, unless it meets one or more of the following criteria:

(1) Five percent or more of the creditor's annual profits over the last twelve months, whether contracted for or received, constitute collection fees, late fees, or any other charges added to the original consumer credit transaction that created the debt.

(2) Within the last 12 months, an average of ten percent or more of the creditor's inventory was repossessed at least once, either by the creditor directly or through a third-party.

(3) The creditor has a monthly average over the last 12 months of twenty-five percent or more of the gross amount of its accounts receivables ninety or more days past due.

(d) A person solely servicing debts not in default on behalf of an original creditor, as described in subdivision (c), is not engaged in the business of debt collection for purposes of licensure under the Debt Collection Licensing Act. For purposes of this section, "default" means

more than 90 days past due, unless the contract governing the transaction or another law provides otherwise.

(e) Notwithstanding subdivision (c), a healthcare provider, healthcare facility, or hospital is not engaged in the business of debt collection for purposes of licensure under the Debt Collection Licensing Act if the only debt it collects is on its own behalf and is payment for medical or other services or products it provided.

(f) Notwithstanding subdivision (c), a local, state, or federal government body of the United States is not engaged in the business of debt collection for purposes of licensure under the Debt Collection Licensing Act when collecting debt owed to a government body. For the purposes of this division, "government body" includes: a state, county, city, tribal, district, public authority, public agency, judicial branch public entity, state-chartered public college or university, and any office, officer, department, division, bureau, board, or commission thereof.

(g) A person whose debt collection activity is limited exclusively to debt collection regulated pursuant to Division 12.5 of the Financial Code is not required to obtain a debt collector license.

(h) Notwithstanding subdivision (c), a public utility is not engaged in the business of debt collection for purposes of licensure under the Debt Collection Licensing Act when acting under the supervision of the California Public Utilities Commission in accordance with its authority under Public Utilities Code section 701.

SECTION 3. Section 1850.2 is adopted to read:

§ 1850.2 Consumer credit transactions.

(a) The following types of debt are not consumer debt within the meaning of section 100002, subdivision (f) of the Financial Code:

(1) Residential rental debt.

(2) Debt owed pursuant to a Homeowners' Association Declaration of Covenants, Conditions, and Restrictions or other equivalent written agreement.

(b) Debt arising from a consumer’s acquisition of healthcare or medical services, where payment is deferred, is presumed to be consumer debt within the meaning of section 100002, subdivision (f) of the Financial Code.

(c) The failure of a personal check to clear does not create a consumer credit transaction under the Debt Collection Licensing Act.

SECTION 4. Article 6, Section 1850.70 is adopted to read:

Article 6. Annual Reports and Record Retention

§1850.70 Annual Reports.

(a) The annual report required by Financial Code section 100021 shall be submitted by each licensee with an attestation to its accuracy and completeness signed by a principal officer or sole proprietor of the licensee. The report must be submitted electronically according to instructions provided by the department.

(b) “Preceding year” means calendar year, January 1 through December 31.

(c) The total number of California debtor accounts should be counted by transaction, not by debtor. If a single debtor has multiple accounts, each account should be counted separately.

(d) The total number of California debtor accounts collected in the preceding year shall include the following:

(1) the total number of California debtor accounts collected in full.

(2) The total number of California debtor accounts collected that settled for less than the full amount of the debt.

(3) The total number of California debtor accounts collected where less than the full amount of the debt was collected, and a balance remains due.

(e) The total dollar amount of California debtor accounts purchased in the preceding year means the total amount owed by all California debtors on all California accounts purchased in the preceding year before any fees or other charges are added by the licensee.

(f) The face value dollar amount of California debtor accounts in the licensee's portfolio in the preceding year means the total amount owed by all debtors on all accounts before any fees or other charges are added by the licensee, as of December 31 of the preceding year, regardless of when the accounts entered the portfolio.

(g) In addition to the requirements of Financial Code section 100021, the report shall include the following:

(1) The number of California debtor accounts in the licensee's portfolio on December 31 of the preceding year.

(2) The total number of California debtors whose accounts are in the licensee's portfolio on December 31 of the preceding year.

(h) The report shall include the total number and dollar amount of California debtor accounts for which collection was attempted during the preceding calendar year. This number shall not include the California debtor accounts reported in subdivision (d), paragraphs (1) through (3).

SECTION 5. Section 1850.71 is adopted to read:

§1850.71 Document Retention.

(a) Each licensee shall make and preserve a record of any contact with, or attempt to contact, anyone associated with a debtor account, regardless of who initiated the contact and whether the attempt at contact is successful. The record shall include, at a minimum:

(1) the name of the employee making the attempt or who received contact from a person regarding the debtor account, and the name of the person who contacted the licensee (if available).

(2) the date and time of contact.

(3) the name and contact information of the person the licensee is attempting to contact.

(4) whether the attempt resulted in direct or indirect communication with the debtor.

(5) a summary of the substance of the contact or message conveyed, and whether payment was made as a result of the contact.

(6) if the call was recorded, the recording shall be retained.

(b) Subdivision (a) does not apply to contacts made between licensees and debt buyers or creditors.

(c) Each licensee shall keep and maintain the following information:

(1) All employee records.

(2) The records created pursuant to subdivision (a).

(3) All documents and records the licensee is required to maintain pursuant to any other law, including but not limited to titles 1.6C and 1.6C.5 of Part 4 of Division 3 of the Civil Code, commencing with section 1788, and Division 24 of the Financial Code, commencing with section 90000.

(4) All records of fees, interest, and any charges on debtor accounts accrued since acquisition of the account by the licensee.

(5) Records establishing that the licensee is no longer attempting to collect on accounts that have been settled and that the consumer has been informed of the settlement and that no further collection efforts will be made.

(6) Complaint records, responses, and documentation establishing compliance with the regulations adopted pursuant to Division 24 of the Financial Code.

(d) Each licensee shall retain the information in subdivision (c), in a form readily accessible, for at least seven years after any of the following, whichever occurred last:

(1) The account has been settled, whether for full payment or a different amount, and the consumer has been informed that they no longer owe the debt and that no further contact or collection attempts will be made by the licensee, or

(2) the account has been returned to the creditor whether or not payments have been made, or

(3) the account is sold or all collection attempts have ceased.