

**Senate Bill No. 908**

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Passed the Senate August 31, 2020

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*Secretary of the Senate*

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Passed the Assembly August 31, 2020

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*Chief Clerk of the Assembly*

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This bill was received by the Governor this \_\_\_\_\_ day  
of \_\_\_\_\_, 2020, at \_\_\_\_\_ o'clock \_\_\_\_M.

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*Private Secretary of the Governor*

## CHAPTER \_\_\_\_\_

An act to amend Sections 1788.11 and 1788.52 of the Civil Code, and to add Division 25 (commencing with Section 100000) to the Financial Code, relating to debt collectors.

## LEGISLATIVE COUNSEL'S DIGEST

SB 908, 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 prohibited debt collection practices.

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.

This 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 various provisions of law, including 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.

The bill would establish the Debt Collection Advisory Committee, consisting of 7 members appointed by the commissioner, within the Department of Business Oversight to advise the commissioner on matters relating to debt collection, as specified.

(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.

*The people of the State of California do enact as follows:*

SECTION 1. Section 1788.11 of the Civil Code is amended to read:

1788.11. No debt collector shall collect or attempt to collect a consumer debt by means of the following practices:

- (a) Using obscene or profane language.
- (b) Placing a telephone call without disclosing the caller's identity, provided that an employee of a licensed collection agency may identify oneself by using their registered alias name if they correctly identify the agency that they represent. A debt collector shall provide its California debt collector license number upon the consumer's request.
- (c) Causing expense to any person for long distance telephone calls, telegram fees, or charges for other similar communications, by misrepresenting to the person the purpose of the telephone call, telegram or similar communication.
- (d) Causing a telephone to ring repeatedly or continuously to annoy the person called.
- (e) Communicating, by telephone or in person, with the debtor with such frequency as to be unreasonable, and to constitute harassment of the debtor under the circumstances.
- (f) Sending written or digital communication to the person that does not display the California license number of the collector in at least 12-point type.

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

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

- (1) That the debt buyer is the sole owner of the debt at issue or has authority to assert the rights of all owners of the debt.
- (2) The debt balance at charge off and an explanation of the amount, nature, and reason for all post-charge-off interest and fees, if any, imposed by the charge-off creditor or any subsequent purchasers of the debt. This paragraph shall not be deemed to require a specific itemization, but the explanation shall identify separately the charge-off balance, the total of any post-charge-off interest, and the total of any post-charge-off fees.
- (3) The date of default or the date of the last payment.

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

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

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

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

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

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

sent and through which information and documents can be delivered, if the parties agree.

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

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

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

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

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

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

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

(e) If a language other than English is principally used by the debt buyer in the initial oral contact with the debtor, the notice

required by subdivision (d) shall be provided to the debtor in that language within five working days.

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

SEC. 3. Division 25 (commencing with Section 100000) is added to the Financial Code, to read:

## DIVISION 25. DEBT COLLECTION LICENSING ACT

### CHAPTER 1. GENERAL PROVISIONS

#### Article 1. Short Title

100000. This division shall be known, and may be cited, as the Debt Collection Licensing Act.

100000.5. (a) Except as set forth in this section, this division shall become operative on January 1, 2022.

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

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

100000.7. No county, city, or other political subdivision within this state shall require a debt collector to be licensed or to register as a debt collector.

#### Article 2. Requirements for Licensure

100001. (a) No person shall engage in the business of debt collection in this state without first obtaining a license pursuant to this division. To the extent permitted by federal law, a person is acting in this state if the person is located in this state and is seeking to collect from a debtor that resides inside or outside the state, or is located outside of the state and is seeking to collect from a debtor that resides in this state. A license shall be obtained for the licensee's principal place of business and shall not be transferred

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

(b) (1) Except as provided in paragraph (2), this division shall not apply to a depository institution, as defined in Section 1420, a person licensed pursuant to Division 9 (commencing with Section 22000) or Division 20 (commencing with Section 50000), a person licensed pursuant to Part 1 (commencing with Section 10000) of Division 4 of the Business and Professions Code, a person who is subject to the Karnette Rental-Purchase Act (Title 2.96 (commencing with Section 1812.620) of Part 4 of Division 3 of the Civil Code), or a trustee performing acts in connection with a nonjudicial foreclosure pursuant to Article 1 (commencing with Section 2920) of Chapter 2 of Title 14 of Part 4 of Division 3 of the Civil Code.

(2) The commissioner may use the authority described in Section 100005 in connection with a violation of Title 1.6C (commencing with Section 1788) or Title 1.6C.5 (commencing with Section 1788.50) of Part 4 of Division 3 of the Civil Code by a person described in paragraph (1).

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

### Article 3. Definitions

100002. For purposes of this division, the following terms have the following meanings:

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

(b) “California debtor accounts” means accounts that are owned by consumers who reside in California at the time that the consumer makes a payment on the account.

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

(d) “Commissioner” means the Commissioner of Business Oversight.

(e) “Consumer credit transaction” means a transaction between a natural person and another 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.

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

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

(h) “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.

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

(j) “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.

(k) “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.

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

(m) “Fund” means the Debt Collection Licensing Fund established pursuant to Section 100006.5.

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

(o) “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.

(p) “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

100003. (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) To issue or to refuse to issue a license as provided in this division.

(2) To allow affiliated companies to be under a single license. The commissioner shall adopt regulations specifying what constitutes an affiliated company for these purposes.

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

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

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

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

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

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

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

(10) To levy fees, fines, and charges in an amount sufficient to cover the cost of the services performed in administering this

division. The fees collected pursuant to this division shall not exceed the costs of administering this division.

100003.3. (a) The proceedings for a revocation of a license shall be conducted in accordance with Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code.

(b) The commissioner may suspend or revoke a license if, after notice and an opportunity for hearing, the commissioner finds any of the following:

(1) The licensee violated this division or a regulation adopted or an order issued under this division.

(2) The licensee does not cooperate with an examination or investigation by the commissioner.

(3) The licensee violates Title 1.6C (commencing with Section 1788) or Title 1.6C.5 (commencing with Section 1788.50) of Part 4 of Division 3 of the Civil Code. The commissioner may adopt regulations that specify the factors that the commissioner will consider in revoking or suspending a license, including, but not limited to, the harm to the consumer, the frequency of the violation, and the number of prior disciplinary actions taken against the licensee.

(4) The licensee is insolvent, suspends payment of its obligations, or makes a general assignment for the benefit of its creditors.

(5) A receiver, liquidator, or conservator has been appointed for a licensee.

(6) Any fact or condition exists that, if it had existed at the time that the licensee applied for the license, would have been grounds for denying the application.

100004. (a) Notwithstanding any law the commissioner shall have the authority to conduct investigations and examinations of an applicant or licensee as follows:

(1) For purposes of determining whether an applicant is eligible for a license, or that a licensee is complying with the provisions of this division or any regulation or order of the commissioner, the commissioner may access, receive, and use any books, accounts, records, files, documents, information, or evidence that relates to debt collection, including, but not limited to, any of the following relating to the intent to, or the practice of, collecting consumer debt:

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

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

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

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

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

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

100005. (a) If, in the opinion of the commissioner, a person who is required to be licensed under this division is engaged in business as a debt collector without a license from the commissioner, or a person or licensee has violated any provision of this division, an order, or a regulation adopted pursuant to this division, or Title 1.6C (commencing with Section 1788) or Title 1.6C.5 (commencing with Section 1788.50) of Part 4 of Division 3 of the Civil Code, the commissioner may do any of the following:

(1) After notice and an opportunity for a hearing, order the person or licensee to desist and to refrain from engaging in the business of further continuing the violation.

(2) After notice and an opportunity for a hearing, order the person or licensee to pay ancillary relief. The ancillary relief may include, but need not be limited to, refunds, restitution, disgorgement, and payment of damages, as appropriate, on behalf of a person injured by the conduct or practice that constitutes the subject matter of the assessment. A person or licensee may dispute an order to pay ancillary relief for an individual violation of Title 1.6C (commencing with Section 1788) or Title 1.6C.5 (commencing with Section 1788.50) of Part 4 of Division 3 of the Civil Code, if the same injured person brought an action for the same violation against the same person or licensee in court, the action resulted in a final judgment on the merits, and all damages, penalties, or fees have been paid to the injured person.

(b) If, in the opinion of the commissioner, a depository institution, as defined in Section 1420, a person licensed pursuant to Division 9 (commencing with Section 22000) or Division 20 (commencing with Section 50000), or a person licensed pursuant to Part 1 (commencing with Section 10000) of Division 4 of the Business and Professions Code, has violated Title 1.6C (commencing with Section 1788) or Title 1.6C.5 (commencing with Section 1788.50) of Part 4 of Division 3 of the Civil Code, the commissioner may take the actions described in paragraphs (1) and (2) of subdivision (a).

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

100006. (a) Notwithstanding any law, the commissioner may by rule or order prescribe circumstances under which to accept electronic records or electronic signatures. This section shall not be deemed to require the commissioner to accept electronic records or electronic signatures.

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

(1) “Electronic record” means an initial license application, or material modification of that license application, and any other record created, generated, sent, communicated, received, or stored

by electronic means. “Electronic record” also includes, but is not limited to, all of the following electronic documents:

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

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

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

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

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

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

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

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

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

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

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

100006.3. (a) The commissioner may require an applicant for a license to make some or all of the filings with the commissioner through the Nationwide Multistate Licensing System & Registry.

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

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

100006.5. (a) The Debt Collection Licensing Fund is hereby established within the state treasury.

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

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

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

## Article 2. Application for Licensure

100007. An applicant shall apply for a license by submitting all of the following to the commissioner:

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

(b) An application fee and investigation fee, the amount of which shall be determined by the department, to cover any costs incurred in processing an application, including a fingerprint processing and criminal history record check under Section 100009. The investigation fee, including the amount for the criminal history record check, and the application fee are not refundable if an application is denied or withdrawn.

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

100008. (a) The commissioner shall submit to the Department of Justice fingerprint images and related information required by the Department of Justice of every applicant, as defined in subdivision (a) of Section 100002, for purposes of obtaining information as to the existence and content of a record of state or federal convictions, state or federal arrests, and information as to the existence and content of a record of state or federal arrests for which the Department of Justice establishes that the person is free on bail or on their own recognizance pending trial or appeal.

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

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

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

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

100009. (a) (1) Upon the filing of an application for a license pursuant to Section 100007 and the payment of the fees, if the applicant is a partnership, the commissioner shall investigate the applicant and its general partners and individuals owning or controlling, directly or indirectly, 10 percent or more of the outstanding interests or any individual responsible for the conduct of the applicant's servicing activities in this state.

(2) Upon the filing of an application for a license pursuant to Section 100007 and the payment of the fees, if the applicant is a corporation, trust, limited liability company, or association, including an unincorporated organization, the commissioner shall investigate the applicant, its principal officers, directors, trustee, managing members, and individuals owning or controlling, directly or indirectly, 10 percent or more of the outstanding equity securities or any individual responsible for the conduct of the applicant's debt collection activities in this state.

(b) Upon the filing of an application for a license pursuant to Section 100007 and the payment of the fees, the commissioner shall investigate the individual responsible for the debt collection activity of the licensee at the location described in the application. The investigation may be limited to information that was not included in prior applications filed pursuant to this division.

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

100011. (a) When the application is complete, including the information from the Department of Justice, and the commissioner determines that the applicant has satisfied the requirements set forth in this division and does not find facts constituting reasons for denial, the commissioner shall issue and deliver a license to the applicant.

(b) If the commissioner determines that the requirements have not been satisfied, after notice and an opportunity for a hearing, the commissioner may deny the application and shall provide a written explanation for the denial.

100012. (a) The proceedings for a denial of a license shall be conducted in accordance with Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code.

(b) After notice and an opportunity for a hearing the commissioner may deny an application for a license for any of the following reasons:

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

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

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

(4) A material requirement for issuance of a license has not been met, provided that a written notice of a material omission shall

first be sent to the applicant with an opportunity to correct the omission prior to the applicant's denial.

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

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

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

(8) The commissioner may adopt regulations specifying the factors that the commissioner will consider in denying a license, including, but not limited to, the harm to the consumer, the frequency of prior violations, and the number of prior disciplinary actions taken against the licensee in California or in other states.

100013. (a) The commissioner may deem an application for a license abandoned if the applicant fails to respond to any request for information required by the commissioner or department during an investigation of the application.

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

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

100014. A license shall remain effective until the license is either suspended or revoked by the commissioner or surrendered by the licensee.

### Article 3. Nationwide Multistate Licensing System and Registry

100015. (a) The commissioner is authorized to establish relationships or contracts with the Nationwide Multistate Licensing System & Registry or other entities designated by the Nationwide Multistate Licensing System & Registry to collect and maintain records and process transaction fees or other fees related to licensees or other persons subject to this division.

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

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

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

100016. (a) Except as otherwise provided in Section 1512 of the SAFE Act (12 U.S.C. Sec. 5111(a)), the requirements under any federal law or the Information Practices Act of 1977 (Chapter 1 (commencing with Section 1798) of Part 4 of Division 3 of the Civil Code) regarding the privacy or confidentiality of any information or material provided to the Nationwide Multistate Licensing System & Registry, and any privilege arising under federal or state law, including the rules of any state court, with respect to that information or material, shall continue to apply to

the information or material after the information or material has been disclosed to the Nationwide Multistate Licensing System & Registry. The information and material may be shared with all state and federal regulatory officials with industry oversight authority without the loss of privilege or the loss of confidentiality protections provided by federal law or the Information Practices Act.

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

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

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

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

100017. The commissioner shall report regularly violations of this division, as well as enforcement actions and other relevant information, to the Nationwide Multistate Licensing System & Registry, to the extent that the information is a public record.

### CHAPTER 3. LICENSEE DUTIES

100018. (a) A licensee shall notify the commissioner, in writing, of any change in the information provided in the application for a license, as applicable, not later than 30 days after the occurrence of the event that results in the information becoming inaccurate or incomplete.

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

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

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

100019. A licensee shall do all of the following:

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

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

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

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

(e) Maintain a surety bond in accordance with this section in a minimum amount of twenty-five thousand dollars (\$25,000). The bond shall be payable to the commissioner and issued by an insurer authorized to do business in this state. The surety bond, including any and all riders and endorsements executed subsequent to the effective date of the bond, shall be filed with the commissioner within 10 days of execution. The bond shall be used for the recovery of expenses, fines, and fees levied by the commissioner in accordance with this division. The commissioner may require licensees to submit bonds, riders, and endorsements electronically through the Nationwide Multistate Licensing System & Registry's electronic surety bond function.

(1) When an action is commenced on a licensee's bond, the commissioner may require the filing of a new bond. Immediately upon recovery of any action on the bond, the licensee shall file a new bond. Failure to file a new bond within 10 days of the recovery on a bond, or within 10 days after notification by the commissioner that a new bond is required, constitutes sufficient grounds for the suspension or revocation of the license. A licensee may provide the commissioner a refundable deposit in the amount of twenty-five thousand dollars (\$25,000) in lieu of the bond while the licensee pursues a new bond.

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

100020. (a) Each licensee shall pay to the commissioner its pro rata share of all costs and expenses reasonably incurred in the administration of this division, as estimated by the commissioner, for the ensuing year and any deficit actually incurred or anticipated in the administration of the division in the year in which the annual fee is levied. The pro rata share shall be based upon the proportion of net proceeds generated by California debtor accounts in the preceding year after the amount levied pursuant to subdivision (c).

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

(c) In the levying and collection of the annual fees, a licensee shall neither be charged for nor be permitted to pay less than two hundred fifty dollars (\$250) nor more than an aggregate of all reasonable costs to operate this division, with the exception of fees associated with investigations and examinations.

(d) If a licensee fails to pay the annual fees on or before January 1, the commissioner may by order summarily suspend or revoke the license issued to the licensee. If, after an order is made, a request for hearing is filed in writing within 30 days, and a hearing is not held within 60 days thereafter, the order is deemed rescinded as of its effective date. During any period when the license is revoked or suspended, a licensee shall not engage in the business of collecting debt in this state pursuant to this division except as may be permitted by order of the commissioner. However, the revocation, suspension, or surrender of a license shall not affect the powers of the commissioner as provided in this division.

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

100021. (a) A licensee shall file an annual report with the commissioner, on or before March 15, that contains all relevant information that the commissioner reasonably requires concerning the business and operations conducted by the licensee in the state

during the preceding calendar year, including information regarding collection activity. The report shall, at minimum, require disclosure of all of the following information:

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

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

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

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

(5) The total dollar amount of net proceeds generated by California debtor accounts in the preceding year.

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

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

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

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

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

100022. A licensee that ceases to engage in debt collection shall inform the commissioner in writing and surrender the license and all other indicia of license to the commissioner.

#### CHAPTER 4. PERIODIC EXAMINATION OF LICENSEES

100023. (a) As often as the commissioner deems necessary and appropriate, 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.

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

(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 100001, 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) 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) The statement of the findings of an examination shall belong to the commissioner and shall not be disclosed to anyone other than the licensee, law enforcement officials, or other state or federal regulatory agencies for further investigation and enforcement. Reports required of licensees by the commissioner under this division and results of examinations performed by the commissioner under this division are the property of the commissioner.

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

(h) Notwithstanding any provision of this division, the commissioner shall have the authority to waive one or more branch office examinations, if the commissioner deems that the branch office examinations are not necessary for the protection of the

public, due to the centralized operations of the licensee or other factors acceptable to the commissioner.

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

CHAPTER 5. ADVISORY COMMITTEE

100025. (a) There is within the Department of Business Oversight, a Debt Collection Advisory Committee.

(b) The Debt Collection Advisory Committee shall advise the commissioner on matters relating to debt collection or the debt collection business, including proposed fee schedules and the mechanics and feasibility of implementing requirements proposed in regulations.

(c) The Debt Collection Advisory Committee shall consist of seven members; one of whom shall represent consumers.

(1) The members of the Debt Collection Advisory Committee shall be appointed by the commissioner.

(2) The term of a member of the Debt Collection Advisory Committee shall be two years. However, a member may be reappointed.

(3) Membership in the Debt Collection Advisory Committee shall be voluntary. No person shall be required to accept an appointment to the Debt Collection Advisory Committee, and any member may resign at any time by filing a resignation with the commissioner.

(4) No member of the Debt Collection Advisory Committee shall receive any compensation, reimbursement for expenses, or other payment from the state in connection with service on the Debt Collection Advisory Committee.

(d) The Debt Collection Advisory Committee shall meet at least twice each calendar year.

(e) The commissioner may, by order or regulation, prescribe rules governing the Debt Collection Advisory Committee and its members, including, but not limited to, matters relating to meetings, quorum, and actions.

SEC. 4. The Legislature finds and declares that Section 1 of this act, which adds Division 25 (commencing with Section 100000) to the Financial Code, imposes a limitation on the public's

right of access to the meetings of public bodies or the writings of public officials and agencies within the meaning of Section 3 of Article I of the California Constitution. Pursuant to that constitutional provision, the Legislature makes the following findings to demonstrate the interest protected by this limitation and the need for protecting that interest:

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

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



Approved \_\_\_\_\_, 2020

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*Governor*