

## Massachusetts

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### Summary

License is required for active debt buyers.

License is not required for passive debt buyers.

### Sources

Licensing Information: <http://www.mass.gov/ocabr/licensee/license-types/banks-banking/application-forms-banking/apply-for-or-amend-a-license/debt-collectors-loan/>

Statute: <https://malegislature.gov/Laws/GeneralLaws/PartI/TitleXV/Chapter93/Section24>

Opinion Letters: <http://www.mass.gov/ocabr/banking-and-finance/laws-and-regulations/opinions-and-decisions/dob-selected-opinions/collection-agencies/>

### Statutory Provisions

Section 24. As used in sections 24 to 28, inclusive the following words shall have the following meanings, unless the context requires otherwise:

"Commissioner", the commissioner of banks.

"Consumer", any natural person obligated or allegedly obligated to pay any debt.

"Creditor", any person who offers or extends credit creating a debt or to whom a debt is owed, but the term shall not include a person to the extent that he receives an assignment or transfer of a debt in default solely for the purpose of facilitating collection of the debt for another.

"Debt", any obligation or alleged obligation of a consumer to pay money arising out of a transaction in which the money, property, insurance, or services which are the subject of the transaction are primarily for personal, family, or household purposes, whether or not the obligation has been reduced to judgment.

"Debt collector", any person who uses an instrumentality of interstate commerce or the mails in any business the principal purpose of which is the collection of a debt, or who regularly collects or attempts to collect, directly or indirectly, a debt owed or due or asserted to be owed or due another. Notwithstanding the exclusion provided by clause (f), debt collector shall include a creditor who, in the process of collecting his own debt, uses any name other than his own which would indicate that a third person is collecting or attempting to collect the debt. Debt collector shall also include a person who uses an instrumentality of interstate commerce or the mails in a business the principal purpose of which is the enforcement of security interests. Debt collector shall not include:

(a) an officer or employee of a creditor while, in the name of the creditor, collecting debts for the creditor;

(b) a person while acting as a debt collector for another person, both of whom are related by common ownership or affiliated by corporate control, if the person acting as a debt collector does so only for a person to whom it is so related or affiliated and if the principal business of the person is not the collection of a debt;

(c) an officer or employee of the United States or a state of the United States to the extent that collecting or attempting to collect a debt is in the performance of his official duty;

(d) a person while serving or attempting to serve legal process on another person in connection with the judicial enforcement of a debt;

(e) a nonprofit organization which, at the request of a consumer, performs bona fide consumer credit counseling and assists the consumer in the liquidation of debts by receiving payments from the consumer and distributing the amounts to creditors;

(f) a person collecting or attempting to collect a debt owed or due or asserted to be owed or due another to the extent the activity (i) is incidental to a bona fide fiduciary obligation or a bona fide escrow arrangement; (ii) concerns a debt which was originated by the person; (iii) concerns a debt which was not in default at the time it was obtained by the person; or (iv) concerns a debt obtained by the person as a secured party in a commercial credit transaction involving the creditor;

(g) attorneys-at-law collecting a debt on behalf of a client; and

(h) an agent or independent contractor employed for the purpose of collecting a charge or bill owed by a tenant to a landlord or owed by a customer to a corporation subject to the supervision of the department of public utilities or the department of telecommunications and cable or the division of insurance insofar as the person collects charges or bills only for the landlord or supervised corporations.

"Register", filing a notice with the commissioner on a form prescribed by the commissioner that notifies the commissioner of the intent to engage in the activities of a third party loan servicer in this state and the payment of a fee required under this act, along with the other documents, proofs, and fees required by the commissioner.

### **Opinion Letters**

“Massachusetts General Laws chapter 93, section 24 requires that any person collecting or receiving payment on behalf of others of any account, bill or indebtedness must first obtain a collection agency license from the Division. However, based on the information provided in your letter, your client is not engaging in the business of collecting debts on behalf of others but rather is purchasing such debt from creditors. After becoming the owner of such debts, your client employs licensed collection agencies or collection attorneys to collect the debt from the debtors. Based on the facts as stated in your letter, it is the position of the Division that your client would not be required to obtain a collection agency license in the Commonwealth in order to purchase charged-off debt from financial institutions and employ licensed collection agencies and collection attorneys to collect the debt on behalf of your client.” Mass. Div. of Banks, [Op. Letter 01-072](#) (February 26, 2002).

“It is the position of the Division that a debt buyer who purchases debt in default but is not directly engaged in the collection of these purchased debts is not required to obtain a debt collector license provided that all collection activity performed on behalf of such debt buyer is done by a properly licensed debt collector in the Commonwealth or an attorney-at-law licensed to practice law in the Commonwealth.” Mass. Div. of Banks, [Op. Letter 60-060](#) (Oct. 13, 2006).

### **Cases Interpreting Applicability to Debt Buyers**

*Pilalas v. Cadle Co.*, 695 F.3d 12, 16 (1st Cir. Mass. 2012) (adopting the above position of the Massachusetts Division of Banks).