

New Jersey

Summary

A bond is required for in-state and out-of-state collection agencies. New Jersey law is unclear whether an active and passive debt buyer soliciting accounts in New Jersey must file a bond. See *Skinner v. Asset Acceptance, LLC*, 876 F. Supp. 2d 473 (D.N.J. 2012). Active and passive debt buying companies should consult counsel to determine whether they should obtain a bond. As a result of *Veras v. LVNV Funding, LLC*, discussed below, active and passive in-state and out-of-state active and passive debt buying companies should consult counsel to determine whether they should obtain a consumer lender license.

Resources

Collection Agency Bonding Information:

<http://www.state.nj.us/treasury/revenue/filecollagbond.shtml>

Collection Agency Bonding Statutes: http://lis.njleg.state.nj.us/cgi-bin/om_isapi.dll?clientID=41350634&Depth=2&depth=2&expandheadings=on&headingswithhits=on&hitsperheading=on&infobase=statutes.nfo&record={13DD1}&softpage=Doc_Frame_PG42

Consumer Lender Licensing Information:

http://www.nj.gov/dobi/banklicensing/conslend_salesfinance.html

Licensed Lender Statutes: http://lis.njleg.state.nj.us/cgi-bin/om_isapi.dll?clientID=118154911&Depth=2&depth=2&expandheadings=on&headingswithhits=on&hitsperheading=on&infobase=statutes.nfo&record={5BB1}&softpage=Doc_Frame_PG42

Collection Agency Statutory Provisions

§ 45:18-1. Collection agencies to file bond

No person shall conduct a collection agency, collection bureau or collection office in this state, or engage therein in the business of collecting or receiving payment for others of any account, bill or other indebtedness, or engage therein in the business of soliciting the right to collect or receive payment for another of any account, bill or other indebtedness, or advertise for or solicit in print the right to collect or receive payment for another of any account, bill or other indebtedness, unless such person, or the person for whom he may be acting as agent has on file with the secretary of state sufficient bond as hereinafter specified.

Licensed Lender Statutory Provisions

§ 17:11C-2. Definitions regarding licensed lenders

As used in this act:

"Billing cycle" means the time interval between periodic billing dates. A billing cycle shall be considered monthly if the closing date of the cycle is the same date each month or does not vary by more than four days from such date.

"Borrower" means any individual applying for a consumer loan from a lender licensed under this act, whether or not the loan is granted, and any individual who has actually obtained such a loan.

"Closed-end loan" means a consumer loan which meets the requirements of section 35 of P.L.1996, c.157 (C.17:11C-35) and pursuant to which the licensee advances a specified amount

of money and the borrower agrees to repay the principal and interest in substantially equal installments over a stated period of time.

"Commissioner" means the Commissioner of Banking and Insurance.

"Consumer lender" means a person licensed, or a person who should be licensed, under P.L.1996, c.157 (C.17:11C-1 et al.) to engage in the consumer loan business.

"Consumer loan" means a loan of \$ 50,000 or less made by a consumer lender, payable in one or more installments, pursuant to the terms of P.L.1996, c.157 (C.17:11C-1 et al.), and not a residential mortgage loan as defined by section 3 of P.L.2009, c.53 (C.17:11C-53).

"Consumer loan business" means the business of making loans of money, credit, goods or things in action, which are to be used primarily for personal, family or household purposes, in the amount or value of \$ 50,000 or less and charging, contracting for, or receiving a greater rate of interest, discount or consideration therefor than the lender would be permitted by law to charge if he were not a licensee hereunder, except as authorized by this act and without first obtaining a license from the commissioner. Any person directly or indirectly engaging in the business of soliciting or taking applications for such loans of \$ 50,000 or less, or in the business of negotiating or arranging or aiding the borrower or lender in procuring or making such loans of \$ 50,000 or less, or in the business of buying, discounting or endorsing notes, or of furnishing, or procuring guarantee or security for compensation in amounts of \$ 50,000 or less, shall be deemed to be engaging in the consumer loan business.

"Controlling interest" means ownership, control or interest of 25% or more of the licensee or applicant.

"Department" means the Department of Banking and Insurance.

"Depository institution" means a state or federally chartered bank, savings bank, savings and loan association, building and loan association or credit union, irrespective of whether the entity accepts deposits.

"Individual" means a natural person.

"Licensee" means a person who is licensed under this act, or who should be so licensed.

"Open-end loan" means a consumer loan made by a consumer lender pursuant to a written agreement with the borrower whereby:

(1) The lender may permit the borrower to obtain advances of money from the lender from time to time or the lender may advance money on behalf of the borrower from time to time as directed by the borrower;

(2) The amount of each advance and permitted interest and charges are debited to the borrower's account and payments and other credits are credited to the same account;

(3) Interest is computed on the unpaid principal balance or balances of the account from time to time; and

(4) The borrower has the privilege of paying the account in full at any time or, if the account is not in default, in monthly installments of fixed or determinable amounts as provided in the agreement.

"Person" means an individual, association, joint venture, partnership, limited partnership association, limited liability company, corporation, trust, or any other group of individuals however organized.

"Sales finance company" shall have the meaning ascribed to that term in section 1 of P.L.1960, c.40 (C.17:16C-1).

§ 17:11C-3. License required for consumer lender, sales finance company

a. No person shall engage in business as a consumer lender or sales finance company without first obtaining a license or licenses under this act.

b. The department shall issue licenses under this act which specify whether a licensee may act as a consumer lender or a sales finance company. A licensee may not engage in a licensed activity under this act or the "Retail Installment Sales Act of 1960," P.L.1960, c.40 (C.17:16C-1 et seq.), unless the license issued by the department specifies that the licensee may engage in that licensed activity.

Cases Interpreting Bonding Requirement Applicability

The only current New Jersey civil law directly referencing debt collectors is a bond statute, the Collection Agencies Act, N.J.S.A. 45:18-1, et seq., which is designed to protect creditors from agencies who misappropriate client funds; it is not a consumer protection statute.

Chulsky v. Hudson Law Offices, P.C., 777 F. Supp. 2d 823, 836 (D.N.J. 2011)

Cases Interpreting Consumer Lender Licensing Applicability

“The NJCFLA [New Jersey Consumer Finance Licensing Act] requires that persons engaged in business as ‘consumer lenders’ obtain certain licenses. A consumer lender means a person licensed, or a person who should be licensed, under to engage in the consumer loan business. Any person directly or indirectly engaging . . . in the business of buying, discounting or endorsing notes, or of furnishing, or procuring guarantee or security for compensation in amounts of \$50,000 or less, shall be deemed to be engaging in the consumer loan business. No person shall engage in business as a consumer lender or sales finance company without first obtaining a license or licenses under this act. . . As discussed above, the NJCFLA prohibits any person from engaging in the consumer loan business who has not yet obtained a license from the Department of Banking and Insurance. Accordingly, MRS's [debt collector acting on behalf of the passive debt buyer] attempt to collect Plaintiff's alleged debt on behalf of LVNV, who was not licensed as a consumer lender under the NJCFLA, constitutes prohibited conduct under the NJCFLA.” *Veras v. LVNV Funding, LLC*, 2014 U.S. Dist. LEXIS 34176, 14-15 (D.N.J. Mar. 17, 2014)(citations and internal quotations omitted).