

RESOLUTION 11-02-2017

DIGEST

Finance Code: Expand Definition of “Pro-Rater”

Amends Finance Code section 12002.1 to expand the definition of “pro-rater” to include factoring companies.

RESOLUTIONS COMMITTEE RECOMMENDATION

APPROVE IN PRINCIPLE

History:

No similar resolutions found.

Reasons:

This resolution amends Finance Code section 12002.1 to expand the definition of “pro-rater” to include factoring companies. This resolution should be approved in principle because it will close a loophole whereby out-of-state factoring companies are incentivized to work with fly-by-night temporary agencies that flout California Law.

The Check Sellers, Bill Payers and Proraters Law (the Law) is contained in Division 3 of the Financial Code, commencing with section 12000. The regulations are contained in Subchapter 10 of Chapter 3, title 10 of the California Code of Regulations, commencing with section 1770. (10 Cal. Code Regs., § 1770, et seq.) The Law, originally named the Check Sellers and Cashers Law, was enacted in 1947. As enacted, it provided for the licensing and regulatory review of companies and individuals who sold checks, cashed checks, or paid bills on behalf of others. General pro-raters are persons who, for compensation, engage in the business of receiving money or something of value from a debtor for the purpose of distributing the money or something of value among creditors in payment or partial payment of the debtor’s obligations.

In the employment context, when factoring companies purchase payroll invoices from a temporary employment agency, the practical effect of this is that payroll factoring companies operate as unlicensed “pro-raters” because: (1) the payroll factoring company receives compensation from the temporary employment agency selling the payroll invoices – (usually in the form of an administrative fee, incremental fee, daily fee or late fee); (2) the payroll factoring company engages in whole or in part in the business of receiving money – (usually receiving money in the form of direct payment from the temporary employment agency’s client accounts); (3) for the purpose of distributing the money or evidences thereof; (4) among creditors – (these are the “creditors” of the temporary employment agency – the employees – who are providing services to the temporary employment agency’s clients; (5) in payment or partial payment of the obligations of the debtor, the “debtor” in this case being the temporary employment agency that owes payroll wages to its employees for working at the temporary employment agency’s client accounts. As an unlicensed “pro-rater”, factoring companies are not subject to the protective licensing requirements of the statute, including a limit on the interest that pro-raters can charge their customers.

Currently, however, payroll factoring companies who finance temporary employment agencies:

1) do not have licenses as "pro-raters" under the Finance Code and resist complying

with existing statute; 2) directly operate and conduct business in this state through these temporary employment agencies (either by loaning so much money that cannot possibly be repaid and therefore setting up a situation in which the creditor [the factoring company] becomes the de facto operator of the temporary employment agency business, or by directly controlling the temporary employment agencies' employees because these employees are technically the "collateral" of the payroll factoring company); and 3) as unlicensed pro-raters, earn significant and usuries fees for loaning funds to these temporary employment agencies that would otherwise be unlawful if earned by a licensed pro-rater under the existing statute.

This resolution addresses and fixes this problem by amending the "Pro-Rater" statute to clearly include factoring companies that finance payroll invoices of California employers.

This resolution is related to Resolution 12-01-2017.

TEXT OF RESOLUTION

RESOLVED that the Conference of California Bar Associations recommends that legislation be sponsored to amend Finance Code section 12002.1 to read as follows:

1 § 12002.1

2 A prorater is a person who, for compensation, engages in whole or in part in the business
3 of receiving money or evidences thereof for the purpose of distributing the money or evidences
4 thereof among creditors in payment or partial payment of the obligations of the debtor. For
5 purposes of this division, a factor, as defined in Civil Code § 2026 et. seq., who purchases, sells,
6 transfers, exchanges, finances, and/or otherwise provides money for the payroll invoices of any
7 employer in the State of California, is a pro-rater.

(Proposed new language underlined; language to be deleted stricken)

PROPOSERS: Joseph A. Goldstein, Jonathan A. Goldstein, Charles H. Goldstein, Charles Wake, Jodi Taksar, Scott Luskin, Robin Bernstein-Lev, Brian Francis Doyle, Barry Ross, James De Sario

STATEMENT OF REASONS

The Problem: In the employment context, when factoring companies purchase payroll invoices from a temporary employment agency, the practical effect of this is that payroll factoring companies operate as unlicensed "pro-raters" because: (1) the payroll factoring company receives compensation from the temporary employment agency selling the payroll invoices – (usually in the form of an administrative fee, incremental fee, daily fee or late fee); (2) the payroll factoring company engages in whole or in part in the business of receiving money – (usually receiving money in the form of direct payment from the temporary employment agency's client accounts); (3) for the purpose of distributing the money or evidences thereof; (4) among creditors – (these are the "creditors" of the temporary employment agency – the employees – who are providing services to the temporary employment agency's clients; (5) in payment or partial payment of the obligations of the debtor, the "debtor" in this case being the temporary employment agency that owes payroll wages to its employees for working at the

temporary employment agency's client accounts. As an unlicensed "pro-rater", factoring companies are not subject to the protective licensing requirements of the statute, including a limit on the interest that pro-raters can charge their customers.

The Solution: Would add the following language to Finance Code § 12002.1 that for purposes of this division, a factor, as defined in Civil Code § 2026 et. seq., who purchases, sells, transfers, exchanges, finances, and/or otherwise provides money for the payroll invoices of any employer in the State of California, is a pro-rater.

IMPACT STATEMENT

The resolution does not affect any other law, statute or rule other than those expressly identified.

CURRENT OR PRIOR RELATED LEGISLATION

None known.

AUTHOR AND/OR PERMANENT CONTACT: Joseph A. Goldstein, The Goldstein Law Firm, 8912 Burton Way, Beverly Hills, California 90211; (310) 553-4746; fax (310) 282-8070; josephgoldsteinesq@gmail.com

RESPONSIBLE FLOOR DELEGATE: Joseph A. Goldstein