

DRAFT

Section 927 of the Government Code is amended to read:

927.

- (a) This chapter shall be known and may be cited as the California Prompt Payment Act.
- (b) It is the intent of the Legislature that state agencies pay properly submitted, undisputed invoices, refunds, or other undisputed payments due to individuals within 45 days of receipt or notification thereof, or automatically calculate and pay the appropriate late payment penalties as specified in this chapter.
- (c) Notwithstanding any other provision of law, this chapter shall apply to all state agencies, including, but not limited to, the Public Employees' Retirement System, the State Teachers' Retirement System, the Treasurer, and the Department of General Services.

927.1.

- (a) (1) A state agency that acquires property or services pursuant to a contract with a business, including any approved change order or contract amendment, shall make payment to the person or business on the date required by the contract and as required by Section 927.4 or be subject to a late payment penalty.
- (2) A state agency that awards a grant, as defined in subdivision (b) of Section 927.2, shall make payment to the person or business that is the recipient of the grant on the date required by the grant and as required by Section 927.4 or be subject to a late payment penalty.
- (b) Except in the event of an emergency as provided in Section 927.11, effective January 1, 1999, the late payment penalties specified in this chapter may not be waived, altered, or limited by either of the following:
 - (1) A state agency acquiring property or services pursuant to a contract or that awards a grant.
 - (2) Any person or business contracting with a state agency to provide property or services or that is the recipient of a grant.

927.2.

The following definitions apply to this chapter:

- (a) "Claim ~~schedule~~" means ~~a schedule of~~ payment requests prepared and submitted by a state agency to the Controller for payment to the named claimant.
- (b) "Grant" means a signed final agreement between any state agency and a local government agency or organization authorized to accept grant funding for victim services or prevention programs administered by any state agency. Any such grant is a contract and subject to this chapter.
- (c) "Invoice" means a bill or claim that requests payment on a contract under which a state agency acquires property or services or pursuant to a signed final grant agreement.
- (d) "Medi-Cal program" means the program established pursuant to Chapter 7 (commencing with Section 14000) of Part 3 of Division 9 of the Welfare and Institutions Code.
- (e) "Nonprofit public benefit corporation" means a corporation, as defined by subdivision (b) of Section 5046 of the Corporations Code, that has registered with the Department of General Services as a small business.
- (f) "Nonprofit service organization" means a nonprofit entity that is organized to provide services to the public.
- (g) "Notice of refund or other payment due" means a state agency provides notice to the person that a refund or payment is owed to that person or the state agency receives notice from the person that a refund or undisputed payment is due.
- (h) "Payment" means any form of the act of paying, including, but not limited to, the issuance of a warrant or a registered warrant by the Controller, or the issuance of a revolving fund check by a state agency, to a claimant in the amount of an undisputed invoice.
- (i) "Reasonable cause" means a determination by a state agency that any of the following conditions are present:
 - (1) There is a discrepancy between the invoice or claimed amount and the provisions of the contract or grant.

- (2) There is a discrepancy between the invoice or claimed amount and either the claimant's actual delivery of property or services to the state or the state's acceptance of those deliveries.
- (3) Additional evidence supporting the validity of the invoice or claimed amount is required to be provided to the state agency by the claimant.
- (4) The invoice has been improperly executed or needs to be corrected by the claimant.
- (5) There is a discrepancy between the refund or other payment due as calculated by the person to whom the money is owed and by the state agency.
- (j) "Received by a state agency" means the date an invoice is delivered to the state location or party specified in the contract or grant or, if a state location or party is not specified in the contract or grant, wherever otherwise specified by the state agency.
- (k) "Required payment approval date" means the date on which payment is due as specified in a contract or grant or, if a specific date is not established by the contract or grant, 30 calendar days following the date upon which an undisputed invoice is received by a state agency.
- (l) "Revolving fund" means a fund established pursuant to Article 5 (commencing with Section 16400) of Division 4 of Title 2.
- (m) "Small business" means a business certified as a "small business" in accordance with subdivision (d) of Section 14837, including certified small businesses engaged in the development, design, and construction of California's high-speed rail system pursuant to the California High-Speed Rail Act (Division 19.5 (commencing with Section 185000) of the Public Utilities Code).
- (n) "Small business" and "nonprofit organization" mean, in reference to providers under the Medi-Cal program, a business or organization that meets all of the following criteria:
- (1) The principal office is located in California.
 - (2) The officers, if any, are domiciled in California.
 - (3) If a small business, it is independently owned and operated.
 - (4) The business or organization is not dominant in its field of operation.
 - (5) Together with any affiliates, the business or organization has gross receipts from business operations that do not exceed three million dollars (\$3,000,000) per year, except that the Director of Health Services may increase this amount if the director deems that this action would be in furtherance of the intent of this chapter.
- (o) "Department of FISCal" means the organization responsible for operating and maintaining the Financial Information System for California integrating statewide accounting, budgeting, cash management and procurement pursuant to subdivision (b) of Section 11890 of the Government Code.

927.3.

- (a) Except where payment is made directly by a state agency pursuant to Section 927.6, an undisputed invoice received by a state agency shall be submitted to the Controller for payment by the required payment approval date. A state agency may dispute an invoice submitted by a claimant for reasonable cause if the state agency notifies the claimant within 15 working days from receipt of the invoice, or delivery of property or services, whichever is later. No state employee shall dispute an invoice, on the basis of minor or technical defects, in order to circumvent or avoid the general intent or any of the specific provisions of this chapter.
- (b) Except where payment is made directly by a state agency pursuant to Section 927.13, a notice of refund or other payment due received by a state agency shall be submitted to the Controller within 30 calendar days of the agency's receipt of the notice. A state agency may dispute a refund request for reasonable cause if the state agency notifies the claimant within 15 working days after the state agency receives notice from the individual that the refund is due.

927.4.

Except as otherwise provided in this chapter, to avoid late payment penalties, the maximum time from state agency receipt of an undisputed invoice to the date of payment is 45 calendar days. If payment is not issued within 45 calendar days from the state agency receipt of an undisputed invoice, late payment penalties shall be paid to the claimant in accordance with Sections 927.6 and 927.7.

927.5.

This chapter shall not apply to claims for reimbursement for health care services provided under the Medi-Cal program, unless the Medi-Cal health care services provider is a small business or nonprofit

organization. In applying this section to claims submitted to the state, or its fiscal intermediary, by providers of services or equipment under the Medi-Cal program, payment for claims shall be due 30 days after a claim is received by the state or its fiscal intermediary, unless reasonable cause for nonpayment exists. With regard to Medi-Cal claims, reasonable cause shall include review of claims to determine medical necessity, review of claims for providers subject to special prepayment fraud and abuse controls, and claims that require review by the fiscal intermediary or State Department of Health Care Services due to special circumstances. Claims requiring special review as specified above shall not be eligible for a late payment penalty.

927.6.

(a) State agencies shall pay applicable penalties, without requiring that the claimant submit an additional invoice for these amounts, whenever the state agency fails to submit a correct claim ~~schedule~~ to the Controller by the required payment approval date and payment is not issued within 45 calendar days from the state agency receipt of an undisputed invoice. The penalty shall cease to accrue on the date the state agency submits the claim ~~schedule~~ to the Controller for payment or pays the claimant directly, and shall be paid for out of the state agency's support appropriation. If the claimant is a certified small business, a nonprofit organization, a nonprofit public benefit corporation, or a small business or nonprofit organization that provides services or equipment under the Medi-Cal program, the state agency shall pay to the claimant a penalty at a rate of 10 percent above the United States Prime Rate on June 30 of the prior fiscal year. However, a nonprofit organization shall only be eligible to receive a penalty payment if it has been awarded a contract or grant in an amount less than five hundred thousand dollars (\$500,000). If the amount of the penalty is ten dollars (\$10) or less, the penalty shall be waived and not paid by the state agency.

(b) For all other businesses, the state agency shall pay a penalty at a rate of 1 percent above the Pooled Money Investment Account daily rate on June 30 of the prior fiscal year, not to exceed a rate of 15 percent. If the amount of the penalty is one hundred dollars (\$100) or less, the penalty shall be waived and not paid by the state agency. On an exception basis, state agencies may avoid payment of penalties for failure to submit a correct claim ~~schedule~~ to the Controller by the required payment approval date by paying the claimant directly from the state agency's revolving fund within 45 calendar days following the date upon which an undisputed invoice is received by the state agency.

927.7.

(a) The Controller shall pay claimants within 15 calendar days of receipt of a correct claim ~~schedule~~ from the state agency. If the Controller fails to make payment within 15 calendar days of receipt of the claim ~~schedule~~ from a state agency, and payment is not issued within 45 calendar days from state agency receipt of an undisputed invoice, the Controller shall pay applicable penalties to the claimant without requiring that the claimant submit an invoice for these amounts. Penalties shall cease to accrue on the date full payment is made, and shall be paid for out of the Controller's funds. If the claimant is a certified small business, a nonprofit organization, a nonprofit public benefit corporation, or a small business or nonprofit organization that provides services or equipment under the Medi-Cal program, the Controller shall pay to the claimant a penalty at a rate of 10 percent above the United States Prime Rate on June 30 of the prior fiscal year, from the 16th calendar day following receipt of the claim ~~schedule~~ from the state agency. However, a nonprofit organization shall only be eligible to receive a penalty payment if it has been awarded a contract or grant in an amount less than five hundred thousand dollars (\$500,000). If the amount of the penalty is ten dollars (\$10) or less, the penalty shall be waived and not paid by the Controller. For all other businesses, the Controller shall pay penalties at a rate of 1 percent above the Pooled Money Investment Account daily rate on June 30 of the prior fiscal year, not to exceed a rate of 15 percent. If the amount of the penalty is one hundred dollars (\$100) or less, the penalty shall be waived and not paid by the Controller.

(b) The Department of FISCal shall be responsible for applicable penalties if the system delays the delivery of a correct claim from the state agency to the Controller preventing the Controller from making payment within 15 calendar days and payment is not issued within 45 calendar days from state agency receipt of an undisputed invoice.

927.8.

State agencies shall avoid seeking any additional appropriation to pay penalties that accrue as a result of the agency's failure to make timely payments as required by this chapter. Any state agency

that requests that the Legislature make a deficiency appropriation for the agency shall identify what portion, if any, of the requested amount is required because of any penalties imposed by this chapter. [927.9.](#)

(a) Except as provided in subdivision (c), on an annual basis, within 90 calendar days following the end of each fiscal year, state agencies shall provide the Director of General Services with a report on late payment penalties that were paid by the state agency in accordance with this chapter during the preceding fiscal year.

(b) The report shall separately identify the total number and dollar amount of late payment penalties paid to small businesses, other businesses, and refunds or other payments to individuals. State agencies may, at their own initiative, provide the director with other relevant performance measures. The director shall prepare a report separately listing the number and total dollar amount of all late payment penalties paid to small businesses, other businesses, and refunds and other payments to individuals by each state agency during the preceding fiscal year, together with other relevant performance measures, and shall make the information available to the public.

(c) The reporting requirements of subdivisions (a) and (b) are not applicable to the Department of Forestry and Fire Protection.

[927.10.](#)

State agencies shall encourage claimants to promptly pay their subcontractors and suppliers, especially those that are small businesses. In furtherance of this policy, state agencies shall utilize expedited payment processes to enable faster payment by prime contractors to their subcontractors and suppliers, and shall promptly respond to any subcontractor or supplier inquiries regarding the status of payments made to prime contractors.

[927.11.](#)

(a) Except in the case of a contract with a certified small business, a nonprofit organization, or a nonprofit public benefit corporation, if an invoice from a business under a contract with the Department of Forestry and Fire Protection would become subject to late payment penalties during the annually declared fire season, as declared by the Director of Forestry and Fire Protection, then the required payment approval date shall be extended by 30 calendar days.

(b) No nonprofit public benefit corporation shall be eligible for a late payment penalty if a state agency fails to make timely payment because no Budget Act has been enacted.

(c) If the Director of Finance determines that a state agency or the Controller is unable to promptly pay an invoice as provided for by this chapter due to a major calamity, disaster, or criminal act, then otherwise applicable late payment penalty provisions contained in Sections 927.6 and 927.7 shall be suspended except as they apply to a claimant that is either a certified small business, a nonprofit organization, a nonprofit public benefit corporation, or a small business or nonprofit organization that provides services or equipment under the Medi-Cal program. The suspension shall remain in effect until the Director of Finance determines that the suspended late payment penalty provisions of this section should be reinstated.

(d) Except as provided in subdivision (b), in the event a state agency fails to make timely payment because no Budget Act has been enacted, penalties shall continue to accrue until the time that the invoice is paid.

[927.12.](#)

Section 926.10 shall not apply to any contract covered by this chapter.

[927.13.](#)

(a) Unless otherwise provided for by statute, any state agency that fails to submit a correct claim ~~schedule~~ to the Controller within 30 days of receipt of a notice of refund or other payment due, and fails to issue payment within 45 days from the notice of refund or other payment due, shall be liable for penalties on the undisputed amount pursuant to this section. The penalties shall be paid out of the agency's funds at a rate equal to the Pooled Money Investment Account daily rate on June 30 of the prior fiscal year minus 1 percent. The penalties shall cease to accrue on the date full payment or refund is made. If the amount of the penalty is ten dollars (\$10) or less, the penalty shall be waived

and not paid by the state agency. On an exception basis, state agencies may avoid payment of penalties for failure to submit a correct claim **schedule** to the Controller by paying the claimant directly from the state agency's revolving fund within 45 calendar days following the agency's receipt of the notice of refund or other payment due.

(b) The Controller shall pay claimants within 15 calendar days of receipt of a correct claim **schedule** from the state agency. If the Controller fails to make payment within 15 calendar days of receipt of the claim **schedule** from a state agency, and payment is not issued within 45 calendar days following the agency's receipt of a notice of refund or undisputed payment due, the Controller shall pay applicable penalties to the claimant. Penalties shall cease to accrue on the date full payment is made, and shall be paid out of the Controller's funds. If the amount of the penalty is ten dollars (\$10) or less, the penalty shall be waived and not paid by the Controller.

(c) The Department of FISCal shall be responsible for applicable penalties if the system delays the delivery of a correct claim from the state agency to the Controller preventing the Controller from making payment within 15 calendar days and payment is not issued with 45 calendar days following the agency's receipt of a notice of refund or undisputed payment due.

(e d) No person shall receive an interest payment pursuant to this section if it is determined that the person has intentionally overpaid on a liability solely for the purpose of receiving a penalty payment.

(e e) No penalty shall accrue during any time period for which there is no Budget Act in effect, nor on any payment or refund that is the result of a federally mandated program or that is directly dependent upon the receipt of federal funds by a state agency.

(e f) This section shall not apply to any of the following:

- (1) Payments, refunds, or credits for income tax purposes.
- (2) Payment of claims for reimbursement for health care services or mental health services provided under the Medi-Cal program, pursuant to Chapter 7 (commencing with Section 14000) of Part 3 of Division 9 of the Welfare and Institutions Code.
- (3) Any payment made pursuant to a public social service or public health program to a recipient of benefits under that program.
- (4) Payments made on claims by the Department of General Services.
- (5) Payments made by the Commission on State Mandates.
- (6) Payments made by the Department of Human Resources pursuant to Section 19823.