

Introduced by Senator Corbett

February 18, 2011

An act to add Division 3.5 (commencing with Section 12500) to the Financial Code, relating to debt settlement.

LEGISLATIVE COUNSEL'S DIGEST

SB 708, as introduced, Corbett. Debt Settlement Consumer Protection Act.

Existing law, the Check Sellers, Bill Payers and Proraters Law, provides for licensure and regulation by the Commissioner of Corporations of persons engaged in, among other activities, the business of receiving money as an agent of the obligor for the purpose of paying bills, invoices, or accounts for the obligor.

This bill would enact the Debt Settlement Consumer Protection Act and provide for the licensure and regulation by the commissioner of debt settlement providers, defined as persons or entities engaging in, or holding themselves out as engaging in, the business of providing debt settlement services, as defined, in exchange for any fee or compensation. The bill would establish criteria for issuance by the commissioner of a license to engage in debt settlement services, would require an application for licensure to be submitted under penalty of perjury, would require a license to be renewed biennially, and would require specified fees to be paid for a license. The bill would prohibit a debt settlement provider from entering into an agreement with a consumer for debt settlement services unless the provider retains on file a written determination, and provides a copy to the consumer, that includes an analysis indicating that the debt settlement program is suitable for the consumer and that the consumer can reasonably expect to receive a tangible net benefit from the program. The bill would require

specified disclosures from a provider to the consumer before entering into an agreement for debt settlement services. The bill would require a consumer entering into a debt settlement services agreement to sign and date a specified consumer notice and rights form. The bill would specify required contents of debt settlement services agreements and would provide that a consumer has a right to terminate an agreement at any time through oral, written, or electronic notice to a provider. The bill would prohibit a provider from engaging in specified practices and would regulate the fees and charges imposed by a provider. The bill would authorize an injured individual to recover specified damages from a provider that violates the bill’s provisions and would make a violation of the bill’s provisions a crime. Because this bill would create a new crime, and expand the scope of the existing crime of perjury, it would impose a state-mandated local program. The bill would authorize the commissioner and the Attorney General to enforce these provisions.

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.

Vote: majority. Appropriation: no. Fiscal committee: yes.
 State-mandated local program: yes.

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

1 SECTION 1. Division 3.5 (commencing with Section 12500)
 2 is added to the Financial Code, to read:

3
 4 DIVISION 3.5. DEBT SETTLEMENT CONSUMER
 5 PROTECTION ACT

6
 7 CHAPTER 1. SHORT TITLE

8
 9 12500. This division shall be known and may be cited as the
 10 Debt Settlement Consumer Protection Act.

11
 12 CHAPTER 2. DEFINITIONS

13
 14 12501. As used in this division, the following definitions shall
 15 apply:

1 (a) “Accretion rate” means the percentage increase in
2 outstanding debt, as measured against the principal amount of the
3 debt, due to the addition of fees and interest.

4 (b) “Commissioner” means the Commissioner of Corporations.

5 (c) “Consumer” means any person who purchases or contracts
6 for the purchase of debt settlement services.

7 (d) (1) “Debt settlement provider” or “provider” means any
8 person or entity engaging in, or holding itself out as engaging in,
9 the business of providing debt settlement services in exchange for
10 any fee or compensation, or any person who solicits for or acts on
11 behalf of any person or entity engaging in, or holding itself out as
12 engaging in, the business of providing debt settlement service in
13 exchange for any fee or compensation.

14 (2) “Debt settlement provider” or “provider” does not include
15 any of the following:

16 (A) Escrow agents, accountants, broker dealers in securities, or
17 investment advisors in securities, when acting in the ordinary
18 practice of their professions and through the entity used in the
19 ordinary practice of their profession.

20 (B) A financial institution not primarily engaged in the business
21 of debt settlement under state or federal law and that is any of the
22 following:

23 (i) A bank, trust company, insurance company, or industrial
24 loan company doing business under the authority of or in
25 accordance with a license, certificate, or charter issued by the
26 United States or any state, district, territory, or commonwealth of
27 the United States that is authorized to transact business in this
28 state.

29 (ii) A federally chartered savings and loan association, federal
30 savings bank, or federal credit union that is authorized to transact
31 business in this state.

32 (iii) A savings and loan association, savings bank, or credit
33 union organized under the laws of this or any other state that is
34 authorized to transact business in this state.

35 (iv) A person engaged solely in business, commercial, or
36 agricultural mortgage lending.

37 (C) Any person who performs credit services for his or her
38 employer while receiving a regular salary or wage when the
39 employer is not engaged in the business of offering or providing
40 debt settlement service.

1 (D) A California licensed title insurer, or escrow company, or
2 other person in good standing that provides bill paying services if
3 the person does not provide debt settlement services.

4 (E) Financial planning services provided in a financial
5 planner-client relationship by a member of a financial planning
6 profession whose members the commissioner determines are
7 licensed under Chapter 3 (commencing with Section 25230) of
8 Part 3 of Division 1 of Title 4 of the Corporations Code, and who
9 is not primarily engaged in the business of debt settlement.

10 (e) (1) “Debt settlement services” means either of the following:

11 (A) Offering to provide advice or service, or acting as an
12 intermediary between or on behalf of a consumer and one or more
13 of a consumer’s creditors, where the primary purpose of the advice,
14 service, or action is to obtain a settlement, adjustment, or
15 satisfaction of the consumer’s debt to a creditor in an amount less
16 than the full amount of the principal amount of the debt or in an
17 amount less than the current outstanding balance of the debt.

18 (B) Offering to provide, or providing, services related to
19 advising, encouraging, assisting, or counseling a consumer to
20 accumulate funds for the primary purpose of proposing, obtaining,
21 or seeking to obtain a settlement, adjustment, or satisfaction of the
22 consumer’s debt to a creditor in an amount less than the full amount
23 of the principal amount of the debt or in an amount less than the
24 current outstanding balance of the debt.

25 (2) “Debt settlement service” does not include services of an
26 attorney in providing information, advice, or legal representation
27 with respect to filing a case or proceeding under Title 11 of the
28 United States Code.

29 (f) “Individualized financial analysis” means a review of a
30 consumer’s budget, income, expenses, and debt in order to make
31 a determination about the individual’s qualification for a provider’s
32 debt settlement program, the consumer’s ability to make the savings
33 necessary to complete the debt settlement program, and whether
34 it is reasonable to expect the consumer will receive a tangible net
35 benefit from the debt settlement program offered by the provider.

36 (g) “Person” means an individual, corporation, business trust,
37 estate, trust, partnership, limited liability company, association,
38 joint venture, or any other legal or commercial entity.

39 (h) “Principal amount of the debt” means the total amount of
40 debt owed by a consumer to one or more creditors for the debt

1 included in an agreement for debt settlement services at the time
2 that the consumer enters into the agreement for debt settlement
3 service.

4 (i) “Program” means a program or strategy in which a provider
5 furnishes debt settlement services.

6
7 CHAPTER 3. LICENSING AND OVERSIGHT

8
9 Article 1. Licensing Requirements

10
11 12505. (a) It shall be unlawful for any person to act as a debt
12 settlement provider without a valid license issued under this
13 division and except as authorized under this division.

14 (b) The commissioner shall maintain and publicize a list of the
15 names of all licensed providers and shall publish the list by July
16 1, 2012.

17 12506. (a) An application for licensure as a provider shall be
18 accompanied by a charge to cover the reasonable regulatory cost
19 of the commissioner incident to investigating an application for
20 licensure and issuing a license. The charge shall include an
21 investigation fee, not to exceed the sum of one thousand dollars
22 (\$1,000), an application fee, not to exceed the sum of one thousand
23 dollars (\$1,000), and a fee to cover the cost of fingerprint
24 processing. The investigation fee and application fee are not
25 refundable.

26 (b) An application for licensure as a provider shall be
27 accompanied by the following:

28 (1) (A) Evidence of a surety bond in the amount of two hundred
29 thousand dollars (\$200,000), which bond or insurance shall be
30 maintained by the provider during the term of the license.

31 (B) Upon licensure as a provider, the bond shall be payable to
32 the commissioner and issued by an insurer authorized to do
33 business in this state. A copy of the bond, including any and all
34 riders and endorsements executed subsequent to the effective date
35 of the bond, shall be filed with the commissioner for review and
36 approval within 10 days of execution. The bond shall be used for
37 the recovery of losses or damages incurred by individuals as the
38 result of a licensee’s noncompliance with the requirements of this
39 division or for the recovery of expenses, fines, and fees levied by

1 the commissioner, a district attorney, city attorney, or the Attorney
2 General.

3 (C) When an action is commenced on a licensee’s bond, the
4 commissioner may require the filing of a new bond. Immediately
5 upon recovery of any action on the bond, the licensee shall file a
6 new bond. Failure to file a new bond within 10 days of the recovery
7 on a bond, or within 10 days after notification by the commissioner
8 that a new bond is required, constitutes sufficient grounds for the
9 suspension or revocation of the license.

10 (D) The bond shall remain in force and effect until the surety
11 is released from liability by the commissioner, or until the bond
12 is canceled by the surety.

13 (2) (A) Audited financial statements prepared in accordance
14 with generally accepted accounting principles and acceptable to
15 the commissioner.

16 (B) A licensee shall maintain a minimum net worth of one
17 hundred thousand dollars (\$100,000) at all times as evidenced by
18 the financial statement.

19 (C) A licensee shall annually file audited financial statements
20 along with the annual report to the commissioner required under
21 Section 12521.

22 (D) The commissioner may by rule or order prescribe the form
23 and content of financial statements required under this law.

24 (3) Proof that the applicant has filed appropriate documents
25 with either the Secretary of State or the county in which the
26 applicant is located to conduct a business in California.

27 12507. (a) Each licensee shall pay to the commissioner its pro
28 rata share of all costs and expenses reasonably incurred in the
29 administration of this division, as estimated by the commissioner,
30 for the ensuing year and any deficit actually incurred or anticipated
31 in the administration of the program in the year in which the
32 assessment is made. The pro rata share shall be the proportion that
33 a licensee’s total enrolled debt for debt settlement services in this
34 state bears to the aggregate total enrolled debt of all licensees as
35 shown by the audited financial statements filed with the
36 commissioner pursuant to subparagraph (A) of paragraph (2) of
37 subdivision (b) of Section 12506, for the costs and expenses
38 remaining after the amount assessed pursuant to subdivision (b).

39 (b) On or before the 30th day of May in each year, the
40 commissioner shall notify each licensee by mail of the amount

1 assessed and levied against it and that amount shall be paid within
2 30 days thereafter. If payment is not made within 30 days, the
3 commissioner may assess and collect a penalty, in addition to the
4 assessment, not to exceed 1 percent of the assessment for each
5 month or part of a month that the payment is delayed or withheld.

6 (c) If a licensee fails to pay the assessment on or before the 30th
7 day of June following the day upon which payment is due, the
8 commissioner may by order summarily suspend or revoke the
9 licensee's license. If, after an order is made, a request for hearing
10 is filed in writing within 30 days, and a hearing is not held within
11 60 days thereafter, the order is deemed rescinded as of its effective
12 date. During any period when its certificate is revoked or
13 suspended, a licensee shall not conduct business pursuant to this
14 division except as may be permitted by order of the commissioner.
15 However, the revocation, suspension, or surrender of a license
16 shall not affect the powers of the commissioner as provided in this
17 division.

18 12508. Every application for licensure shall be signed by the
19 applicant and shall declare under penalty of perjury as true any
20 matter submitted on the application for licensure. Any applicant,
21 and any person who signs an application on behalf of an applicant,
22 who knowingly misrepresents any material fact, submits any
23 material statement that is false, or who knowingly makes an
24 omission of a material fact, is guilty of a misdemeanor. The
25 application form shall contain a statement informing the applicant
26 that a false or dishonest answer to a question may be grounds for
27 denial or subsequent suspension or revocation of the applicant's
28 license. An application for licensure shall be in a form prescribed
29 by the commissioner and at minimum shall include the following:

30 (a) The applicant's name, principal business address and
31 telephone number, and all other business addresses in this state,
32 e-mail addresses, and all Internet Web site addresses.

33 (b) All names under which the applicant conducts a debt
34 settlement business or a business for which licensure by the
35 commissioner is required.

36 (c) The address of each location in this state at which the
37 applicant shall provide debt settlement services or a statement that
38 the applicant will have no such location accompanied by a
39 statement of the locations from which debt settlement services will
40 be provided to persons in the state.

1 (d) The name of each executive officer and director of the
2 applicant and each person that owns or controls, directly or
3 indirectly, at least 10 percent or more of the outstanding equity
4 interests of the applicant and any other information necessary for
5 investigation in Section 12509.

6 (e) A statement describing, to the extent it is known or should
7 be known by the applicant, any civil or criminal judgment relating
8 to financial fraud or misuse, or relating to consumer protection
9 laws; any disposition of a criminal matter in the nature of a nolo
10 contendere plea and any significant civil settlement if either relates
11 to allegations of financial misconduct or fraud or consumer
12 protection laws; and any material administrative or enforcement
13 action by a governmental agency relating to financial fraud or
14 misuse or consumer protection laws in any jurisdiction against the
15 applicant, any of its officers, directors, owners, employees, agents,
16 or predecessor organizations.

17 (f) At the applicant's expense, pursuant to the process in Section
18 12510, the results of a national criminal history records check,
19 including fingerprints, provided pursuant to the Federal Bureau of
20 Investigation appropriation of Title II of Public Law 92-544 (28
21 U.S.C. Sec. 534) conducted within the immediately preceding 12
22 months, covering every executive officer of the applicant. The
23 commissioner shall be the authorized agency to receive information
24 regarding the results of the national criminal history records check
25 under Title II of Public Law 92-544 (28 U.S.C. Sec. 534).

26 (g) Disclosure of common ownership by any person owning or
27 controlling, directly or indirectly, 10 percent or more of the
28 outstanding interests or equity securities in the debt settlement
29 services provider with the following persons:

30 (1) Any person who advertises any service to assist consumers
31 with reducing or eliminating debt.

32 (2) Any person who provides banking or similar depository
33 services to consumers of debt settlement services providers.

34 (3) Any person, other than individuals employed by the debt
35 settlement services provider, with whom the debt settlement
36 services provider contracts to provide debt settlement services, or
37 parts thereof, to consumers of the debt settlement services provider.

38 (h) Disclosure of any other potential conflict of interest with
39 any person that facilitates, promotes, influences, or is involved

1 with the debt settlement process, as required by rule of the
2 commissioner.

3 (i) A copy of any agreement or evidence of any contractual
4 relationship with any entity listed in paragraph (2) of subdivision
5 (d) of Section 12501.

6 (j) An authorization for disclosure of financial records of the
7 applicant pursuant to Section 7473 of the Government Code.

8 (k) All sample agreements and disclosures intended to be used
9 by the provider in California.

10 (l) A statement listing the names of any other businesses or
11 entities through which the applicant does business as a debt
12 settlement organization or has done so within the five calendar
13 years immediately preceding the application.

14 (m) Any other information that the commissioner reasonably
15 requires to determine whether to issue a license.

16 12509. (a) Upon filing the application and payment of fees
17 pursuant to subdivision (a) of Section 12506 and approval of the
18 bond pursuant to paragraph (1) of subdivision (b) of Section 12506,
19 the commissioner shall investigate and examine the following:

20 (1) The background and experience of the applicant and of the
21 partners or members owning or controlling, directly or indirectly,
22 10 percent or more of the outstanding interests if the applicant is
23 a partnership, association, or limited liability company.

24 (2) The background and experience of the applicant and officers,
25 directors, and persons owning or controlling, directly or indirectly,
26 10 percent or more of the outstanding equity securities or interests
27 if the applicant is a corporation, trust, or association, including an
28 unincorporated organization.

29 (b) If the commissioner determines that the applicant has
30 satisfied the provisions of this division and does not find facts
31 constituting reasons for denial as specified in Section 12512, the
32 commissioner shall issue and deliver a license to the applicant to
33 engage in business in accordance with the provisions of this
34 division.

35 12510. (a) An applicant for licensure shall provide to the
36 commissioner, and the commissioner shall submit to the
37 Department of Justice, fingerprint images and related information
38 required by the Department of Justice of all applicants for licensure
39 for purposes of obtaining information as to the existence and
40 content of a record of state or federal convictions and state or

1 federal arrests, and also information as to the existence and content
2 of a record of state or federal arrests for which the Department of
3 Justice establishes that the person is free on bail or on his or her
4 own recognizance pending trial or appeal.

5 (b) When received, the Department of Justice shall forward to
6 the Federal Bureau of Investigation requests for federal summary
7 criminal history information received pursuant to this section. The
8 Department of Justice shall review the information returned from
9 the Federal Bureau of Investigation and compile and disseminate
10 a response to the Commissioner of Corporations.

11 (c) The Department of Justice shall provide state and federal
12 responses to the commissioner pursuant to paragraph (1) of
13 subdivision (p) of Section 11105 of the Penal Code.

14 (d) The commissioner may request from the Department of
15 Justice subsequent arrest notification service, as provided pursuant
16 to Section 11105.2 of the Penal Code, for a person described in
17 subdivision (a).

18 (e) The Department of Justice shall charge a fee to be paid by
19 an applicant for licensure that is sufficient to cover the cost of
20 processing the request described in this section.

21 12511. An applicant or licensed provider shall notify the
22 department in writing at least 10 days prior to any change in the
23 information specified in subparagraph (A) of paragraph (1) of
24 subdivision (b) of Section 12506 or in subdivision (a), (b), or (c)
25 of Section 12508, or within 14 days after any change in the
26 information specified in subdivision (d), (e), (g), (h), or (k) of
27 Section 12508, or any other information as required, by rule, by
28 the commissioner.

29 12512. (a) Except as otherwise provided in subdivisions (b)
30 and (c), the commissioner shall issue a certificate of licensure as
31 a provider to a person that complies with this division.

32 (b) The commissioner may deny licensure for any of the
33 following:

34 (1) An application that contains any omission or false statement
35 of material fact or is incomplete.

36 (2) The applicant, an officer, director, general partner, member
37 or person owning or controlling, directly or indirectly, 10 percent
38 or more of the outstanding interests or equity securities, or a
39 predecessor organization of the applicant, has been convicted of
40 or pleaded nolo contendere to a crime; has incurred a significant

1 civil settlement; has suffered a civil judgment or any administrative
2 judgment by any public agency involving fraud, deceit, dishonesty,
3 or financial misconduct, or has violated state or federal securities
4 or consumer protection laws, or any regulatory scheme of the State
5 of California or another state; or has been convicted of any other
6 offense reasonably related to the qualifications, functions, or duties
7 of a person engaged in the business in accordance with the
8 provisions of this division.

9 (3) An applicant or any officer, director, general partner, member
10 or person owning or controlling, directly or indirectly, 10 percent
11 or more of the outstanding interests or equity securities or has
12 made any false statement or representation or material omission
13 to the commissioner.

14 (4) An applicant is or becomes insolvent.

15 (5) An applicant refuses to reasonably comply with an
16 investigation or examination of the debt settlement service provider
17 by the commissioner.

18 (6) An applicant has improperly withheld, misappropriated, or
19 converted funds received in the course of doing business.

20 (7) An applicant has used fraudulent, coercive, deceptive, illegal,
21 or dishonest practices, or demonstrated incompetence regarding
22 debt settlement services, or financial irresponsibility in this state
23 or elsewhere.

24 (8) An applicant has shown to have engaged in a pattern of
25 failing to perform services promised.

26 (9) An applicant or any officer, director, or general partner,
27 member or person owning or controlling, directly or indirectly, 10
28 percent or more of the outstanding interests or equity securities of
29 the applicant has violated any provision of this division or the rules
30 or any order thereunder or any similar regulatory scheme of the
31 State of California or a foreign jurisdiction.

32 (10) For good cause shown.

33 (c) The commissioner shall deny licensure if the application is
34 not accompanied by the fee established by the commissioner.

35 (d) The application shall be considered withdrawn within the
36 meaning of this section if the applicant fails to respond to a written
37 notification of a deficiency in the application within 90 days of
38 the date of the notification.

39 12513. (a) The commissioner shall approve or deny an initial
40 license as a provider within 60 days after the receipt of a complete

1 application, the receipt of criminal history background information
2 from the Department of Justice, and the payment of required fees.
3 Within 30 calendar days after denying an application, the
4 commissioner, in a record, shall inform the applicant of the reasons
5 for the denial.

6 (b) If the commissioner denies an application for licensure as
7 a provider or does not act on an application within the time
8 prescribed in subdivision (a), the applicant may appeal and request
9 a hearing pursuant to the California Administrative Procedure Act
10 (Chapter 4.5 (commencing with Section 11400) of Division 3 of
11 Title 2 of the Government Code).

12 12514. (a) A provider shall obtain a renewal of its license
13 biennially.

14 (b) An application for renewal of licensure as a provider shall
15 be in a form prescribed by the commissioner and be filed no fewer
16 than 30 days and no more than 60 days before the license expires.

17 (c) Application for renewal shall be accompanied by the fee
18 established by the commissioner in an amount reasonably necessary
19 for the administration of this division. The commissioner may, if
20 necessary, also include a surcharge to the licensure renewal fee
21 that shall be determined by the amount of the deficit, if any, for
22 reasonable expenses and costs incurred greater than the revenue
23 collected, in the administration of this division in the year
24 immediately preceding the renewal year. The surcharge shall be
25 charged to providers on a pro rata share based on the number of
26 California residents enrolled in the provider's debt settlement
27 services program.

28 (d) The commissioner, by rule, may require a provider to submit
29 specific business information with the annual renewal application.

30 12515. A license is not transferable or assignable.

31 12516. No licensee shall provide debt settlement services under
32 any other name or through an Internet Web site address other than
33 those named in the license or except pursuant to a currently
34 effective written order of the commissioner authorizing the other
35 name or Internet Web site address.

36 12517. A person or entity licensed as a provider under this
37 division shall be exempt from the requirements of Division 3
38 (commencing with Section 12000), except to the extent the person
39 is performing services and activities governed by Section 12000
40 that do not constitute providing debt settlement services.

1 12518. In any proceeding under this division, the burden of
2 proving an exemption or exception is upon the person claiming it.

3
4 Article 2. Commissioner Oversight
5

6 12520. (a) Each licensee shall keep and use books, accounts,
7 and records in accordance with generally accepted accounting
8 practices and good business practice that will enable the
9 commissioner to determine if the licensee is complying with the
10 provisions of this division and with the rules and regulations
11 promulgated by the commissioner. Each licensee shall maintain
12 any other records as required by the commissioner.

13 (b) The commissioner may act on his or her own initiative or
14 in response to complaints and may receive complaints, take action
15 to obtain voluntary compliance with this division, refer cases to
16 the Attorney General, or any other law enforcement agency, and
17 seek or provide remedies as provided in this division.

18 (c) For the purpose of discovering violations of this division or
19 securing information required by the commissioner in the
20 administration and enforcement of this division, the commissioner
21 may investigate and examine at any time, but not less than once
22 every two years, in this state or elsewhere, by subpoena or
23 otherwise, the activities, books, accounts, and records of a person
24 that provides or offers to provide debt settlement services, or a
25 person to which a provider has delegated its obligations under an
26 agreement or under this division, to determine compliance with
27 this division. For the purpose of examination, the commissioner
28 and the commissioner's representatives shall have free access to
29 the offices and places of business, books, accounts, papers, records,
30 and files of all these persons. Information that identifies individuals
31 who have agreements with the provider shall not be disclosed to
32 the public. In connection with the investigation, the commissioner
33 may require or permit a person to file a statement under oath as to
34 all the facts and circumstances of a matter to be investigated.

35 (d) For the purpose of any investigation or proceeding under
36 this law, the commissioner or any officer designated by him or her
37 may administer oaths and affirmations, subpoena witnesses, compel
38 their attendance, take evidence, and require the production of any
39 books, papers, correspondence, memoranda, agreements, or other
40 documents or records which the commissioner deems relevant or

1 material to the inquiry. If the books, records, and supporting data
2 are located out of this state they shall be made available for
3 examination by the commissioner in this state within 10 days after
4 a written demand. This section does not limit or condition the
5 requirement in subdivision (c) that a licensee provide the
6 commissioner with free access to the licensee's offices, places of
7 business, and records at any reasonable time.

8 (e) A provider shall maintain all records for a minimum of five
9 years, and shall enable the commissioner to review the
10 recordkeeping and reconcile each individual debt settlement
11 transaction with documentation maintained in the individual's debt
12 settlement file records. With respect to individual consumer
13 records, this five-year period shall begin from the later of the
14 expiration of the individual debt settlement services, the completion
15 of the individual debt settlement program, or the date of termination
16 of the agreement. Failure to keep the records for five years
17 following the last entry shall permit the commissioner to assess
18 and collect a penalty of up to ten thousand dollars (\$10,000) for
19 each year that the records are not kept.

20 (f) The commissioner may enter into cooperative arrangements
21 with any other federal or state agency having authority over
22 providers and may exchange with any of those agencies
23 information about a provider, including information obtained
24 during an examination of the provider.

25 12521. (a) On or before March 15 of each year, beginning
26 March 2013, each licensee shall file an annual report with the
27 commissioner pursuant to procedures that the commissioner shall
28 establish by rule. The licensee shall submit with the annual report
29 a declaration that conforms to Section 2015.5 of the Code of Civil
30 Procedure, is executed by an official authorized by the licensee,
31 and that states that the licensee complies with this section. An
32 annual report shall be prepared by the commissioner and made
33 available to the public. Each licensee's annual report shall include
34 the following information for the previous calendar year, except
35 where indicated. Where data must be reported by year of
36 enrollment, the licensee shall report as to the previous five years:

37 (1) The total amount of debt as of December 31, for all
38 California residents for whom a licensee is providing debt
39 settlement services, broken down by year of enrollment.

1 (2) The total principal amount of debt of all California residents
2 for whom a licensee is providing debt settlement services as of
3 December 31, broken down by year of enrollment.

4 (3) The total number of California residents that entered into
5 agreements by year of enrollment.

6 (4) The total number of California residents with outstanding
7 debt settlement service agreements in California.

8 (5) The total number of California residents who terminated,
9 withdrew, abandoned, or were terminated from an agreement by
10 year of enrollment.

11 (6) With respect to California residents who completed a
12 program in the previous year by settling 100 percent of their
13 principal amount of debt, the following figures broken down by
14 year of enrollment:

15 (A) The total number of California residents falling into this
16 category.

17 (B) The total principal amount of debt.

18 (C) The total dollar amount of debt that was settled as measured
19 by the amounts outstanding at the time of settlement.

20 (D) The total dollar amounts paid to creditors to settle the settled
21 debts.

22 (E) The median, mean, lowest, and highest percentage of the
23 savings from the principal amount, as calculated by consumer and
24 not by debt.

25 (F) The total, median, mean, lowest, and highest fees paid by
26 these consumers to the provider.

27 (7) The total number of debts settled by the provider.

28 (8) The total dollar amount of debts settled by the provider, as
29 follows:

30 (A) The total principal amount of debt as to the settled debts.

31 (B) The total dollar amount of debt that was settled, measured
32 by the amounts outstanding at the time of settlement.

33 (C) The total dollar amounts paid to creditors to settle the settled
34 debts.

35 (9) With respect to California residents who cancelled, became
36 inactive, or terminated the program during the reporting period,
37 the following figures broken down by year of enrollment:

38 (A) The total number of California residents falling into this
39 category.

40 (B) The total number who did not have any of their debt settled.

- 1 (C) The total number who had less than 75 percent of their debt
2 settled, with the 75 percent figure measured by calculating the
3 percentage of the principal amount of debt settled as compared to
4 the total principal amount of debt enrolled in the program.
- 5 (D) The total number who had 25 percent or less of their debt
6 settled, with the 25 percent figure measured by calculating the
7 percentage of the principal amount of debt settled as compared to
8 the total principal amount of debt enrolled in the program.
- 9 (E) The total principal amount of debt.
- 10 (F) The total dollar amount of debt that was settled, measured
11 by the principal amount of debt.
- 12 (G) The total dollar amounts paid to creditors to settle the settled
13 debts.
- 14 (H) The total, median, mean, lowest, and highest fees paid by
15 these consumers to the provider.
- 16 (10) The total amount of fees collected from California residents.
- 17 (11) The average accretion rate of debt that has been settled, as
18 of the date of settlement.
- 19 (12) The average accretion rate of debt that has not been settled,
20 as of December 31, broken down by year of enrollment.
- 21 (13) The number of individuals acquired from lead generators
22 and the identity of each of the lead generators. For the purposes
23 of this section, a “lead generator” is defined as a person that meets
24 any of the following:
 - 25 (A) Solicits individuals to receive information or referrals on
26 how to reduce or eliminate the individual’s debt through telephone,
27 television, mail, in-person, or electronic Web site-based
28 solicitation, or any other means.
 - 29 (B) Acts as an intermediary or referral agent between an
30 individual and a provider.
 - 31 (C) Obtains an individual’s personally identifiable information
32 for the purpose of transmitting all or part of that information to a
33 provider.
- 34 (b) If a provider fails to do any of the following, the provider
35 shall forfeit to the people of the state a sum of up to one hundred
36 dollars (\$100) for every day up to the 10th day: (1) to make any
37 report required by law or by the commissioner within 10 days from
38 the day designated for the making of the report, or within any
39 extension of time granted by the commissioner, or (2) fails to
40 include therein any matter required by law or by the commissioner.

1 Thereafter, any failure shall constitute grounds for the suspension
2 or revocation of the license held by the debt settlement service
3 provider.

4 12522. The commissioner may, from time to time, make,
5 amend, and rescind rules, regulations, forms, findings, and orders
6 as may be reasonable or necessary to carry out the purposes and
7 provisions of this division, or for the enforcement of this division.

8
9 CHAPTER 4. REGULATIONS

10
11 Article 1. Pre-Agreement Requirements and Disclosures

12
13 12525. A person may not provide, or offer or attempt to
14 provide, debt settlement services in this state except as provided
15 in this division.

16 12526. (a) (1) Prior to entering into a written contract with a
17 consumer, a debt settlement provider shall prepare and provide all
18 of the following to the consumer in writing and retain a copy:

19 (A) An individualized financial analysis, including the
20 individual's income, expenses, and debts.

21 (B) A statement containing a good faith estimate of the length
22 of time it will take to complete the debt settlement program, the
23 total amount of debt owed to each creditor included in the debt
24 settlement program, the total savings estimated to be necessary to
25 complete the debt settlement program, and the monthly targeted
26 savings amount estimated to be necessary to complete the debt
27 settlement program.

28 (2) A debt settlement provider shall not enter into a written
29 contract with a consumer unless it makes written determinations,
30 supported by the financial analysis, and retained in the file with a
31 copy provided to the consumer, that indicates all of the following:

32 (A) The consumer can reasonably meet the requirements of the
33 proposed debt settlement program, including the fees and the
34 periodic savings amounts set forth in the savings goals.

35 (B) The debt settlement program is suitable for the consumer
36 at the time the contract is to be signed.

37 (C) The consumer is reasonably expected to receive a tangible
38 net benefit from the program.

39 (3) A provider shall consider all of the following in making the
40 determinations required by paragraph (2), and shall adopt

1 reasonable procedures describing its process for making the
2 determinations:

3 (A) Whether the consumer's monthly income exceeds basic
4 living expenses and fixed obligations by an amount that permits
5 the consumer to meet the savings goals of the program.

6 (B) Whether each of the consumer's creditors are likely or
7 unlikely to agree to the settlement of the consumer's debts.

8 (C) Whether the consumer's credit score is likely to be harmed
9 by the requirements of the debt settlement program.

10 (D) Whether the consumer is current or delinquent on each of
11 the debts.

12 (E) Whether the consumer has other debt payment or debt
13 concession options that are more appropriate than a debt settlement
14 program given the consumer's financial situation.

15 (F) Whether the consumer is a candidate for bankruptcy.

16 (G) Any other consideration required by rule of the
17 commissioner.

18 (4) The procedures adopted under paragraph (3) shall satisfy
19 all of the following:

20 (A) Ensure that persons offering or providing debt settlement
21 services are familiar with the determinations required to be made
22 under paragraph (2).

23 (B) Ensure that persons offering or providing debt settlement
24 services obtain the information required to make the determinations
25 required by paragraph (2).

26 (C) Ensure that persons offering or providing debt settlement
27 services comply with the limitations imposed by the determinations
28 required by paragraph (2).

29 (b) The responsibility for ensuring that debt settlement programs
30 are limited to persons meeting the qualification standards applicable
31 to the program is upon the provider and its agents.

32 (c) The commissioner may prescribe by rule qualification
33 standards for consumers in a debt settlement program.

34 12527. (a) A provider shall provide to the consumer, and retain
35 a copy, of the following documentation in not less than 12-point
36 type:

37 (1) A description of the services to be provided by the debt
38 settlement provider, including a good faith estimate of the length
39 of time necessary to complete the program as represented by the

1 provider, and a statement of the monthly savings goals for the
2 consumer necessary to complete the program under that timeline.

3 (2) A statement of the total amount of debt owed to each creditor
4 included in the program, and a good faith estimate of the time by
5 which the debt settlement service provider will make a bona fide
6 settlement offer to each creditor.

7 (3) A good faith estimate of the total amount of all fees and
8 compensation, not to exceed the amounts specified in Section
9 12538, to be collected by the debt settlement provider from the
10 consumer for the provision of debt settlement service contemplated.
11 This shall include an itemized list of fees and the approximate
12 dates or circumstances under which each fee will become due.

13 (b) Before the consumer signs a contract, the debt settlement
14 provider shall provide an oral and written notice to the consumer
15 that clearly and conspicuously discloses all of the following:

16 (1) The debt settlement provider does not send any money to
17 the consumer's creditors, unless there is a settlement. The
18 consumer's debts can grow bigger before any settlement.

19 (2) Debt settlement services are not suitable for all consumers.

20 (3) To the extent that any aspect of the debt settlement service
21 relies upon or results in the consumer's failure to make timely
22 payments to creditors or debt collectors, that the use of the debt
23 settlement service will likely adversely affect the consumer's
24 creditworthiness, may result in the consumer being subject to
25 collections or sued by creditors or debt collectors, and may increase
26 the amount of money the consumer owes due to the accrual of fees
27 and interest.

28 (4) Not all creditors will accept a reduction in the balance,
29 interest rate, or fees a consumer owes.

30 (5) The consumer may inquire about other means of dealing
31 with debt, including, but not limited to, nonprofit credit counseling
32 and bankruptcy.

33 (6) The consumer remains legally obligated to make periodic
34 or scheduled payments to creditors while participating in a debt
35 settlement plan, and that the debt settlement provider will not make
36 any periodic or scheduled payments to creditors on behalf of the
37 consumer.

38 (7) The amount of time necessary to complete the program as
39 represented by the provider.

1 (8) The amount of money or the percentage of debt the consumer
2 must accumulate before a settlement offer will be made to each of
3 the consumer’s creditors.

4 (c) The consumer shall sign and date an acknowledgment form
5 entitled “Consumer Notice and Rights Form” that states: “I, the
6 debtor, have received from the debt settlement provider a copy of
7 the form entitled ‘Consumer Notice and Rights Form’.” The debt
8 settlement provider or its representative shall also sign and date
9 the acknowledgment form, which includes the name and address
10 of the debt settlement services provider. The acknowledgment
11 form shall be in duplicate and incorporated into the “Consumer
12 Notice and Rights Form”. The original acknowledgment form shall
13 be retained by the debt settlement provider, and the duplicate copy
14 shall be retained within the form by the consumer.

15 (d) The requirements of this section are satisfied if the debt
16 settlement provider provides the following warning verbatim, both
17 orally and in writing, with the caption “CONSUMER NOTICE
18 AND RIGHTS FORM” in at least 20-point font and the remaining
19 portion in at least 12-point font with the emphases indicated, to a
20 consumer before the consumer signs a contract for the debt
21 settlement provider’s services:

22
23 “CONSUMER NOTICE AND RIGHTS FORM CAUTION

24
25 We CANNOT GUARANTEE that you successfully will reduce or eliminate
26 your debt.

27
28 If you stop paying your creditors, there is a strong likelihood some or all of
29 the following may happen:

- 30 - CREDITORS MAY STILL CONTACT YOU AND TRY TO
- 31 COLLECT.
- 32 - CREDITORS MAY STILL SUE YOU FOR THE MONEY
- 33 YOU OWE.
- 34 - YOUR WAGES OR BANK ACCOUNT MAY STILL BE
- 35 GARNISHED.
- 36 - YOUR CREDIT RATING AND CREDIT SCORE LIKELY
- 37 WILL BE HARMED.
- 38 - NOT ALL CREDITORS WILL AGREE TO ACCEPT A
- 39 BALANCE REDUCTION.

- 1 - YOU SHOULD CONSIDER ALL YOUR OPTIONS FOR
- 2 ADDRESSING YOUR DEBT, SUCH AS CREDIT
- 3 COUNSELING AND BANKRUPTCY FILING.
- 4 - THE AMOUNT OF MONEY YOU OWE MAY INCREASE
- 5 DUE TO CREDITOR IMPOSITION OF INTEREST
- 6 CHARGES, LATE FEES, AND OTHER PENALTY FEES.
- 7 - WE DO NOT SEND PAYMENT TO YOUR CREDITORS
- 8 UNLESS THERE IS SETTLEMENT.
- 9 - EVEN IF WE DO SETTLE YOUR DEBT, YOU MAY STILL
- 10 BE REQUIRED TO PAY TAXES ON THE AMOUNT
- 11 FORGIVEN.

12
13 YOUR RIGHT TO CANCEL

14
15 If you sign a contract with a Debt Settlement Provider, you have the right to
16 cancel at any time and receive a full refund of all unearned fees you have paid
17 to the provider and all funds placed in your settlement fund that have not been
18 paid to any creditors.

19
20 IF YOU ARE DISSATISFIED OR YOU HAVE QUESTIONS

21
22 If you think you have been defrauded by a debt settlement provider or have
23 any questions, please bring it to the attention of the California Attorney
24 General’s Office or the Department of Corporations.

25
26 Attorney General

27 Call toll-free: (800) 952-5225

28 Online Complaints: http://ag.ca.gov/contact/complaint_form.php?cmplt=CL

29 Contact by mail: Public Inquiry Unit Office of the Attorney General P.O. Box
30 944255 Sacramento, CA 94244-2550

31
32 Department of Corporations

33 Call toll-free: 1-866-ASK-CORP (1-866-275-2677)

34 Online Complaints: <http://www.corp.ca.gov/about/complaint.asp>

35 Contact by mail:

36 Department of Corporations

37 Consumer Services Office

38 1515 K Street, Suite 200

39 Sacramento, CA 95814

40

Article 2. Debt Settlement Agreements

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12530. (a) A debt settlement provider shall not provide debt settlement service to a consumer without a written contract signed and dated by both the consumer and the debt settlement provider.

(b) Any contract for the provision of debt settlement service entered into in violation of the provisions of this section is void.

(c) A debt settlement services agreement between a debt settlement provider and a consumer for the provision of debt settlement services shall satisfy all of the following requirements:

- (1) Include the following information in at least 12-point type:
 - (A) The name, address, and telephone number of the consumer.
 - (B) The name, address, California license number, and telephone number of the debt settlement services provider, and if this does not include a street address in California, the name and address of its California agent for service of process.
 - (C) The following information on the first page of the contract:
 - (i) A complete list of the consumer’s accounts, debts, and obligations to be included in the provision of debt settlement service, including the name of each creditor and principal amount of each debt.
 - (ii) A statement of how the fees will be calculated, and a good faith estimate of the total amount of all fees and compensation, not to exceed the amounts specified in Section 12538, to be collected by the debt settlement provider from the consumer for the provision of debt settlement service contemplated by the contract. This shall include an itemized list of fees and the approximate dates and circumstances under which each fee will become due.
 - (D) A description of the services to be provided by the debt settlement provider, including the amount of time necessary to achieve the represented results, and the time by which the debt settlement service provider will make a bona fide settlement offer to each creditor.
 - (E) A statement of the proposed savings goals for the consumer, stating the amount to be saved per month or other period, the time period over which the savings goal extends, and the total amount of the savings expected to be paid by the consumer pursuant to the terms of the contract.

1 (F) The amount of money or the percentage of each outstanding
2 debt that the customer must accumulate before the debt settlement
3 service provider will make a bona fide settlement offer to each of
4 them.

5 (G) If the debt settlement provider requests or requires the
6 customer to place funds in an account at an insured financial
7 institution, a statement that the consumer owns the funds held in
8 the account, the customer may withdraw from the debt settlement
9 service at any time without penalty, and that if the consumer
10 withdraws, the consumer must receive all funds in the account,
11 other than funds earned by the debt settlement service in
12 compliance with Article 4 (commencing with Section 12538).

13 (H) The disclosures required by Section 12527.

14 (2) Be delivered to the consumer at the time of formation of the
15 agreement. For purposes of this paragraph, delivery of an electronic
16 record occurs when it is received by the individual in a format in
17 which the individual may retrieve, save, and print.

18 (d) A debt settlement services agreement under this division
19 shall not do any of the following:

20 (1) Provide for application of the law of any jurisdiction other
21 than California.

22 (2) Contain a provision that modifies or limits otherwise
23 available forums or procedural rights, including the right to trial
24 by jury, that are generally available to the individual under law
25 other than as provided in this division.

26 (3) Contain a provision that restricts the individual's rights or
27 remedies or the provider's obligations under this division or under
28 another applicable law.

29 (4) Contain a provision that does any of the following:

30 (A) Limits or releases the liability of any person for not
31 performing the agreement or for violating this division.

32 (B) Indemnifies any person for liability arising under the
33 agreement or this division.

34 (C) Requires the consumer to be responsible for payment of
35 any attorney's fees of the provider.

36 (5) Contain a hold harmless clause.

37 (6) Contain a confession of judgment clause.

38 (7) Contain assignment of or order for payment of wages or
39 other compensation for services.

40 (8) Contain an acceleration provision.

- 1 (9) Contain an unconscionable term or provision.
- 2 (e) If a provider communicates with a consumer primarily in a
- 3 language other than English, the provider shall furnish a translation
- 4 of the disclosures and documents required by this division in that
- 5 language.
- 6 (f) All rights and obligations specified in subdivision (b) exist
- 7 even if not provided in the agreement. A provision in an agreement
- 8 that violates subdivision (b) or (c) is void.

10 Article 3. General Provisions

11

12 12533. (a) A consumer has the right to cancel a debt settlement

13 services agreement at any time by giving the provider oral, written,

14 or electronic notice. Cancellation of the agreement becomes

15 effective immediately upon receipt by the provider, at which time

16 all powers of attorney and all direct debit authorizations granted

17 by the individual to the provider are revoked and ineffective. No

18 fees may be charged to cancel and no fees may be charged after

19 cancellation, but a debt settlement provider may collect a settlement

20 fee that was earned prior to cancellation of the agreement.

21 (b) Upon the cancellation of an agreement under this section,

22 the debt settlement provider shall provide timely notice of the

23 cancellation of the agreement to each of the creditors with whom

24 the debt settlement provider has had any prior communication on

25 behalf of the consumer in connection with the provision of any

26 debt settlement service.

27 12534. A debt settlement services provider shall not, directly

28 or indirectly, do any of the following:

- 29 (a) Misrepresent any material aspect of any debt settlement
- 30 service, including, but not limited to, the amount of money or the
- 31 percentage of the debt amount that a customer may save by using
- 32 the service; the amount of time necessary to complete the program,
- 33 as described by the provider; the amount of money or the
- 34 percentage of each outstanding debt that the customer must
- 35 accumulate before the provider of the debt settlement service will
- 36 initiate attempts with the customer’s creditors or debt collectors
- 37 or make a bona fide offer to settle, the customer’s debt; the effect
- 38 of the service on a customer’s creditworthiness; or the effect of
- 39 the service on collection efforts of the customer’s creditors or debt
- 40 collectors.

- 1 (b) Make any representation about the results that may be
2 achieved by debt settlement, including about the percentage or
3 dollar amount by which debt may be reduced or the amount a
4 consumer may save, or the experience of its customers with respect
5 to debt reduction.
- 6 (c) Advise, encourage, or require, directly or indirectly, a
7 consumer to stop making payments to any creditor of the consumer.
- 8 (d) Solicit or accept a voluntary contribution from a consumer.
- 9 (e) Acquire a power of attorney conferring any power except
10 the power to negotiate a proposed settlement of one or more debts
11 to which the consumer will be offered the opportunity to assent.
- 12 (f) Purchase a debt or obligation of the consumer or engage in
13 the practice or business of debt collection.
- 14 (g) (1) Require a consumer to deposit his or her funds into a
15 specific financial institution. A provider must also state to the
16 consumer that the consumer is free to choose any Federal Deposit
17 Insurance Corporation-insured or National Credit Union
18 Administration-insured financial institution.
- 19 (2) With respect to any financial institution account opened by
20 or for a consumer, take a power of attorney, exercise control over
21 the account, be named the account, create a demand draft, or obtain
22 any information about the account from any person other than the
23 consumer.
- 24 (h) Charge the consumer for or provide credit or other insurance,
25 or charge the consumer for coupons for goods or services,
26 membership in a club, educational services or materials, access to
27 computers or the Internet, or any other ancillary product or service,
28 or represent or imply to a person participating in or considering
29 debt settlement that purchase of any ancillary goods or services is
30 required.
- 31 (i) Employ any unfair, unconscionable, or deceptive act or
32 practice.
- 33 (j) Enter into any contract with one or more unconscionable
34 terms.
- 35 (k) Misrepresent any material fact, including the knowing
36 omission of any material information, or make a false promise
37 directed to one or more consumers in connection with the
38 solicitation, offering, contracting, or provision of debt settlement
39 service.

- 1 (l) Make loans or offer credit to a consumer or solicit or accept
2 any note, mortgage, or negotiable instrument other than a check.
- 3 (m) Take any release or waiver of any obligation to be
4 performed on the part of the debt settlement provider or any right
5 or remedy of the consumer.
- 6 (n) Change the mailing address on any of a consumer's creditor's
7 statements.
- 8 (o) Receive any cash, fee, gift, bonus, premium, reward, or other
9 compensation from any person other than the consumer explicitly
10 for the provision of debt settlement service to that consumer.
- 11 (p) Take any confession of judgment or power of attorney to
12 confess judgment against the consumer or appear as the consumer
13 or on behalf of the consumer in any judicial proceedings.
- 14 (q) Offer or provide gifts or bonuses to consumers for signing
15 a debt settlement service contract or for referring another potential
16 customer or customers.
- 17 (r) Seek or obtain a consumer's signature on an agreement that
18 contains any blank spaces to be filled in later.
- 19 (s) Disclose to anyone the name or any personal information of
20 a consumer for whom the debt settlement provider has provided
21 or is providing debt settlement services, without the prior consent
22 of the consumer, other than to a consumer's own creditors or the
23 debt settlement provider's agents, affiliates, or contractors for the
24 purpose of providing debt settlement services.
- 25 (t) Structure a program or settlement plan that would cause
26 negative amortization of a consumer's debt or debts.
- 27 (u) Represent that debt settlement will prevent wage
28 garnishment, litigation, debt collection efforts, attachment,
29 repossession, or other adverse consequences, or advise a consumer
30 to ignore any such activity.
- 31 12535. (a) A provider shall provide an accounting to a
32 consumer, as described in subdivisions (b) and (c), in each of the
33 following situations:
- 34 (1) Within five business days of the settlement of a debt.
35 (2) Within five business days after a request by an individual,
36 but the provider shall not be required to comply with more than
37 one request in any three-month period.
38 (3) Upon cancellation or termination of an agreement.
39 (4) Every six months.

1 (b) A provider, in a record, shall provide all of the following to
2 each consumer for whom it has established a program if a creditor
3 has agreed to accept as payment in full an amount less than the
4 principal amount of the debt owed by the individual:

5 (1) The total amount and terms of the settlement.

6 (2) The amount of the debt when the consumer assented to the
7 program.

8 (3) The amount of the debt when the creditor agreed to the
9 settlement.

10 (4) The fee, and the calculation of the fee, if any, charged to the
11 consumer in connection with the settlement.

12 (c) A provider, in a record, shall provide the following
13 accounting to each consumer for whom it has established a program
14 every six months: a statement showing all settlements completed;
15 all fees paid; for each remaining debt, the principal amount of the
16 debt and current amount of the debt; and any other information
17 identified by the commissioner by regulation.

18 (d) A provider shall provide the consumer with a copy of the
19 written documentation from the creditor of a debt that has been
20 successfully settled, unless that documentation has already been
21 provided directly by the creditor to the consumer. The written
22 documentation from the creditor showing that the debt is fully
23 released by the settlement shall be provided to the consumer no
24 later than when any fee associated with that settlement is charged.

25 12536. A debt settlement provider shall have a fiduciary duty
26 to a consumer in connection with the solicitation and provision of
27 debt settlement services.

28
29 Article 4. Fees and Charges
30

31 12538. (a) A debt settlement provider shall not impose any
32 fees or other charges on a consumer, or receive any funds or other
33 payments from a consumer or another person on behalf of a
34 consumer, except in compliance with all of the requirements of
35 this section.

36 (b) A debt settlement provider shall not claim, demand, charge,
37 collect, or receive any fee until it has fully complied with Sections
38 12526 and 12527, the consumer has signed an agreement for debt
39 settlement services that complies with Section 12530, and the
40 conditions of subdivision (c) have been met.

1 (c) It is a violation of this section for any debt settlement
2 provider to request or receive payment of any fee or consideration
3 for any debt settlement service until and unless all of the following
4 conditions have been met:

5 (1) The debt settlement provider has settled at least one debt
6 pursuant to a settlement agreement.

7 (2) Documentation of the agreement is provided to the consumer.

8 (3) The funds to settle the debt in full have been paid to the
9 creditor.

10 (4) To the extent that debts enrolled in a service are settled
11 individually, the fee or consideration may not exceed 15 percent
12 of the amount saved as a result of the settlement. The percentage
13 charged shall not change from one individual debt to another. The
14 amount saved shall be calculated as the difference between the
15 principal amount of the debt and the amount paid by the debt
16 settlement provider to the creditor or negotiated by the debt
17 settlement provider and paid by the consumer to the creditor
18 pursuant to a settlement negotiated by the debt settlement provider
19 on behalf of the consumer as full and complete satisfaction of the
20 creditor's claim with regard to that debt.

21 (d) No fee may be charged or collected under this subdivision
22 at any time if the total fees, settlements, and unsettled debt exceeds
23 the principal amount of the debt.

24 (e) Nothing in this section prohibits a provider from requesting
25 or requiring the consumer to place funds in an account to be used
26 for the debt settlement provider's fees to be earned in the future
27 as provided under subdivision (c), and for payments to creditors
28 or debt collectors in connection with the settlement or future
29 settlement of a debt, provided that all of the following conditions
30 are met:

31 (1) The funds are held in an account at an insured financial
32 institution freely chosen by the consumer.

33 (2) The consumer owns the funds held in the account and is the
34 owner of any accrued interest on the account.

35 (3) The entity administering the account is not owned or
36 controlled by, or in any way affiliated with, or under contract with,
37 the debt settlement service.

38 (4) The entity administering the account does not give or accept
39 any money or other compensation in exchange for referrals of
40 business involving the debt settlement service.

1 (5) The consumer may withdraw from the debt settlement
2 service at any time without penalty, and must receive all funds in
3 the account, other than funds earned by the debt settlement service
4 in compliance with the provisions of this section, within seven
5 business days of the consumer's request.

6
7 CHAPTER 5. ENFORCEMENT
8

9 12540. (a) If a provider imposes any fee or other charge, or
10 receives any money or other payments, not authorized by Section
11 12538, the agreement is void, and the debt settlement provider
12 shall automatically refund all fees paid within five business days
13 upon valid notice that the agreement is void. In addition, the
14 consumer may recover in a civil action all money paid by or on
15 behalf of the consumer pursuant to the agreement, in addition to
16 the recovery under subdivision (b).

17 (b) For any violation of this division, a consumer may recover
18 any or all of the following in a civil action from the debt settlement
19 provider and any person other than an employee of the provider
20 that caused the violation:

21 (1) Statutory damages in an amount determined by the court of
22 no less than one thousand dollars (\$1,000) and no more than five
23 thousand dollars (\$5,000) per violation. The consumer does not
24 need to establish any losses in fact in order to recover statutory
25 damages.

26 (2) Compensatory damages for any injury caused by the
27 violation, if applicable.

28 (3) Reasonable attorney's fees and costs.

29 12541. (a) An action brought under this division shall be
30 commenced within four years after the latest of the following dates:

31 (1) The last transmission of money to a provider by or on behalf
32 of the consumer.

33 (2) The date on which the consumer discovered or reasonably
34 should have discovered the facts giving rise to the consumer's
35 claim.

36 (b) The period prescribed in paragraph (2) of subdivision (a)
37 shall be tolled during any period during which the provider or, if
38 different, the defendant has misstated or omitted material
39 information required by this division to be disclosed to the

1 consumer, if the information is material to the establishment of
2 the liability of the defendant under this division.

3 12542. No later than 30 days after a provider has been served
4 with notice of a civil action for violation of this division by or on
5 behalf of a consumer who resides in this state at either the time of
6 an agreement or the time the notice is served, the provider shall
7 notify the commissioner in writing that it has been sued and provide
8 a copy of the complaint to the commissioner.

9 12543. The rights, remedies, and penalties established by this
10 division are cumulative to the rights, remedies, or penalties
11 established under other laws.

12 12544. (a) The provisions of this division are enforceable by
13 the commissioner and the Attorney General. Any person, including
14 a partner or officer of a provider, who violates any provision of
15 this division, shall, upon conviction, be punished by a fine of not
16 more than ten thousand dollars (\$10,000) for each violation, or by
17 imprisonment in a county jail for not more than one year, or by
18 both that fine and imprisonment.

19 (b) The Attorney General may also bring a civil action for
20 injunctive relief, and may include in the action a claim for
21 restitution, disgorgement, or damages on behalf of the consumers
22 subject to the act or practice constituting the subject matter of the
23 action. The Attorney General may include in any action authorized
24 by this section a claim for costs, including reasonable attorney's
25 fees and expenses, and the court shall have jurisdiction to award
26 relief, authorized by this section and any other additional relief.

27 (c) Any person who violates or authorizes, directs, or aids in
28 the violation of any rule or order adopted pursuant to this division
29 shall be liable for an additional civil penalty not exceeding ten
30 thousand dollars (\$10,000) for each violation, which shall be
31 assessed and recovered in a civil action brought in the name of the
32 people of the State of California by the Attorney General in any
33 court of competent jurisdiction, or by the commissioner.

34 (d) Any debt settlement service provider who violates any
35 provision of this division shall be deemed to have violated that
36 person's licensing law.

37 SEC. 2. The Legislature finds and declares that Section 1 of
38 this act imposes a limitation on the public's right of access to the
39 meetings of public bodies or the writings of public officials and
40 agencies within the meaning of Section 3 of Article I of the

1 California Constitution. Pursuant to that constitutional provision,
2 the Legislature makes the following findings to demonstrate the
3 interest protected by this limitation and the need for protecting
4 that interest:

5 In order to allow the Department of Corporations to fully
6 accomplish its goals, it is imperative to protect the interests of
7 those persons submitting information to the department to ensure
8 that any personal or sensitive business information that this act
9 requires those persons to submit is protected as confidential
10 information.

11 SEC. 3. No reimbursement is required by this act pursuant to
12 Section 6 of Article XIII B of the California Constitution because
13 the only costs that may be incurred by a local agency or school
14 district will be incurred because this act creates a new crime or
15 infraction, eliminates a crime or infraction, or changes the penalty
16 for a crime or infraction, within the meaning of Section 17556 of
17 the Government Code, or changes the definition of a crime within
18 the meaning of Section 6 of Article XIII B of the California
19 Constitution.

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