AMENDED IN SENATE MAY 10, 2011

AMENDED IN SENATE APRIL 12, 2011

SENATE BILL No. 708

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 amended, 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 an 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, to California consumers 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 contain specified information and include evidence of a surety bond, would require a license to be renewed biennially, and would require specified fees to be paid for a license. The bill would make a person who knowingly provides false information in an application for licensure subject to a civil penalty in a specified amount. 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 specified written determinations, 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 the 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 consumer 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 and subject to specified civil penalties. Because this bill would create a new crime, 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:

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

DIVISION 3.5. DEBT SETTLEMENT CONSUMER PROTECTION ACT

Chapter 1. Short Title

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

Chapter 2. Definitions

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

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

(b) "Commissioner" means the Commissioner of Corporations.

(c) "Consumer" means an individual who owes money to one or more creditors for unsecured debt, including an individual who owes money jointly with one or more other individuals, and who purchases or contracts for the purchase of debt settlement services.

(d) (1) "Debt settlement provider" or "provider" means any person or entity engaging in, or holding itself out as engaging in, the business of providing debt settlement services to California consumers in exchange for any fee or compensation, or any person who solicits for or acts on behalf of any person or entity engaging in, or holding itself out as engaging in, the business of providing debt settlement services to California consumers in exchange for any fee or compensation.

(2) "Debt settlement provider" or "provider" does not include any of the following:

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

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

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

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

(E) An attorney who provides debt settlement services to a consumer, and meets all of the following requirements:

(i) The attorney is licensed to practice law in the State of California and is in good standing with the California Bar Association.

(ii) The attorney personally provides debt settlement services while acting in the ordinary practice of law, and is not primarily engaged in the business of providing debt settlement services.

(iii) The attorney puts any advance fee received from the consumer in a client trust account until earned in accordance with California law and the California Rules of Professional Conduct, and pursuant to the terms of a written agreement that details the work to be performed by the attorney and the fee schedule for the attorney's work.

(iv) The attorney does not share any fee received for the provision of debt settlement services with a person who is not an attorney.

(v) The attorney does not provide debt settlement services through a partnership, corporation, association, referral arrangement, or other entity or arrangement (I) that is directed or controlled, in whole or in part, by an individual who is not an attorney; (II) in which an individual who is not an attorney holds any interest; (III) in which an individual who is not an attorney is a director or officer of the entity or occupies a position of similar responsibility; (IV) in which an individual who is not an attorney has the right to direct, control, or regulate the professional judgment of the attorney; or (V) in which an individual who is not an attorney and who is not under the supervision and control of an attorney, that delivers debt settlement services or exercises professional judgment with respect to the provision of debt settlement services.

(F) Any organization described in Section 501(c)(3) of the Internal Revenue Code of 1986 that is subject to Section 501(q) of, and exempt from tax under Section 501(a) of, that code, that meets all of the criteria in Section 12104, and that submits to the commissioner all of the documentation specified in subdivisions (i) and (j) of Section 12104.

(e) ~~(1)~~ "Debt settlement services" means either of the following:

~~(A)~~

(1) Offering to provide advice or service, or acting as an intermediary between or on behalf of a consumer and one or more of a consumer's creditors, where the purpose of the advice, service, or action, in whole or in part, is to obtain a settlement, adjustment, or satisfaction of any of the consumer's unsecured debt to a creditor in an amount less than the full amount of the principal amount of the debt or in an amount less than the current outstanding balance of the debt.

~~(B)~~

(2) Offering to provide, or providing, services related to advising, encouraging, assisting, or counseling a consumer to accumulate funds for the purpose, in whole or in part, of proposing, obtaining, or seeking to obtain a settlement, adjustment, or satisfaction of any of the consumer's unsecured debt to a creditor in an amount less than the full amount of the principal amount of the debt or in an amount less than the current outstanding balance of the debt.

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

(f) "Financial institution" means any commercial bank, trust company, credit union, industrial loan company, consumer finance lender, residential mortgage lender, or any other person engaged in the business of lending money.

(g) "Individualized financial analysis" means a review of a consumer's budget, income, expenses, and debt in order to make a determination about the consumer's qualification for a provider's debt settlement program, the consumer's ability to make the savings necessary to complete the debt settlement program, and whether it is reasonable to expect the consumer will receive a tangible net benefit from the debt settlement program offered by the provider.

(h) "Person" means an individual, corporation, business trust, estate, trust, partnership, limited liability company, association, joint venture, or any other legal or commercial entity.

(i) "Principal amount of the debt" means the total amount of debt owed by a consumer to one or more creditors for the debt included in an agreement for debt settlement services at the time that the consumer enters into the agreement for debt settlement service.

(j) "Program" means a program or strategy in which a provider furnishes debt settlement services.

Chapter 3. Licensing and Oversight

Article 1. Licensing Requirements

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

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

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

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

(1) (A) Evidence of a surety bond in the amount of ~~two hundred thousand dollars ($200,000)~~ *fifty thousand dollars ($50,000)*, which bond or insurance shall be maintained by the provider during the term of the license.

(B) Upon licensure as a provider, the bond shall be payable to the commissioner and issued by an insurer authorized to do business in this state. A copy of the bond, including any and all riders and endorsements executed subsequent to the effective date of the bond, shall be filed with the commissioner for review and approval within 10 days of execution. The bond shall be used for the recovery of losses or damages incurred by consumers as the result of a licensee's noncompliance with the requirements of this division or for the recovery of expenses, fines, and fees levied by the commissioner, a district attorney, city attorney, or the Attorney General.

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

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

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

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

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

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

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

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

(b) On or before the 30th day of May in each year, the commissioner shall notify each licensee by mail of the amount assessed and levied against it and that amount shall be paid within 30 days thereafter. If payment is not made within 30 days, the commissioner may assess and collect a penalty, in addition to the assessment, not to exceed 1 percent of the assessment for each month or part of a month that the payment is delayed or withheld.

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

12508. Every application for licensure shall be signed by the applicant and contain current information on all matters required in an application for licensure. Any person who knowingly provides false information in the application required by this division shall be subject to a civil penalty in an amount up to fifty thousand dollars ($50,000) in addition to any other civil remedies available, including, but not limited to, the remedies and penalties provided in Section 12544. An action for a civil penalty under this section may be brought by the commissioner or the Attorney General. The application form shall contain a statement informing the applicant that a false or dishonest answer to a question may be grounds for denial or subsequent suspension or revocation of the applicant's license. An application for licensure shall be in a form prescribed by the commissioner and at minimum shall include the following:

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

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

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

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

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

(f) At the applicant's expense, *fingerprint images and related information* pursuant to the process *set forth* in Section 12510~~, the results of a national criminal history records check, including fingerprints, provided pursuant to the Federal Bureau of Investigation appropriation of Title II of Public Law 92-544 (28 U.S.C. Sec. 534) conducted within the immediately preceding 12 months,~~ covering every executive officer of the applicant.~~ The commissioner shall be the authorized agency to receive information regarding the results of the national criminal history records check under Title II of Public Law 92-544 (28 U.S.C. Sec. 534).~~

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

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

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

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

(h) Disclosure of any other potential conflict of interest with any person that facilitates, promotes, influences, or is involved with the debt settlement process, as required by rule of the commissioner.

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

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

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

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

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

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

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

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

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

12510. (a) An applicant for licensure shall provide to the commissioner, and the commissioner shall submit to the Department of Justice, fingerprint images and related information required by the Department of Justice of all applicants for licensure for purposes of obtaining information as to the existence and content of a record of state or federal convictions and state or federal arrests, and also information as to the existence and content of a record of state or federal arrests for which the Department of Justice establishes that the person is free on bail or on his or her own recognizance pending trial or appeal.

(b) When received, the Department of Justice shall forward to the Federal Bureau of Investigation requests for federal summary criminal history information received pursuant to this section. The Department of Justice shall review the information returned from the Federal Bureau of Investigation and compile and disseminate a response to the Commissioner of Corporations. *The Department of Corporations shall be the authorized agency to receive information regarding the results of the national criminal history records check under Title II of Public Law 92-544 (28 U.S.C. Sec. 534).*

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

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

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

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

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

(b) The commissioner may deny *or revoke* licensure for any of the following:

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

(2) The applicant, an officer, director, general partner, member or person owning or controlling, directly or indirectly, 10 percent or more of the outstanding interests or equity securities, or a predecessor organization of the applicant, has been convicted of or pleaded nolo contendere to a crime; has incurred a significant civil settlement; has suffered a civil judgment or any administrative judgment by any public agency involving fraud, deceit, dishonesty, or financial misconduct, or has violated state or federal securities or consumer protection laws, or any regulatory scheme of the State of California or another state; or has been convicted of any other offense reasonably related to the qualifications, functions, or duties of a person engaged in the business in accordance with the provisions of this division.

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

(4) An applicant is or becomes insolvent.

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

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

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

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

(9) An applicant or any officer, director, or general partner, member or person owning or controlling, directly or indirectly, 10 percent or more of the outstanding interests or equity securities of

the applicant has violated any provision of this division or the rules or any order thereunder or any similar regulatory scheme of the State of California or a foreign jurisdiction.

(10) For good cause shown.

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

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

12513. (a) The commissioner shall approve or deny an initial license as a provider within 60 days after the receipt of a complete application, the receipt of criminal history background information from the Department of Justice, and the payment of required fees. Within 30 calendar days after denying an application, the commissioner, in a record, shall inform the applicant of the reasons for the denial.

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

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

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

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

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

12515. A license is not transferable or assignable.

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

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

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

12519. This division shall not apply to the following persons or their employees when the person or the employee is engaged in the regular course of the person's business or profession:

(a) A bank, bank holding company, credit union, or the subsidiary or affiliate of a bank, bank holding company, or credit union.

(b) Any other financial institution licensed under state or federal law.

Article 2. Commissioner Oversight

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

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

(c) For the purpose of discovering violations of this division or securing information required by the commissioner in the administration and enforcement of this division, the commissioner may investigate and examine at any time, but not less than once every two years, in this state or elsewhere, by subpoena or otherwise, the activities, books, accounts, and records of a person that provides or offers to provide debt settlement services, or a person to which a provider has delegated its obligations under an agreement or under this division, to determine compliance with this division. For the purpose of examination, the commissioner and the commissioner's representatives shall have free access to the offices and places of business, books, accounts, papers, records, and files of all these persons. Information that identifies consumers who have agreements with the provider shall not be disclosed to the public. In connection with the investigation, the commissioner may ~~require~~ *do either of the following:*

(1) Charge the person or provider the reasonable expenses necessarily incurred to conduct the examination. The commissioner may maintain an action for the recovery of expenses in any court of competent jurisdiction.

(2) Require or permit a person to file a statement under oath as to all the facts and circumstances of a matter to be investigated.

(d) For the purpose of any investigation or proceeding under this law, the commissioner or any officer designated by him or her may administer oaths and affirmations, subpoena witnesses, compel their attendance, take evidence, and require the production of any books, papers, correspondence, memoranda, agreements, or other documents or records which the commissioner deems relevant or material to the inquiry. If the books, records, and supporting data are located out of this state they shall be made available for examination by the commissioner in this state within 10 days after a written demand. This section does not limit or condition the requirement in subdivision (c) that a licensee provide the commissioner with free access to the licensee's offices, places of business, and records at any reasonable time.

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

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

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

(1) The total amount of debt *outstanding, including the growth of debt since enrollment*, as of December 31, for all California residents for whom a licensee is providing debt settlement services, broken down by year of enrollment.

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

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

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

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

(6) With respect to California residents who completed a program in the previous year by settling 100 percent of their

principal amount of debt, the following figures broken down by year of enrollment:

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

(B) The total principal amount of debt.

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

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

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

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

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

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

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

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

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

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

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

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

(C) The total number who had less than 75 percent of their debt settled, with the 75 percent figure measured by calculating the percentage of the principal amount of debt settled as compared to the total principal amount of debt enrolled in the program.

(D) The total number who had 25 percent or less of their debt settled, with the 25 percent figure measured by calculating the percentage of the principal amount of debt settled as compared to the total principal amount of debt enrolled in the program.

(E) The total principal amount of debt.

(F) The total dollar amount of debt that was settled, measured by the principal amount of debt.

(G) The total dollar amounts paid to creditors to settle the settled debts.

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

(10) The total amount of fees collected from California residents.

(11) The average accretion rate of debt that has been settled, as of the date of settlement.

(12) The average accretion rate of debt that has not been settled, as of December 31, broken down by year of enrollment.

(13) The number of consumers acquired from lead generators and the identity of each of the lead generators. For the purposes of this section, a "lead generator" is defined as a person that meets any of the following:

(A) Solicits consumers to receive information or referrals on how to reduce or eliminate the consumer's debt through telephone, television, mail, in-person, or electronic Internet Web site-based solicitation, or any other means.

(B) Acts as an intermediary or referral agent between a consumer and a provider.

(C) Obtains a consumer's personally identifiable information for the purpose of transmitting all or part of that information to a provider.

(b) If a provider fails to do any of the following, the provider shall forfeit to the people of the state a sum of up to one hundred dollars ($100) for every day up to the 10th day: (1) to make any report required by law or by the commissioner within 10 days from the day designated for the making of the report, or within any extension of time granted by the commissioner, or (2) fails to include therein any matter required by law or by the commissioner. Thereafter, any failure shall constitute grounds for the suspension or revocation of the license held by the debt settlement service provider.

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

Chapter 4. Regulations

Article 1. Pre-Agreement Requirements and Disclosures

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

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

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

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

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

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

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

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

(3) A provider shall consider all of the following in making the determinations required by paragraph (2), and shall adopt reasonable procedures describing its process for making the determinations:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(1) A description of the services to be provided by the debt settlement provider, including a good faith estimate of the length of time necessary to complete the program as represented by the provider, and a statement of the monthly savings goals for the consumer necessary to complete the program under that timeline.

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

(3) 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. This shall include an itemized list of fees and the approximate dates or circumstances under which each fee will become due.

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

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

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

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

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

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

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

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

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

(c) The consumer shall sign and date an acknowledgment form entitled "Consumer Notice and Rights Form" that states: "I, the debtor, have received from the debt settlement provider a copy of the form entitled 'Consumer Notice and Rights Form'." The debt settlement provider or its representative shall also sign and date the acknowledgment form, which includes the name and address of the debt settlement services provider. The acknowledgment form shall be in duplicate and incorporated into the “Consumer Notice and Rights Form”. The original acknowledgment form shall be retained by the debt settlement provider, and the duplicate copy shall be retained within the form by the consumer.

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

“CONSUMER NOTICE AND RIGHTS FORM CAUTION

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

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

- CREDITORS MAY STILL CONTACT YOU AND TRY TO COLLECT.
- CREDITORS MAY STILL SUE YOU FOR THE MONEY YOU OWE.
- YOUR WAGES OR BANK ACCOUNT MAY STILL BE GARNISHED.
- YOUR CREDIT RATING AND CREDIT SCORE LIKELY WILL BE HARMED.
- NOT ALL CREDITORS WILL AGREE TO ACCEPT A BALANCE REDUCTION.
- YOU SHOULD CONSIDER ALL YOUR OPTIONS FOR ADDRESSING YOUR DEBT, SUCH AS CREDIT COUNSELING AND BANKRUPTCY FILING.
- THE AMOUNT OF MONEY YOU OWE MAY INCREASE DUE TO CREDITOR IMPOSITION OF INTEREST CHARGES, LATE FEES, AND OTHER PENALTY FEES.
- WE DO NOT SEND PAYMENT TO YOUR CREDITORS UNLESS THERE IS SETTLEMENT.

- EVEN IF WE DO SETTLE YOUR DEBT, YOU MAY STILL BE REQUIRED TO PAY TAXES ON THE AMOUNT FORGIVEN.

YOUR RIGHT TO CANCEL

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

IF YOU ARE DISSATISFIED OR YOU HAVE QUESTIONS

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

<u>Attorney General</u>
Call toll-free: (800) 952-5225
Online Complaints: http://ag.ca.gov/contact/complaint_form.php?cmplt=CL
Contact by mail: Public Inquiry Unit Office of the Attorney General P.O. Box 944255 Sacramento, CA 94244-2550

<u>Department of Corporations</u>
Call toll-free: 1-866-ASK-CORP (1-866-275-2677)
Online Complaints: http://www.corp.ca.gov/about/complaint.asp
Contact by mail:
Department of Corporations
Consumer Services Office
1515 K Street, Suite 200
Sacramento, CA 95814

Article 2. Debt Settlement Agreements

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~~ *services* entered into *with a person not licensed as a debt settlement* *provider and not exempt from licensing under this division, or that is* 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.

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

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

(H) The disclosures required by Section 12527.

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

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

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

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

(3) Contain a provision that restricts the consumer’s rights or remedies or the provider’s obligations under this division or under another applicable law.

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

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

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

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

(5) Contain a hold harmless clause.

(6) Contain a confession of judgment clause.

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

(8) Contain an acceleration provision.

(9) Contain an unconscionable term or provision.

(e) If a provider communicates with a consumer primarily in a language other than English, the provider shall furnish a translation of the disclosures and documents required by this division in that language.

~~(f) All rights and obligations specified in subdivision (b) exist even if not provided in the agreement. A provision in an agreement that violates subdivision (b) or (c) is void.~~

Article 3. General Provisions

12533. (a) A consumer has the right to cancel a debt settlement services agreement at any time by giving the provider oral, written, or electronic notice. Cancellation of the agreement becomes effective immediately upon receipt by the provider, at which time all powers of attorney and all direct debit authorizations granted by the consumer to the provider are revoked and ineffective. No fees may be charged to cancel and no fees may be charged after cancellation, but a debt settlement provider may collect a settlement fee that was earned prior to cancellation of the agreement.

(b) Upon the cancellation of an agreement under this section, the debt settlement provider shall provide timely notice of the cancellation of the agreement to each of the creditors with whom the debt settlement provider has had any prior communication on behalf of the consumer in connection with the provision of any debt settlement service.

12534. A debt settlement services provider shall not, directly or indirectly, do any of the following:

(a) Misrepresent any material aspect of any debt settlement service, including, but not limited to, the amount of money or the percentage of the debt amount that a consumer may save by using the service; the amount of time necessary to complete the program, as described by the provider; the amount of money or the percentage of each outstanding debt that the consumer must accumulate before the provider of the debt settlement service will initiate attempts with the consumer's creditors or debt collectors or make a bona fide offer to settle the consumer's debt; the effect of the service on a consumer's creditworthiness; or the effect of the service on collection efforts of the consumer's creditors or debt collectors.

(b) Make any representation about the results that may be achieved by debt settlement, including about the percentage or dollar amount by which debt may be reduced or the amount a consumer may save or the experience of its customers with respect to debt reduction.

(c) Advise, encourage, or require, directly or indirectly, a consumer to stop making payments to any creditor of the consumer.

(d) Solicit or accept a voluntary contribution from a consumer.

(e) Acquire a power of attorney conferring any power except the power to negotiate a proposed settlement of one or more debts to which the consumer will be offered the opportunity to assent.

(f) Purchase a debt or obligation of the consumer or engage in the practice or business of debt collection.

~~(g) (1) Require a consumer to deposit his or her funds into a specific financial institution. A provider must also state to the consumer that the consumer is free to choose any Federal Deposit Insurance Corporation-insured or National Credit Union Administration-insured financial institution.~~

~~(2) With respect to any financial institution account opened by or for a consumer, take a power of attorney, exercise control over the account, be named on the account, create a demand draft, or obtain any information about the account from any person other than the consumer.~~

(g) With respect to any financial institution account established pursuant to subdivision (e) of Section 12538, take a power of attorney, exercise control over the accounts, or be named on the account.

(h) Charge the consumer for or provide credit or other insurance, or charge the consumer for coupons for goods or services, membership in a club, educational services or materials, access to computers or the Internet, or any other ancillary product or service, or represent or imply to a person participating in or considering debt settlement that purchase of any ancillary goods or services is required.

(i) Employ any unfair, unconscionable, or deceptive act or practice.

(j) Enter into any contract with one or more unconscionable terms.

(k) Misrepresent any material fact, including the knowing omission of any material information, or make a false promise directed to one or more consumers in connection with the solicitation, offering, contracting, or provision of debt settlement service.

(*l*) Make loans or offer credit to a consumer or solicit or accept any note, mortgage, or negotiable instrument other than a check.

(m) Take any release or waiver of any obligation to be performed on the part of the debt settlement provider or any right or remedy of the consumer.

(n) Change the mailing address on any of a consumer's creditor's statements.

(o) Receive any cash, fee, gift, bonus, premium, reward, or other compensation from any person other than the consumer explicitly for the provision of debt settlement service to that consumer.

(p) Take any confession of judgment or power of attorney to confess judgment against the consumer or appear as the consumer or on behalf of the consumer in any judicial proceedings.

(q) Offer or provide gifts or bonuses to consumers for signing a debt settlement service contract or for referring ~~another potential customer or customers.~~ *other potential consumers.*

(r) Seek or obtain a consumer's signature on an agreement that contains any blank spaces to be filled in later.

(s) Disclose to anyone the name or any personal information of a consumer for whom the debt settlement provider has provided or is providing debt settlement services, without the prior consent of the consumer, other than to a consumer's own creditors or the debt settlement provider's agents, affiliates, or contractors for the purpose of providing debt settlement services.

(t) Structure a program or settlement plan that would cause negative amortization of a consumer's debt or debts.

(u) Represent that debt settlement will prevent wage garnishment, litigation, debt collection efforts, attachment, repossession, or other adverse consequences, or advise a consumer to ignore any such activity.

~~12535. (a) A provider shall provide an accounting to a consumer, as described in subdivisions (b) and (c), in each of the following situations:~~

~~(1) Within five business days of the settlement of a debt.~~

~~(2) Within five business days after a request by a consumer, but the provider shall not be required to comply with more than one request in any three-month period.~~

~~(3) Upon cancellation or termination of an agreement.~~

~~(4) Every six months.~~

~~(b)~~

12535. (a) A provider, in a record, shall provide all of the following to each consumer for whom it has established a program if a creditor has agreed to accept as payment in full an amount less than the principal amount of the debt owed by the consumer:

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

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

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

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

~~(c)~~

(b) A provider, in a record, shall provide the following accounting to each consumer for whom it has established a program every six months*, and within five business days after a request by a consumer*: a statement showing all settlements completed; all fees paid; for each remaining debt, the principal amount of the debt and current amount of the debt; and any other information identified by the commissioner by regulation. *A provider shall not be required to respond to more than one request for an accounting in any three-month period.*

~~(d)~~

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

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

Article 4. Fees and Charges

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

(b) A debt settlement provider shall not claim, demand, charge, collect, or receive any fee until it has fully complied with Sections

12526 and 12527, the consumer has signed an agreement for debt settlement services that complies with Section 12530, and the conditions of subdivision (c) have been met.

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

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

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

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

(4) The fee or consideration shall not exceed ~~15~~ *20* percent of the amount saved as a result of the settlement of each debt settled. The percentage charged shall not change from one individual debt to another. The amount saved shall be calculated as the difference between the principal amount of the debt and the amount paid by the debt settlement provider to the creditor or negotiated by the debt settlement provider and paid by the consumer to the creditor pursuant to a settlement negotiated by the debt settlement provider on behalf of the consumer as full and complete satisfaction of the creditor's claim with regard to that debt.

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

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

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

(2) The consumer owns the funds held in the account and is ~~the owner of any~~ *paid* accrued interest on the account, *if any*.

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

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

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

Chapter 5. Enforcement

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

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

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

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

(3) Reasonable attorney's fees and costs.

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

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

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

(b) The period prescribed in paragraph (2) of subdivision (a) shall be tolled during any period during which the provider or, if different, the defendant has misstated or omitted material information required by this division to be disclosed to the consumer, if the information is material to the establishment of the liability of the defendant under this division.

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

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

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

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

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

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

SEC. 2. The Legislature finds and declares that Section 1 of this act imposes a limitation on the public's right of access to the meetings of public bodies or the writings of public officials and agencies within the meaning of Section 3 of Article I of the California Constitution. Pursuant to that constitutional provision, the Legislature makes the following findings to demonstrate the interest protected by this limitation and the need for protecting that interest:

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

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

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