

AMENDED IN SENATE MAY 31, 2011  
AMENDED IN SENATE MAY 10, 2011  
AMENDED IN SENATE APRIL 12, 2011

**SENATE BILL**

**No. 708**

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**Introduced by Senator Corbett**

February 18, 2011

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An act to add Division 3.5 (commencing with Section 12500) to, *and to repeal Chapter 3.5 (commencing with Section 12520.5) of Division 3.5 of*, 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 *registration*, 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 provide for the registration of these persons by the commissioner until January 1, 2014, and thereafter would require these persons to obtain a license from the commissioner.* The bill would establish criteria for *the registration of a person by the commissioner to, or for the issuance by*

the commissioner of a license to, engage in debt settlement services, would require an application for *registration or* 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 *registration or* a license. The bill would *require a license to be renewed biennially and 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. *The bill would make a provider liable for any conduct of a person to whom the provider has delegated any of its duties or obligations if the person's conduct violates the bill's provisions.* 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:*

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:

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

19 (b) “Commissioner” means the Commissioner of Corporations  
20 and “department” means the Department of Corporations.

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

25 (d) (1) “Debt settlement provider” or “provider” means any  
26 person or entity engaging in, or holding itself out as engaging in,  
27 the business of providing debt settlement services to California  
28 consumers in exchange for any fee or compensation, or any person  
29 who solicits for or acts on behalf of any person or entity engaging  
30 in, or holding itself out as engaging in, the business of providing  
31 debt settlement services to California consumers in exchange for  
32 any fee or compensation.

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

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

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

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

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

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

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

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

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

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

31 (v) The attorney does not provide debt settlement services  
32 through a partnership, corporation, association, referral  
33 arrangement, or other entity or arrangement (I) that is directed or  
34 controlled, in whole or in part, by an individual who is not an  
35 attorney; (II) in which an individual who is not an attorney holds  
36 any interest; (III) in which an individual who is not an attorney is  
37 a director or officer of the entity or occupies a position of similar  
38 responsibility; (IV) in which an individual who is not an attorney  
39 has the right to direct, control, or regulate the professional judgment  
40 of the attorney; or (V) in which an individual who is not an attorney

1 and who is not under the supervision and control of an attorney;  
2 that delivers debt settlement services or exercises professional  
3 judgment with respect to the provision of debt settlement services.

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

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

11 ~~(1)~~

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

20 ~~(2)~~

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

29 (2) “Debt settlement services” does not include the provision  
30 of programs or services that represent, directly or by implication,  
31 to renegotiate, settle, or alter the terms of a tax obligation between  
32 a consumer and a taxing authority or entity.

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

37 (g) “Individualized financial analysis” means a review of a  
38 consumer’s budget, income, expenses, and debt in order to make  
39 a determination about the consumer’s qualification for a provider’s  
40 debt settlement program, the consumer’s ability to make the savings

1 necessary to complete the debt settlement program, and whether  
2 it is reasonable to expect the consumer will receive a tangible net  
3 benefit from the debt settlement program offered by the provider.

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

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

12 (j) “Program” means a program or strategy in which a provider  
13 furnishes debt settlement services.

14  
15 CHAPTER 3. LICENSING AND OVERSIGHT

16  
17 Article 1. Licensing Requirements

18  
19 12505. (a) It shall be unlawful for any person to act as a debt  
20 settlement provider without a valid license issued under this  
21 division and except as authorized under this division.

22 (b) The commissioner shall maintain and publicize a list of the  
23 names of all licensed providers and shall publish the list by July  
24 1, ~~2012~~ 2014.

25 12506. (a) An application for licensure as a provider shall be  
26 accompanied by a charge to cover the reasonable regulatory cost  
27 of the commissioner incident to investigating an application for  
28 licensure and issuing a license. The charge shall include an  
29 investigation fee, not to exceed the sum of one thousand dollars  
30 (\$1,000), an application fee, not to exceed the sum of one thousand  
31 dollars (\$1,000), and a fee to cover the cost of fingerprint  
32 processing. The investigation fee and application fee are not  
33 refundable.

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

36 (1) (A) Evidence of a surety bond in the amount of fifty  
37 thousand dollars (\$50,000), which bond or insurance shall be  
38 maintained by the provider during the term of the license.

39 (B) Upon licensure as a provider, the bond shall be payable to  
40 the commissioner and issued by an insurer authorized to do

1 business in this state. A copy of the bond, including any and all  
2 riders and endorsements executed subsequent to the effective date  
3 of the bond, shall be filed with the commissioner for review and  
4 approval within 10 days of execution. The bond shall be used for  
5 the recovery of losses or damages incurred by consumers as the  
6 result of a licensee's noncompliance with the requirements of this  
7 division or for the recovery of expenses, fines, and fees levied by  
8 the commissioner, a district attorney, city attorney, or the Attorney  
9 General.

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

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

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

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

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

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

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

34 12507. (a) Each licensee shall pay to the commissioner its pro  
35 rata share of all costs and expenses reasonably incurred in the  
36 administration of this division, as estimated by the commissioner,  
37 for the ensuing year and any deficit actually incurred or anticipated  
38 in the administration of the program in the year in which the  
39 assessment is made. The pro rata share shall be the proportion that  
40 a licensee's total enrolled debt for debt settlement services in this

1 state bears to the aggregate total enrolled debt of all licensees as  
2 shown by the audited financial statements filed with the  
3 commissioner pursuant to subparagraph (A) of paragraph (2) of  
4 subdivision (b) of Section 12506, for the costs and expenses  
5 remaining after the amount assessed pursuant to subdivision (b).

6 (b) On or before the 30th day of May in each year, the  
7 commissioner shall notify each licensee by mail of the amount  
8 assessed and levied against it and that amount shall be paid within  
9 30 days thereafter. If payment is not made within 30 days, the  
10 commissioner may assess and collect a penalty, in addition to the  
11 assessment, not to exceed 1 percent of the assessment for each  
12 month or part of a month that the payment is delayed or withheld.

13 (c) If a licensee fails to pay the assessment on or before the 30th  
14 day of June following the day upon which payment is due, the  
15 commissioner may by order summarily suspend or revoke the  
16 licensee's license. If, after an order is made, a request for hearing  
17 is filed in writing within 30 days, and a hearing is not held within  
18 60 days thereafter, the order is deemed rescinded as of its effective  
19 date. During any period when its certificate is revoked or  
20 suspended, a licensee shall not conduct business pursuant to this  
21 division except as may be permitted by order of the commissioner.  
22 However, the revocation, suspension, or surrender of a license  
23 shall not affect the powers of the commissioner as provided in this  
24 division.

25 12508. Every application for licensure shall be signed by the  
26 applicant and contain current information on all matters required  
27 in an application for licensure. Any person who knowingly provides  
28 false information in the application required by this division shall  
29 be subject to a civil penalty in an amount up to fifty thousand  
30 dollars (\$50,000) in addition to any other civil remedies available,  
31 including, but not limited to, the remedies and penalties provided  
32 in Section 12544. An action for a civil penalty under this section  
33 may be brought by the commissioner or the Attorney General. The  
34 application form shall contain a statement informing the applicant  
35 that a false or dishonest answer to a question may be grounds for  
36 denial or subsequent suspension or revocation of the applicant's  
37 license. An application for licensure shall be in a form prescribed  
38 by the commissioner and at minimum shall include the following:

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

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

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

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

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

28 (f) At the applicant's expense, fingerprint images and related  
29 information pursuant to the process set forth in Section 12510,  
30 covering every executive officer of the applicant.

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

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

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

39 (3) Any person, other than individuals employed by the debt  
40 settlement services provider, with whom the debt settlement

1 services provider contracts to provide debt settlement services, or  
2 parts thereof, to consumers of the debt settlement services provider.

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

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

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

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

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

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

20 12509. (a) Upon filing the application and payment of fees  
21 pursuant to subdivision (a) of Section 12506 and approval of the  
22 bond pursuant to paragraph (1) of subdivision (b) of Section 12506,  
23 the commissioner shall investigate and examine the following:

24 (1) The background and experience of the applicant and of the  
25 partners or members owning or controlling, directly or indirectly,  
26 10 percent or more of the outstanding interests if the applicant is  
27 a partnership, association, or limited liability company.

28 (2) The background and experience of the applicant and officers,  
29 directors, and persons owning or controlling, directly or indirectly,  
30 10 percent or more of the outstanding equity securities or interests  
31 if the applicant is a corporation, trust, or association, including an  
32 unincorporated organization.

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

39 12510. (a) An applicant for licensure shall provide to the  
40 commissioner, and the commissioner shall submit to the

1 Department of Justice, fingerprint images and related information  
2 required by the Department of Justice of all applicants for licensure  
3 for purposes of obtaining information as to the existence and  
4 content of a record of state or federal convictions and state or  
5 federal arrests, and also information as to the existence and content  
6 of a record of state or federal arrests for which the Department of  
7 Justice establishes that the person is free on bail or on his or her  
8 own recognizance pending trial or appeal.

9 (b) When received, the Department of Justice shall forward to  
10 the Federal Bureau of Investigation requests for federal summary  
11 criminal history information received pursuant to this section. The  
12 Department of Justice shall review the information returned from  
13 the Federal Bureau of Investigation and compile and disseminate  
14 a response to the Commissioner of Corporations. The Department  
15 of Corporations shall be the authorized agency to receive  
16 information regarding the results of the national criminal history  
17 records check under Title II of Public Law 92-544 (28 U.S.C. Sec.  
18 534).

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

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

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

29 12511. An applicant or licensed provider shall notify the  
30 department in writing at least 10 days prior to any change in the  
31 information specified in subparagraph (A) of paragraph (1) of  
32 subdivision (b) of Section 12506 or in subdivision (a), (b), or (c)  
33 of Section 12508, or within 14 days after any change in the  
34 information specified in subdivision (d), (e), (g), (h), or (k) of  
35 Section 12508, or any other information as required, by rule, by  
36 the commissioner.

37 12512. (a) Except as otherwise provided in subdivisions (b)  
38 and (c), the commissioner shall issue a certificate of licensure as  
39 a provider to a person that complies with this division.

- 1 (b) The commissioner may deny or revoke licensure for any of  
2 the following:
- 3 (1) An application that contains any omission or false statement  
4 of material fact or is incomplete.
- 5 (2) The applicant, an officer, director, general partner, member  
6 or person owning or controlling, directly or indirectly, 10 percent  
7 or more of the outstanding interests or equity securities, or a  
8 predecessor organization of the applicant, has been convicted of  
9 or pleaded nolo contendere to a crime; has incurred a significant  
10 civil settlement; has suffered a civil judgment or any administrative  
11 judgment by any public agency involving fraud, deceit, dishonesty,  
12 or financial misconduct, or has violated state or federal securities  
13 or consumer protection laws, or any regulatory scheme of the State  
14 of California or another state; or has been convicted of any other  
15 offense reasonably related to the qualifications, functions, or duties  
16 of a person engaged in the business in accordance with the  
17 provisions of this division.
- 18 (3) An applicant or any officer, director, general partner, member  
19 or person owning or controlling, directly or indirectly, 10 percent  
20 or more of the outstanding interests or equity securities or has  
21 made any false statement or representation or material omission  
22 to the commissioner.
- 23 (4) An applicant is or becomes insolvent.
- 24 (5) An applicant refuses to reasonably comply with an  
25 investigation or examination of the debt settlement service provider  
26 by the commissioner.
- 27 (6) An applicant has improperly withheld, misappropriated, or  
28 converted funds received in the course of doing business.
- 29 (7) An applicant has used fraudulent, coercive, deceptive, illegal,  
30 or dishonest practices, or demonstrated incompetence regarding  
31 debt settlement services, or financial irresponsibility in this state  
32 or elsewhere.
- 33 (8) An applicant has shown to have engaged in a pattern of  
34 failing to perform services promised.
- 35 (9) An applicant or any officer, director, or general partner,  
36 member or person owning or controlling, directly or indirectly, 10  
37 percent or more of the outstanding interests or equity securities of  
38 the applicant has violated any provision of this division or the rules  
39 or any order thereunder or any similar regulatory scheme of the  
40 State of California or a foreign jurisdiction.

1 (10) For good cause shown.

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

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

8 12513. (a) The commissioner shall approve or deny an initial  
9 license as a provider within 60 days after the receipt of a complete  
10 application, the receipt of criminal history background information  
11 from the Department of Justice, and the payment of required fees.  
12 Within 30 calendar days after denying an application, the  
13 commissioner, in a record, shall inform the applicant of the reasons  
14 for the denial.

15 (b) If the commissioner denies an application for licensure as  
16 a provider or does not act on an application within the time  
17 prescribed in subdivision (a), the applicant may appeal and request  
18 a hearing pursuant to the Administrative Procedure Act (Chapter  
19 4.5 (commencing with Section 11400) of Division 3 of Title 2 of  
20 the Government Code).

21 12514. (a) A provider shall obtain a renewal of its license  
22 biennially.

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

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

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

39 12515. A license is not transferable or assignable.

1 12516. No licensee shall provide debt settlement services under  
2 any other name or through an Internet Web site address other than  
3 those named in the license or except pursuant to a currently  
4 effective written order of the commissioner authorizing the other  
5 name or Internet Web site address.

6 12517. A person or entity licensed as a provider under this  
7 division shall be exempt from the requirements of *Chapter 14*  
8 (*commencing with Section 1800*) of *Division 1 and Division 3*  
9 (*commencing with Section 12000*), except to the extent the person  
10 is performing services and activities governed by ~~Section 12000~~  
11 *that chapter or that division* that do not constitute providing debt  
12 settlement services.

13 12518. In any proceeding under this division, the burden of  
14 proving an exemption or exception is upon the person claiming it.

15 12519. This division shall not apply to the following persons  
16 or their employees when the person or the employee is engaged  
17 in the regular course of the person's business or profession:

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

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

23

## 24 Article 2. Commissioner Oversight

25

26 12520. (a) Each licensee shall keep and use books, accounts,  
27 and records in accordance with generally accepted accounting  
28 practices and good business practice that will enable the  
29 commissioner to determine if the licensee is complying with the  
30 provisions of this division and with the rules and regulations  
31 promulgated by the commissioner. Each licensee shall maintain  
32 any other records as required by the commissioner.

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

38 (c) For the purpose of discovering violations of this division or  
39 securing information required by the commissioner in the  
40 administration and enforcement of this division, the commissioner

1 may investigate and examine at any time, but not less than once  
2 every two years, in this state or elsewhere, by subpoena or  
3 otherwise, the activities, books, accounts, and records of a person  
4 that provides or offers to provide debt settlement services, or a  
5 person to which a provider has delegated its obligations under an  
6 agreement or under this division, to determine compliance with  
7 this division. For the purpose of examination, the commissioner  
8 and the commissioner's representatives shall have free access to  
9 the offices and places of business, books, accounts, papers, records,  
10 and files of all these persons. Information that identifies consumers  
11 who have agreements with the provider shall not be disclosed to  
12 the public. In connection with the investigation, the commissioner  
13 may do either of the following:

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

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

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

33 (e) A provider shall maintain all records for a minimum of five  
34 years, and shall enable the commissioner to review the  
35 recordkeeping and reconcile each individual debt settlement  
36 transaction with documentation maintained in the consumer's debt  
37 settlement file records. With respect to individual consumer  
38 records, this five-year period shall begin from the later of the  
39 expiration of the consumer's debt settlement services, the  
40 completion of the consumer's debt settlement program, or the date

1 of termination of the agreement. Failure to keep the records for  
 2 five years following the last entry shall permit the commissioner  
 3 to assess and collect a penalty of up to ten thousand dollars  
 4 (\$10,000) for each year that the records are not kept.

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

10 *12520.1. The commissioner may, from time to time, adopt,*  
 11 *amend, and rescind rules, regulations, forms, findings, and orders*  
 12 *as may be reasonable or necessary to carry out the purposes and*  
 13 *provisions of this division, or for the enforcement of this division.*

14 *12520.2. This chapter shall become operative on January 1,*  
 15 *2014.*

16

17

#### CHAPTER 3.5. REGISTRATION

18

19 *12520.5. (a) It shall be unlawful for any person to act as a*  
 20 *debt settlement provider to consumers in this state unless the*  
 21 *person satisfies the following requirements:*

22 *(1) The person registers with, and is issued and maintains a*  
 23 *certificate of registration from, the department in accordance with*  
 24 *the following requirements:*

25 *(A) The person shall submit a completed registration form,*  
 26 *along with applicable fees, to the department. The registration*  
 27 *form shall include the name, address, and telephone number of*  
 28 *the debt settlement provider; all of the names, addresses, telephone*  
 29 *numbers, Internet Web sites, and e-mail addresses used or*  
 30 *proposed to be used in connection with acting as a debt settlement*  
 31 *provider; a statement that the person has not been convicted of,*  
 32 *or pled nolo contendere to, any crime involving fraud,*  
 33 *misrepresentation, dishonesty, or a violation of this division, a*  
 34 *statement that the person has not been liable under any civil*  
 35 *judgment for fraud, misrepresentation, or violations of this division*  
 36 *or of Section 17200 or 17500 of the Business and Professions*  
 37 *Code, and any additional information required by the department.*

38 *(B) The registration form shall be accompanied by a copy of*  
 39 *all print or electronic advertising, marketing and other promotional*  
 40 *material, and scripts of all broadcast advertising.*

1 (C) *The registration form shall be accompanied by a copy of*  
2 *the bond required pursuant to paragraph (2).*

3 (D) *The person shall file with the department an update of any*  
4 *material change in the information required by subparagraphs*  
5 *(A) and (B).*

6 (E) *The person shall pay any fee set by the department to defray*  
7 *reasonable costs incurred in connection with the department's*  
8 *responsibilities under this chapter.*

9 (2) *The person obtains and maintains in force a surety bond in*  
10 *the amount of fifty thousand dollars (\$50,000). The bond shall be*  
11 *executed by a corporate surety admitted to do business in this*  
12 *state. The bond shall be made in favor of the State of California*  
13 *for the benefit of consumers for damages caused by the debt*  
14 *settlement provider's violation of this division or any other*  
15 *provision of law. A copy of the bond, including any and all riders*  
16 *and endorsements executed subsequent to the effective date of the*  
17 *bond, shall be filed with the commissioner for review and approval*  
18 *within 10 days of execution.*

19 (3) *The person maintains and keeps current and accurate books,*  
20 *records, and accounts relating to its business in accordance with*  
21 *generally accepted accounting principles, and stores them in a*  
22 *readily accessible place for a period of no less than five years from*  
23 *the end of the fiscal year in which any transactions occurred.*

24 (4) *The person complies with the requirements of this division.*

25 (b) *The commissioner may refuse to issue, or may revoke, a*  
26 *certificate of registration because of any misstatement in the*  
27 *registration form, because the debt settlement provider has been*  
28 *held liable for the violation of any law described in subparagraph*  
29 *(A) of paragraph (1) of subdivision (a), because the debt settlement*  
30 *provider has failed to maintain the bond required under paragraph*  
31 *(2) of subdivision (a), or because of any violation of this division.*

32 (c) *The commissioner shall maintain and publicize a list of the*  
33 *names of all registered providers and shall publish the list by July*  
34 *1, 2012.*

35 12520.6. *This chapter shall remain in effect only until January*  
36 *1, 2014, and as of that date is repealed, unless a later enacted*  
37 *statute, that is enacted before January 1, 2014, deletes or extends*  
38 *that date.*

## CHAPTER 4. ANNUAL REPORTING

1  
2  
3 12521. (a) On or before March 15 of each year, beginning  
4 March 2013, each *registrant or licensee* shall file an annual report  
5 with the commissioner pursuant to procedures that the  
6 commissioner shall establish by rule. The ~~licensee~~ *debt settlement*  
7 *provider* shall submit with the annual report a declaration that  
8 conforms to Section 2015.5 of the Code of Civil Procedure, is  
9 executed by an official authorized by the ~~licensee~~ *debt settlement*  
10 *provider*, and that states that the ~~licensee~~ *debt settlement provider*  
11 complies with this section. An annual report summarizing the data  
12 reported by ~~licensees~~ *debt settlement providers* shall be prepared  
13 by the commissioner and made available to the public. Each  
14 ~~licensee's~~ *debt settlement provider's* annual report shall include  
15 the following information for the previous calendar year, except  
16 where indicated. Where data must be reported by year of  
17 enrollment, the ~~licensee~~ *debt settlement provider* shall report as to  
18 the previous five years:

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

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

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

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

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

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

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

40 (B) The total principal amount of debt.

- 1 (C) The total dollar amount of debt that was settled as measured  
2 by the amounts outstanding at the time of settlement.
- 3 (D) The total dollar amounts paid to creditors to settle the settled  
4 debts.
- 5 (E) The median, mean, lowest, and highest percentage of the  
6 savings from the principal amount, as calculated by consumer and  
7 not by debt.
- 8 (F) The total, median, mean, lowest, and highest fees paid by  
9 these consumers to the provider.
- 10 (7) The total number of debts settled by the provider.
- 11 (8) The total dollar amount of debts settled by the provider, as  
12 follows:
- 13 (A) The total principal amount of debt as to the settled debts.
- 14 (B) The total dollar amount of debt that was settled, measured  
15 by the amounts outstanding at the time of settlement.
- 16 (C) The total dollar amounts paid to creditors to settle the settled  
17 debts.
- 18 (9) With respect to California residents who canceled, became  
19 inactive, or terminated the program during the reporting period,  
20 the following figures broken down by year of enrollment:
- 21 (A) The total number of California residents falling into this  
22 category.
- 23 (B) The total number who did not have any of their debt settled.
- 24 (C) *The total number who had less than 100 percent, but not*  
25 *less than 75 percent, of their debt settled, with percentages*  
26 *measured by calculating the percentage of the principal amount*  
27 *of debt settled as compared to the total principal amount of debt*  
28 *enrolled in the program.*
- 29 (C)
- 30 (D) The total number who had less than 75 percent, *but not less*  
31 *than 50 percent, of their debt settled, with the ~~75 percent figure~~*  
32 *percentages measured by calculating the percentage of the principal*  
33 *amount of debt settled as compared to the total principal amount*  
34 *of debt enrolled in the program.*
- 35 (E) *The total number who had less than 50 percent, but not less*  
36 *than 25 percent, of their debt settled, with the percentages*  
37 *measured by calculating the percentage of the principal amount*  
38 *of debt settled as compared to the total principal amount of debt*  
39 *enrolled in the program.*
- 40 (D)

- 1     (F) The total number who had *more than zero but less than 25*
- 2     percent ~~or less~~ of their debt settled, with the ~~25 percent figure~~
- 3     percentages measured by calculating the percentage of the principal
- 4     amount of debt settled as compared to the total principal amount
- 5     of debt enrolled in the program.
- 6     ~~(E)~~
- 7     (G) The total principal amount of debt.
- 8     ~~(F)~~
- 9     (H) The total dollar amount of debt that was settled, measured
- 10    by the principal amount of debt.
- 11    ~~(G)~~
- 12    (I) The total dollar amounts paid to creditors to settle the settled
- 13    debts.
- 14    ~~(H)~~
- 15    (J) The total, median, mean, lowest, and highest fees paid by
- 16    these consumers to the provider.
- 17    (10) The total amount of fees collected from California residents.
- 18    (11) *The fee percentage charged to California residents. If more*
- 19    *than one fee amount is charged, the distribution of the fee*
- 20    *percentages charged to California residents.*
- 21    ~~(I)~~
- 22    (12) The average accretion rate of debt that has been settled, as
- 23    of the date of settlement.
- 24    ~~(12)~~
- 25    (13) The average accretion rate of debt that has not been settled,
- 26    as of December 31, broken down by year of enrollment.
- 27    ~~(13)~~
- 28    (14) The number of consumers acquired from lead generators
- 29    and the identity of each of the lead generators. For the purposes
- 30    of this section, a “lead generator” is defined as a person that meets
- 31    any of the following:
- 32    (A) Solicits consumers to receive information or referrals on
- 33    how to reduce or eliminate the consumer’s debt through telephone,
- 34    television, mail, in-person, or electronic Internet Web site-based
- 35    solicitation, or any other means.
- 36    (B) Acts as an intermediary or referral agent between a consumer
- 37    and a provider.
- 38    (C) Obtains a consumer’s personally identifiable information
- 39    for the purpose of transmitting all or part of that information to a
- 40    provider.

1 (b) A debt settlement provider shall annually file audited  
2 financial statements with the commissioner along with the annual  
3 report required under subdivision (a).

4 (b)

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

15 ~~12522. The commissioner may, from time to time, make,  
16 amend, and rescind rules, regulations, forms, findings, and orders  
17 as may be reasonable or necessary to carry out the purposes and  
18 provisions of this division, or for the enforcement of this division.~~

19  
20 CHAPTER 4-5. REGULATIONS

21  
22 Article 1. Pre-Agreement Requirements and Disclosures

23  
24 12525. A person may not provide, or offer or attempt to  
25 provide, debt settlement services in this state except as provided  
26 in this division.

27 12526. (a) (1) Prior to entering into a written contract with a  
28 consumer, a debt settlement provider shall prepare and provide all  
29 of the following to the consumer in writing and retain a copy:

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

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

39 (2) A debt settlement provider shall not enter into a written  
40 contract with a consumer unless it makes written determinations,

1 supported by the financial analysis, and retained in the file with a  
2 copy provided to the consumer, that indicates all of the following:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

6 12527. (a) A provider shall provide to the consumer, and retain  
7 a copy, of the following documentation in not less than 12-point  
8 type:

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

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

18 (3) *A statement of how the fees will be calculated, and a good*  
19 *faith estimate of the total amount of all fees and compensation,*  
20 ~~not to exceed the amounts specified in in compliance with~~ Section  
21 12538, to be collected by the debt settlement provider from the  
22 consumer for the provision of debt settlement service contemplated.  
23 This shall include an itemized list of fees and the approximate  
24 dates or circumstances under which each fee will become due.

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

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

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

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

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

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

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

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

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

16 ~~(e) The consumer shall sign and date an acknowledgment form~~  
17 ~~entitled “Consumer Notice and Rights Form” that states: “I, the~~  
18 ~~debtor, have received from the debt settlement provider a copy of~~  
19 ~~the form entitled ‘Consumer Notice and Rights Form’.” The debt~~  
20 ~~settlement provider or its representative shall also sign and date~~  
21 ~~the acknowledgment form, which includes the name and address~~  
22 ~~of the debt settlement services provider. The acknowledgment~~  
23 ~~form shall be in duplicate and incorporated into the “Consumer~~  
24 ~~Notice and Rights Form”. The original acknowledgment form shall~~  
25 ~~be retained by the debt settlement provider, and the duplicate copy~~  
26 ~~shall be retained within the form by the consumer.~~

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

35  
36 ~~“CONSUMER NOTICE AND RIGHTS FORM CAUTION~~  
37  
38 ~~We CANNOT GUARANTEE that you successfully will reduce or eliminate~~  
39 ~~your debt.~~

40

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

- 3 - ~~CREDITORS MAY STILL CONTACT YOU AND TRY TO~~
- 4 ~~COLLECT.~~
- 5 - ~~CREDITORS MAY STILL SUE YOU FOR THE MONEY~~
- 6 ~~YOU OWE.~~
- 7 - ~~YOUR WAGES OR BANK ACCOUNT MAY STILL BE~~
- 8 ~~GARNISHED.~~
- 9 - ~~YOUR CREDIT RATING AND CREDIT SCORE LIKELY~~
- 10 ~~WILL BE HARMED.~~
- 11 - ~~NOT ALL CREDITORS WILL AGREE TO ACCEPT A~~
- 12 ~~BALANCE REDUCTION.~~
- 13 - ~~YOU SHOULD CONSIDER ALL YOUR OPTIONS FOR~~
- 14 ~~ADDRESSING YOUR DEBT, SUCH AS CREDIT~~
- 15 ~~COUNSELING AND BANKRUPTCY FILING.~~
- 16 - ~~THE AMOUNT OF MONEY YOU OWE MAY INCREASE~~
- 17 ~~DUE TO CREDITOR IMPOSITION OF INTEREST~~
- 18 ~~CHARGES, LATE FEES, AND OTHER PENALTY FEES.~~
- 19 - ~~WE DO NOT SEND PAYMENT TO YOUR CREDITORS~~
- 20 ~~UNLESS THERE IS SETTLEMENT.~~
- 21 - ~~EVEN IF WE DO SETTLE YOUR DEBT, YOU MAY STILL~~
- 22 ~~BE REQUIRED TO PAY TAXES ON THE AMOUNT~~
- 23 ~~FORGIVEN.~~

24  
25 **YOUR RIGHT TO CANCEL**

26  
27 If you sign a contract with a Debt Settlement Provider, you have the right to  
28 cancel at any time and receive a full refund of all unearned fees you have paid  
29 to the provider and all funds placed in your settlement fund that have not been  
30 paid to any creditors.

31  
32 **IF YOU ARE DISSATISFIED OR YOU HAVE QUESTIONS**

33  
34 If you think you have been defrauded by a debt settlement provider or have  
35 any questions, please bring it to the attention of the California Attorney  
36 General's Office or the Department of Corporations.

37  
38 Attorney General

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

40 Online Complaints: [http://ag.ca.gov/contact/complaint\\_form.php?emplt=CL](http://ag.ca.gov/contact/complaint_form.php?emplt=CL)

1 Contact by mail: Public Inquiry Unit Office of the Attorney General P.O. Box  
 2 944255 Sacramento, CA 94244-2550  
 3  
 4 Department of Corporations  
 5 Call toll-free: 1-866-ASK-CORP (1-866-275-2677)  
 6 Online Complaints: <http://www.corp.ca.gov/about/complaint.asp>  
 7 Contact by mail:  
 8 Department of Corporations  
 9 Consumer Services Office  
 10 1515 K Street, Suite 200  
 11 Sacramento, CA 95814  
 12

13 *CONSUMER NOTICE AND RIGHTS FORM CAUTION*

14  
15 *We cannot guarantee that you successfully will reduce or eliminate your debt.*

16  
17 *If you stop paying your creditors, there is a strong likelihood that some or all*  
18 *of the following may happen:*

- 19 - *Creditors may still contact you and try to collect.*
- 20 - *Creditors may still sue you for the money you owe.*
- 21 - *Your wages or bank account may still be garnished.*
- 22 - *Your credit rating and credit score likely will be*  
23 *harmed.*
- 24 - *Not all creditors will agree to accept a balance*  
25 *reduction.*
- 26 - *You should consider all your options for addressing*  
27 *your debt, such as credit counseling and bankruptcy*  
28 *filing.*
- 29 - *The amount of money you owe may increase due to*  
30 *creditor imposition of interest charges, late fees, and*  
31 *other penalty fees.*
- 32 - *We do not send payment to your creditors unless there*  
33 *is settlement.*
- 34 - *Even if we do settle your debt, you may still be required*  
35 *to pay taxes on the amount forgiven.*

36  
37 *YOUR RIGHT TO CANCEL*

38  
39 *If you sign a contract with a debt settlement provider, you have the right to*  
40 *cancel at any time and receive a full refund of all unearned fees you have paid*

1 to the provider and all funds placed in your settlement fund that have not been  
2 paid to any creditors.

3

4 IF YOU ARE DISSATISFIED OR YOU HAVE QUESTIONS

5

6 If you think you have been defrauded by a debt settlement provider or have  
7 any questions, please bring it to the attention of the Department of  
8 Corporations.

9

10 Department of Corporations

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

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

13 Contact by mail:

14 Department of Corporations

15 Consumer Services Office

16 1515 K Street, Suite 200

17 Sacramento, CA 95814

18

19 I, the debtor, have received from the debt settlement provider a copy of the  
20 Consumer Notice and Rights Form.

21

22 \_\_\_\_\_

23 Debtor

24

25

26 \_\_\_\_\_

27 Debt settlement provider representative

28

29

30

31 (c) The consumer shall sign and date the consumer notice and  
32 rights form set forth in subdivision (b). The debt settlement  
33 provider, or its representative, shall also sign and date the  
34 acknowledgment form, which shall include the name and address  
35 of the debt settlement provider. The acknowledgment form shall  
36 be in duplicate and incorporated into the consumer notice and  
37 rights form. The original acknowledgment form shall be retained  
38 by the debt settlement provider and the duplicate copy shall be  
provided to the consumer.

Article 2. Debt Settlement Agreements

1  
2  
3 12530. (a) A debt settlement provider shall not provide debt  
4 settlement service to a consumer without a written contract signed  
5 and dated by both the consumer and the debt settlement provider.  
6 (b) Any contract for the provision of debt settlement services  
7 entered into with a person not licensed as a debt settlement provider  
8 and not exempt from licensing under this division, or that is in  
9 violation of the provisions of this section, is void.  
10 (c) A debt settlement services agreement between a debt  
11 settlement provider and a consumer for the provision of debt  
12 settlement services shall satisfy all of the following requirements:  
13 (1) Include the following information in at least 12-point type:  
14 (A) The name, address, and telephone number of the consumer.  
15 (B) The name, address, California license number, and telephone  
16 number of the debt settlement services provider, and if this does  
17 not include a street address in California, the name and address of  
18 its California agent for service of process.  
19 (C) The following information on the first page of the contract:  
20 (i) A complete list of the consumer’s accounts, debts, and  
21 obligations to be included in the provision of debt settlement  
22 service, including the name of each creditor and principal amount  
23 of each debt.  
24 (ii) A statement of how the fees will be calculated, and a good  
25 faith estimate of the total amount of all fees and compensation,  
26 not to exceed the amounts specified in Section 12538, to be  
27 collected by the debt settlement provider from the consumer for  
28 the provision of debt settlement service contemplated by the  
29 contract. This shall include an itemized list of fees and the  
30 approximate dates and circumstances under which each fee will  
31 become due.  
32 (D) A description of the services to be provided by the debt  
33 settlement provider, including the amount of time necessary to  
34 achieve the represented results, and the time by which the debt  
35 settlement service provider will make a bona fide settlement offer  
36 to each creditor.  
37 (E) A statement of the proposed savings goals for the consumer,  
38 stating the amount to be saved per month or other period, the time  
39 period over which the savings goal extends, and the total amount

1 of the savings expected to be paid by the consumer pursuant to the  
2 terms of the contract.

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

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

15 (H) The disclosures required by Section 12527.

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

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

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

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

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

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

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

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

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

39 (5) Contain a hold harmless clause.

40 ~~(6) Contain a confession of judgment clause.~~

- 1     ~~(7)~~
- 2     (6) Contain assignment of or order for payment of wages or
- 3 other compensation for services.
- 4     ~~(8)~~
- 5     (7) Contain an acceleration provision.
- 6     ~~(9)~~
- 7     (8) Contain an unconscionable term or provision.
- 8     (e) If a provider communicates with a consumer primarily in a
- 9 language other than English, the provider shall furnish a translation
- 10 of the disclosures and documents required by this division in that
- 11 language.

Article 3. General Provisions

12

13

14

15     12533. (a) A consumer has the right to cancel a debt settlement

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

17 or electronic notice. Cancellation of the agreement becomes

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

19 all powers of attorney and all direct debit authorizations granted

20 by the consumer to the provider are revoked and ineffective. No

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

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

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

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

25 the debt settlement provider shall provide timely notice of the

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

27 the debt settlement provider has had any prior communication on

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

29 debt settlement service.

30     12534. A debt settlement services provider shall not, directly

31 or indirectly, do any of the following:

32     (a) Misrepresent any material aspect of any debt settlement

33 service, including, but not limited to, the amount of money or the

34 percentage of the debt amount that a consumer may save by using

35 the service; the amount of time necessary to complete the program,

36 as described by the provider; the amount of money or the

37 percentage of each outstanding debt that the consumer must

38 accumulate before the provider of the debt settlement service will

39 initiate attempts with the consumer’s creditors or debt collectors

40 or make a bona fide offer to settle the consumer’s debt; the effect

1 of the service on a consumer's creditworthiness; or the effect of  
2 the service on collection efforts of the consumer's creditors or debt  
3 collectors.

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

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

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

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

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

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

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

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

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

32 ~~(k)~~

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

38 ~~(t)~~

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

- 1     ~~(m)~~
- 2     (l) Take any release or waiver of any obligation to be performed
- 3     on the part of the debt settlement provider or any right or remedy
- 4     of the consumer.
- 5     ~~(n)~~
- 6     (m) Change the mailing address on any of a consumer’s
- 7     creditor’s statements.
- 8     ~~(o)~~
- 9     (n) Receive any cash, fee, gift, bonus, premium, reward, or other
- 10    compensation from any person other than the consumer explicitly
- 11    for the provision of debt settlement service to that consumer.
- 12    ~~(p)~~
- 13    (o) Take any confession of judgment or power of attorney to
- 14    confess judgment against the consumer or appear as the consumer
- 15    or on behalf of the consumer in any judicial proceedings.
- 16    ~~(q)~~
- 17    (p) Offer or provide gifts or bonuses to consumers for signing
- 18    a debt settlement service contract or for referring other potential
- 19    consumers.
- 20    ~~(r)~~
- 21    (q) Seek or obtain a consumer’s signature on an agreement that
- 22    contains any blank spaces to be filled in later.
- 23    ~~(s)~~
- 24    (r) Disclose to anyone the name or any personal information of
- 25    a consumer for whom the debt settlement provider has provided
- 26    or is providing debt settlement services, without the prior consent
- 27    of the consumer, other than to a consumer’s own creditors or the
- 28    debt settlement provider’s agents, affiliates, or contractors for the
- 29    purpose of providing debt settlement services.
- 30    ~~(t)~~
- 31    (s) Structure a program or settlement plan that would cause
- 32    negative amortization of a consumer’s debt or debts.
- 33    ~~(u)~~
- 34    (t) Represent that debt settlement will prevent wage garnishment,
- 35    litigation, debt collection efforts, attachment, repossession, or other
- 36    adverse consequences, or advise a consumer to ignore any such
- 37    activity.
- 38    12535. (a) A provider, in a record, shall provide all of the
- 39    following to each consumer for whom it has established a program

1 if a creditor has agreed to accept as payment in full an amount less  
2 than the principal amount of the debt owed by the consumer:

- 3 (1) The total amount and terms of the settlement.
- 4 (2) The amount of the debt when the consumer assented to the  
5 program.
- 6 (3) The amount of the debt when the creditor agreed to the  
7 settlement.
- 8 (4) The fee, and the calculation of the fee, if any, charged to the  
9 consumer in connection with the settlement.

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

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

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

29  
30 Article 4. Fees and Charges

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

37 (b) A debt settlement provider shall not claim, demand, charge,  
38 collect, or receive any fee until it has fully complied with Sections  
39 12526 and 12527, the consumer has signed an agreement for debt

1 settlement services that complies with Section 12530, and the  
2 conditions of subdivision (c) have been met.

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

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

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

10 (3) (A) The funds to settle the debt in full have been paid to the  
11 creditor *or (B) at least one payment has been made to the creditor*  
12 *pursuant to an installment plan that is negotiated by the provider*  
13 *and agreed to by the consumer and that, after all payments, would*  
14 *result in the settlement of the debt in full. An installment plan under*  
15 *this paragraph shall not extend beyond four months and shall*  
16 *include substantially equal payments, except that the last payment*  
17 *may be less than the earlier payments.*

18 (4) (A) The fee or consideration ~~shall not exceed 20 percent of~~  
19 *that is disclosed to the consumer pursuant to paragraph (3) of*  
20 *subdivision (a) of Section 12527 and clause (ii) of subparagraph*  
21 *(C) of paragraph (1) of subdivision (c) of Section 12530, and*  
22 *charged at the time of payment, is calculated as a percentage of*  
23 *the amount saved as a result of the settlement of each debt settled.*  
24 *The percentage charged shall not change from one individual debt*  
25 *to another. The amount saved shall be calculated as the difference*  
26 *between the principal amount of the debt and the amount paid by*  
27 *the debt settlement provider to the creditor or negotiated by the*  
28 *debt settlement provider and paid by the consumer to the creditor*  
29 *pursuant to a settlement negotiated by the debt settlement provider*  
30 *on behalf of the consumer as full and complete satisfaction of the*  
31 *creditor's claim with regard to that debt.*

32 (B) *If the debt is to be settled by installment payments pursuant*  
33 *to an installment plan that meets the requirements of paragraph*  
34 *(3), the provider may receive the fee or consideration for debt*  
35 *settlement service in installments, made simultaneously with the*  
36 *consumer's installment payments to the creditor, but any*  
37 *installment fee payment to the provider shall not be a greater*  
38 *percentage of the provider's total compensation for settlement of*  
39 *the debt than the simultaneous payment to the creditor is of the*  
40 *entire settlement amount for the debt.*

1 (C) *The fee or consideration charged shall be reasonable and*  
2 *rationally related to the benefit provided to the consumer relative*  
3 *to all the circumstances.*

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

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

14 (1) The funds are held in an account at an insured financial  
15 institution.

16 (2) The consumer owns the funds held in the account and is  
17 paid accrued interest on the account, if any.

18 (3) The entity administering the account is not owned or  
19 controlled by, or in any way affiliated with, the debt settlement  
20 provider.

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

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

29  
30 CHAPTER 5-6. ENFORCEMENT

31  
32 12540. (a) If a provider imposes any fee or other charge, or  
33 receives any money or other payments, not authorized by Section  
34 12538, the agreement is void, and the debt settlement provider  
35 shall automatically refund all fees paid within five business days  
36 upon valid notice that the agreement is void. In addition, the  
37 consumer may recover in a civil action all money paid by or on  
38 behalf of the consumer pursuant to the agreement, in addition to  
39 the recovery under subdivision (b).

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

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

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

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

13 12541. (a) An action brought under this division shall be  
14 commenced within four years after the latest of the following dates:

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

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

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

26 12542. No later than 30 days after a provider has been served  
27 with notice of a civil action for violation of this division by or on  
28 behalf of a consumer who resides in this state at either the time of  
29 an agreement or the time the notice is served, the provider shall  
30 notify the commissioner in writing that it has been sued and provide  
31 a copy of the complaint to the commissioner.

32 12543. The rights, remedies, and penalties established by this  
33 division are cumulative to the rights, remedies, or penalties  
34 established under other laws.

35 12544. ~~(a)~~ The provisions of this division are enforceable by  
36 the commissioner and the Attorney General. Any person, including  
37 a partner or officer of a provider, who violates any provision of  
38 this division, *or who authorizes, directs, or aids in the violation*  
39 *of any rule or order adopted pursuant to this division*, shall, upon  
40 conviction, be punished by a fine of not more than ten thousand

1 dollars (\$10,000) for each violation, or by imprisonment in a county  
2 jail for not more than one year, or by both that fine and  
3 imprisonment.

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

12 ~~(c) Any person who authorizes, directs, or aids in the violation~~  
13 ~~of any rule or order adopted pursuant to this division shall be liable~~  
14 ~~for an additional civil penalty not exceeding ten thousand dollars~~  
15 ~~(\$10,000) for each violation, which shall be assessed and recovered~~  
16 ~~in a civil action brought in the name of the people of the State of~~  
17 ~~California by the Attorney General in any court of competent~~  
18 ~~jurisdiction, or by the commissioner.~~

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

22 *12545. If a debt settlement provider delegates to another person*  
23 *any of its duties or obligations under this division, or under a debt*  
24 *settlement agreement, the debt settlement provider shall be liable*  
25 *for any conduct of that person that, if done by the debt settlement*  
26 *provider, would violate this division or the debt settlement*  
27 *agreement.*

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

36 In order to allow the Department of Corporations to fully  
37 accomplish its goals, it is imperative to protect the interests of  
38 those persons submitting information to the department to ensure  
39 that any personal or sensitive business information that this act

1 requires those persons to submit is protected as confidential  
2 information.

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

O