

## Assembly Bill No. 1548

### CHAPTER 377

An act to amend Section 1812.206 of the Civil Code, relating to business regulation.

[Approved by Governor August 26, 1997. Filed with Secretary of State August 26, 1997.]

#### LEGISLATIVE COUNSEL'S DIGEST

AB 1548, Committee on Consumer Protection, Governmental Efficiency and Economic Development. Seller assisted marketing plans.

(1) Existing law governing seller assisted marketing plans requires a seller to provide, prior to the execution of the plan contract or the receipt of any consideration, a prospective purchaser of this plan with prescribed information. A seller must give information regarding the criminal background and civil liability of the seller's officers, directors, trustees, and general or limited partners and individuals who have management responsibilities in connection with the seller's business activities. Existing law provides that it is a crime for a person to willfully violate these provisions.

This bill would require this disclosure to include information regarding the criminal background and civil liability of the seller and any other company managed by the above-described persons. By changing the definition of a crime, this bill would impose a state-mandated local program.

(2) 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.

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

SECTION 1. Section 1812.206 of the Civil Code is amended to read:

1812.206. At least 48 hours prior to the execution of a seller assisted marketing plan contract or agreement or at least 48 hours prior to the receipt of any consideration, whichever occurs first, the seller or his or her representative shall provide to the prospective purchaser in writing a document entitled "SELLER ASSISTED MARKETING PLAN INFORMATION SHEET." The seller may combine the information required under this section with the



information required under Section 1812.205 and, if done, shall utilize the single title “DISCLOSURES REQUIRED BY CALIFORNIA LAW,” and the title page required by Section 1812.205. If a combined document is used, it shall be given at the time required by Section 1812.205, provided that this time meets the 48-hour test of this section. The information sheet required by this section shall contain the following:

(a) The name of and the office held by the seller’s officers, directors, trustees and general or limited partners, as the case may be, and the names of those individuals who have management responsibilities in connection with the seller’s business activities.

(b) A statement whether the seller, any person identified in subdivision (a), and any other company managed by a person identified in subdivision (a):

(1) Has been convicted of a felony or misdemeanor or pleaded nolo contendere to a felony or misdemeanor charge if the felony or misdemeanor involved an alleged violation of this title, fraud, embezzlement, fraudulent conversion or misappropriation of property.

(2) Has been held liable in a civil action by final judgment or consented to the entry of a stipulated judgment if the civil action alleged a violation of this title, fraud, embezzlement, fraudulent conversion or misappropriation of property or the use of untrue or misleading representations in an attempt to sell or dispose of real or personal property or the use of unfair, unlawful or deceptive business practices.

(3) Is subject to any currently effective injunction or restrictive order relating to business activity as the result of an action brought by a public agency or department, including, but not limited to, action affecting any vocational license.

The statements required by paragraphs (1), (2) and (3) of this subdivision shall set forth the court, the docket number of the matter, the date of the conviction or of the judgment and, when involved, the name of the governmental agency that brought the action resulting in the conviction or judgment.

(4) Has at any time during the previous seven fiscal years filed in bankruptcy, been adjudged a bankrupt, been reorganized due to insolvency, or been a principal, director, officer, trustee, general or limited partner, or had management responsibilities of any other person, as defined in subdivision (b) of Section 1812.201, that has so filed or was so adjudicated or reorganized, during or within one year after the period that the individual held such position. If so, the name and location of the person having so filed, or having been so adjudged or reorganized, the date thereof, the court which exercised jurisdiction, and the docket number of the matter shall be set forth.

(c) The length of time the seller:

(1) Has sold seller assisted marketing plans.



(2) Has sold the specific seller assisted marketing plan being offered to the purchaser.

(d) If the seller is required to secure a bond or establish a trust account pursuant to the requirements of Section 1812.204, the information sheet shall state either:

(1) “Seller has secured a bond issued by

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(name and address of surety company)

a surety company admitted to do business in this state. Before signing a contract to purchase this seller assisted marketing plan, you should check with the surety company to determine the bond’s current status,” or

(2) “Seller has deposited with the office of the Attorney General information regarding its trust account. Before signing a contract to purchase this seller assisted marketing plan, you should check with the Attorney General to determine the current status of the trust account.”

(e) A copy of a recent, not more than 12 months old, financial statement of the seller, together with a statement of any material changes in the financial condition of the seller from the date thereof. Such financial statement shall either be audited or be under penalty of perjury signed by one of the seller’s officers, directors, trustees or general or limited partners. The declaration under penalty of perjury shall indicate that to the best of the signatory’s knowledge and belief the information in the financial statement is true and accurate; the date of signature and the location where signed shall also be indicated. Provided, however, that where a seller is a subsidiary of another corporation which is permitted by generally accepted accounting standards to prepare financial statements on a consolidated basis, the above information may be submitted in the same manner for the parent if the corresponding financial statement of the seller is also provided and the parent absolutely and irrevocably has agreed to guarantee all obligations of the seller.

(f) An unexecuted copy of the entire seller assisted marketing plan contract.

SEC. 2. 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.

Notwithstanding Section 17580 of the Government Code, unless otherwise specified, the provisions of this act shall become operative



on the same date that the act takes effect pursuant to the California Constitution.

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