

AMENDED IN ASSEMBLY MARCH 31, 2009

CALIFORNIA LEGISLATURE—2009—10 REGULAR SESSION

ASSEMBLY BILL

No. 350

Introduced by Assembly Member Lieu

February 19, 2009

An act to add Division 21 (commencing with Section 60000) to the Financial Code, relating to debt.

LEGISLATIVE COUNSEL'S DIGEST

AB 350, as amended, Lieu. Debt management and settlement.

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

The

This bill would enact the Debt Settlement Services Act and would, commencing January 1, 2011, provide for the licensing and regulation by the commissioner of providers, defined as persons who provide, offer to provide, or agree to provide debt settlement services, as defined, directly or through others. The bill would require a provider to submit specified fees and an application for licensure with the commissioner. An applicant who knowingly misrepresents or submits any material matter that is false, or who otherwise willfully violates a provision of the act, would be guilty of a misdemeanor. The bill would specify the conditions under which the commissioner may issue or deny licensure as a provider, would require renewal of a provider's license on an annual basis, and would require a provider to satisfy certain requirements before entering into an agreement with an individual for the provision of debt

settlement services, including providing specified disclosures. The bill would require an agreement for debt settlement services to contain specified terms and would impose limits on the fees charged by providers. The bill would prohibit providers from engaging in specified practices. The bill would authorize the commissioner to take enforcement actions against a provider for violations of the bill's provisions and would also authorize an injured individual to recover specified damages from a provider that violates the bill's provisions. The bill would enact other related provisions.

Because the bill would create a new crime, it would impose a state-mandated local program.

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 21 (commencing with Section 60000)
2 is added to the Financial Code, to read:

3
4 DIVISION 21. DEBT SETTLEMENT SERVICES ACT

5
6 CHAPTER 1. SHORT TITLE

7
8 60000. This division shall be known and may be cited as the
9 Debt Settlement Services Act.

10
11 CHAPTER 2. DEFINITIONS

12
13 60001. As used in this division, the following definitions shall
14 apply:

15 (a) "Agreement" means an agreement between a provider and
16 an individual for the performance of debt settlement services.

17 (b) "Applicant" means any person who submits an application
18 to the department for the purpose of seeking licensure to become
19 a debt settlement provider.

1 (c) “Commissioner” means the Commissioner of Corporations.

2 (d) “Concessions” means assent to repayment of a debt on terms
3 more favorable to an individual than the terms of the contract
4 between the individual and a creditor.

5 (e) “Debt settlement services” means services as an intermediary
6 between an individual and one or more creditors of the individual
7 for the purpose of obtaining concessions, but without receiving
8 money from the individual for distribution to the individual’s
9 creditor.

10 (f) “Good faith” means honesty in fact and the observance of
11 reasonable standards of fair dealing.

12 (g) “Person” means an individual, corporation, business trust,
13 estate, trust, partnership, limited liability company, association,
14 joint venture, or any other legal or commercial entity. The term
15 does not include a public corporation, government, or governmental
16 subdivision, agency, or instrumentality.

17 (h) “Principal amount of the debt” means the amount of a debt
18 at the time of the execution of the agreement.

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

21 (j) “Provider” means a person that provides, offers to provide,
22 or agrees to provide debt settlement services directly or through
23 others. “Provider” does not include either of the following:

24 (1) The services of a person licensed to practice law in this state,
25 when the person renders services in the course of his or her practice
26 as an attorney-at-law.

27 (2) The services of a person licensed as a certified public
28 accountant or a public accountant in this state, when the person
29 renders services in the course of his or her practice as a certified
30 public accountant or a public accountant.

31 (3) A family member of an individual that negotiates financial
32 concessions, with or without compensation, from the creditors of
33 the individual.

34 (k) “Record” means information that is inscribed on a tangible
35 medium or that is stored in an electronic or other medium and is
36 retrievable in perceivable form.

CHAPTER 3. GENERAL PROVISIONS

60002. This division shall not apply to the following persons or their employees when the person or the employee is engaged in the regular course of the person's business or profession:

(a) A judicial officer, a person acting under an order of a court or an administrative agency, or an assignee for the benefit of creditors.

(b) A bank, bank holding company, or the subsidiary or affiliate of either, or a credit union or other financial institution, licensed under state or federal law.

(c) A title insurer, escrow company, or other person that provides bill-paying services if the provision of debt settlement services is incidental to the bill-paying services.

(d) Financial-planning services provided in a financial planner-client relationship by a member of a financial-planning profession whose members the commissioner determines are licensed under Chapter 3 (commencing with Section 25230) of Part 3 of Division 4 of the Corporations Code.

60003. All fees collected by the commissioner pursuant to this division shall be deposited in the State Treasury to the credit of the State Corporations Fund. The administration of this division shall be supported out of the State Corporations Fund upon appropriation by the Legislature.

60004. The commissioner may adopt rules and regulations necessary to implement this division in accordance with the provisions of the Administrative Procedure Act (Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code).

CHAPTER 4. LICENSING

60005. (a) No person shall provide debt settlement services to an individual who it reasonably should know resides in this state at the time it agrees to provide the services, unless the provider is licensed under this division.

(b) The commissioner shall maintain and publicize a list of the names of all licensed providers, which shall be published by the commissioner within 180 days of the operative date of this division.

1 60006. (a) An application for licensure as a provider shall be
2 in a form prescribed by the commissioner.

3 (b) Subject to adjustment of dollar amounts pursuant to
4 subdivision (a) of Section 60007, an application for licensure as
5 a provider shall be accompanied by the following:

6 (1) The fee established by the commissioner.

7 (2) Evidence of a surety bond or minimum coverage of
8 insurance, in an amount specified by the commissioner, which
9 bond or insurance shall be maintained by the provider during the
10 term of the license.

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

14 60007. (a) The commissioner shall set an annual deadline for
15 the submission of applications for licensure. The commissioner
16 shall set, prior to the annual application deadline, based on its
17 estimates of the cost of administering the program and the
18 estimated number of license applicants, an application fee. Sixty
19 days after the licensing deadline for the initial license, the
20 commissioner shall determine, if necessary, a surcharge to cover
21 the estimated costs for the remainder of the year, plus any deficit,
22 if any, from the year prior, for administering this division. The
23 surcharge shall be charged as a pro rata share to each applicant
24 granted a license during that year based on the number of active
25 enrolled California residents in that licensee's debt settlement
26 program, with a reasonable minimum and maximum charge as
27 determined by the commissioner.

28 (b) The commissioner shall notify each licensee by mail of the
29 amount of the surcharge assessed against it and that the amount
30 shall be paid within 30 days thereafter. If the licensee fails to pay
31 the assessment on or before the 30th day upon which payment is
32 due, the commissioner may by order summarily suspend or revoke
33 the license issued to the licensee.

34 (c) Any applicant that files its application after the deadline
35 shall be charged the initial application fee plus the pro rata
36 surcharge specified in subdivision (a), and the application fee for
37 that applicant shall not be adjusted to account for any partial year.

38 60008. Every application for licensure shall be signed by the
39 applicant and shall declare as true any material matter pursuant to
40 this application for licensure. Any applicant who knowingly

1 misrepresents or submits any material matter that is false is guilty
2 of a misdemeanor. The application form shall contain a statement
3 informing the applicant that a false or dishonest answer to a
4 question may be grounds for denial or subsequent suspension or
5 revocation of the applicant's license. An application for licensure
6 shall be in a form prescribed by the commissioner and shall include
7 the following:

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

11 (b) All names under which the applicant conducts a debt
12 settlement business or a business for which licensure by the
13 Department of Corporations is required.

14 (c) The address of each location in this state at which the
15 applicant shall provide debt settlement services or a statement that
16 the applicant will have no such location.

17 (d) The name and home address of each executive officer and
18 director of the applicant and each person that owns at least 10
19 percent of the applicant.

20 (e) A statement describing, to the extent it is known or should
21 be known by the applicant, any material civil or criminal judgment
22 relating to financial fraud or misuse and any material administrative
23 or enforcement action by a governmental agency relating to
24 financial fraud or misuse in any jurisdiction against the applicant,
25 any of its officers, directors, owners, or agents.

26 (f) Evidence of accreditation or certification by an independent
27 accrediting or certification organization approved by the
28 commissioner. If the applicant has not had the opportunity to obtain
29 accreditation or certification, the applicant shall provide proof of
30 registration with a recognized accrediting or certifying organization
31 along with a schedule under which it plans to obtain accreditation
32 or certification. The applicant shall obtain accreditation or
33 certification within six months of the date of its application.

34 (g) At the applicant's expense, via the process in Section 60009,
35 the results of a national criminal history records check, including
36 fingerprints, provided pursuant to the Federal Bureau of
37 Investigation appropriation of Title II of Public Law 92-544 (28
38 U.S.C. Sec. 534) conducted within the immediately preceding 12
39 months, covering every executive officer of the applicant. The
40 commissioner shall be the authorized agency to receive information

1 regarding the results of the national criminal history records check
2 under Title II of Public Law 92-544 (28 U.S.C. Sec. 534).

3 (h) Any other information that the commissioner reasonably
4 requires to issue a license.

5 60009. (a) An applicant for licensure shall provide to the
6 commissioner, and the commissioner shall submit to the
7 Department of Justice, fingerprint images and related information
8 required by the Department of Justice of applicants for licensure
9 for purposes of obtaining information as to the existence and
10 content of a record of state or federal convictions and state or
11 federal arrests and also information as to the existence and content
12 of a record of state or federal arrests for which the Department of
13 Justice establishes that the person is free on bail or on his or her
14 own recognizance pending trial or appeal.

15 (b) The Department of Justice shall provide a response to the
16 commissioner pursuant to paragraph (1) of subdivision (p) of
17 Section 11105 of the Penal Code.

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

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

25 (e) All information supplied to the commissioner in connection
26 with the application for licensure shall be held confidential by the
27 commissioner.

28 60010. An applicant or licensed provider shall notify the
29 department within 30 days after a change in the information
30 specified in paragraph (2) of subdivision (b) of Section 60006 or
31 in subdivision (a), (c), or (e) of Section 60008, or any other
32 information as required, by rule, by the commissioner.

33 60011. (a) Except as otherwise provided in subdivisions (b)
34 and (c), the commissioner shall issue a certificate of licensure as
35 a provider to a person that complies with this article.

36 (b) The commissioner may deny registration for either of the
37 following:

38 (1) An application that contains information that is materially
39 erroneous or incomplete.

1 (2) An officer, director, or owner of the applicant has been
2 convicted of a crime, or suffered a civil judgment, involving fraud,
3 deceit, or dishonesty or the violation of state or federal securities
4 laws.

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

7 60012. (a) The commissioner shall approve or deny an initial
8 license as a provider within 60 days after a complete application
9 is filed. In connection with a request pursuant to subdivision (h)
10 of Section 60008 for additional information, the commissioner
11 may extend the 60-day period for not more than 45 days. Within
12 10 business days after denying an application, the commissioner,
13 in a record, shall inform the applicant of the reasons for the denial.

14 (b) If the commissioner denies an application for licensure as
15 a provider or does not act on an application within the time
16 prescribed in subdivision (a), the applicant may appeal and request
17 a hearing pursuant to the California Administrative Procedure Act
18 (Chapter 3.5 (commencing with Section 11340) of Part 1 of
19 Division 3 of Title 2 of the Government Code).

20 60013. (a) A provider shall obtain a renewal of its license
21 annually.

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

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

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

38 60014. A person or entity licensed as a provider under this
39 division shall be exempt from the requirements of Division 3
40 (commencing with Section 12000).

CHAPTER 5. REGULATIONS

60015. A provider that is required to be licensed under this division shall maintain a toll-free communication system, staffed at a level that reasonably permits an individual to speak to a debt specialist or customer service representative, as appropriate, during ordinary business hours.

60016. (a) Before providing debt settlement services, a licensed provider shall give the individual an itemized list of goods and services and the charges for each. The list shall be in no less than 12 point font.

(b) A provider shall not furnish debt settlement services unless the provider has prepared a financial analysis.

(c) A written good-faith estimate of the length of time it will take to complete the program and a statement of the total amount of debt owed to each creditor included in the program shall be provided to the individual. The estimate shall be provided prior to the first payment made by the individual to creditors pursuant to the program.

(d) Before an individual assents to an agreement to engage in a program, the provider shall inform the individual in writing of all of the following:

- (1) The name and business address of the provider.
- (2) That some programs are not suitable for some individuals.
- (3) That the conduct of a program may affect the individual's credit rating or credit scores.
- (4) That nonpayment of debt may lead creditors to increase finance and other charges or undertake collection activity, including litigation.
- (5) That unless the individual is insolvent, if a creditor settles for less than the full amount of the debt, the program may result in the creation of taxable income to the individual, even though the individual does not receive any money.
- (6) That specific results cannot be predicted or guaranteed.
- (7) That a program requires an individual to meet certain savings goals in order to maximize settlement results.
- (8) That a provider, who is not otherwise authorized or professionally licensed, does not provide accounting or legal advice to individuals.

1 (9) That a provider does not receive compensation from an
2 individual's creditors, banks, or third-party collection agencies.

3 (10) That a provider cannot force negotiations or settlements
4 with creditors but will advocate solely on behalf of an individual.

5 (11) That if an individual terminates an agreement pursuant to
6 paragraph (1) of subdivision (b) of Section 60019, no additional
7 fees will be due.

8 (e) The provider shall insert the following statement, in not less
9 than 10-point type, in its debt settlement program agreements:

10
11 "Complaints related to this agreement may be directed to the
12 Department of Corporations."

13
14 60017. (a) For purposes of this section, the following
15 definitions apply:

16 (1) "Consumer" means an individual who seeks or obtains goods
17 or services that are used primarily for personal, family, or
18 household purposes.

19 (2) "Federal act" means the Electronic Signatures in the Global
20 and National Commerce Act (15 U.S.C. Sec.7001 et seq.).

21 (b) A provider may satisfy the requirements of Section 60016,
22 60019, or 60024 by means of the Internet or other electronic means
23 if the provider obtains a consumer's consent in the manner provided
24 by Section 101(c)(1) of the federal act (15 U.S.C. Sec. 7001(c)(1)).

25 (c) The disclosures and materials required by Section 60016,
26 60019, or 60024 shall be presented in a form that is capable of
27 being accurately reproduced for later reference.

28 (d) With respect to disclosure by means of an Internet Web site,
29 the disclosure of the information required by subdivision (d) of
30 Section 60016 shall appear on one or more screens that satisfy
31 both of the following:

32 (1) The screen contains no other information.

33 (2) An individual shall be able to see the screen before
34 proceeding to assent to formation of a program.

35 (e) At the time of providing the materials and agreement required
36 by subdivisions (a), (b), and (c) of Section 60016, Section 60019,
37 and Section 60024, a provider shall inform the individual that upon
38 electronic, telephonic, or written request, it will send the individual
39 a written copy of the materials, and shall comply with a request
40 as provided in subdivision (f).

1 (f) If a provider is requested, before the expiration of 90 days
2 after a program is completed or terminated, to send a written copy
3 of the materials required by subdivisions (b) and (c) of Section
4 60016, Section 60019, and Section 60024, the provider shall send
5 them at no charge within three business days after the request, but
6 the provider shall not be required to comply with a request more
7 than once per calendar month or if it reasonably believes the request
8 is made for purposes of harassment. If a request is made more than
9 90 days after a program is completed or terminated, the provider
10 shall send within a reasonable time a written copy of the materials
11 requested.

12 (g) Subject to subdivision (h), if a consumer who has consented
13 to electronic communication in the manner provided by Section
14 101(c) of the federal act (15 U.S.C. Sec. 7001(c)) withdraws
15 consent as provided in the federal act, a provider may terminate
16 its agreement with the consumer.

17 (h) If a provider wishes to terminate an agreement with a
18 consumer pursuant to subdivision (g), it shall notify the consumer
19 that it will terminate the agreement unless the consumer, within
20 30 days after receiving the notification, consents to electronic
21 communication in the manner provided in Section 101(c) of the
22 federal act (15 U.S.C. Sec. 7001(c)).

23 60018. A provider shall maintain an Internet Web site and shall
24 disclose all of the following on the home page of its Internet Web
25 site or on a page that is clearly and conspicuously connected to
26 the home page by a link that clearly reveals its contents:

27 (a) Its name, business address, telephone number, and e-mail
28 address, if any.

29 (b) Its license number under this division and a link to the
30 department's Internet Web site.

31 (c) All other disclosures required by law.

32 60019. (a) An agreement under this division shall satisfy all
33 of the following requirements:

34 (1) Be in writing, dated, and signed by the individual.

35 (2) Include the name of the individual and the address where
36 the individual resides.

37 (3) Include the name, business address, and telephone number
38 of the provider.

39 (4) Be delivered to the individual immediately upon formation
40 of the agreement. For purposes of this paragraph, delivery of an

1 electronic record occurs when it is made available in a format in
2 which the individual may retrieve, save, and print, and the
3 individual is notified that it is available.

4 (5) Include all disclosures required under Section 60016.

5 (6) Disclose all of the following:

6 (A) The list required under subdivision (a) of Section 60016.

7 (B) The amount, and method of determining the amount, of all
8 fees, individually itemized, to be paid by the individual.

9 (C) How the provider will comply with its obligations under
10 subdivision (a) of Section 60024.

11 (D) That the individual may contact the commissioner with any
12 questions or complaints regarding the provider, provided the
13 individual first attempts to address any and all grievances with the
14 provider pursuant to Section 60026.

15 (b) An agreement under this division shall provide the following:

16 (1) That the individual has a right to terminate the agreement
17 at any time by giving the provider written or electronic notice.
18 Termination of the agreement becomes effective immediately upon
19 receipt by the provider, at which time all powers of attorney granted
20 by the individual to the provider are revoked and ineffective.

21 (2) That the individual can cancel an agreement and receive a
22 full refund of any moneys paid to the provider before midnight of
23 the third business day after the individual assents to it. Notice of
24 cancellation is effective upon proof of sending such notice prior
25 to the deadline.

26 (3) That any power of attorney only authorizes the provider, as
27 reasonably necessary, to communicate with creditors for the
28 purposes of negotiating settlement offers and to initiate transfer
29 of funds in accordance with Section 60025.

30 (4) That the provider shall notify the individual within three
31 business days after learning of a creditor's decision to cease final
32 negotiation with the provider. This notification shall include both
33 of the following:

34 (A) The identity of the creditor.

35 (B) The right of the individual to modify or terminate the
36 agreement.

37 (C) The terms and conditions of the agreement modification
38 process.

39 (c) An agreement shall not do any of the following:

1 (1) Provide for application of the law of any jurisdiction other
2 than the United States and this state.

3 (2) Except as permitted by the California Arbitration Act (Title
4 9 (commencing with Section 1280) of Part 3 of the Code of Civil
5 Procedure), contain a provision that modifies or limits otherwise
6 available forums or procedural rights, including the right to trial
7 by jury, that are generally available to the individual under law
8 other than as provided in this division.

9 (3) Contain a provision that restricts the individual's remedies
10 under this division or under another law of this state.

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

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

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

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

19 60020. If a provider communicates with an individual primarily
20 in a language other than English, the provider shall furnish a
21 translation into the other language of the disclosures and documents
22 required by this division.

23 60021. (a) The total of all fees charged by a provider shall not
24 exceed 20 percent of the *principal* amount of debt ~~brought into~~
25 ~~the program~~ which includes a maximum of a 5-percent setup fee.
26 The total fees must be spread over at least half the length of the
27 program, unless accelerated by the individual or until offers of
28 settlement by creditors are obtained on at least half of the debts
29 enrolled to provider. In no case shall total fees exceed 20 percent
30 of the principal debt, and the total fees plus settlements cannot
31 exceed the principal amount of the debt.

32 (b) A provider shall not impose, directly or indirectly, a fee or
33 other charge on an individual or receive money from or on behalf
34 of an individual for debt settlement services except as permitted
35 by this section.

36 (c) A provider shall not impose charges or receive payment for
37 debt settlement services until the provider and the individual have
38 signed an agreement that complies with Sections 60016 and 60019.

39 (d) If a payment to a provider by an individual under this
40 division is dishonored, a provider may impose a reasonable charge

1 on the individual, not to exceed the amount permitted by paragraph
2 (1) of subdivision (a) of Section 1719 of the Civil Code.

3 60022. (a) If a provider imposes a fee or other charge or
4 receives money or other payments not authorized by Section 60021,
5 the agreement is void and the individual shall first seek a remedy
6 pursuant to Section 60026, but, if no remedy is obtained, may
7 recover as provided in Section 60032.

8 (b) If a provider is not licensed as required by this division when
9 an individual assents to an agreement, the agreement shall be void.

10 (c) If an agreement is void pursuant to subdivision (a) or (b),
11 the provider shall not have a claim against the individual for breach
12 of contract or for restitution.

13 (d) Subdivision (a) shall not apply to an error in computation
14 if (1) the provider shows by a preponderance of evidence that the
15 violation was not willful and resulted from a good-faith error,
16 notwithstanding the maintenance of procedures reasonably adapted
17 to avoid that error, and (2) within 60 days of discovering the error
18 the provider notifies the individual of the error and makes whatever
19 adjustments in the account are necessary to correct the error.

20 60023. If an individual who has entered into a fee agreement
21 fails for 60 days to make payments required by the agreement, a
22 provider may terminate the agreement.

23 60024. (a) A provider shall provide the accounting required
24 by subdivision (b), as follows:

25 (1) Upon settlement of a debt.

26 (2) Within five business days after a request by an individual,
27 but the provider shall not be required to comply with more than
28 one request in any calendar month.

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

30 (b) A provider, in a record, shall provide the following to each
31 individual for whom it has established a program if a creditor has
32 agreed to accept as payment in full an amount less than the
33 principal amount of the debt owed by the individual:

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

35 (2) The amount of the debt when the individual assented to the
36 program.

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

1 (4) The fee, and the calculation of the fee, if any, charged to the
2 individual based on a percentage of the settlement of debt or based
3 on a percentage of the savings realized by the individual.

4 (c) A provider shall maintain records for each individual for
5 whom it provides debt settlement services for three years after the
6 final payment made by the individual. A provider shall produce a
7 copy of those records and provide them to the individual within a
8 reasonable time after a request for the records. The provider may
9 use electronic or other means of storage of the records.

10 60025. (a) A provider shall not, directly or indirectly, do any
11 of the following:

12 (1) Exercise or attempt to exercise a power of attorney after an
13 individual has terminated an agreement.

14 (2) Initiate a transfer of funds to or from an individual's bank
15 or other financial institution, unless the transfer is one of the
16 following:

17 (A) A return of money to the individual.

18 (B) Before termination of an agreement, properly authorized
19 by the agreement and this division, for payment of a fee.

20 (C) A transaction that has been expressly approved in writing,
21 or recorded statement, by the individual after the transaction has
22 been presented to the individual for approval.

23 (D) A transaction expressly directed by the individual to the
24 bank or financial institution.

25 (3) Settle a debt or lead an individual to believe that a payment
26 to a creditor is in settlement of a debt to the creditor unless, at the
27 time of settlement, the individual or provider receives a certification
28 or confirmation by the creditor that the payment is in full
29 settlement, or is part of a payment plan that is in full settlement,
30 of the debt.

31 (4) Make a representation that:

32 (A) The provider will furnish money to pay bills or prevent
33 attachments.

34 (B) Payment of a certain amount will guarantee satisfaction of
35 a certain amount or range of indebtedness.

36 (C) Participation in a program will or may prevent litigation,
37 garnishment, attachment, repossession, foreclosure, eviction, or
38 loss of employment.

39 (5) Represent that it is a not-for-profit entity unless it is
40 organized and properly operating as a not-for-profit entity under

1 the law of the state in which it was formed or that it is a tax-exempt
2 entity unless it has received certification of tax-exempt status from
3 the Internal Revenue Service.

4 (6) Knowingly employ an unfair, unconscionable, or deceptive
5 act or practice, including the knowing omission of any material
6 information.

7 (7) Fail to respond to and research any complaint initiated by
8 an individual within 20 days of receipt of the complaint and resolve
9 each complaint in a prompt and reasonable manner.

10 (8) Require an individual participating in a debt settlement
11 program to utilize additional ancillary services.

12 (9) Receive financial incentives or additional compensation
13 based on the outcome of the debt settlement program in excess of
14 the fee cap.

15 (10) Pay referral fees to creditors or potential creditors who
16 refer new clients to the provider.

17 (b) If a provider furnishes debt settlement services to an
18 individual, the provider may not, directly or indirectly, do any of
19 the following:

20 (1) Purchase a debt or obligation of the individual.

21 ~~(2) Except through a separately licensed affiliate, receive~~
22 ~~Receive from or on behalf of the individual either of the following:~~

23 (A) A promissory note or other negotiable instrument other than
24 a check or a demand draft.

25 (B) A postdated check or demand draft.

26 ~~(3) Except through a separately licensed affiliate, lend~~ *Lend*
27 ~~money or provide credit to the individual, except as a deferral of~~
28 ~~a fee at no additional expense to the individual or advance a~~
29 ~~settlement payment for the individual at no additional expense to~~
30 ~~the individual.~~

31 ~~(4) Except through a separately licensed affiliate, obtain~~ *Obtain*
32 ~~a mortgage or other security interest from any person in connection~~
33 ~~with the services provided to the individual.~~

34 (5) Force or otherwise require an individual to deposit his or
35 her funds into a specific financial institution. A provider must also
36 state to the individual that the individual is free to choose any
37 FDIC-insured financial institution. However, this shall not prevent
38 a provider from furnishing the individual with a list of
39 FDIC-insured financial institutions from which the individual may

1 choose or explaining the benefits of using any particular financial
2 institution.

3 (6) Except as permitted by federal and California law, disclose
4 the identity or identifying information of the individual or the
5 identity of the individual's creditors, except to:

6 (A) The commissioner, upon proper demand.

7 (B) A creditor of the individual, to the extent necessary to secure
8 the cooperation of the creditor in a program.

9 (C) The extent necessary to administer the program.

10 (7) Except as otherwise provided in Section 60021, provide the
11 individual less than the full benefit of a compromise of a debt
12 arranged by the provider.

13 (8) Charge the individual for or provide credit or other insurance,
14 coupons for goods or services, membership in a club, access to
15 computers or the Internet, or any other matter not directly related
16 to debt settlement services or educational services concerning
17 personal finance.

18 (9) Furnish legal advice or perform legal services, unless the
19 person furnishing that advice to or performing those services for
20 the individual is licensed to practice law.

21 (10) Advise individuals to stop payment on any of the accounts
22 being handled by the provider.

23 (11) Hold an individual's funds in trust.

24 (c) This division does not authorize any person to engage in the
25 practice of law.

26 60026. Each provider shall establish an internal formal
27 complaint policy that creates a process for the provider to receive,
28 review, and address or resolve formal complaints internally. The
29 availability of this process shall be communicated in writing to
30 individuals enrolled in the provider's program. This policy shall
31 include a provision that all consumers who file a formal complaint
32 shall receive a response from the provider within 20 days from the
33 provider's receipt of the complaint. The provider shall maintain a
34 file for each formal complaint that documents the complaint, its
35 handling, and the resolution, if any, of the complaint and the
36 provider shall disclose the file to the commissioner upon request.

37 60027. No later than 30 days after a provider has been served
38 with notice of a civil action for violation of this division by or on
39 behalf of an individual who resides in this state at either the time

1 of an agreement or the time the notice is served, the provider shall
2 notify the commissioner in a record that it has been sued.

3 60028. Any advertising conducted by the provider shall not
4 contain any false, misleading, or deceptive statement or omit to
5 state any fact necessary to make the statements made, in light of
6 circumstances under which they are made, not false, misleading,
7 or deceptive.

8 60029. (a) The commissioner may act on his or her own
9 initiative or in response to complaints and may receive complaints,
10 take action to obtain voluntary compliance with this division, refer
11 cases to the Attorney General, or any other law enforcement
12 agency, and seek or provide remedies as provided in this division.

13 (b) The commissioner may investigate and examine once every
14 two years, in this state or elsewhere, by subpoena or otherwise,
15 the activities, books, accounts, and records of a person that provides
16 or offers to provide debt settlement services, or a person to which
17 a provider has delegated its obligations under an agreement or
18 under this division, to determine compliance with this division.
19 Information that identifies individuals who have agreements with
20 the provider shall not be disclosed to the public. In connection
21 with the investigation, the commissioner may do either of the
22 following:

23 (1) Charge the person the reasonable expenses necessarily
24 incurred to conduct the examination.

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

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

32 60030. (a) The commissioner may enforce this division and
33 rules adopted under this division by taking one or more of the
34 following actions:

35 (1) Ordering a provider or a director, employee, or other agent
36 of a provider to desist and refrain from any violations.

37 (2) Ordering a provider or a person that has caused a violation
38 to correct the violation, including making restitution of money or
39 property to a person aggrieved by a violation.

1 (3) Imposing an administrative penalty not exceeding two
2 thousand five hundred dollars (\$2,500) for each violation on a
3 provider or a person that has caused a violation.

4 (4) Prosecuting a civil action to do either or both of the
5 following:

6 (A) Enforce an order.

7 (B) Obtain restitution or an injunction or other equitable relief,
8 or both.

9 (b) If a person knowingly violates or knowingly authorizes,
10 directs, or aids in the violation of a final order issued under
11 paragraph (1) or (2) of subdivision (a), the commissioner may
12 impose an administrative penalty not exceeding ten thousand
13 dollars (\$10,000) for each violation.

14 (c) The commissioner may recover the reasonable costs of
15 enforcing this division under subdivisions (a) and (b), including
16 attorney's fees based on the hours reasonably expended and the
17 hourly rates for attorneys of comparable experience in the
18 community.

19 (d) In determining the amount of a penalty to impose under
20 subdivision (a) or (b), the commissioner shall consider the
21 seriousness of the violation, the good faith of the violator, any
22 previous violations by the violator, the deleterious effect of the
23 violation on the public, the net worth of the violator, and any other
24 factor the commissioner considers relevant to the determination
25 of the civil penalty.

26 (e) Any penalties or other amounts recovered by the
27 commissioner under this section shall be paid into the State
28 Corporations Fund.

29 60031. (a) In this section, "insolvent" means the following:

30 (1) The inability to pay debts in the ordinary course of business
31 other than as a result of good-faith dispute.

32 (2) Being unable to pay debts as they become due.

33 (3) Being insolvent within the meaning of the federal bankruptcy
34 law (11 U.S.C. Sec. 101 et seq.).

35 (b) The commissioner may suspend, revoke, or deny renewal
36 of a provider's license if:

37 (1) A fact or condition exists that, if it had existed when the
38 licensee applied for licensure as a provider, would have been a
39 reason for denying the license.

1 (2) The provider has committed a material violation of this
2 division or a rule or order of the commissioner under this division.

3 (3) The provider is insolvent.

4 (4) The provider or an employee or affiliate of the provider has
5 refused to permit the commissioner to make an examination
6 authorized by this division, failed to comply with paragraph (2)
7 of subdivision (b) of Section 60029 within 15 days after request,
8 or made a material misrepresentation or omission in complying
9 with paragraph (2) of subdivision (b) of Section 60029.

10 (5) The provider has not responded within a reasonable time
11 and in an appropriate manner to communications from the
12 commissioner.

13 (6) The provider has been convicted of a crime that involves
14 dishonesty, fraud, or deceit, and that is substantially related to the
15 qualifications, functions, or duties of the licensed activity.

16 (c) If the commissioner suspends or revokes a provider's license,
17 the provider may appeal and request a hearing pursuant to the
18 California Administrative Procedure Act (Chapter 3.5
19 (commencing with Section 11340) of Part 1 of Division 3 of Title
20 2 of the Government Code).

21 60032. (a) If an agreement is void pursuant to subdivision (a)
22 or (b) of Section 60022, the individual may recover in a civil action
23 all money paid by or on behalf of the individual pursuant to the
24 agreement, in addition to the recovery under subdivision (b).

25 (b) An individual with respect to whom a provider violates this
26 division may recover the following in a civil action from the
27 provider and any person that caused the violation:

28 (1) Compensatory damages for injury caused by the violation.

29 (2) Reasonable attorney's fees and costs.

30 (c) A provider shall not be liable under this section for a
31 violation of this division if the provider proves that the violation
32 was not willful and resulted from a good-faith error.

33 60033. If an act or practice of a provider violates both this
34 division and Chapter 5 (commencing with Section 17200) of Part
35 2 of Division 7 of the Business and Professions Code, an individual
36 may not recover under both for the same act or practice.

37 60034. (a) An action brought under this division shall be
38 commenced within three years after the latest of one of the
39 following:

40 (1) The individual's last transmission of money to a provider.

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

4 (b) The period prescribed in paragraph (2) of subdivision (a)
5 shall be tolled during any period during which the provider or, if
6 different, the defendant has materially and willfully misrepresented
7 information required by this division to be disclosed to the
8 individual, if the information so misrepresented is material to the
9 establishment of the liability of the defendant under this division.

10 60035. This division shall not apply to a debt settlement
11 agreement between an individual and a provider for the
12 performance of debt settlement services that was entered into prior
13 to the operative date of this division.

14 60036. The commissioner may make general rules and
15 regulations and specific rulings, demands, and findings for the
16 enforcement of this division.

17 60037. Any person, including a partner or officer of an entity
18 that is a licensee, who willfully violates any provision of this
19 division or who willfully violates any rule or order adopted
20 pursuant to this division, shall, upon conviction, be punished by
21 a fine of not more than ten thousand dollars (\$10,000), or by
22 imprisonment in a county jail for not more than one year, or by
23 both that fine and imprisonment. However, no person may be
24 imprisoned for the violation of any rule or order unless he or she
25 had knowledge of the rule or order.

26 60038. A provider shall act in good faith in all matters under
27 this division.

28 60039. This division shall become operative on January 1,
29 2011.

30
31 CHAPTER 6. MISCELLANEOUS
32

33 60050. The provisions of this division are severable. If any
34 provision of this division or its application is held invalid, that
35 invalidity shall not affect other provisions or applications that can
36 be given effect without the invalid provision or application.

37 SEC. 2. No reimbursement is required by this act pursuant to
38 Section 6 of Article XIII B of the California Constitution because
39 the only costs that may be incurred by a local agency or school
40 district will be incurred because this act creates a new crime or

1 infraction, eliminates a crime or infraction, or changes the penalty
2 for a crime or infraction, within the meaning of Section 17556 of
3 the Government Code, or changes the definition of a crime within
4 the meaning of Section 6 of Article XIII B of the California
5 Constitution.

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